

NAPIERPUB00914
08/07/2011

NAPIER
pp 00914-00963

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION NAPIER

Reference: Operation E11/0475

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 8 JULY 2011

AT 1.50PM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Mr Alexis.

<WARWICK ARTHUR WATKINS, on former oath [1.50pm]

MR ALEXIS: Thank you, Commissioner.

10 Mr Watkins, I'll have shown to you Exhibit 20 which the is valuation that I think you accepted before lunch had been received under cover of an email from Mr Ferguson on around 11 January, 2011?---Yes.

And if you look at page 26 of that valuation, just looking at the pagination in the bottom right-hand corner that I'm working from, do you have that page?
---Yes.

20 And you'll see that in the calculations which informed the valuer's market value range of 10 to 11.5 million the valuer started his expression of calculations by reference to the open space component and do we see at the foot of page 26 the valuer's attribution of a relatively nominal amount of \$500,000 for that open space zoned land?---Yes, as it relates to a, a residential zoning, yes.

And you see that he says, "This figure is our assessment of its value in negotiations for the dedication of the excess land as part of an approval on the residential 2(a) section of the property"?---Yes, I do.

30 And then over the page I think it's clear that you see that the Valuer then sets out his calculations of prospective gross realisation with the various lots and then after bringing into account costs, just to put it broadly, he ultimately brings to account the value of what he describes as the escarpment land, do you see that at the bottom of the calculation?---Yes.

To derive the valuation range that is the subject of this valuation, is that so?
---Yes.

40 Now, may we understand that when you came to the briefing minute of 9 February to Minister Kelly which I took you to before lunch behind tab 8 at page 41 - - -?---Yes.

- - - you knew and understood that the valuer that Mr Ferguson had procured this valuation from had attributed a relatively nominal amount of \$500,000 to the open space zoned land within Currawong?---I had read that but I can't recall having it with me when I wrote the Briefing Note but I had read it.

Well, can I just go back to the question that I think I started with before we adjourned and that is to ask you to explain to us why in paragraph 3.2.3 you referred to the Currawong site including the open space component with a nominal value of approximately \$2 million when you aware of a Council procured valuation which attributed a relatively nominal amount of \$500,000 to that open space zoned land?---As I say I, I, I have read that and I read that before this was written. I did not refer to that when I was, when I was reviewing this material.

10 Well, we know that but can you explain to me why when paragraph 3.2.3 was written having read and I take it understood what the Council procured valuer was saying about the nominal value of the open space land of \$500,000, why didn't you refer to that in the Briefing Note to the Minister? ---Because as I've replied to your previous question I did not have that next to me and I did not recall that when I was, when I was reviewing this Briefing Note.

20 So are you telling the Commissioner that about a month or so after the receipt of Mr Ferguson's email when you came to direct your mind to the subject of the value of the open space component of Currawong the content of that earlier valuation had slipped your mind?---I wouldn't say slipped my mind, I did not cross-reference when I prepared this material.

But you obviously may I suggest to you directed your mind to the value of the open space component of Currawong when you were writing to the Minister didn't you?---Yes, in the, in the context of the SRDF, yes.

30 And didn't you think to yourself well, upon what basis am I representing to the Minister that the open space component of Currawong had a nominal value of \$2 million?---That was my approximation at that time.

But didn't you direct your mind to what the basis of that approximation was and didn't you think that the valuation that the Council had procured and Mr Ferguson had passed on to you might inform your representation to Mr Kelly in this document on that subject?---As I said to my previous question -- your previous question I did not reflect on that or refer to this when I was preparing that Briefing Note.

40 Wasn't it important to you when writing to the Minister about this in the context of seeking approval to convey to him that the SRDF was a ready source of funding that would cover at least half the acquisition cost of Currawong assuming a cost acquisition price of around 12 million?---Yes.

And wasn't it important then to convey to the Minister that the open space component contained significant value so that the SRDF could fund the purchase of the open space component up to at least that value?---That the SRDF could fund areas outside of the escarpment.

But the SRDF fund was one that responded to the implementation of any acquisitional liability on the Minister administering the Environment Planning and Assessment Act, wasn't it?---That was part, but under the provisions in section 130 of the EP&A Act provides the SRDF to be used on adjoining lands where they add open space value particularly infrastructure.

10 And is that how you considered the position at the time you wrote this Briefing Note in February 2011?---That's why the term nominal is there because there was no final consideration as to what value would be applied and the apportionment of the SRDF.

Thank you. That exhibit can be returned. Now, Mr Watkins, we know, don't we, that no GAMC submission was made in relation to the acquisition of Currawong?---Yes.

And we know that the Gateway review process was not navigated with respect to the purchase of Currawong?---Yes.

20 And you were familiar with both the GAMC process and the Gateway review process?---Yes.

You've heard evidence of your involvement at meetings in relation to GAMC?---Yes.

And the evidence indicates that you were present at those meetings and may we take it that you well understood those proceedings and those processes? ---Yes.

30 And I gather you say, Mr Watkins, that you were entitled to circumvent those processes and procedures with respect to the purchase of Currawong because of the Premier's letter?---That was part of that (not transcribable) GAMC in my experience does not always address particularly acquisitions under the SRDF, it operates outside of that on most occasions. So that wasn't a consideration and Gateway wasn't a consideration because of Gateway always set guidelines that weren't applying to this because of time and the Premier's letter overtook those matters.

40 Can you explain to us please why Gateway didn't apply because of time? ---Gateway in most cases on properties on a valuation whether they be IT projects or others can take anywhere from 12 to 18 months. There are a set of guidelines to enable an organisation to work through that aren't mandatory and on this occasion the decision by Government had already been taken as a result of the Premier's letter to acquire this site and therefore Gateway wasn't part of the consideration.

So should we understand, Mr Watkins, that if we put the Premier's letter to one side and we note to put also to one side what you've said about timing you would accept that the GAMC procedure and the Gateway review

process would have ordinarily applied to an acquisition such as Currawong?---No.

Why not?---Gateway as I said is a set of guidelines and they're applied by an agency, they not directed by Treasury as mandatory and on this occasion because there's already a statutory provision to purchase some 72 per cent of it Gateway would not have been something that we would have considered.

10 So when we speak about GAMC and we speak about Gateway reviewed processes you regarded both of those as irrelevant to extraneous to the steps to acquire the Currawong site?---At the time that I made that decision to acquire the site, yes.

And we should understand that decision was at the point in time following Mr Linz and you agreeing on the price and the steps thereafter were taken to exchange the contract the following Tuesday?---Yes.

20 So did you consider GAMC and the Gateway process at that time or was that something that was, to put it frankly, the furthest from your mind?---It wasn't a consideration.

All right. So it wasn't considered?---It wasn't a consideration.

Thank you. Now, before Friday, 11 March had you spoken to Mr Costello at all about how the LPMA was going to fund the deposit and the completion of the purchase of Currawong?---I can't recall any, I cannot recall direct discussions, no.

30 And can I ask you to tell us whether you recall having brought to your attention that in order for the Currawong purchase to be completed within the proposed timeframe of three or four weeks of exchange that it would be necessary to withhold about \$10.4 million from Treasury payments from the CLE account to the consolidated fund?---I was not aware of the, of the amount but I was aware that there would have been need to make some adjustments.

40 So you're telling us, Mr Watkins, that you knew that some adjustments had to be made but you weren't across the detail?---That's right.

And did the detail concern you or should we understand that you really weren't troubled about that sort of detail?---No, what I was concerned about was, pardon me, meeting the end of year accounts and ensuring that I'd met the appropriate targets.

Would you agree with this proposition, Mr Watkins, that given what we've stepped through up to the date of exchange they indicate a fairly clear and

decisive path by you to acquire this property within the window that was open and available to you?---Yes.

Now, the contract I think was exchanged at some particular time between or around 5.00pm on 15 March?---I was in Melbourne at the time but I understand it was around that time.

10 I don't seek to be precise about it but we're looking at a timeframe at somewhere between about 4.30 to 5.00, is - - -?---I, I assume so, I, I wasn't there at the time.

And you were in may I suggest reasonably constant telephone communication with those at the frontline of the execution of this part of the transaction?---I had a number of discussions as I recall.

20 And you had a number of discussions with not only Mr Costello about the steps forward in effecting an exchange via the work that Mr Simpson was doing but you were also in constant communication with Mr Fenn, do you agree with that?---I can't recall the - but I would have been in contact, yes, but I can't say constant.

But you accept that you were in contact with Mr Fenn during the course of Tuesday, 15 March?---Yes, I would have been.

Now, I think the position we should understand is that you executed the execution page of the contract on the morning before your departure, is that so?---I did.

30 And you did that with instructions that whatever changes to the contract needed to occur they would occur so that your execution was in escrow of those changes being agreed so that Mr Simpson was then in a position to exchange the contract?---Yes, if there was anything outside of the agreed, pardon me, of a substantive nature, that's right, I could have, yes.

40 And so for example, Mr Watkins, we should understand that insofar as the identity of the purchaser was concerned, that was a matter that hadn't been squarely resolved before you executed the contract?---No, it was as I recall because I specifically spoke with Mr Simpson and that's why I put the line through the Ministerial corporation and signed it accordingly.

I see. Thank you. Now, can I just show you a series of emails and, Commissioner, I'll go through each of the emails and then I'll tender them separately at the end if I may, and can I start with, yes, can I provide you with a bundle of emails, Mr Watkins, with a copy for you, Commissioner. Now, Mr Watkins, can I ask you firstly to locate the email from yourself to Ms Hopkins, Tuesday, 15 March, 12.43, do you have that?---Yes, I do.

And do you see at about quarter to 1.00 that day you emailed her to ask the date of Tony's letter, that's Minister Kelly's letter and especially the Premier's letter, do you see that?---Yes.

And do you see if I ask you to turn to the next page of that stapled series of emails your PA's reply at the top of the page at 12.54, shortly after the email that you sent to her, replying with the dates that you'd asked for?---Yes.

10 And if I could just ask you to put that one to one side for the moment. Now, the next email I wish to take you to is the email which is from you to Mr Fenn, again on 15 March at 1.04pm, do you have that one?---Yes.

Thank you. And you'll see that in that email to Mr Fenn you've said, "Both Tony's and Premier's approvals were proof to Caretaker," and may I suggest that the word proof was a typographical error and it should read prior to Caretaker?---I think that I'd agree with that, yes.

20 So if we read it with that change and we see that you've said the letters, approvals as you've described them were prior to Caretaker and therefore the policy position/commitment entered into by government, do you see that?---Yes, I do.

And then you've said, "Accordingly, I have now" completed I think that word should be, would you agree?---Yes, fat fingers I'm sorry.

That's all right, "completed this already entered into commitment and settlement within three weeks from today," do you see that?---Yes.

30 Now, can I ask you to explain to us why at just after 1 o'clock on the day of exchange you were communicating with Mr Fenn in those terms?---I was keeping Mr Fenn informed of progress on the matter.

40 But can I ask you to explain to us why you asked your personal assistant when you were in Melbourne to email you the dates of the respective letters and then why having got that information at 12.54 you emailed Mr Fenn at 1.04 and said that those approvals were prior to Caretaker and therefore the policy position/commitment entered into by government?---I can't recall the exact, the exact reason for doing, doing that but - no, I can't give you a specific direct answer.

Well, could you then explain to us why you then expressed yourself, "Accordingly I have now completed this already entered into commitment."?---If you're asking me to interpret what my mind was at that time I can only recall that I would've been ensuring and checking in my mind that the, that the letters upon which I was relying being the, pardon me, the Premier's letter and the Minister's were indeed by the Caretaker and that was but one of the aspects that I had considered.

Mr Watkins, you know, don't you, that by lunchtime on Tuesday, 15 March Mr Fenn was being asked questions about this transaction and whether it was in breach of Caretaker, don't you?---There was a series of phone calls, I didn't relate that to where you're going with your question, I'm sorry.

But Mr Fenn had raised with you during these series of phone calls that he had been in communication with Mr Pooley of the Premier's office and he was raising questions about Caretaker and needed to explain the position, you knew that, didn't you?---Yes, I had discussions with Mr Fenn on that.

10

And that's why you were responding in the terms that we see and putting to him that the letters that you had already had the dates identified to you by your Personal Assistant as you then saw it confirmed a position and a commitment entered into prior to the commencement of Caretaker?---Yes, I can understand that.

That's how you were constructing the position and conveying it to Mr Fenn in this email at 1.04pm?---That would've been one aspect of the Caretaker I considered, yes.

20

And can I ask you to look at the third email which, just for identification purposes, should be an email from Mr Fenn to Mr Pooley of 15 March at 12.30. Do you have that one?---With one of three on the top of it?

Yes?---Yes, I have that.

And if you just come to two of three you'll see that the string on the email commences with a letter from Pittwater Council - - -?---A letter or - - -

30 I beg your pardon?---Sorry, did you say a letter?

No, an email. On page 2 of 3 you see the email from Pittwater Council to you earlier that day at 9.56?---Yes, I do.

And it says, and it attached the letter of 15 March to which I think we've been referring from Mr Ferguson?---Yes.

40 So if we then go to the bottom of the first page you see that Ms Hopkins is then sending that communication from Pittwater Council onto Mr Fenn at 11.42, do you see that?---Yes.

And then you see that Mr Fenn then passed that correspondence onto Mr Pooley at 11.45?---Yes.

And you then see the terms of Mr Pooley's response to Mr Fenn, "We're in Caretaker, depends on the date of agreement and nature of the agreement. Are you getting a Brief up from Watkins" - - -?---Yes

- - - "I can get Legal to look at it then." Do you see that?---Yes.

Now Mr Fenn conveyed to you, didn't he, that he had received this email from Mr Pooley just after 1.15pm?---Yes.

And that explains why you were communicating to him about what the position was as you were then putting it in this email about commitments and policies and Caretaker?---Yes, as well as over, as well as discussions over the phone, yes.

10

And during that communication with Mr Fenn he told you that Mr Pooley had asked him when a Brief was coming up because he, Mr Pooley, wanted to get Legal to look at it?---I don't recall the aspect about Legal but, pardon me, I recall, I recall the aspect about the Brief and that was the Brief that was sent up the next day.

He told you, didn't he, that the Brief needed to come up so that he, Mr Pooley, could get Legal to look at it?---No, that's not my recollection.

20 And do you see Mr Fenn respond to Mr Pooley at 1.19pm and informing him - - -?---Sorry – yes, I've got that.

You've got that. Thank you. And Mr Fenn is saying to Mr Pooley, "He was given permission to negotiate prior to Caretaker." Do you see that? ---Yes.

30 And if you look at the time at which Mr Fenn despatches that email 1.19 and you look at the time of your earlier email 1.04 it's clear, isn't it, that what Mr Fenn was doing was to convey the position as you had conveyed to him shortly before?---Yes, I can see that.

And then you see that Mr Pooley responds to that at 1.21pm. And do you see the terms in which Mr Pooley communicates with Mr Fenn, "Yeah, I tried all that, permission to negotiate means not much, what I need is information on what has been agreed, handshake, exchange of letters, heads of agreement and when it was completed, once I get that info we can see if we can use Stokes or someone from their side to make it work." Do you see that?---Yes, I see that.

40 Now, Mr Stokes, I think we should understand, was then in opposition and the Member for Pittwater?---He was.

And Mr - - -?---Well, he still is, yes.

And Mr Fenn, when he received that email, got you on the phone, didn't he?---I can't recall the time but – I haven't got the records but I - - -

Well, he rang you at 1.22pm and he spoke to you for 3 minutes and 56 seconds?---Right.

Well, does that accord with your recollection?---I had a number of phone calls so I don't dispute that I spoke to him that time if that's what the records show.

10 And at that point during this 3 minute 56 second conversation he conveyed to you the content of these communications with Mr Pooley, didn't he?---He conveyed to me, I can't recall the exact content whether it's word for word and I don't recall that but I recall that he wanted, he wanted to get information on the contract exchange and the finalisation of the matter I was undertaking, yes.

And he wanted to get information so that consistent with Caretaker Conventions information could be provided to the Opposition so that the Leader of the Opposition's consent could be obtained to allow the transaction to go forward?---No, I don't, that's not my recollection.

20 What Mr Fenn said to you is that he could get Mr Stokes to speak with Mr O'Farrell to see if they could make it work?---No, I recall a discussion that Mr Fenn and Mr Pooley had an exchange of emails and (not transcribable) that, words to the effect was that Mr Pooley had said, I'll get the – the boss wants to talk – the boss wants to talk to BOF before announcement is made or words to that effect. There's an email in the system to that effect.

30 So you're telling us are you, Mr Watkins, that the communication with Mr Fenn which contained the reference to Mr O'Farrell related to the making of an announcement rather than the obtaining of the Opposition's consent to you entering into this transaction, is that so?---That's as I recall the, the, I think the word "announcement" was there and that's as I, as I recall the email.

But at this point in time, namely, 1.22pm there was nothing to announce because contracts hadn't been exchanged, correct?---No, what I'm referring to here is that was my understanding of it and I can't recall whether that, that email was dated this day or dated the next day.

40 But is what I just put to you correct?---I don't, I can't - - -

1.22pm when you were speaking with Mr Fenn for 3 minutes and 56 seconds about this subject matter you knew that the contract had not been exchanged?---No, at the time that I left the office to catch a flight to Melbourne I was not certain and was not aware of the actual timing of the contract or when it would be exchanged.

Mr- -?---I only heard of that as I recall later on.

Mr Watkins, you knew very well that by 1.22pm on 15 March the contract had not been exchanged, didn't you?---No. I cannot, I cannot recall that, because when I left I executed the contract and I did not know at what time on that day that the contract would be exchanged.

And when you were speaking with Mr Fenn you told him in effect that you didn't want this to go anywhere near the opposition because it was critical to get the contract exchanged today?---No. That's, that's not the case at all.

10 I tender each of these emails, Commissioner. The first should be the 12.43 email.

THE COMMISSIONER: Yes. The email from Mr Watkins to Ms Hopkins on 15 March, 2010 at 12.43pm is Exhibit 59A and the email from Ms Hopkins to Mr Watkins of 15 March, 2011 at 12.54pm is Exhibit 59B.

**#EXHIBITS 59A - EMAIL FROM MR WATKINS TO MS HOPKINS
SENT ON 15 MARCH 2011 AT 12:43PM**

20

**#EXHIBIT 59B - EMAIL FROM MS HOPKINS TO MR WATKINS
SENT ON 15 MARCH 2011 AT 12:54PM**

THE COMMISSIONER: Now, I think the next one, is, is that the string, Mr Alexis, commencing with 15 March, 2011?

MR CURTIN: No, there's three.

30

THE COMMISSIONER: One of three.

MR BRANSON: There is a string, one of three, yes.

THE COMMISSIONER: So that's the next one that should be- - -

MR ALEXIS: No, the next one in order should be Mr Watkins' email to Mr Fenn at 1.04pm.

40 THE COMMISSIONER: Yes.

MR ALEXIS: That's the two-page one.

THE COMMISSIONER: Right. Yes. In Exhibit 60A will be Mr Watkins' email to Mr Fenn of 15 March, 2011 at 1.04pm, and 60B will be Mr Fenn's email to Mr Watkins of 15 March, 2011 at 1.11pm, and Exhibit 61 is a string of emails consisting of three pages with the top of the first page being the email from Mr Fenn to Mr Pooley at 12.30pm on 15 March, 2011.

**#EXHIBIT 60A – EMAIL FROM MR WATKINS TO MR FENN
SENT ON 15 MARCH 2011 AT 1:04PM**

**#EXHIBIT 60B – EMAIL FROM MR FENN TO MR WATKINS
DATED 15 MARCH 2011 AT 1:11PM**

10

**#EXHIBIT 61 - EMAIL STREAM COMMENCING WITH EMAIL
FROM MR FENN TO MR POOLEY DATED 15 MARCH 2011**

THE COMMISSIONER: So in other words the three-page documents is Exhibit 61.

20 MR ALEXIS: Yes, thank you, Commissioner. Now, can I show you, Mr Watkins, with a copy for you, Commissioner, one further email on this subject?---Thank you.

And you'll see that at 1.38 and following I would suggest the three minute 56 second telephone conversation with Mr Fenn that commenced at 1.22, you emailed Ms Hopkins and asked her to send Mr Fenn a copy of Minister Kelly's letter and the letter from the Premier?---Yes.

30 And can you explain to us why at that point in time, 1.38pm, you made that request of your personal assistant?---All I could recall is that that would be as a result of telephone discussions with Mr Fenn.

And you understood that what Mr Pooley was after was some documents or a brief of some sort and Mr Fenn needed these letters to then send up to Mr Pooley. Is that how the Commission understand it?---That was my, yes.

Yes, thank you. I tender that further email together with the attached letters, Commissioner.

40 THE COMMISSIONER: Exhibit 62 comprises one page containing two emails. At the top of the page is an email from Ms Hopkins to Mr Watkins at 12.54pm on 15 March, 2011, together with two attached letters.

**#EXHIBIT 62 - EMAIL STREAM COMMENCING WITH EMAIL
FROM MS HOPKINS TO MR WATKINS DATED 15 MARCH 2011
SENT AT 12:54PM**

MR ALEXIS: Thank you, Commissioner. Now, Mr Watkins, do you still have Exhibit 62?---No, I don't.

So it will be shown to you momentarily. I should have drawn attention to this earlier. When you emailed Ms Hopkins at 1.38 and we see at the top of the page that she then responded to you with the word, "Done." Do you see that?---Yes.

10 And the time of her email on its face would suggest that it was before you made the request. Do you see that?---Yes.

And should we understand that either you or Ms Hopkins were operating on daylight saving time or one of you was, one of you wasn't or something like that?---That, well it must mean some (not transcribable)

Should we, and we've seen it in other email communications- -?---Yeah.

- - -the one-hour approximately difference?---Yeah, yeah.

20 And is that the explanation?---I would, yes, I would think so.

Yes, thank you. Now, can I show you, please, a further email that you sent to Mr Costello, Mr Simpson, Mr Matchett and Mr O'Keefe and Ms Hopkins close to 6.00pm on the evening of 15 March?---Yes.

And by that stage you'd learned the contract had been exchanged?---Yes.

30 And should we understand that this was a personal expression of gratitude to your staff for the work and assistance provided in securing the purchase of Currawong?---Yeah. Well, a thank you as I said in the first line.

Yeah. And can I draw attention to the reference to "intense and difficult negotiations" and the timeframes that you refer to there in the opening paragraph?---Yes.

And do you see that you expressed the sentiment that it would have been very easy for all of us to say it's all too hard and give it away but this decision would not have been right?---Yes.

40 And then do you see in the next paragraph just passing over your complimentary words of your staff and colleagues, you describe the purchase as one of the most significant decisions in the past few years for the LPMA, especially given the odds?---Yes.

And what were the odds that you were there referring to?---Oh, there was, especially given the odds, the odds as far as I would, as I recall, my thoughts at that time would have been the, the short timeframe, the difficult

negotiations, the, just the general construct of doing what we did within the, to achieve what we did.

And do you see in the next line you refer to how you then saw your own approach to it and you accept in expressing yourself in the way that you did that people might have been observing you and wondering what you were doing and the fact that you might need certifying? Does that capture the- - -?---No, I think that- - -

10 Can I finish my question please?---Sorry.

Does that really capture the sentiment that you were driven by these intense and difficult circumstances and timeframes to pull off what some might have said was the impossible?---No. My, the expression that I'm using here because I work very closely with these people is that I was expressing my appreciation for their efforts. It was a, it was a difficult task. It would have been much easy, easier for me to say let's not go ahead with this and to say to Mr Linz thank you very much, you're too late, it's not worth doing and so the context of this is to say thank you for doing what you've done within the
20 timeframes that you've done it.

You see in the last paragraph you refer to the quality of persistence and you refer to that being especially so in this case because, as you there describe, the cause is correct?---Yes, I do.

And you did regard this as a cause, didn't you, Mr Watkins?---Not in the, not in the sense that it was a crusade as a cause, no.

Now, the sentiment that you were conveying in this congratulatory email to
30 your staff was that you and they had pulled off this deal, perhaps cutting some corners, perhaps pushing the envelope, but all in the cause of public ownership of this land because that was an important outcome to achieve?
---No.

You, you don't agree with that?---No, I don't agree with that.

Can I tender the email, please, Commissioner.

40 THE COMMISSIONER: Yes. The email from Mr Watkins to Mr Costello and others of 15 March, 2011 at 5.59pm is Exhibit 63.

**#EXHIBIT 63 - EMAIL FROM MR WATKINS TO NUMEROUS
LPMA EMPLOYEES REGARDING CURRAWONG SENT AT
5:59PM ON 15 MARCH 2011**

MR ALEXIS: And, finally, Mr Watkins, can I show you one last email?

MR BRANSON: I said finally the other day, it wasn't.

MR ALEXIS: Well, when I say finally I hope I - - -

MR BRANSON: Mr Alexis is more precise than me. He needs to be.

MR ALEXIS: Don't be that way, Mr - - -

10 THE COMMISSIONER: Just for the time being, final for the time being.

MR ALEXIS: Mr Watkins, you see this email sent after the earlier one to Mr Fenn?---Yes.

And perhaps I can pass over the first two paragraphs which we can read for ourselves but do you see that again in the final paragraph you refer to what's been achieved for the State and does that reflect that you how you saw the outcome, a great outcome for the State of New South Wales?---That's my colloquial expressions for seeing something in the public interest that was achieved, yes.

20

And do you see in the next breath you say "it would have been much easier to say it all too hard and I guess DPC and Treasury would say why didn't you just leave it alone," do you see that?---Yes, I do.

And why, why did you perceive at the time you wrote this email to Mr Fenn that the DPC and Treasury would have told you to leave it alone if you had asked them?---Short timeframes, leading up to Caretaker, those, those sorts of issues.

30

Yes, thank you, Mr Watkins. I'll tender that email.

THE COMMISSIONER: Yes. The email from Mr Watkins to Mr Fenn of 15 March, 2011 at 6.12pm is Exhibit 64.

#EXHIBIT 64 - EMAIL FROM MR FENN TO MR WATKINS SENT AT 6:12PM ON 15 MARCH 2011

40

MR ALEXIS: Thank you, Commissioner, and that was my final question.

THE COMMISSIONER: Mr Watkins, before you are asked questions by others there are just two topics I just want to ask you about. Was there any reluctance on your part to have this matter submitted to a Budget Committee?---No, not if the timing had been different, not at all.

But because of the timing there was a reluctance?---Because of the timing and discussions with the Minister there wasn't the opportunity so it wasn't a matter about reluctance on my behalf, it was a matter that getting to the timing of that middle to late February the Cabinet process was grinding very much to a close.

10 Are you saying that you could not have submitted this to a Budget Committee?---If you want my, if you're asking me for my opinion in that sense the Budget Committee and I, I can't say when the last meeting of Budget Committee was but as I recall it was around the middle of February, the last meeting of Budget Committee and full Cabinet therefore as I recall the decision was taken because of that process to go straight to the Premier and the head of executive government because the budget process was not readily available at that time.

20 Did you make any inquiries as to whether you could have sent it to a Budget Committee?---I recall that's, that is a matter for the Minister's office who, who in direct contact with, with the timing of, of and the preparation submission of those things but I do recall that when we were preparing and sending the letter of the 9th of the Minister's, that was the conscious decision that was taken at that time.

Conscious decision on whose part?---Conscious decision by the Minister's office and - because they were the ones that determined whether in fact you would proceed through the executive path with the letter or indeed say no, this must go to Cabinet and it was that decision at that time.

30 Now you, you'll have to explain to me, please, how it is that it came about that the Minister's office made this decision. Did you ask them to? Did you ask them whether you could submit the matter, the, the proposal to the Budget Committee?---No, this was - - -

Can you just answer the question?---Did I ask?

Yes, did you ask anyone in the Minister's office whether you could submit the proposal to the Budget Committee?---No.

40 And are you, I thought at one point you said but I might not have heard you properly but did you say that you agreed with the Minister that you would not submit the, subject the proposal to the Budget Committee?---(NO AUDIBLE REPLY)

Did you say that, that's my first question?---Yes.

Well, when did you come to this agreement with the Minister?---Either at the time when we signed this letter or just prior to that and that generated the letter, so that would have been in the timing around late January early February.

And what were the factors that led you and the Minister to decide in late January or early February that you could not send this matter to a Budget Committee?---The, there were very few Budget Committees left at that time, probably one or two and as I recall there were discussions between Mr Fenn and, and the Premier's office.

Well, how do you know?---Because that became part of the discussions at the weekly meetings on this issue.

10

Are these minuted?---No, they're not minuted.

Why not?---I, I don't know. I have never in all the times I've served Ministers, there's never been minuted meetings.

What, you have meetings taking important decisions as to whether or not to send a proposal to a Budget Committee and that's never minuted, is that what you're saying?---Not in those meetings, no.

20 Is it minuted in any other meeting?---No.

No note was taken of this?---No note was taken of that decision.

So how do you know in a few weeks time whether that decision has been taken or not? Do you rely simply on memory?---No, I rely on the, rely on the fact that the decision that ensued which was going to the executive arm of Government to the Premier was the decision that was taken as a result of that.

30 Have you read the Premier's evidence on the issue of the Budget Committee?---Yes, I have.

Do you agree with it?---No, I don't.

Do you say the Premier is wrong?---No, I'm not.

So what don't you agree with?---In my experience I, I have not known a Budget Committee to have, or indeed a Cabinet meeting to have been undertaken during Caretaker.

40

But you made no attempt to have such a meeting held?---That is not a matter for myself, it's a matter for the Minister.

You didn't request that or suggest that or recommend it?---No, I didn't.

Are you saying that it was the Minister's decision not to have a Budget Committee meeting?---No, I'm saying that, that - - -

I withdraw that, I put it incorrectly. Are you saying it was the Minister's decision not to submit the matter to a Budget Committee?---Yes.

Because he said it would be too difficult to get it in front of a Budget Committee before Caretaker and you couldn't have such a Committee meeting after Caretaker, is that what he said?---No, he didn't say it in those terms.

10 Well, what did he say?---The decision, because there was a limited number of Cabinet meetings left and we did not have the sale – the understanding that the sale had been completed till late January, I think it was the 28th, the decision was taken by the Minister, and as I understand it, there were some discussions between the Premier's office and Minister's office that if this issue of Currawong was going to be pursued it would be pursued through a letter to the Premier and not to the Cabinet process.

20 If you're putting it in these general terms you better now explain what you mean by the last statement. You had an understanding that there was an arrangement, I'm paraphrasing, - - -?---Yes.

- - - between the Premier's office and the Minister's office to what effect?
---To deal with this issue by letter in the way that it has been as opposed to dealing with it through a Cabinet process.

Now, how did you get this understanding?---In discussions with the Minister and Mr Fenn.

30 When?---At the, at the time that this Briefing Note was being prepared with the letter attached for the 9th, that is dated the 9th that the Minister sent to the Premier's office.

What did the Minister say to you about this?---I recall words to the effect, We'll deal with the Currawong issue with a letter to the Minister, with a letter to the Premier, can you please prepare the letter for the Premier.

Did he say to you, We will not have a Budget Committee meeting?---I cannot recall those exact words.

40 So are you saying that it was implicit in what the Minister said to you that there would not be a Budget Committee meeting?---Yes.

What did Mr Fenn say to you?---Mr Fenn, as I recall, was present at that discussion and as I recall he relayed that, that was the position that had been discussed between the Premier's office and the Minister's office.

And was the identity of the people who had these discussions mentioned?
---Yes, it was discussions between Mr Pooley and Mr Fenn.

And these discussions were to the effect that there would be no submission to the Budget Committee?---Correct, it would be handled by letter.

From the Premier?---From the Minister to the Premier. The request and then the reply came back.

So the ultimate decision not to have the matter submitted to a Budget Committee was dependent on the Premier agreeing that you could execute a contract for the purchase of Currawong, is that what you're saying?---Yes, I'm saying that that's the way I interpreted her letter as it came back.

I'm not asking that question. My question is whether the decision not to submit the proposal to a Budget Committee was dependent on the Premier giving authority to you to execute a contract for the purchase of Currawong?---Yes.

And was this an issue that was discussed between you and the Minister? ---Yes, in the context of that's the way that this was going to be handled.

20 And that was late January, early February?---Yes.

And this is a decision that we see nowhere in writing?---Yes.

Did you tell anyone on your staff that this was so?---The, Mr Matchett was aware and that generated the process of preparing the Briefing Note and the letter for the Minister to sign.

You were aware that for some period there was a belief in your office that this proposal would go to a Budget Committee?---Yes, back in, in 2010 that it would go to a, it would go through the Cabinet process.

And there would be a Minute to Cabinet?---Back in that 2010 period that was the path that was going to be taken, yes.

Is this the reason that a Cabinet Minute was never sent?---Pardon. Can I have that question again?

Is this the reason why a Cabinet Minute was never sent?---Yes.

40 Why didn't you explain that to Mr Alexis when he was asking you why the Budget Minute was never sent?---Well, I apologise, it was my little misunderstanding of his question or my, my articulation of the response.

I see.

MR BRANSON: Can I - - -

THE COMMISSIONER: Now, would it - I beg your pardon?

MR BRANSON: I'm sorry, your Honour, I beg your pardon, I thought I was on next. I apologise for saying anything.

THE COMMISSIONER: Now, Mr Watkins, what I would like to know is whether there would have been any difficulty in submitting the proposal to the Budget Committee at an early stage, earlier than say mid-February 2011 and the basis of the proposal, namely, that it was conditional on Eco Villages purchasing the property from the Unions and Eco Villages agreeing to sell to the Government?---That could've been an approach, but - - -

Why didn't you adopt it?---Because it, the decision had always been that we weren't going to do it, we were not going to deal with this matter until the property had changed hands to Eco Villages.

Would you agree that going to the Budget, getting a Budget Committee decision is generally regarded as the appropriate way of dealing with an acquisition of this kind?---No, particularly – I say that, Commissioner, because 72 per cent of the site had a contingent liability for Government to purchase so therefore the, those types of decisions particularly with myself holding a delegation of 50 million and Treasury not having direct involvement in the SRDF would not have triggered this in the normal case.

You heard evidence given in this inquiry by senior public servants to the effect that such was generally accepted practice?---Yes.

Is that evidence wrong?---No, that's their, that's their value judgements and - - -

It's not a value judgement it's evidence of practice. Is that evidence wrong?---It's not my experience so in that context it's wrong.

And with regard to a property, this particular property did you not think it appropriate that the Cabinet have a say in whether it should be purchased or not?---I did up until the stage when the decision was taken by the Minister that we would proceed through the exchange of the letters between he and the Premier.

So are you saying the Minister decided that he would do it on his own and the matter would not be given to Cabinet to decide. Is that right?---No, that's not correct. I'm saying - - -

What are you saying then when you mean that you said that it was the idea until the Minister decided - - -?---Well, the - - -

- - -that it would not go to Cabinet but it would be dealt with by a letter to the Premier?---It is my understanding that in discussions between the Premier's office and the Minister's office that the matter would be handled

by letter and not by Cabinet Minute, pardon me, as it was previously going to be handled back in 2010.

Are you again referring to discussions between Mr Pooley and Mr Fenn?
---Yes.

10 So are you saying it was their decision?---No, I'm saying the decision in the end, because the only person that can sign a Cabinet Minute is a executive arm of government being the Premier or one of her Ministers it was always going to be a Minister who signed off a Cabinet Minute.

But the replies that you gave previously when seeking to explain why this matter did not go to the Cabinet by way or a Budget Committee namely, that the deal between the Unions and Eco Villages had not yet been done was really no answer. Do you accept that – because it could have been done in the way that I suggested, namely, subject to this happening?---If the Minister and the Premier had agreed that that was the way it was to be done.

20 But you send a matter to a Budget Committee with – who decides to send a matter to the Budget Committee?---The Minister is, submits a matter to the Budget Committee and the Premier - - -

I'm asking you who decides whether or not to submit a matter to a Budget Committee, in your Department?---The Minister.

You have no say in that?---I provide advice.

30 Why did you not advise the Minister at an early stage when you were contemplating this transaction in at least October, that it would be advisable to get Budget Committee meeting now on the basis that a deal was in the offing in the light of the Council's attitude between Unions NSW and Eco Villages on the one hand and then Eco Villages and the Government on the other?---Because the overriding consideration at that time was not to deal with this matter whilst the property was owned by the Unions and hadn't been transferred.

40 All right. Now my other topic that I wanted to ask you about was this, when you met Mr Matchett on the Old Pacific Highway near the old toll gates.---
Yes.

Did you tell Mr Matchett that you had been interviewed the previous Friday by this Commission?---Yes, I told him that I'd been to ICAC I can't recall my exact words but I did say that I'd had, I believe I would've, as I recall, a discussion – I didn't – I can't recall the exact words but I did say that I had been to ICAC.

Did you tell him that you had been interviewed by ICAC?---I don't believe I used the word interview but I certainly - - -

What word do you believe you used?---That I had a discussion with ICAC.

What was the point of telling him that?---It was, it was in the context of my state of mind at the time where I had retreated from the family up to be by myself and do some physical work to drive some of this out of my system and that was the way that I conveyed that to him at that time.

10 So Mr Matchett must have been aware from what you said that you'd been interviewed by ICAC as part of its investigation because that is what made you, made your state of mind that which you have described?---Mr Matchett may have formed that opinion, yes.

Did you tell Mr Matchett that the Commission was aware of a back dated letter?---No, I cannot recall those exact words. I recall talking about the, the back dated letter because that was the bone of my contention and the dishonesty and the blight on my character and professional career.

20 Did you tell Mr Matchett something to the effect that, the Commission was aware of the back dated letter?---Commissioner, I cannot deny that but I do not recall that they are the words that I used.

Did you use words to that effect?---To be truthful Commissioner, I would have to say yes but I cannot recall.

30 You're not in, I take it that you do not deny in light of this reply, of these replies you have given I take it you do not then deny Mr Matchett's evidence that you advised him that you had been interviewed the previous Friday and that the Commission was aware of a back dated letter?---No, I would deny that I used those words or implied that. I'm trying to be truthful with you Commissioner in the light that I'm expressing it.

My impression is that you've just given two inconsistent answers but I will try, I will give you the opportunity to try and explain yourself. I thought that you said to me that you could not deny that you used words to the effect that the Commission was aware of a back dated letter. Am I wrong in that? ---No, you're not wrong in that I cannot deny but I do not recall saying it but being truthful I'm not going to say to you that that wasn't said if I can't recall it exactly.

40

And then again I ask you whether you deny Mr Matchett's evidence that you told him that you'd been interviewed the previous Friday and the Commission was aware of a back dated letter?---I cannot deny that but that is not my understanding of what I said to him.

Yes, thank you.

Mr Branson.

MR BRANSON: Thank you Commissioner.

Mr Watkins can I, as you know I'm am, Mr Kelly sir. Just given this an over view, do I correctly understand that up until about mid December last year there was a proposal to acquire the Currawong site that would have involved a submission upon your recommendation to Mr Kelly, the Minister, that would have gone through the Budget Committee in the ordinary course of things?---Either Budget Committee or full Cabinet, yes.

- 10 Or the full Cabinet. Do I correctly understand that it was the Premier and/or the Premier and the Treasurer that in the ordinary course of events would determine whether the matter went to a full Cabinet or through the Budget Committee?---Yes.

And as you've explained that there'd be a minute prepared following a decision made by the Premier or a minister - - -?---Yes.

- - - at the end of that process. Is that correct?---Yes.

- 20 We all know that until Eco Villages finally completed the purchase from Unions New South Wales that it was premature to advance that proposal in any material fashion. Is that correct?---Yes.

It was in pause or in limbo?---It was.

And of course we had the Christmas break, the Christmas New Year break? ---Yes.

- 30 And it wasn't until 28 January this year as we all now know that the purchase from Unions New South Wales was completed?---Yes.

Could you just assume that this is the former Premier's evidence and I'm referring your Honour to Exhibit 2 of the statement by Kristina Kersa Keneally, paragraph 7 through - well, 7 and 8, I don't know whether you've read the former Premier's statement recently?---I haven't read it recently but I have read it before.

- 40 The Commissioner's associate's just showing you that and if you could turn to page 2 of 8, paragraph 7 at the bottom of page 2 and if you just read that to yourself please and paragraph 8 and when you've read those paragraphs please let me know, excuse me?---Yes, I have read it.

Now, if we just accept as you should that that's the evidence of Ms Keneally.

THE COMMISSIONER: Well, it's not the only evidence.

MR BRANSON: Well, it's the evidence of Ms Keneally but as the Commissioner has pointed out it's not her only evidence?---Yes.

THE COMMISSIONER: I mean, I'm just clarifying the point, Mr Branson.

MR BRANSON: Your Honour is perfectly appropriate I, I agree. But would you assume as stated there by Ms Keneally that some time in late January or early February that she had a discussion with Mr Kelly about the proposed Currawong purchase, you assume that?---I assume that.

10

Yes. And that that conversation in the Cabinet room took place shortly after the completion of the purchase of the site by Eco Villages?---I assume that.

Right. Now, was it your understanding of the situation that having regard to a number of factors, including time and the forthcoming commencement of the Caretaker period on 4 March that any purchase of this site could be undertaken in a practical fashion by seeking the authorisation of the Premier herself?---That would be consistent with my understanding.

20

Yes, and not going through the process that was earlier proposed as you've described, correct?---Yes.

So in a sense this was plan B and did you and your staff set about preparing a briefing note for the Minister on about 8 February?---Yes.

And did you, you recall you had a discussion with the Minister on 9 February which led to the signing by the Minister of the letter addressed to the Premier?---Yes.

30

Just assume further that there's some evidence of a further discussion at the ANZ Stadium between the Premier and Mr Kelly about when, inter alia, about when the Minister may receive a reply from the Premier to the letter of 9 February?---Yes.

And as we know the, the Premier, well, actually the evidence of Mr Pooley was that he gave the letter undated to the Premier on the 24th, she took it home and in the morning the signed letter was on his desk, assume that was the evidence - - -?---Yes.

40

- - - as we've heard it and as we now know I think from your evidence today and yesterday that you recall first seeing that letter on your desk on the morning of Monday, 28 February?---Yes.

Or thereabouts?---Or thereabouts, yes.

Right. Now, just pausing there, is it not the position then that your understanding was that the passage of correspondence of 9 and 25 February authorised you to exchange contracts for the purchase of Currawong?---Yes.

All right. Now, let me just take you back. It was on 4 February that you did have a discussion, I think it was a meeting with Mr Linz, wasn't it?---It was either the 14th or the 17th.

I'm sorry, I've got that wrong. Yes. I beg your pardon, sorry. Now, just, just looking at that Monday, 28 February and putting to one side your discussion with Mr Kelly for the moment, do I correctly understand that you proceeded in your role as the CEO of the LPMA to seek to effect an exchange of contracts for the purchase of the site?---Yes, I did.

And if I can put it this way, but correct me if I'm wrong, without any thought in your mind that you lacked the requisite authority to do so? ---Correct.

And you've told us in some detail as has Mr Linz the course of the negotiations that took place between you between 28 February and 10 March?---Yes.

20 We don't need to go through those, sir, so that knowing as we do that, if I may put it this way, shortcuts have to be taken you proceeded up until the time when those contracts were exchanged between about 4.30 and 5.00pm on Tuesday, 15 March to act on what you believe to be the actual authority that you'd received from the Premier, is that correct?---Yes, I used my best endeavours.

Yes.

30 THE COMMISSIONER: Do you understand that clearly, the question clearly, Mr Watkins, you've been asked whether you proceeded in accordance with the authority you received from the Premier and you said yes. I am just pointing out the question and your answer?---Well, if I may then, Commissioner, say that I proceeded based on the letter and the authority that I understood that was conveyed in that letter.

MR BRANSON: Yes, according to your understanding?---Yes.

Do you want me to - - -

40 THE COMMISSIONER: No, whatever you wish, well (not transcribable)

MR BRANSON: No, no (not transcribable) we're in a, in a situation fortunately as you said there's no judge and jury, you're, you're it and if you - - -

THE COMMISSIONER: For the time being.

MR BRANSON: But if you want me to pause I'm happy to.

THE COMMISSIONER: No, no. I don't want you to pause at all, Mr Branson.

MR BRANSON: All right. Thank you, no, I - - -

THE COMMISSIONER: This was actually for the benefit of Mr Watkins.

MR BRANSON: I know, I understand.

10

THE COMMISSIONER: My - - -

MR BRANSON: I understand.

THE COMMISSIONER: - - - interjection was to warn him - - -

MR BRANSON: Yes, I understand.

THE COMMISSIONER: - - - about the answer he had given.

20

MR BRANSON: Yes, I know.

THE COMMISSIONER: It was not - - -

MR BRANSON: I understand.

THE COMMISSIONER: No reflection on anything you had asked him, your question was perfectly clear.

30

MR BRANSON: Thank you. Thank you very much. Now, so where have we got to? We got to - - -

THE COMMISSIONER: You interrupted yourself, Mr Branson.

MR BRANSON: I did, I did. Now, we know that if I could put it mutually subsequent to the time of, the time of the exchange of contracts that issues arose with respect to whether you had actual authority from the Premier to do what you did, correct?---Yes.

40

Right. Now, we've been through that in a lot of depth and detail. Now, may I just take you to something that affects directly my client. You told us in your evidence that you had several telephone conversations on Friday, 18 March with Mr Kelly. I think it was put to you by Counsel that there may have been four.

THE COMMISSIONER: I'm going to interrupt you again, Mr Branson.

MR BRANSON: Sorry. Too long a question?

THE COMMISSIONER: No. I have received complaints that both I and Counsel speak too softly and people at the back can't hear.

MR BRANSON: I'm sorry. That's not normally a complaint about me. Thank you. I'll talk to the microphone. All right. You had four phone conversations apparently with Mr Kelly on that morning or during the day of 18 March, correct?---I had a number, I can't recall the number, but I had a number.

10

Can I just suggest this to you please, Mr Watkins, that – I would like to suggest to you that during one of those conversations with Mr Kelly on 18 March you said to him in words to this effect, Minister, or Tony, whatever, are you prepared to sign the letter that draws together the three documents, or pulls them together, something like that?---Yes.

20

All right. Meaning thereby the Briefing Note of 8 October, 2010, the letter to the Premier of 9 February, her reply of 25 February?---That was in the context of getting the clear understanding between us that I thought we had, yes.

And did Mr Kelly say to you something like this. "What difference will that make?" Something like that?---I can't recall, I can't deny him saying that.

All right. In any event the evidence is that Mr Costello prepared a draft that day, it was emailed to you, you suggested certain change which we've been through chapter and verse?---Yes.

30

And do you agree that when Mr Kelly met Mr Costello that afternoon upon his return from Bathurst that he didn't have any idea as to what was actually in that letter or do you not know?---I, I don't recall seeing the final letter before it was signed by Mr Kelly.

That's right. My question is directed to whether prior to Mr Kelly meeting with Mr Costello that afternoon as to whether Mr Kelly had any knowledge of what the letter contained before the meeting?---I, I don't believe he did, but I've got no understanding of that.

40

All right.

THE COMMISSIONER: Mr Branson, are you going to enlighten us as to your case as to what Mr Watkins' reply was to Mr Kelly's question in this conversation?

MR BRANSON: I think I've gone past the conversation.

THE COMMISSIONER: You certainly have. You've put to him that he – the question you've asked of him, would you put what the reply was.

MR BRANSON: I was thinking ahead. I'm sorry, you're completely correct, that's an oversight. I just put this to you. The essence of a telephone conversation you had with Mr Kelly on the morning or on the day of 18 March was this, that you said to him, "Will you sign a letter that pulls together the three documents?"?---And reconfirms our understanding, that was the two threads of it.

10 And did Mr Kelly say to you either directly in response to that question or during this conversation, "What difference does it make to have a letter like that?" Did he say something like that?---He may have, I can't recall.

All right. And did he say to you, "Well, yes, I'm prepared to sign such a letter", something like that?---Yes.

All right.

20 THE COMMISSIONER: Do you recall any response by you to a question of that kind?---That he signed a letter? No, I don't, I just took that - - -

No, no, not that. When Mr Branson put a question to you words to the effect, "What's the point of a letter like that?" And you said you can't deny that he may have put that question to you?---Yes, but I can't recall actually hearing that so I don't know what my response was.

MR BRANSON: But do you recall, Mr Watkins, if Mr Kelly said to you, "Well, it won't make any difference.", something like that?---He may have but I can't recall that specifically, but he may have.

30 Just in terms of telephone calls that day involving the Minister's number were you perhaps ringing his office or were you speaking to him on the mobile, do you remember or not?---No, I don't recall.

All right. And is it your recollection that during the telephone conversation or the relevant one that day of 18 March with Mr Kelly that you did not discuss with him the date that such a letter should bear?---No, I do not.

40 No. Now, can I ask you this. Just looking at the matter say in early February this year do you say that you needed the approval of the Premier to negotiate with respect to the acquisition of the site falling short of exchanging contracts?---Yes, given the circumstances of Currawong at that time and the discussion, decisions that were being taken around the subject matter.

And, of course, in your mind you had clearly in focus, did you not, the wording of the Briefing Note that went to Minister Kelly about securing the purchase, those words?---Yes.

You've heard the evidence of Mr Pooley I gather that he prepared the Minister's – sorry, the Premier's response inferring that on 24 February?
---Yes.

And was it your understanding at all material times that the letter signed by the Premier purported to be a direct response to the letter signed by Mr Kelly on 9 February?---Yes.

10 Insofar as you were concerned Mr Kelly's letter was not seeking the approval of the Premier to merely negotiate?---No.

Was there anybody that you can point to on the staff of the Minister that had a contrary view?---No.

Or anyone on the Premier's staff that had a contrary view?

MR CURTIN: I object.

20 THE WITNESS: I can't comment on that, I don't know.

MR BRANSON: All right. Now, I think we're nearly finished. By the way, was any consideration given on or after 25 February to the purchaser of Currawong being the State of New South Wales as opposed to any of the other proposals that we saw at the Corporation Sole or the Minister - - -?
---No, not that I can recall.

30 Any reason why that could not have been done as you understood the machinations of Government through your long experience?---It could've been done but in this case because it was going to be reserved as a reserve under the Crown Lands Act it was going to be acquired in the fashion that it was.

Can I just qualify, seek to qualify something with you please, Mr Watkins. I'd just like to suggest to you sir, that you really cannot recall any specific occasion from say 28 January this year when Mr Kelly said to you, by way of instruction or direction, that the Premier wants this acquisition to proceed. That that's a really a matter of your understanding - - -?---That's my understanding.

40 But not, please let me clarify my question. I'm suggesting to you that contrary to an impression you might have given in your earlier evidence today Mr Kelly did not specifically say to you, "I've been told by the Premier you must go ahead and acquire this site."---In the words that you've just expressed, no I cannot say that I recall that.

THE COMMISSIONER: I don't think anyone has said that.

MR BRANSON: Well, it come down to the poll.

THE COMMISSIONER: Well, if you are putting to Mr - - -

MR BRANSON: How about I ask a non-leading innocent question.

THE COMMISSIONER: You can ask a leading question that's not innocent at all as long as you ask a question that's relevant.

10 MR BRANSON: And innocent. Look, I suppose it gets down to this Sir and there's a lot happening and we had an election and all sorts of things going on but can you recall a specific conversation with Mr Kelly wherein you discussed whether or not the Premier had said to him let's go and get this site.---Not in those terms, no.

But of course it was your both general and specific understanding that that was something that the Premier was not opposed to.---Correct.

20 It had certain electoral advantages in terms of the potential green vote at the election. Did it not?---That was for others to judge, not me.

Very well. And up until say 17 March was it your understanding that the acquisition of the site was regarded by all in Government as a successful outcome?---Yes.

And was it your understanding that the opposition so regarded it?---It was my understanding.

Yes.

30 THE COMMISSIONER: Mr Branson, I'm not sure if you have finished or not?

MR BRANSON: I think I have. I must keep these scratchy notes. Should I clarify something?

40 THE COMMISSIONER: Well, I think I should tell you I am, I am sure that Mr Watkins has testified that he had a conversation with Mr Kelly in which Mr Kelly told him that he'd spoken to the Premier and the Premier had told him, Mr Kelly, that Mr Watkins had the authority to purchase Currawong. Now nothing that you have put to Mr Watkins is contrary to that proposition. So that may be deliberate or not but I'm not saying there's anything wrong in you not doing it I'm simply pointing out to you that you haven't done it and I don't want to be any misunderstanding about that.

MR BRANSON: I've gone about it too obliquely.

THE COMMISSIONER: Well, did you say but I'm not going to let that Mr Branson, I would like that to be met squarely one way or the other.

MR BRANSON: I agree. I tried it and it hasn't succeeded in your mind which is the most important barometer.

Can I just read this out please, what did this become, 54 or 57. Can I just read to this out to you please, Mr Watkins, it's from the private examination on 3 June, it's PT96. Do you, I'm not sure whether you - - -

THE COMMISSIONER: It's 57 isn't it.

10 MR BRANSON: It's 57 thank you Commissioner.

THE WITNESS: Page 96.

MR BRANSON: Yes please, at line 22. It's a short question from Mr Alexis.---Yes.

20 What did the Minister say? Your answer was, "The Minister said to me that the Premier wanted me to go out, negotiate and purchase the land." Now I'm not sure – thank you. Now it would appear from the context of that part of your evidence that Mr Alexis was focusing your attention specifically on the conversation or conversations you had with Mr Kelly on 28 February and I just remind you that my understanding of the context of the evidence that he may have been in the car and you had the letter in front of you. ---Sure.

He may or may not have had the Premier's letter in front of him. I suppose I'll put this formal question to you. Do you still adhere to that answer?---To the best of my recollection that's what it was.

30 And may I put this to you, sir, that did you regard that statement made by Mr Kelly as being consistent with your understanding of the course of correspondence the 9 and 25 February letter?---Yes, I did.

And there it is.

THE COMMISSIONER: As a great philosopher said, yes. All right, Mr Branson you're finished.

40 MR BRANSON: Thank you, thank you Commissioner. Thank you Mr Watkins.

THE COMMISSIONER: Mr Dunne.

MR DUNNE: Mr Watkins, my name is Dunne and I represent Mr Costello.

I just want to ask you a couple of questions about the conversations and discussions that you had with Mr Costello on 18 March. So that's the day

of the drafting of the back dated letter and (not transcribable) - - -?---Oh yes, yes.

The previous night you've given Mr Costello a bundle of documents to have a look at to see if there was any gaps, I think Mr Costello described them as?---As I recall.

10 And he identified that there was a missing link in between the Minister's briefing note which said, come back to me or words to that effect.---Yes, he did.

Mr Costello said to you, you should do nothing at all at that stage but you should look at doing a file note somewhere down the track. Do you agree with that?---Yes, I agree there was a discussion along those lines.

If we could then move to discussions you had on Friday morning and I understand there may have been several discussions.

20 THE COMMISSIONER: Mr Dunne can you stop (not transcribable) - - -

MR DUNNE: I'm sorry. Excuse me.

THE WITNESS: What date (not transcribable)

MR DUNNE: We're moving forward from the Thursday to the 18th where I'd started.---Friday the 18th.

Friday the 18th, the date of the, you got the letter.---Yes, I understand.

30 And you had a discussion with Mr Costello where you told him that you'd spoken to the Minister and he was going to sign a letter.---Yes.

Or words to that effect?---Yes.

Can I also suggest to you that in terms of that discussion that you said words to Mr Costello to the effect of, "the letter needed to be dated at least the date of the Premier's letter or subsequent date?"---I can't recall that exact conversation along those lines.

40 If Mr Costello gave evidence to that effect, would you accept that that conversation could have occurred?---I would accept that that's a possibility but I do not recall.

Thank you. Now as I say, you had a couple of discussions with Mr Costello that day. In a later conversation - - -

THE COMMISSIONER: That day.

MR DUNNE: That day on 18 March, all the questions I will be asking Mr Watkins are Friday 18 March.---Yes.

At the moment. And in the subsequent telephone conversation well, you said words, sorry, you'd, you'd received the draft document by that stage of the, of the, of the backdated letter?---Right.

10 And you'd told Mr Costello that Mr Kelly will phone you shortly to let you know that when he's in Sydney, he'll be in Sydney this afternoon some time, get it signed and leave it for me?---I can't recall whether it was Mr Kelly that phoned Mr Costello or the other way around but I was aware that there was going to be communication between each other for the, to effect the signature on the letter.

And if Mr Costello gave evidence that you said that in a conversation you wouldn't disagree?---I couldn't, I couldn't disagree, no.

Thank you. I have now finished with 18 March?---Good.

20 If we could move forward to the week of 21 to 25 March?---Yes.

Okay. And this is about the time of the IAB inquiry, where it started - - -? ---Yes.

- - - and the collation of documents and, and your interview. During that week did you have several, what Mr Costello described as heated discussions?---I wouldn't call them heated in the way that Mr Costello said but we did have a number of discussions and there were, some of them were forceful but I wouldn't call them heated in, in the way that he did.

30 Were the context of at least one of these discussions that - sorry, did the context of at least one of these discussions involve Mr Costello remonstrating with you for using the backdated letter?---Yes.

And did he say words to you in these discussions and I'll just leave that global, if there's need for specification please let me know, that he said to you that you can't rely on or use that letter?---He may have used those terms, I can't recall the exact words but he may have used those terms.

40 It was not created at that time and it was not created for that purpose, would you agree?---I recall the latter but not the former.

I see. And that you responded with words to the effect of, as far as the Minister and I are concerned this letter was signed on the 28th just after we got the Premier's letter?---No, I don't recall that.

You don't recall?---No, I don't recall. I can't recall saying that at all.

So if Mr Costello gave evidence that that's what you said you wouldn't disagree?---I would disagree with that, yes.

THE COMMISSIONER: I beg your pardon?---I would disagree.

You would disagree?---I would disagree with that last component.

MR DUNNE: The last component, so, so you would disagree that you said as far as the Minister and I are concerned the letter was signed on the 28th,
10 just after the Premier's letter?---Yes, I cannot recall that, those, those words.

So you can't recall that?---No, I can't.

But I think you just told his Honour that you deny that you said that?
---Well, I don't believe those words were said.

I see. And Mr Costello said words to you of the effect of, Well, that's not true, you can't do it, the existence of the letter will in this investigation take
20 on a life of its own, and continuing, You need not to have anything in it at all, referring to the backdated letter. Would you agree that Mr Costello said words to you of that effect?---There was a conversation along those lines, I cannot, I cannot recall the exact nature of it but I would not, I would not, not deny that Mr Costello said words along similar lines.

Well, can I suggest to you that after Mr Costello said that you slammed your fist down and said words to the effect of, I'm telling you, as far as the Minister and I are concerned the letter was signed on the 28th?---No, I deny that.

30 THE COMMISSIONER: Do you deny that your slammed your fist down or you deny, or do you deny that you said that you said those words or do you deny both?---I deny both.

MR DUNNE: Thank you, Commissioner.

Nothing further, Commissioner.

THE COMMISSIONER: Yes, thank you. Ms Fisher.

40 MR ALEXIS: Before we lose the moment could we just note on the transcript that what has just been put is at 731, may it please.

MR DUNNE: I'm sorry.

THE COMMISSIONER: Ms Fisher.

MS FISHER: No, thank you.

THE COMMISSIONER: No, thank you. Does anyone else have any questions of Mr Watkins? No. Mr Alexis. I'm sorry, I beg your pardon, Mr Curtin. How could I have omitted to invite you to - - -

MR CURTIN: Mr Watkins, you were asked some questions I think particularly by the Commissioner about political, whether the purchase of Currawong might, might be politically contentious?---Yes.

10 And you were asked some questions and this is around 668, 669 of the transcript about political components et cetera. Mr Stokes I think was the then, that is before 26 March, 2011 election, was the Member for Pittwater? ---He was.

And he belonged to the, I think the Liberal Party?---Yes.

And had he - I withdraw that. Have you seen him interviewed or have you read newspaper reports of interviews with him in which he expressed his view of what should happen to Currawong?---Yes.

20 And do you, do you recall what it was that you saw, was it a TV programme or in the press or somewhere else?---I saw press and I also saw letters that he'd written to the Minister requesting that the government purchase Currawong.

Do I take it from what you last said that so far as you were aware Mr Stokes was in favour of Currawong being purchased by the State Government? ---Yes.

30 That's the only matter I have, Commissioner. In Mr Alexis' words just to seize the moment there is a Manly Daily media, something which in the IAB report which I think says something about Mr Stokes and his view.

THE COMMISSIONER: Yes, thank you, Mr Curtin. Mr Alexis.

MR ALEXIS: Nothing further.

THE COMMISSIONER: Yes. Thank you, Mr Watkins, you're excused? ---Thank you.

40

THE WITNESS EXCUSED

[3.37pm]

THE COMMISSIONER: Mr Alexis.

MR ALEXIS: Thank you, Commissioner. I call Mr Anthony Kelly.

MR BRANSON: Does that have to be done right now?

THE COMMISSIONER: Yes.

MR BRANSON: Well, can I, I mean it means that I don't get an opportunity over the weekend to confer with Mr Kelly about all that has happened. I intended to do that, I would like to do it.

THE COMMISSIONER: I give you that leave, you have that leave.

10 MR BRANSON: Notwithstanding that we'll - - -

THE COMMISSIONER: Yes.

MR BRANSON: Thank you.

THE COMMISSIONER: I - - -

MR BRANSON: No, no, thank you, that's fine.

20 THE COMMISSIONER: Mr Branson - - -

MR BRANSON: No, that's fine, I can't argue with that.

THE COMMISSIONER: I would like to say something.

MR BRANSON: I'm sorry, I beg your pardon, I beg your pardon.

30 THE COMMISSIONER: I have no doubt that you will not take advantage of, of that leave and that you will simply ask him what you would have asked him had we adjourned. But I'm anxious to save the time - - -

MR BRANSON: I understand.

THE COMMISSIONER: - - - and I have no doubt that you will behave in that way so that - - -

MR BRANSON: Thank you.

40 THE COMMISSIONER: - - - for that reason I am content for you to do that.

MR BRANSON: Thank you, Commissioner, I accept that unequivocally.

THE COMMISSIONER: Yes, Mr Alexis.

MR BRANSON: Does that extend to Mr Gerathy?

THE COMMISSIONER: Yes.

MR BRANSON: Thank you very much.

THE COMMISSIONER: On the basis that you do it together.

MR BRANSON: Yes, we do everything together, your Honour.

THE COMMISSIONER: I have noticed that.

MR BRANSON: That's unfair to Mr Gerathy.

10

THE COMMISSIONER: Mr Kelly, would you mind coming into the witness box. I take it you'd like me to make the section 38 order, Mr Branson.

MR BRANSON: Yes, yes, please. I'm sorry.

20

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

30

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

THE COMMISSIONER: Mr Kelly, do you wish to give your evidence under oath or do you wish to affirm the truth?

40

MR KELLY: Under oath.

MR ALEXIS: Thank you, Commissioner. Sir, is your full name Anthony Bernard Kelly?---Yes, it is.

And, sir, should we understand that before the election earlier this year and your recent retirement from State politics you were the Minister for Planning?---Yes.

10

You were the Minister for Infrastructure?---Yes.

You were the Minister for Lands?---Yes.

You were the Deputy Leader of the Government in the Legislative Council?---Yes.

And you were the Leader of the House in the Legislative Council?---Yes.

20

And in your time as a Minister you've held portfolios in Local Government, is that right?---Yes.

Emergency Services and Industrial Relations?---Yes.

And you also had ministerial portfolios in areas of Local Government and in areas of both juvenile justice and justice more generally?---Yes.

30

And can I ask you to tell us for how long you have served in Parliament whether in Government or in Opposition?---The one you missed there was police. I've been in Parliament for about 14 years.

Thank you. And prior to that, Mr Kelly, should we understand that your area of service was by and large in Local Government?---That's correct.

And you have a background as a General Manager, I think, in the area of Wellington - - -?---Yes.

- - - which is where your home is?---Yes.

40

And in order we should understand that you've been in public service, and I include within that, of course, your time in Parliament for about 45 years or so?---That's correct.

Now, can I start this afternoon, Mr Kelly, with the Briefing Note that we see behind tab 2 of Exhibit 1, if that can be shown to you please. And should we understand from you, Mr Kelly, that this October Briefing Note represented, as you saw it, the commencement of a stage where the

arrangements for the possible acquisition of the Currawong site on behalf of the Government were formalising?---Yes.

And we need to understand this in the background of which you were aware that back in 2005 an expression of interest had been submitted as part of the tender process by Mr Watkins on behalf of Government to try and purchase the site?---Yes.

And you were aware of that, at least generally, at that stage?---Yes.

10

And should we understand that a decision was taken by the then Treasurer in or about late 2005 which led to that EOI being withdrawn?---That's correct.

And thereafter as you understood as we approach the period of October 2010 there was consideration being given to the acquisition of this site by the company Eco Villages and this Briefing document was the mere formalising of the process to possibly acquire the site if the point was reached where Eco Villages will become the owner of that site?---That's correct.

20

Thank you. And if we can go directly in that background to the Briefing Note at pages 4 and following of Exhibit 1. And should we understand, Mr Kelly, that the handwritten endorsement that we see on page 6 was the result of you and Mr Watkins as the Chief Executive Officer of the LPMA having a meeting the result of which was after reviewing and discussing the content of the Briefing Note you endorsed your approval as we see on page 6? ---Yes.

30

And you intended, I gather, Mr Kelly, by expressing your approval in the way that you did that you were giving approval to Mr Watkins to undertake negotiations as he saw fit, but that he had to come back to you for final approval?---Yes. Yes, with that qualification. Up to 13 million, negotiations up to 13 million.

And where do we see in the handwritten note on page 6, Mr Kelly, that the approval related in some way to \$13 million?---Well, that's the recommendation, the normal thing with these minutes, Briefing Minutes is that if you just sign it you're adopting the recommendation.

40

I see?---And what we'd done here is added a couple of qualifiers.

So should we understand by that evidence, Mr Kelly, that having read the content of the Briefing Note, having read and understood the matters for notation and approval in the recommendation section on page 5 your approval to proceed with negotiations contained within it approval of the proposal funding arrangements of any acquisition that might arise in the future?---Yes, that was what was proposed at the time.

And insofar as your approval included the funding arrangements that are set out in the recommendation paragraph number 4 on page 5 can I seek to understand from you what you understood in October 2010 about the arrangements as between the LPMA and the Council that was to be the subject of the Memorandum of Understanding?---I understood that the Council had offered in their discussions that they would contribute those two blocks of land that could be sold, that would assist in the purchase and as well as some other land to go into a State Park.

10

And what did you understand the effect of the entry into a Memorandum of Understanding with the Council would be?

THE COMMISSIONER: Sorry, I'm just a bit concerned about Mr Kelly's microphone?---I'm sorry. I'm moving away from it.

MR ALEXIS: Would you like the question again, Mr Kelly?---Where was that?

20 I'm focusing on paragraph 4.1(c), do you have that?---Yes. Yes.

And my question is what you understood then about what the entry into the Memorandum of Understanding with Council would achieve?---It would be an understanding that the Council would contribute that land that had been mentioned, some for sale and some to go into the State Park.

30 And did you understand that the MOU there proposed would contain the respective commitments between the State and the Council concerning the subject of the joint purchase of the Currawong site?---Yes. What do you mean by commitments?

THE COMMISSIONER: I think, Mr Kelly, did you understand that the MOU would record at least what is set out in 3.5 and 3.6?---Yes.

40 MR ALEXIS: So, Mr Kelly, what you expected based on the approval that was given which in turn approved the recommendation in 4.1(c) was that the document referred to as the Memorandum of Understanding would set out and record the commitments being made for the joint purchase of the Currawong site as those arrangements are exposed in the paragraphs 3.5 and 3.6?---Yes.

Thank you.---The only question I've got is about the joint purchase.

Well, I'm just simply reading the word that's in the note before you at the time.

THE COMMISSIONER: I presume it would also contain what's in 3.4.

THE WITNESS: Yes.

MR ALEXIS: Now, Mr Kelly, in relation to recommendation 4.1 (d) where we see the recommended limit to \$13 million can you explain to us what you understood informed that ceiling on negotiations as you understood it in October last year?---If I can recall in October, it, they had purchased, there was a contract or an agreement for Eco to purchase it for, I think it was \$11 million and they'd spent a considerable amount of money on it in legal fees and applications and so forth since then, well in preparation. And whilst Mr
10 Watkins thought he could get it for around about \$12 million, that gave him a little bit of room to move.

So, the \$12 million which we see referred to at the end of paragraph 3.5 is that the likely purchase price that Mr Watkins explained to you at the time of this briefing note was the price that he would hope to get it for?---That's correct.

And so by approving by way of a ceiling up to \$13 million you were proposing to give him a bit of room to move in the order of about \$1
20 million. Is that how we should understand it?---Yeah, in his negotiations.

Now - - ?---But it's obviously not to purchase at that stage.

Yes. Now bringing up what you've told us based on what you understood the position as between the then owner of the site Unions NSW and Eco Villages to be, was there any other information before you which informed you as to whether or not 12 or \$13 million was a fair market price for the Currawong site at the time?---No other information before me, no.

30 And now in relation to sub-paragraph (e) the handwritten paragraph at the bottom of page 5, can you tell me what information was before you when you gave approval for the funding to be through Crown Land and SRDF together with future sale of land gifted to the Crown from Pittwater Council?---I was aware that a significant proportion of this site had that liability for the Crown to purchase because of the way it was owned.

And when you say significant I - - ?---Three quarters.

40 - - -I gather you mean significant in terms of land area?---Of geographical area.

Thank you.---So obviously there was a government liability there to purchase some of it even if, not the whole site so that it was appropriate that that should be included in the funding.

But what information did you have before you when approval was given that funding would be through Crown Land, see that is referred to before the reference to the SRDF?---Only the notes that were above, I think it was

mentioned above? Let me have a look. Up in 3.6 it said that it proposed the funds be, the purchase would be made available through existing reserve trust fund and then the other note was added and the SRDF.

Yes.---I think those two complimented each other.

I'm sorry, could you just take me to the first reference you gave me in answering that question.---3.6

- 10 3.6 Thank you. So we should understand that the sale of Crown Land related to funds being made available from existing reserve trust funding? ---Well, they are two different things but there's another reference, I thought.

THE COMMISSIONER: There is a reference to - - -

MR ALEXIS: 3.7 is that the one you're looking for Mr Kelly?---Yes, yes. So those two really encapsulated in that (e).

- 20 So apart from what we see referred to in the document as to source of funding, namely, Pittwater Council land, SRDF and sale of Crown Land and apart from what you've told us as to your level of understanding in that regard, was that the basis upon which you gave the approval in the terms that we see at page 6?---I'm sorry, could you repeat that.

- 30 Yes, of course. Apart from what you've told us about, about what the document told you and what Mr Watkins told you, did you have any other information available as to the source of funding from Pittwater Council land, SRDF or the sale of Crown Land?---No, I can't recall any other information.

And is it, should we understand, ordinarily the case that when a briefing document like this is provided to you, you independently have your staff check what's contained in it or should we understand it's a matter of you accepting it at face value from the chief executive of the organisation that provides it to you?---Well, it would normally come up through, through my staff to me, sometimes at meetings that we have those standing meetings but it's normally checked by the staff.

- 40 And who in relation to Currawong was your staff member that was tasked to checked these sorts of things in relation to briefing notes and issues of funding?---I can't recall who it was then but it would've been either Mr O'Brien or Mr Fenn or both. No, I can't recall whether Mr Fenn was there then. Might've been Laurie Brown.

THE COMMISSIONER: Mr Kelly, at your staff meetings when decisions are taken to approve or not approve or to seek variation of minutes of this kind are these meetings minuted, are there minutes kept of these meetings?

---There is meetings, if it's at a meeting it would be a meeting with Mr Watkins when he comes for that regular meeting. Other than that the staff just send the notes up. In this particular case Mr Watkins either produced that at a regular meeting or came up himself.

I'm trying to find out whether when you had meetings with your staff where decisions are taken that have importance, are minutes kept of such meetings?---No.

10 (not transcribable)?---Well, they're not meetings as such, merely Briefing Notes or letters to sign come up and left with, in an in tray and I'll go through them. Now, if there's important ones sometimes a staff member will bring it in personally. It's not a meeting as such in its moment.

I thought you said that, perhaps I misunderstood you, that the minutes of this kind would be discussed at staff meetings at which you were present?
---No.

20 No?---I think what I said is that my staff would go through it and bring it up, send it up to me, I'm sorry.

No, no, I'm sure it's my fault. Now, you had regular meetings with Mr Watkins?---Unless I wasn't there or he was away it would generally be of a Monday I think.

Every Monday?---Yes.

30 And no record would be kept of what was decided there?---(NO AUDIBLE REPLY)

Your answer is no?---No.

MR ALEXIS: Now, was the approval that you gave to Mr Watkins to negotiate one that you expected from what he had indicated to you that he'd exercise straightaway or was your understanding that he had that approval to negotiate and would do so once the Eco Villages purchase had been completed?---Yes.

40 The latter, is it?---The latter.

Thank you. And should we understand by reference to the email at page 9 behind tab 4, if you'd go to that, please, and you'll see at the foot of the page there's a reference within an internal email of the LPMA, a reference to Mr Fenn and Mr Fenn wanting the submission prepared to go to Treasury to get approval. Do you see that?---Ah, yes.

Bottom of page 9?---Yes.

And was your understanding of progress come November that a Minute would be prepared for Cabinet to get approval in relation to the negotiations or any purchase of Currawong which could then when obtained be put into effect at the point in time when Eco Villages had completed the purchase of Currawong?---No, I was not at that meeting and nor was I aware that the Cabinet Minute was being prepared.

10 So if we come forward to page 11 for example behind tab 5, and we see for example your chief of staff has emailed a Mr Watkins at the bottom of that page of 17 November. Do you have that?---Ah hmm.

And do you see the terms with which Mr Fenn expressed himself in that email to Mr Watkins, "Can we hurry up a Budget Minute to get endorsement to negotiate on the purchase of Currawong."?---Yes.

Now, you would have been aware of that, wouldn't you?---No, I wasn't. I was not aware of any of these emails until ah, I saw them here.

20 But whether you were aware of the email or not, were you nonetheless aware of the subject matter that as November was progressing your chief of staff was in communication with the CEO of the LPMA asking him to hurry up with the preparation of a Budget Minute?---No, I can't recall that.

You can't recall that.

THE COMMISSIONER: But it wouldn't surprise you, I take it?---I, I don't think it, they had informed of it. I can't- - -

30 No, no, no. I understand that you're saying that, but I'm trying- - -?---Oh, he may well have. He may well have sent these and may well have asked for them, but- - -

No, no. My question is, it wouldn't surprise you if your staff were very keen to put up a Cabinet Minute on this issue?---No.

MR ALEXIS: I see the time, Commissioner, and it is Friday afternoon.

THE COMMISSIONER: You can go on though.

40 MR ALEXIS: Thank you. Would the practice as you understood it at the time, Mr Kelly, in November, have required the preparation of a Budget Minute to endorse negotiations on the purchase of Currawong?---At November I still thought my October letter was still appropriate. Notation on the Briefing Note.

But you did anticipate though because of the limitation that you placed on it, that if negotiations commenced following Eco Villages' completion of the

contract, the result of those negotiations would come back to you and a Budget Committee Minute would be prepared and put up for approval? ---Well, as you'll see in that October note, it was to come back to me and possible Budget Committee. I wasn't sure at that stage just the best way forward, but I wanted the opportunity to at least have some other discussions, possibly if not one of the Budget Committees with the Premier.

10 But, Mr Kelly, by 17 November, according to your chief of staff's email, page 11, the way forward must have been reasonably clear to you, wasn't it?---No. I'm not aware that we had any discussions on those.

Well, you're not suggesting, are you, that Mr Fenn was seeking to have Mr Watkins hurry up with the Budget Minute in circumstances where you didn't think it was necessary, are you?---No. I'm not saying I didn't think it was necessary, what I was saying is I was not aware of those discussions. There, there, there wasn't a lot of discussion after the 28th of, sorry, after 8 October through till you then start to get some movement early in the new year, that I was involved with.

20 Could I ask you to look, please, at the email at page 13. And- -?---Sorry, page 13?

Page 13, yes. And appreciating that this is an email internal to LPMA, it indicates that at the end of November the draft Minute had been prepared. Do you see that?---Yep.

30 And if you look from page 14 you'll see that it was proposed at least by this draft Minute that you would be the minister putting up this Minute to, for consideration by Cabinet?---Submitting it, yes.

Submitting it. Thank you. Now, did you see this draft form of Minute at the end of November or sometime during the course of December?---My understanding is the first time I've seen that is in this folder.

So your chief of staff didn't bring to your attention that this Minute was being prepared in anticipation of Eco Villages completing the purchase of Currawong?---No, I can't recall that.

40 And can I ask you to turn, please, to the email at page 24 behind tab 5. And do you recall, and the content of this email from Mr Matchett to Ms Connolly may assist you, but do you recall having a meeting with Mr Ferguson and the Mayor of Pittwater Council, Mr Rose, on 7 December, as is referred to in the opening sentence of that email?---Sometime in December.

Yeah. And did you understand that during that meeting there was discussion about Council's desire to proceed with the joint purchase? Do you see the reference to that in the email?---Yes. Now, this is a meeting that

I wasn't at for the whole time. The, the, the ah, meeting had a number of different things. The, the, the first part of the meeting was dealing with town planning and the Council's concern over Part 3A, and there was a particular development there, that was Warriewood, and, and then I had, I had my meetings had backed up and I'd had another meeting and I went to leave and as I was leaving they said, now, we also want to let you know that we're still very keen that we go ahead with Currawong, or something to that effect. So a lot of the detail of this meeting I was not at.

10 I see. Well, insofar as- -?---(not transcribable)

Sorry, Mr Kelly, have you finished your answer?---Yeah.

Thank you. Insofar as Currawong was discussed, do you recall that the preparation of the Memorandum of Understanding was being finalised and that you were told that?---I, I don't recall that. The part I recall is that they, they confirmed their desire to proceed with the joint purchase. Now, I don't recall the rest.

20 But do you recall there being discussion about the Cabinet decision being one that was likely to be subject to the finalisation of the Memorandum of Understanding?---No.

But do you recall, Mr Kelly, by about the first week of December 2010 that there was discussion in your office which got to you that steps were being taken by others to work up and finalise a Minute for Cabinet in conjunction with steps being taken to finalise the Memorandum of Understanding?---No, I can't recall that.

30 But it wouldn't surprise you I gather that by mid-December those steps and arrangements were, were in place?---They may have been doing that but I can't recall being advised of it.

And they, you accept they may well have been in place because you know that the contract under which Eco Villages was to purchase this site may well be completed at any time thereafter?---I knew there was still difficulties with the settlement.

40 But did you learn from this meeting that Eco Villages had been issued with a Notice to Complete?---I can't recall that.

Now- - -

THE COMMISSIONER: Mr Alexis, I propose to go on till 4.15.

MR ALEXIS: Yes. Thank you, Commissioner. Now, behind tab 6, Mr Kelly, you'll see the draft Memorandum of Understanding. And do you recall seeing that draft document either in the form of the draft we've

reproduced behind tab 6 or in any other form?---No. Sorry, behind tab 6, yes, when, when I saw it in here.

All right. But did you see it in the December/January period that we're dealing with?---No, I can't recall seeing it before.

Do you recall during the month of January learning that the completion of the contract between the Unions and Eco Villages was likely to be achieved at the end of January?---Yes, probably towards the end of January.

10

And how did you come to learn that?---I was led to believe that by, well, the possibility by Unions New South Wales.

Can I just understand the working relationship between you and Mr Fenn, I think by this stage he was on your staff?---Yes.

And when I say this stage I mean late December, early - - -?---Yes.

- - - January, 2011?---Yes.

20

And would you speak with him, should we understand, regularly every day? ---I wouldn't say every day but regularly. I was, I was not in the office a lot of the time.

Which perhaps explains why you'd be speaking on the telephone regularly both Monday to Fridays and most usually over weekends?---I wouldn't say most usually over the weekends but he would ring me on weekends.

But as and when the circumstances required he'd - - -?---Mmm.

30

- - - be able to speak to you and he'd keep you across as best he could what was going on in relation to the issues which were relevant to your various portfolios?---Not necessarily all of them but some of the important ones, planning was obviously my most important portfolio.

Well, in relation to Currawong Mr Fenn was the critical point of contact with not only Mr Watkins and the LPMA but Mr Pooley and the Department of the Premier and Cabinet, correct?---I think so.

40

And so if there was ever any information that was to be conveyed in relation to the possible purchase of Currawong it would ordinarily come to you either directly or via Mr Fenn?---One would think so.

And he told you, didn't he, that the wording of the Memorandum of Understanding was progressing in late December and early January in anticipation of the contract with Eco Villages completing?---I can't recall that.

And he told you that the arrangements for the Cabinet submission were similarly being worked through in anticipation of that event?---I can't recall that.

Did you come to learn that Eco Villages had lodged an appeal in the Land and Environment Court by about 17 January?---I knew of an appeal but I don't know when, when that was.

10 And did you come to learn that Eco Villages had finally completed the contract in late January and that it was then open for negotiations to proceed to acquire that property?---I can't say that I understood that in late January or early February.

Well, can I ask you to just try and focus on the point in time at which the momentum with Currawong took a significant step forward?---In February.

And was that informed significantly by the fact that you knew that Eco Villages had completed the contract and - - -?---Yes.

20 - - - it had actually purchased the land?---Yes.

And should we understand that whilst Eco Villages as a purchaser under a contract but it actually hadn't purchased, that of itself was an impediment to negotiations?---I'm sorry, could you put that again?

Of course. Did you understand that whilst Eco Villages was a purchaser under the contract but it had not actually purchased, that that was an impediment to negotiations?---Up until the time they'd actually purchased, yes.

30 So your understanding was that the reason why negotiations hadn't been activated since 8 or 9 October through until the end of January was because of the delay caused by the contractual workings through with Eco Villages? ---That's correct and, and that's part of the reason why I put that qualification to come back to me back in October because of - it had been rejected once before before - 'cause the Treasurer had some years back asked the department to withdraw their expression of interest.

40 Now, in early February, Mr Kelly, did you understand that the Budget Committee was meeting on a regular basis?---I wasn't sure when they were meeting. You only got told of Budget Committee meetings if you were involved in them.

But did you - - -?---And in fact often you'd only get a few hours' notice.

But in terms of the state election then having been set, I think, for 26 March in early February what was your understanding about the Budget Committee

process from that time until the election?---Sorry, say that again, in early February?

10 In early February what did you understand to be the Budget Committee process in terms of the convening of meetings, the despatch of business, the giving of approvals to acquisitions, what did you understand that process was from early February through until the anticipated state election on 26 March?---Well, they were coming to a close, but certainly I'm not aware that any occurred after, after February and it was difficult to get items on the agenda. But the process of submitting a, a Cabinet, a Cabinet or a Budget Committee submission was that the department would propose it and submit it to the Minister. It can only go to the committee if the Minister signed it so the Minister signed it. There would then be as you've heard earlier a decision as to whether it actually ever got listed. A number had been put up and never got listed.

20 So Mr Kelly, we'll come to some detail on Monday but I gather when you understood that steps to negotiate with Eco Villages were now available you considered whether or not if negotiations were successful it was unlikely to be able to put up a submission to a Budget Committee?---We had that discussion about the 8th or the 9th when that submission came up from the department.

And when you say we had that discussion you're speaking of a discussion with Mr Watkins, are you?---That's correct.

Was anyone else present?---I'm not sure if anyone was, it would have Mr Fenn if there was.

30 And from that point in time I gather you had decided that if the matter was to go forward you wouldn't be able to achieve a conclusion to any negotiations because it was unlikely to get a matter up to a Budget Committee?---Well, it was more on the lines of it was going to be difficult to get it to the Budget Committee that if we put it up to the Premier and she approved if, if she made the decision to go ahead then it didn't need to go to the Budget Committee.

Yes, I see the time, thank you.

40 THE COMMISSIONER: Yes, thank you. Before we adjourn I wish to inform counsel that I am contemplating inviting oral submissions on a day that would suit everyone on limited issues that counsel identify after the written submissions have filed if that's what counsel wish. That would have to be subject to certain conditions that we could later discuss once I learn whether this is the desire of counsel involved. So could you please inform Mr Alexis early on Monday morning what your wishes are in this respect. Just to make that clear I don't propose having oral submissions on every matter, on every issue, but there may be issues in which particular counsel

may want to make submissions and I'm contemplating making provision for that. Should that happen those counsel who do not wish to be there need not be there. So this is a matter for each person involved. We'll adjourn until 10.00am on Monday.

AT 4.19 PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.19pm]

10