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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION NAPIER

Reference: Operation E11/0475

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 11 JULY 2011

AT 10.10AM

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

THE COMMISSIONER: Mr Alexis.

MR ALEXIS: Thank you, Commissioner. We'll be seeking to interpose Mr Fenn to give evidence. I don't expect the further evidence to be obtained from Mr Fenn to take terribly long and it would be most convenient for him if that's done before we resume with Mr Kelly.

THE COMMISSIONER: Yes.

10 MR ALEXIS: So in those circumstances could I recall Mr Stephen Fenn.

MR HARRIS: Commissioner, Harris, if I might, he'll take an affirmation, please.

THE COMMISSIONER: Yes, thank you, Mr Harris.

MR HARRIS: And if it's necessary in these particular circumstances could he have the benefit of the declaration under section 38.

20 THE COMMISSIONER: Yes, yes. Won't you take a seat, Mr Fenn. The order previously made under section 38 in relation to Mr Fenn's evidence continues to apply to the evidence he will give this morning.

**THE ORDER PREVIOUSLY MADE UNDER SECTION 38 IN
RELATION TO MR FENN'S EVIDENCE CONTINUES TO APPLY
TO THE EVIDENCE HE WILL GIVE THIS MORNING.**

30 THE COMMISSIONER: And would you affirm.

<STEPHEN WILLIAM CHRISTOPHER FENN, affirmed [10.11am]

THE COMMISSIONER: Mr Alexis.

MR ALEXIS: Thank you, Commissioner.

Sir, your full name is?---Stephen William Christopher Fenn.

10 Thank you very much and I understand you've responded to a request on
short notice to return to the witness box and can I convey our appreciation
for doing so?---It's no problem.

Now, Mr Fenn, it's appropriate that I take you back to some evidence that
you gave on 29 June, 2011 at page 229 to try and provide some context to
some further issues that have emerged since you gave evidence. So if we
could have on the screen please page 229 and Mr Fenn if you could look at
the hard copy if that's more convenient to you the evidence following my
question at about line 22, you see the numbers down the left-hand side of
20 the page?---Yes.

And you recall you told us there that you received a telephone call on about
15, it says "of 16" but I think that should say "or 16". Is that right?---Yes.

15 or 16 March telling Mr Pooley that we've bought it or words to that
effect and you said "I can recall ringing up Mr Pooley. I think that was a
Tuesday. It was after the contract was exchanged." And then you said, line
30, you tell us that Mr Watkins advised you of that?---Yes.

30 And particularly at line 35 you see that evidence there, "No, I believe it
came from Mr Watkins, do you see that?---Yes.

And then you recall further down the page I asked you as to Mr Pooley's
reaction and you'll see at line 43 or thereabouts I suggested that Mr Pooley
was shocked and you told me that you couldn't recall any shock from
Mr Pooley, do you see that?---Yes.

And then you see I suggested to you that Mr Pooley said that we're in
Caretaker mode, how could you possibly exchange contracts. You told us
40 then that you couldn't recall that. Do you see that?---Yes.

And then just coming over the page there was some further dialogue that I
put to you concerning the conversation between you and Mr Pooley and if I
could just pause and take you slowly through the question and answer
between line 10 and line 20, do you have that?---Line 10 and line 20?

On page 230?---Yeah.

Do you have that?---Yes.

And you'll see that I put this question, "And when you said to Mr Pooley, no, we had approval to negotiate he said to you, 'Yeah, you did, you had approval to negotiate but you can't sign anything, we're not even signing off discretionary fund cheques for \$5,000 when we're in Caretaker mode. You know we can't do this when we are in Caretaker.' He said that to you, didn't he?" and can I invite you to just look at your response there, you said, "I can't recall him saying that. I had a number of conversations with Mr Pooley over those days and I fully understood that he had a completely different understanding of the process." Do you see that?---Yes.

And is what you were seeking to convey with that evidence that you and Mr Pooley when you were having these discussions had a different view as to whether or not the Premier's letter gave approval to execute and exchange a contract for the purchase of Currawong?---Yes.

And the tenor of your conversations between each of you on the 15th or the 16th which is what you told us on page 229, line 25, was to that effect, a different understanding?---That's my recollection.

Thank you. Now could I suggest to you that when Mr Watkins advised you that the contract had been exchanged, that occurred during a telephone conversation that he initiated to you that afternoon at about 5.35pm?---I have no reason to doubt that.

Is your best recollection that you received the advice that contracts had been exchanged towards the end of the business day rather than at the other end? ---I can only recall it was the 15 or 16 March.

You've got no reason to doubt 5.35?---No, no reason to doubt that.

Because the telephone record that shows - - -?---Yeah.

- - - that's the time of the call?---Yeah.

You would accept that that's the conversation during which you learnt the contracts had been exchanged?---Sure.

Thank you. Now I'd like you to look at Exhibits 59A and B, Exhibit 60A and B and Exhibit 61A. Now can I just introduce the point I wish to come to by firstly asking you to look at Exhibit 59A which Mr Fenn, should be an email from Mr Watkins to his personal assistant on 15 March, at 12.43pm. Do you have that?---Yes.

And you see from the content of that email that he was asking for the date on which your Minister's letter and especially the Premier's letter was dated. Do you see that?---15 March, yep, the email?

Yes?---Yep.

And do you see 59B, Ms Hopkins is responding at 12.54pm indicating the date of the Minister's letter and the date of the Premier's reply?---Sure.
Yep.

10 Now does that assist in you recalling to mind that during the course of the 15th, particularly around the lunch time period, you and Mr Watkins were conversing extensively on the phone and particularly about the subject of the dates up on which the two letters were dated?---I can't recall any conversations specifically about the, the dates.

All right. Could you look please at Exhibit 60A and - - -

THE COMMISSIONER: 60A?

20 MR ALEXIS: 60A. And you'll see Mr Fenn, that Mr Watkins sent you an email at 1.04pm. Do you have that one?---Yes.

And just for completeness before I go to the content, if you look at 60B, Exhibit 60B over the page, you'll see that you've responded to that email at 11 minutes past 1.00 with the word thanks. Do you see that?---Yes.

30 So if I can just come back to the email at 1.04pm on 15 March, you'll see that Mr Watkins was there telling you that both Mr Kelly's and the Premier's approvals were prior to Caretaker and you can assume from me that Mr Watkins accepted that the word proof should be prior when he gave evidence about this?---Yes.

So he sent you this email saying both Tony's and the Premier's approvals were prior to Caretaker and therefore the policy position/commitment entered into by government. Do you see that?---Yes.

And then he goes on to say, accordingly I have now completed this already, entered into commitment and settlement will be in three weeks from today. Do you have that?---Yes.

40 And can I suggest to you that prior to the receipt of this email you and Mr Watkins had discussed the date of the respective letters, namely the Minister's letter and the Premier's letter for the purpose of determining how the matter would be dealt with in the circumstances of the terms of the Caretaker conventions and that explains, may I suggest to you why Mr Watkins is expressing himself in the way that he does in the email to you at 1.04pm, Exhibit 60A. Do you agree with that?---I have no reason to doubt that that would have been the tone of conversation.

And can I suggest to you that that was the tone of the conversation because Mr Pooley had expressed concern to you about how this could proceed having regard to the Caretaker provisions?---I'm not too sure whether that preceded my advice to Mr Pooley.

Well, have a look at Exhibit 61A which, can I just ensure that we're on the same page here, at the top of that page it should be an email from you to Mr Pooley of 15 March, 2011 at 12.30pm, do you have that?---Yes.

10 Now, if you could just go to the commencement of the email chain and you'll see on the second page, just let me pause, Mr - - -

THE COMMISSIONER: I'm trying to find, I don't have the 61 so I'm just waiting to get it, Mr Alexis. Do you mind waiting?

MR ALEXIS: Of course.

THE COMMISSIONER: Is there a spare Exhibit 61?

20 MR ALEXIS: Commissioner, I may have referred to that, no, I think we're okay, as 61A, I think it's just Exhibit 61, it's the entire email chain.

THE COMMISSIONER: Right. Yes, thank you.

MR ALEXIS: Now, Mr Fenn, if we just go to the start of the email chain on the second page of that exhibit you'll see that Ms Garrity from Pittwater Council is sending an email to Mr Watkins attaching a letter from Mr Ferguson, do you see that?---Yes, yeah.

30 And then if we turn back to the first page you'll see that Ms Hopkins is then sending that to you under cover of the email at the bottom of the page at 11.42am, do you see that?---Yes.

And you've got no doubt you received that email from Ms Hopkins?---No doubt.

And then you see above that Mr Pooley is emailing you at 11.45 - - -

THE COMMISSIONER: (not transcribable)?---Yeah.

40

MR ALEXIS: I'm sorry. You're passing this on to Mr Pooley at 11.45 with the short message, "corro between Council and LPMA"?---Sure.

And that's what you did?---Yeah.

And then do you see Mr Pooley's response at 1.15pm?---Yes.

Where he says, "We're in Caretaker, it depends on date of agreement and nature of the agreement. Are you getting a brief up from Watkins? I can get Legal to look at it then." Do you see that?---Sure.

Now, can I ask you to just explain to us what you took Mr Pooley's reference to getting it to Legal to look at to mean?---I would, I would assume he's chasing up the, the contract.

10 He says there, "Are you getting a brief up from Watkins? I can get Legal to look at it," so it was your assumption that he was chasing the contract?
---Yeah, he would have been chasing any, any relevant documents around the, the purchase.

But, Mr Fenn, can I ask you to consider this: how would Mr Pooley have known by 1.15pm on 15 March that there had been an exchange of contracts?
---I'm not too sure.

20 Because all you'd sent him is the correspondence between the Council and the LPMA?---Maybe he was chasing up the, the brief, the letters to and fro that the Minister and Premier, you know.

Wasn't Mr Pooley saying to you, well, look, I've got the letter between the Council and the, the LPMA but there must be - - -?---More than that.

- - - you know, more of this?---Yeah.

30 Are you going to get a brief up so I can send it to Legal, that's how you understood it, isn't it?---Yeah, yeah.

And if you look at your response, at 1.19pm, do you see that?---Yes.

And if you just pause and go back to Exhibit 60A which is the email from Mr Watkins at 1.04pm?---Yes.

And you see as, as I think we've already noted that you responded with a thanks at 11 minutes past 1.00, Exhibit 60B?---Yeah.

40 And so having got that from Mr Watkins you then emailed Mr Pooley back, didn't you, at 1.19pm and said he was given permission to negotiate prior to Caretaker?---Yes.

And that's information that you got from Mr Watkins' email at 1.04, is that so?---That would have helped. There may have been a conversation where, that was my understanding at the time. The, the letter from the Premier on 25 February was the approval to go ahead and negotiate with a view to purchase.

But, Mr Fenn, what informed your email to Mr Pooley at 1.19pm was Mr Watkins' email received only moments before where he said to you that the letters were prior to Caretaker and that's indeed the language that you used to Mr Pooley, isn't it?---Yeah.

He was given permission to negotiate prior to Caretaker?---No, I had no reason to doubt that was a, a view that was formed in my own mind as well.

10 All right. And then you've said, "Happy to have the Shadow Lands Minister up there thanking the government??" What was that comment all about?---Well, I think it got to the point of, you know, if there's an issue, if it's going to get, if it's going to be problematic let's make it a bipartisan announcement.

So if what was going to be problematic?---If, if the purchase, if, if, if it was going to be called, called into doubt the, the (not transcribable) the purchase let's make it bipartisan.

20 So the reference to the Shadow Lands Minister was a reference to the means by which the problem concerning Caretaker could be resolved, if it was bipartisan then there'd be a resolution of that problem, is that what you're saying?---Yeah, if there was a problem within the Premier's office, I'd, you know, at that time I think they were going to go off and talk to the then Leader of the Opposition but, you know, our view was that, you know, it wasn't a politically contentious issue and if it, if it took a bipartisan announcement then it was happy, we were happy with that.

30 Can I then ask you to look at Mr Pooley's response to you at 1.21pm and you'll see that Mr Pooley says, "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 concluded. 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?---Sure.

And may we understand that by reason of the emails that are recorded in Exhibit 61 you were reading them virtually as they were received?---By, I have no doubt that I would of, if Tony Pooley emailed me I would have, you know, unless I was called away elsewhere but - - -

40 And when you read his email which referred to a handshake or an exchange of letters or heads of agreement, when it was concluded you understood from that, didn't you, that he was seeking to understand how the conclusion of negotiations was evidenced?---Yeah, he was just trying to get as much information as possible.

But can I ask you to attend to my question. What he was conveying to you was an understanding or he was seeking to understand from you how the,

the conclusion of the negotiations was evidenced. Was it a handshake or - -
-?---Okay, yeah, the nature of the agreement.

- - - was it an exchange of letters or was it a heads of agreement and when it
was concluded, do you see that?---Yes.

And it's clear, isn't it, that he's not referring to any contract there, he's
referring to the conclusion of negotiations isn't he?---I, I, I, I don't, a
contract would be part of it I assume but that - - -

10

THE COMMISSIONER: Well, it doesn't say that?---Sorry, okay, well - - -

MR ALEXIS: Mr Fenn, I'd like you to focus on the words and what I
suggest to you is that the language that Mr Pooley used was everything
other than a concluded contract, isn't it? A handshake, exchange of letters,
heads of agreement and then when it was concluded, that is to say when the
negotiations were concluded, that's what he was saying to you, isn't it?
---Okay.

20 Well do you accept that?---Yeah, I accept that.

Thank you. And then he says, once I get that info we can see if we can use
Stokes or someone from their side to make it work, and Mr Pooley was
saying to you was, look, if there has been a conclusion to the negotiations,
we can use Mr Stokes or someone from the opposition to procure consent to
a contract then being entered into, having regard of the fact that you were in
Caretaker. Do you agree with that?---Yeah.

30 And Stokes is a reference to Mr Stokes who was then I think the Member
for Pittwater?---Yes.

And so you understood that what Mr Pooley was saying was, look we can
utilise the Local Member to get a direct line to the then leader of the
opposition to get bipartisan consent?---Yes.

Now as soon as you received this email you called that Mr Watkins at
1.22pm didn't you?---Oh, I can't recall.

40 Well can I suggest to you that you did place that call at 1.22pm and you
spoke with Mr Watkins for three minutes and fifty six seconds?---Okay.

And do you accept that that's the likely timing and duration of that
telephone call?---I have no reason to doubt it.

If the records, telephone records show that that was when the call was made
and the duration of that call, you would accept that?---Sure.

Can you tell me what was spoken between you and Mr Watkins at that time for three minutes and fifty six seconds?---No, I can't honestly recall.

THE COMMISSIONER: Well just think back on what you just heard from Mr Pooley?---Well I assume it would have been trying to get information that was required by Mr Pooley.

10 MR ALEXIS: Well Mr Fenn, it's obvious isn't it you would have conveyed to Mr Watkins that Mr Pooley was on your back wanting to know how the negotiations had been concluded and whether there was a handshake or an exchange of letters or Heads of Agreement or something else. You would have conveyed that to him wouldn't you?---I would have conveyed that, yeah, what Mr Pooley was after.

20 And you would have told him that we needed to something or get something so that steps could be taken to employ Mr Stokes or someone from the Opposition to make it work, that is to say, to obtain some bipartisan consent. That's so isn't it?---I'm not too sure whether I had spoken about the Mr Stokes part of it to Mr Watkins, but - - -

Why wouldn't you be sure about that if Mr Pooley's email that you received a minute before referred in terms to Mr Stokes?---Oh, I'm just trying to recall. I can't recall talking about Mr Stokes to Mr Watkins.

Okay. In any event you do recall speaking to him about this email and what was to be done about it?---Oh, I don't recall the precise conversation, but I have no reason to doubt that there was a conversation.

30 Well what was decided to do about Mr Pooley's email when you spoke with Mr Watkins for three minutes and fifty six seconds after the receipt of it? ---Well I assume Mr Watkins would have chased up whatever was needed.

What was that?---I, I'm not too sure. Probably, you know, what Mr Pooley was after.

You knew during this conversation that the contracts hadn't been exchanged?---I'm not too sure.

40 Well you already told me that Mr Watkins advised you or was likely to have advised you of the exchange of contracts at about 5.30 that afternoon? ---Okay.

And so at the time you're having this conversation with Mr Watkins, having received the email from Mr Pooley, you knew the contract hadn't been exchanged didn't you?---I wasn't aware that it hadn't been, had been exchanged.

And can I suggest to you that what Mr Watkins said to you was that he didn't want you to go anywhere near Mr Stokes or anyone in Opposition in relation to the purchase of Currawong?---I can't recall that specific conversation.

Well did you go anywhere near Mr Stokes or anywhere near anyone in Opposition about the purchase of Currawong?---No, I don't think it was proper for me at that stage to.

10 And why did you think it would not have been proper?---Well that was something that the Premier's office should have been dealing with.

See Mr Watkins was desperate to get this deal concluded and he didn't want anything to occur that would delay that objective. That's so isn't it?---Mr Watkins was very keen to finalise the negotiations.

And when you conveyed the content of Mr Pooley's email that you received from him at 1.21 and had this three minute, fifty six second conversation, the upshot of that conversation was that he didn't want you to go anywhere
20 near Mr Stokes or the Opposition and convey anything until after the contract had been exchanged. That's so isn't it?---I have no reason to doubt that that, that Mr Watkins said that. But I wouldn't have gone near Mr Stokes anyway.

And you wouldn't have gone anywhere near Mr Stokes because that's the last thing as you understood it, Mr Watkins wanted?---Well if he said it that way, yeah, I would have listened to what Mr Watkins would have said. But as I said, I wouldn't have gone near Mr Stokes. That would have been something that the Premier's office should have negotiated.
30

But you weren't going to go anywhere near the idea of advising Mr Pooley that consent from the Opposition was required before the contract was exchanged?---I wasn't aware that consent was required by, by the Opposition before the contract was exchanged, no.

But you were critically conscious because Mr Pooley had told you that you were in Caretaker?---No, Mr Pooley was asking questions about the nature of the agreement.

40 Well can I just put this very clearly to you, that it was decided between you and Mr Watkins during this telephone conversation that started at 1.22pm that you would not say anything to Pooley and you would not do anything in relation to the Premier's office that would cause the then Opposition to be involved in any question of consent for the exchange of contract to purchase Currawong?---No, I can't recall that.

But that's the likely scenario isn't it Mr Fenn?---I can't speculate on whether it's likely or not.

Well can I ask you this then, how did you respond to Mr Pooley's email at 1.21pm after you spoke to Mr Watkins at 1.22pm?---Well I suppose I would have asked Mr Watkins this is the information I need and that's all I can recall.

And the information that then came forth was the Minister's letter to the Premier and the Premier's reply?---This is the information I provided to Mr Pooley?

10

Yes?---I'm not too sure what time that was provided to Mr Pooley.

All right. Have you got Exhibit 62 there?---No.

It's being shown to you. Let's just get the timing back in our minds. Mr Pooley emails you at 1.21. You speak with Mr Watkins for three minutes or so at 1.22. And you see Exhibit 62, Mr Watkins is emailing his personal assistant at 1.38 saying, please send up to Stephen a copy of the letter Tony sent to Premier with authority to purchase Currawong and the letter Premier sent back. Do you see that?---Yes.

20

And do you see at 12.54pm at the top of the page Ms Hopkins responds to that email to Mr Watkins and says that she's done it.

THE COMMISSIONER: No, that really should be 1.54 I think.

MR ALEXIS: I'm sorry.

THE COMMISSIONER: It says 12.54, but - - -

30

MR ALEXIS: It should be 1.54, yes.

THE COMMISSIONER: - - - but there is a problem with that I'd say, though I understand the evidence.

MR ALEXIS: Yes, there always is. But do you see the email at the top of the page with the word done?---From Ms Hopkins to Mr Watkins, yeah.

And assume, as the Commissioner says, that that's at 1.54. Do you see that, instead of 12.54?---Okay.

40

And if you turn the page, you'll see there's the email from Ms Hopkins to you which says, copy of letters attached re Currawong. Do you see that?---Yes.

And again if you assume that that's at 1.57 instead of 12.57, the line of email communication to you ultimately is clear isn't it?---Yes, that Ms Hopkins sent that to me at 1.57, purportedly.

And then what did you do with the two letters that Ms Hopkins sent to you?
---I probably would have, I think I, I think I sent them up to Mr Pooley.

And in response to the email that we've been examining back in Exhibit 61 that Mr Pooley sent to you at 1.21 your only response was to send the two letters that Ms Hopkins had sent to you at 1.57pm, is that right?---Yeah, I seem to recall that.

10 Thank you. Those exhibits can be returned and could I show you Exhibit 15 and I'm just showing you this exhibit, Mr Fenn, just to bring back to mind what we discussed in your earlier examination in relation to your receipt of this email from Mr Watkins attaching the draft statement late on the evening of Sunday, 20 March, do you see that?---Yes.

And I think you recall your evidence in relation to when you saw this and you referred to the train trip to Newcastle the following Friday and all of that?---Yeah.

20 I don't propose going back through that, Mr Fenn, but I want to bring you if I could to Exhibit 50 and Exhibit 15 can be returned and I want to come to Exhibit 50. Now, can I introduce Exhibit 50 to you, Mr Fenn, this way. 19 March is a Saturday and can I suggest to you that before this email was sent to you by Mr Watkins and you'll see that it was sent at 5.15pm on the Saturday afternoon, do you see that?---Yes.

But before that email was sent you had six telephone conversations with Mr Watkins, each of which were initiated by him?---Okay. I, I can't recall them but - - -

30 Well, can I just assist you this way, he initially rang you at 12.41pm and spoke for about seven minutes and 12 seconds?---Okay.

He then spoke, rang you again at about 2.38 and you had a 14 minute 38 second conversation. Let me just put all this to you and then - - -?---Sure.

- - - you can tell me whether or not you agree that this is likely or not.

40 There was a third telephone conversation that he initiated at 12.51pm which went for about two minutes and 17 seconds. Let me just go back a step, Mr Fenn. The first conversation that was initiated by Mr Watkins to you was at 12.41 and that was a seven minute, 12 second conversation?---Right.

The second was at 2.38pm which was another conversation that he initiated, it was for one minute and 19 seconds. The next conversation was at 2.51pm that he initiated that went for two minutes and 17 seconds. The next conversation was at 2.59pm that he initiated that went for one minute and 33 seconds, there was then a six second conversation at 5 minutes past 3.00 and then a further conversation that he initiated at eight minutes past 3.00

that afternoon, it went for about one minute and 48 seconds so in total six conversations between about lunchtime and just after 3 o'clock. Now, does that accord with your recollection on that Saturday afternoon of receiving all those phone calls from Mr Watkins?---They may have been voice messages but the longer ones, they would have generally been a conversation, yes.

10 And was that in relation to the events that were by then unfolding, the detail of which we step through where you gave evidence on the last occasion, the investigation by that stage had started, he'd been stood down and he was discussing with you matters relating to that?---They, they generally would have pertained to that, I can't recall the precise conversations.

And then you see Exhibit 50 which should be before you, Mr Fenn, and you see that Mr Watkins is forwarding you some, some papers and you'll see the nature of those papers if you look at the email at the foot of the page, you'll see the email from Ms Hopkins to Mr Kelly sent the afternoon before which attached the copies of the papers discussed with Bob and there's a reference to the attachment F, the map and, and the other, the other documents, do you see that?---Sure.

20 And so at the top of the page, Mr Watkins, is sending you what he describes as the background papers that Tony, a reference to Mr Kelly, has as well, do you see that?---Yes.

And then he says "it includes the letter from him to me and the October 2010 briefing paper with the authority to spend up to \$13 million," do you see that?---Yes.

30 Now, can I suggest to you that after that email was sent there were two further telephone conversations with Mr Watkins that he initiated, one at 6.09 and one at 6.16pm?---Right.

And can I suggest to you that the subject matter of those conversations concerned the email that you'd received at 5.15pm on that Saturday afternoon?---I, I don't receiving, I don't recall seeing this email on that weekend. I was out at a, at a function.

40 Well, can I ask you to recall as best you can what was spoken during those two subsequent telephone conversations after receiving the email, appreciating that as you say you not have seen it at about 5.15pm but what did he ring you about?---I, I can't recall those two conversations, I don't how long they were but as I said, I was out at a function at that time, I think it was a birthday party and all I can vaguely recall is, is, is a message from Warwick about chasing up a letter.

Can I suggest to you, Mr Fenn, that during one or other or all of the eight telephone communications, six of which preceded the date and time of this email and the two that proceeded afterwards, during those conversations you

and Mr Watkins discussed the backdated letter that formed part of the papers attached to this email?---No.

And he told you that he had decided that he was going to use the letter to cover himself?---No, I can't recall that.

THE COMMISSIONER: What was this letter that you say you spoke about?---Well, I wasn't too sure, this was the letter I was, I was going to chase up with the Minister when I spoke to him next.

10

And what letter was that?---I'm, I'm not too sure, it was a letter.

Well, what letter? What, how, are you suggesting that you were going to chase up some letter with the Minister but you don't know what the letter was?---No.

Well, what was the letter?---I'm not too sure.

20 That's what you're saying then. You're saying that you were asked to chase up a letter but you don't know what letter it was?---No.

Are you being serious?---Yes.

You have eight conversations on a Saturday afternoon with Mr Watkins and you're not able to tell us what it's about?---I don't recall any, any conversation about a letter, about the backdated letter.

And it's four months ago?---Yes. My memory is - - -

30 It's not a long time ago?---It was a busy time.

But this was a very important matter, wasn't it?---I, I wasn't aware of this, the nature of, of the letter.

This was a very important matter wasn't it, Currawong?---The Currawong matter was, was very, very important the time.

40 And you have eight conversations in the space of a couple of hours, perhaps a bit more, with Mr Watkins on a Saturday afternoon, there must have been something very special about that?---Well, I'm not too, they might have been voice messages. I was out all afternoon.

Well, they're not voice messages, you already concede that some of them at least were not?---Well, some may have, yes, some of them would be conversations.

(not transcribable) very long?---I, I can't recall any conversation about this relevant letter. I was chasing a letter and as Chief of Staff I spoke to the Minister either on Sunday or the Monday.

Do you have a bad memory, Mr Fenn?---My memory is not that good, particularly around that time. It was, it was a very, very difficult time.

And particularly about this matter?---No, not really, that was the least of my worries.

10

So why have you got a bad memory about it?---A bad memory about?

This matter?---No, I'm just about bad, bad memory, it was a very busy time, there was a lot going on, you know, Currawong wasn't, wasn't front and centre of my concerns.

Are you being frank with the Commission?---I'm being very frank. I'm trying to be honest here.

20

MR ALEXIS: I have nothing further for Mr Fenn.

THE COMMISSIONER: Mr Branson?

MR BRANSON: Thank you, your Honour. Mr Fenn, can I just ask you this please, prior to 15 March, had you had any discussions with Mr Pooley about the proposed purchase of the Currawong site?---I can recall talking to Mr Pooley in passing, downstairs, at GMT, just giving the heads up saying the negotiations are continuing.

30

Yes. And I think you told us about that when you were here on 28 June. Correct?---That's the only conversation I can recall.

Thank you. Now do you remember that on the afternoon of Tuesday, 15 March, that Mr Watkins was heading to Melbourne?---I can't recall his whereabouts, no.

40

Well he's told the Commission that at about 2.00pm that afternoon he was going to Melbourne. Was that something you have any knowledge of or not?---I can't honestly recall his whereabouts. He did travel a lot. No reason to doubt that he wasn't in Melbourne.

Now as Mr Watkins Chief of Staff, prior to 15 March, did you have any understanding as to what role Mr Watkins was to play with respect to the proposed purchase of the Currawong site?

THE COMMISSIONER: Mr Branson, what has this to do with Mr Kelly?

MR BRANSON: A lot, with respect.

THE COMMISSIONER: What? I don't understand. You'll have to explain yourself.

MR BRANSON: Well, I'll come about it more directly, but you know, Commissioner, cross-examination does depend on some premise, but I'll move it along if you're concerned about time, with respect.

MR HARRIS: Commissioner, I just wanted to clarify is Mr Branson saying, as Mr Watkins' Chief of Staff?

10

THE COMMISSIONER: Yes, he did.

MR HARRIS: (not transcribable) that point might be cleared up. Thank you.

MR BRANSON: I'm sorry. Now can you just come to this 15th, the Tuesday, all right. Did you have any prior knowledge that contracts were to be exchanged later that afternoon? Any at all?---No. Only when I was informed by Mr Watkins.

20

Well on that Tuesday afternoon did you appreciate that contracts were to be exchanged by close of business that day?---I can't recall the specific times, but I knew that they were getting close.

But if, have you still got Exhibit, we'll go about it this way, when there was this email exchange with Mr Pooley towards the middle of the day on the Tuesday, did you understand that contracts had not by then been exchanged or not?---I wasn't aware that contracts had or had not been exchanged, but I hadn't been advised the contracts had been exchanged at that stage.

30

Did you appreciate that an exchange of contracts was imminent on at the time that you and Mr Pooley were exchanging the emails that you've read today?---I had, I can vaguely recollect that there was, they were getting close to exchange of contracts.

Excuse me Commissioner, I'm sorry, it's just (not transcribable). But is it clear from the email headings concerning announcement of the purchase that it was contemplated on the afternoon of 15 March, that when and if contracts were exchanged that there would be an announcement made?

40

MR WHITE: I object, your Honour. There's no reference in the emails to any announcement on 15 March. That's 16 March that, the following day that I think my learned friend is referring to.

THE COMMISSIONER: You'll have to take out the (not transcribable) emails, Mr Branson.

MR BRANSON: Yes, I'm just looking at the moment. I just made a note. Well Exhibit 61, if, I don't know who made the objection, but I'm just reading the dates, would you have a look at Exhibit 61, please, sir?---Yes.

Am I correct or not correct that a subject of communication between you and Mr Pooley on the afternoon of 15 March concerned an announcement?

THE COMMISSIONER: Well it speaks for itself. I don't think you to ask this question. It's either the case or not, we can all read it.

10

MR BRANSON: Well there's no basis for the objection, number 1, right. Well your Honour, I don't know, I mean - - -

THE COMMISSIONER: Let's not, let's move on. Put what you - - -

MR BRANSON: Well I've got to, I've got to (not transcribable) a preliminary basis, with great respect Commissioner. Now - - -

20 THE COMMISSIONER: Well these documents speak for themselves. I just would like to move on. We've got a lot to go through.

MR BRANSON: Did you have any specific role to play, Mr Fenn, with respect to any announcement in the media once the purchase had taken place by way of exchange of contracts?---It would have only been in discussions with the Premier's office about a possible announcement.

Was it your understanding as at 15 March that afternoon that, and as far as you were aware, the Premier supported this proposed purchase?

30 MR WHITE: I object. Your Honour, that could only be based on some communication between this witness and Mr Pooley and there's simply no evidence of that. It's improper in my submission to put that proposition to this witness.

THE COMMISSIONER: Yes. Yes, Mr (not transcribable) there's substance to that objection.

40 MR BRANSON: Well if my friend would just stay away from the word improper, I'd be very grateful. Thank you.

THE COMMISSIONER: I'm sure he will.

MR BRANSON: Well, well it's entirely inappropriate.

THE COMMISSIONER: Yes, I accept that.

MR BRANSON: Did Mr Pooley indicate to you or not whether as at the afternoon of 15 March the Premier supported the proposed purchase of

Currawong?---I can't recall him saying that, but I had no reason to doubt that - - -

Thank you. Did you discuss in any depth and detail with Mr Pooley why it was that he wanted a copy of the contract itself?---No. I just, that would have been just him gathering as much information as he could.

10 THE COMMISSIONER: But he was talking to you about Caretaker wasn't he?---On that day, oh yeah, well on that day the conversation obviously was around Caretaker.

MR BRANSON: Was your understanding that the sole reason why Mr Pooley wanted a copy of the contract was with respect to the Caretaker provisions?---No, I couldn't draw that conclusion.

20 Did it strike you in any way as being unusual on that afternoon that Mr Pooley was asking you for a copy of the contract for purchase?---No, it didn't strike me as unusual, but as I say, I can just vaguely recall this general fact gathering exercise for Mr Pooley. It may have gone over a couple of days, but I can't recall them, the precise conversation.

And when did you find out yourself that contracts were (not transcribable) exchanged, the purchase of the Currawong site had taken place?---Had taken place?

Mmm?---It must have been that email that I got late on, you know COB on the Tuesday when I believe Mr Watkins informed me at that time.

30 So you - - -

THE COMMISSIONER: Are you saying by email or by phone?---Look, I can't recall whether it was an email or a phone conversation, it might have been both.

MR BRANSON: Just excuse me please, your Honour, I've just got one more note to check on, please. Can you just clarify this, just tell us when you first spoke to Mr O'Reilly about the subject of the exchange?---I never spoke to Mr O'Reilly.

40 Not at all?---No. I was talking to my boss about that.

Sorry?---I was talking to the Minister about, I think the Minister took that upon himself to talk to Mr O'Reilly about those matters. And I can't recall talking - - -

Thank you very much, Mr Fenn.

THE COMMISSIONER: Mr Curtin?

MR CURTIN: Could I have two minutes just to speak to Mr Watkins, Commissioner?

THE COMMISSIONER: Yes. Well I'll, you'll have the time to speak to Mr Watkins.

MR CURTIN: Thank you.

10 THE COMMISSIONER: But not now. What I mean is I'll ask someone else to - - -

MR CURTIN: (not transcribable)

THE COMMISSIONER: Any other counsel other than Mr White who wishes to question?

MR WHITE: No, your Honour.

20 MS FISHER: No, thank you.

THE COMMISSIONER: No. It looks as if I, we'll take the adjournment, ten minutes.

SHORT ADJOURNMENT

[11.00am]

30 MR CURTIN: Mr Fenn, my name's Curtin and I appear for Mr Watkins. Do you recall, whether by receiving an email or having a conversation that Mr Watkins had reached a verbal agreement with Mr Linz to purchase Currawong on the evening of 10 March?---10 March would have been, sorry, what day?

It was the Thursday?---I, I recall getting a, a phone call from Mr Watkins saying that basically they were (not transcribable) agreement, they just had to go through the necessary paperwork. That was late on the 10th, 11th.

40 Right. And in that conversation, and I want you please not to guess or assume or anything of those sort of things, but do you, do you have a recollection whether you were informed amongst other things that a particular purchase price had been agreed?---I can just recall, I can't recall a particular price, but I know it was under the 13 million.

And this morning I think you gave, gave an answer to the effect that on 15 March you, your understanding was that the, Mr Watkins and the vendor were moving towards an exchange of contracts?---Yes, that was my understanding, there was - - -

All right. And if you could be shown please Exhibit 61?---I've got it here.

You've got it. Thank you. You'll see at the bottom of the first page, I'm sorry, if we go to page 2 first, you'll see an email from Pittwater Council to Mr Watkins attaching a letter of 15 March?---Yes

And if we assume all these email times are correct, that's just before 10.00am?---Yep.

10 And if you turn back to page, the first page, the bottom email is Ms Hopkins forwarding this letter from the Council to you?---Yes.

And do you recall whether that letter being sent to you was after a request by you?

THE COMMISSIONER: The email, the email?

MR CURTIN: The email, yes?---No, I can't recall.

20 Is there, was there a practice or convention or a usual way of doing things with the purchase of property by the LPMA which would account for Ms Hopkins' email to you of 11.42 attaching this letter?---No. I have, I have no reason to believe why I would have sought out this letter. I, I - -

And the next email above that is yourself to Mr Pooley at 11.45, attaching correspondence between the Council and the LPMA?---Yes.

30 Do you recall what happened, whether conversation, email or something else which caused you to send that letter to Mr Pooley at 11.45 on 15 March?---He must have asked for it. I wouldn't have freely given it. As, as I said, all I can recall is that Mr Pooley was trying to gather information around this.

Yeah.

THE COMMISSIONER: Around what, around the transaction?---Around the, yeah.

40 MR CURTIN: And do you remember what the, could I ask you to assume that exchange of contracts occurred roughly around 5.00pm on 15 March? ---Right.

Do you recall what the precipitating event was which led to Mr Pooley seeking this information on the morning of 15 March or perhaps earlier? ---No, I can't recall, but there must have been some conversation between he and I about, about, you know, the fact that we're about to purchase the, the property.

Well, can you think hard, please, Mr Fenn, as to what it was that precipitated communications between your office and the Premier's Office about Currawong on the morning of 15 March. Did you say something to Mr Pooley, did Mr Pooley ring you, did something else happen, do you recall?---I, I can't recall whether it was a conversation in person or a phone call, but obviously Mr Pooley would have been told that, you know, that- -

THE COMMISSIONER: I think Mr Curtin asked you not to make any assumptions?---Okay. Well, I can't- -

10

If you don't know, I think simply say that?---Sorry. Okay. No, no, it was a busy day.

MR CURTIN: That email from you to Mr Pooley at 11.45, in the subject line you'll see "FW: Letter from the Council." Do you see that?---Sure.

Mr Pooley's response it appears at 1.15pm to yourself, the subject line you'll see, "Preliminary advice is we can't announce this because ... we're in Caretaker."---Yep.

20

"It depends on date of agreement and nature of agreement." Do you have any recollection of any conversation between yourself and Mr Pooley concerning dates of agreement or natures of agreement on the 15th or perhaps the day before or- -?---Well, I can only go on what's on the email trail. I can't recall a precise conversation with Mr Pooley on that matter.

Do you recall, sorry, I'll just go to the other three emails. Above the 1.15 email from Pooley to you is yourself to Mr Pooley at 1.19pm saying what you see in that email and then two minutes later Mr Pooley replies to you saying, "Yeah, I tried all that"?---Mmm.

30

Did you have any - which presumably referred, but perhaps not, but presumably refers to - well, I'm not sure what it refers to.

THE COMMISSIONER: It looks as though, it looks as if it's referring to he was given permission to negotiate prior to Caretaker or it might refer to happy to have the Shadow Lands Minister thanking the government but I doubt it, it seems to, Mr Curtin, it seems to me to relate to the permission to, to negotiate prior to Caretaker. What do you say, Mr Fenn?---Yeah, my, my general recollection was that Mr Pooley was going back to get some advice on, you know, can we do it bipartisan.

40

Because of problems with Caretaker?---Yes, and, and, and the fact that I was maintaining that the authorisations were in place prior to Caretaker from the Premier's 25th Feb letter.

MR CURTIN: Mr Fenn, what, I think as you know one part of this inquiry concerns whether Mr Watkins was authorised to enter into contracts,

another part concerns the Caretaker provisions and you'll understand there is some overlap between those two?---Yes.

And we can see in these emails that specific reference is made to Caretaker but what I'm seeing to ask you is about any conversation that you recall having with Mr Pooley, putting Caretaker to one side, about either exchange being imminent or some form of handshake agreement or heads of agreement having been reached during the morning of 15 March, do you understand? You see, I'm just - -?---I think, I wouldn't, I wouldn't have, I can't recall talking to Mr Pooley about those details.

Sorry, you can't - -?---I can't recall talking to Mr Pooley about those details. As I said, I can recall some advice from Mr Watkins towards the end of the previous week saying that essentially there was a, you know, a deal to be done.

So you were aware at least after the Thursday evening the week before - -? ---I don't know about Thursday but it was, it might have been Friday.

20 Well, you were aware at least that Mr Watkins had reached, I'll call it a verbal agreement with the developer?---Yes, yeah, along, along, yeah, along those lines.

THE COMMISSIONER: Along those lines?---Well, I had advice from Mr Watkins that there was some in principle agreement and they had obviously over the coming days they needed to work out the, dot the I's and cross the T's and there was only, it was only a, you know, a quick heads-up towards the end of the week.

30 MR CURTIN: You used the words in principle agreement, is it correct to say that you were aware that Mr Watkins had agreed on some things with the vendor and other things were to be worked out?---Not being a lawyer I couldn't answer, all I knew that was, they were getting close to a deal and Mr Watkins advised me of that.

Well, when you say getting close to a deal do you mean by that getting close to exchanging contracts?---I believe that was the next step, you know, just to go through, to get the paperwork done but at that stage what, I had no, I - towards the end of that week I, I can't recall thinking to myself that this a done deal. There still would have been lawyers involved in - - -

Yeah, well, I'm just talking about your, your state of mind at the time? ---Mmm.

When you say getting the paperwork done and lawyers involved et cetera, do I take that to mean that the involvement of lawyers and paperwork was required to then enter into a legally binding contract for the purchase of the

land?---Yes, they would have had to, you know, do the necessary paperwork.

And then somebody had to sign it?---Yeah, it had to be, contracts needed to be exchanged - - -

Exactly?--- - - - but as of Friday the contracts weren't exchanged is my understanding.

10 THE COMMISSIONER: I'm still not sure whether you were saying that your understanding the week before was that they had come to an oral agreement or they were on the way to coming to an oral agreement?---I can't recall. It was a positive message from Mr Watkins on the Friday that all going - sorry, I'm no lawyer, I - - -

No, I understand that I'm just trying to know what your state of - I think, and you're being asked - - -?---Yes.

20 - - - about your state of mind, well, did you understand that the parties involved had agreed the terms orally, all the relevant terms orally, or did you understand there was still some work to be done before, before consensus was arrived at?---I'm not too sure. I was just relying on the advice Mr Watkins gave which was quite favourable.

So he was, he was being positive - - -?---Positive that - - -

- - - that you were being assured that the deal had been done?---No, no, there was no guarantee there.

30 MR ALEXIS: Whatever it was that you were aware of in terms of in principle agreements or however you describe it, you were aware on Friday, 11 March that after this favourable report - - -?---Mmm.

- - - by Mr Watkins that he was moving towards, that is doing things necessary to enter into a binding legal contract for the purchase of the property?---Yes, yes, and I, and he had spoken to the Minister about that as well, I think he advised both myself and the Minister that that was the state of play as of, as of the end of the week.

40 Yeah. And did he tell you or did you - I withdraw that. In terms of your state of mind did you know that those things necessary to progress to a binding legal contract were happening quickly?---I had no idea of the, you know, obviously the sooner the better, I would assume Mr Watkins might if he can sort out a deal.

What, so you, you knew Mr Watkins was moving towards a binding contract and in your own mind the sooner the better for that to occur?

---Look, not in my own mind, I think Mr Watkins was very keen to conclude the deal and I, you know, as I said I saw it as a positive, you know, so if it could be wrapped up the sooner the better.

All right. So do you recall Mr Watkins conveying to you something to the effect that he would be progressing these matters - - -?---Yeah, the paperwork and - - -

10 The paperwork - - -?---Yeah.

- - - expeditiously?---I can't recall whether he was using those terms.

Or terms to that effect?---I honestly can't recall.

And by Monday, 14 March and the morning of 15 March for some reason you start communicating with Mr Pooley about Currawong?---Yes, yeah, I, I'm, I'm not too sure when but obviously I made a call advising them of where it was up to.

20 All right. So if you assume that Mr Pooley had no other source of information about what was going on at Currawong, do you recall or is the practice for you and your office that you would have, that you did speak to Mr Pooley something about Currawong?

THE COMMISSIONER: When is that, Mr Curtin?

30 MR CURTIN: On 14 March or the morning of the 15th?---I, I took it upon myself to advise Mr Pooley of, you know, as I said, you know, during the negotiations I did bump into Mr Pooley and advise him that negotiations were ongoing, so I took it upon myself to, to inform him of- - -

Well, I want to ask you two questions, one is when did you inform him and two, to the best of your recollection could you tell the Commissioner what you said to Mr Pooley?---That I can't recall but, I can't recall when, but it would have been along the, along the, along the lines of, you know, we're, we're, we're in, we're in, we're going to buy it. I can't recall the precise wording but words to that effect.

40 And do you, are you able to recall say by reference to 15 March or by reference to some other event, when you said those words or words to that effect to Mr Pooley?---No, I can't recall. All I can, that, I think it was a Barangaroo day that day so I can't recall much in terms of the timings and so forth.

Right. If you, if you look at Mr Pooley's email to you at 1.21pm in Exhibit 61, he asks or he tells you what he needs is information on what has been agreed and then there's reference to handshakes, exchange of letters, heads of agreements and when it was concluded. Do you recall any conversation

with Mr Pooley on the, up until 1.21pm on 15 March on what had been agreed or what had been concluded or the subject matter?---No. I, I, I, I don't believe I went into details. I can't recall talking to Mr Pooley about what I, what was, what I was advised on the Friday about, whether it was in principle or handshake or- - -

Did, other than what's written in these emails, do you recall whether or not Mr Pooley ever spoke to you saying something about, well, or something about Watkins' authority to enter into a contract?---No.

10

So did Pooley ring you on the 15th and discuss with you the subject matter of whether Watkins was able to enter into a binding contract with the vendor?---I can't recall him talking about that, that particular aspect of it, it was more about the timing and Caretaker.

And can I just ask you, no, that's the, no further questions.

THE COMMISSIONER: Mr Alexis?

20 MR ALEXIS: Nothing arising.

THE COMMISSIONER: Yes. You are excused, thank you, Mr Fenn.

THE WITNESS EXCUSED

[11.34am]

MR ALEXIS: Commissioner, could we have Mr Kelly recalled, please.

30 THE COMMISSIONER: The Section 38 order that I previous made continues to apply to Mr Kelly.

THE SECTION 38 ORDER THAT I PREVIOUS MADE CONTINUES TO APPLY TO MR KELLY

MR ALEXIS: Thank you, Commissioner. Mr Kelly, on Friday afternoon we'd reached a point in your evidence where we were about to move to the Briefing Minute and the letter from you to the Premier of 9 February and the discussions that occurred around that. Do you recall?---(NO AUDIBLE REPLY)

10 I'm sorry, you'll have to answer?---Yes.

Thank you. And do you recall on Friday that I suggested to you at transcript 962 point 30 that 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 the Budget Committee. Do you remember that?---Thank you.

You've just been given the transcript, Mr Kelly?---Thank you.

20 And without me repeating it, if you just look at page 962 of the transcript and at line 30 you'll see my question that I've just- - ?---30.

- - -taken up with you?---Yes.

And you see your answer there from line 33 or thereabouts, "It was more along the lines 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 it, if she made the decision to go ahead, then it didn't need to go to the Budget Committee."
---Yes, see that.

30

So we should understand, Mr Kelly, that around the time of your letter to the Premier there had been consideration of whether or not approval to purchase Currawong could be put up to and obtain approval from a Budget Committee, so that was considered?---The, yes.

And that was resolved, should we understand, by putting a letter to the Premier and if she gave approval to proceed, then that circumvented the need for any reference to the Budget Committee. Is that- - ?---Yes.

40 Does that fairly reflect the thinking at the time?---Thinking, yep, yep.

Thank you. Now- - ?---Ordinary Cabinet Meetings had concluded by then I think.

THE COMMISSIONER: Sorry, I beg your pardon?---Ordinary Cabinet Meetings had concluded by then, about the beginning of the month.

MR ALEXIS: But, Mr Kelly, whether that's so or not, once you'd fixed upon the alternative process of getting approval directly from the Premier, then whether Budget Committees were sitting or not, whether or not the business of the day would have permitted this to achieve some priority of consideration or not became irrelevant, didn't it? If you got the Premier's approval then you didn't need to go anywhere near a Budget Committee. Is that so?---Mmm, that's correct.

Is that, does that fairly represent- -?---Yes.

10

- - -the thinking that you had at the time that the letter went from your office up to the Premier?---That's correct, because we felt it was difficult to get on a Budget Committee (not transcribable)

Now, do you recall attending a Cabinet Meeting, and the best I can put to you in timing, sir, is late January/early February, and at the conclusion of that meeting, taking the opportunity to speak directly with the Premier about the possible purchase of Currawong?---Yeah, I can't recall exactly when it was.

20

And do you recall telling the Premier that there was a possibility that the Government could purchase the site, there was a, there was either a campaign underway or there would be a campaign underway by the Friends of Currawong for the site to be purchased by the Government and that there was a possibility that the Government could be in a good position to purchase the site and create a State Park?---I think that's correct.

And, Commissioner, just for you and for everyone, that's Exhibit 3 page 214 lines 10 to 20. Now, can you tell us what the Premier's response to you conveying that information to her was?---To get a letter up to her.

30

THE COMMISSIONER: I beg your pardon?---To get a letter up to her. She said, "Is it good for the environment?" I said, "Yes." And she said, "Then get a letter up to me."

MR ALEXIS: Now do you recall seeing a letter from the President of The Friends of Currawong? And I'll get Exhibit 27 shown to you. Did you receive, recall receiving a letter or an email from him on or around 3 February, 2011?---No.

40

And just have a look at the email from Mr Withington to one of your policy advisors, Mr O'Brien of 3 February. Perhaps you could just read it to yourself and just let me know when you've done so?---Yes, I've read it.

And firstly do you recall being shown or having this email brought to your attention in early February this year?---No, I don't.

Do you nonetheless recall meeting with Mr Withington together with Mr Watkins in a meeting which was requested towards the end of this email from Mr Withington to Mr O'Brien?---No, I don't.

And should we understand Mr Kelly, that you may well have been involved in such a meeting and you now can't recall or are you telling us that if there was any such meeting you were not involved in it? What's the position?---I can't recall being - - -

10 So you may well have been involved but you can't - - -?---No, no, I, I don't believe that I was at a meeting with this gentleman.

I see?---There is, in some of your evidence there is a, a meeting that's referred where it's mentioned with my staff, but I didn't attend.

Do you remember being advised by your staff about the meeting and importantly what the result of that meeting was?---No.

20 MR BRANSON: I'm just unclear about the date. I'm sorry, I don't mean to interrupt my learned friend but (not transcribable) the date (not transcribable)

MR ALEXIS: The date of what?

MR BRANSON: The meeting.

MR ALEXIS: Well you don't know when the meeting was Mr Kelly?---No.

30 All you know is that Mr Withington sent Mr O'Brien an email on 3 February. We know that you wrote to the Premier on 9 February, but you can't help us as to when if at all the meeting that involved Mr Withington and Mr Watkins occurred either between those two dates or after the 9th? ---No, I can't. There was, as I said, there's some evidence that's been given that there was a meeting that could have been the 8th, but it said I didn't attend.

MR BRANSON: All right. Thank you. I'm sorry to interrupt.

40 THE WITNESS: I think it was, I'm not sure who gave the evidence.

MR BRANSON: My apologies.

MR ALEXIS: Now in relation to the decision to seek to obtain the Premier's approval to proceed, was the potential impact of any purchase of Currawong on the budget an important consideration for you?---It was discussed.

Discussed with who?---Mr Watkins when he brought the Briefing Note.

And was the discussion, I withdraw that. What was discussed on that subject?---I should also say that starting back in October, that was also discussed, about how it would be funded. Sorry, the question - - -

But Mr Kelly, I think as you've told us, by the time of your letter to the Premier, the strategy had changed and rather as approval was to be procured from the Premier. Is that so?---Yes.

10 And my question is whether or not the possible purchase of Currawong and its effect on budget was important to that strategy in obtaining approval from the Premier?---Well yes it was because the Budget Committee would have less interest in it if it didn't affect the budget. And also my understanding, I haven't got it in front of me here, but that Briefing Note of 9 February, that you're talking about, mentioned that, that it wouldn't have an effect on the budget.

20 THE COMMISSIONER: You're talking about the letter of 9 February?---I believe there was a Briefing Note that came up with, with the, the Briefing Note comes up and attached to it is the letter.

I see?---I think, from memory, I haven't, as I said I haven't got it in front of me. I think the second recommendation was to sign the attached letter.

30 MR ALEXIS: But Mr Kelly is this a fair description of the position as you understood it at the time you came to sign the letter of 9 February to the Premier that if the possible purchase of Currawong was going to have an additional cost to the budget, then it would have to go to a Budget Committee?---No. The Premier still could have approved it, but I knew she would be interested in the fact that it didn't affect the budget.

So is this how we should understand things as you then saw it. That if it the purchase of Currawong could be achieved with no additional cost to the budget, then it was unlikely that the Premier would refer it to a Budget Committee, she would likely approve it herself?---I can't say what the Premier would do. That's her decision.

40 Well can I ask you then to explain to us what the significance of the possible cost of Currawong having no additional cost to the budget was as at the time of your letter to the Premier?

MR BRANSON: I object to that. He's answered that, with respect.

THE COMMISSIONER: I'll allow the question.

MR BRANSON: Well he said it was - - -

THE COMMISSIONER: I'll allow the question I said Mr Branson.

MR BRANSON: Well (not transcribable) with respect.

THE COMMISSIONER: Will you please cease interrupting with unnecessary objections, Mr Branson.

MR BRANSON: Well I'm protecting my client, with respect, Commissioner.

10 THE COMMISSIONER: Yes. But you - - -

MR BRANSON: I'm here to do that, with respect.

THE COMMISSIONER: I won't use the same word as Mr White. You can protect your client according to law.

MR BRANSON: Well, no, I have. And look there's got to be some basis to fairness.

20 THE COMMISSIONER: You've raised (not transcribable) Mr Branson.

MR BRANSON: Well, I might be in your view.

THE COMMISSIONER: Yes (not transcribable) chance here.

MR BRANSON: Not in my view, with respect. I've been doing this for quite a while, Commissioner.

30 THE COMMISSIONER: That's irrelevant to me your view. Mr Alexis?

MR ALEXIS: You may answer that question, please Mr Kelly?---Could you put it to me again, please?

What was the significance that you attached to the possible purchase of Currawong being achieved with no additional cost to the budget?---Well I suppose it was less likely that the Premier would refer it, but again I say it's entirely up to her because she could have approved it if it didn't affect the budget.

40 And did you and Mr Watkins discuss the significance that you've just explained to us?---Yes, we would have.

And should we understand that that discussion is the reason or at least one reason for the letter that you came to sign referring to the purchase of Currawong could be achieved with no additional cost to the budget?---Yes.

Thank you. Now could you look please at the Briefing Note behind tab 8 of Exhibit 1, please. And at page 41 Mr Kelly, we have the Briefing Note

which from paragraph 3.2 sets out the various funding sources that would have been available. Do you see that?---From 3.2?

Yes. And you see in 3.2.1 it's recorded there that Council has offered to transfer a number of waterfront properties. Do you see that?---Yes.

10 Now at the time you came to sign the letter to the Premier, did you know whether or not the Council had made a commitment in relation to the transfer of the waterfront properties there referred to?---I was advised that they'd, they'd made that offer and that had started back in October.

And did you know whether or not the offer had been accepted such that there was a binding commitment as between Mr Watkins or his organisation and Pittwater Council?---Mr Watkins had led me to believe that that was a binding agreement.

And how did he lead you to believe that? What did he say to you?---I can't recall.

20 Well there's no reference in this document. I think we can accept the existence of any binding agreement on 9 February, so how did you come to understand that there was a binding agreement?---Well it said that they'd offered to transfer it, a number of properties.

That's not a binding agreement?---And, and - no, it's not a binding agreement.

30 MR ALEXIS: So should we understand from your evidence, Mr Kelly, that Mr Watkins had told you that there was a binding commitment between LPMA and Pittwater Council for the transfer of the land referred to there? ---He told me there was an agreement.

THE COMMISSIONER: A binding legal agreement?---I'm not sure he's, yeah, I don't think he used the words binding legal.

40 MR ALEXIS: Now, in relation to the \$5 million there referred to did you know when you signed the letter to the Premier whether or not there was any valuation report or reports available, that is, a valuation report from an independent valuer?---No, but that's around about the figure that had been mentioned all the way along, I think it was four to six at one stage and five to seven another and Mr Watkins is in charge of the Valuer General who values all properties in New South Wales.

So you were prepared I gather to accept - - -?---His word.

- - - on face value his word - - -?---His word.

- - - as reflected in this Briefing Note?---Yes.

Now, in relation to the realisation of those properties did you know that they had to be rezoned in order them to be - - -?---No.

- - - sold?---I was advised they were in a residential area.

10 And should we understand from that, Mr Kelly, that the detail concerning their actual zoning and the need for rezoning so as, so as to ready them for residential development and sale was not discussed with you?---I can't recall it being discussed with me.

Well, do you recall thinking when you read this Briefing Note that the properties there referred to, the waterfront properties, could virtually be marketed shortly and sold shortly thereafter?---That was my belief.

And how did you come by that belief?---Because I had been given no advice to the contrary.

20 So did you think that the waterfront properties - - -?---That - as the LPMA could choose to dispose of these properties to realise an income around \$5 million.

And did you think that that is something that could be realised during the 2010/2011 financial year?---Yes.

And, Mr Kelly, did you see the realisation of the Council properties, the waterfront properties there referred to in paragraph 2.2.1 critical to the proposal?---Yes.

30 In other words if the Council lands couldn't be realised and sold within the then current financial year, that would have a significant impact on whether or not the purchase of Currawong could be achieved without additional cost to the budget?---Unless there was some other accounting method to carry it over to the next year, yes.

40 But I'm not putting it too high, am I, you saw it as critical to the success of this proposal so as to cause no additional cost to the budget. Is that - - -?
---Yes, but my point was there are, there may be accounting methods of transferring it to another year and recompensing it the next year so, so that it doesn't affect the budget over, over a period so - - -

Now, in 3.2 to point - - -?---It was not, you know, spelled out a particular year.

I'm sorry, just could you repeat that last - - -?---It wasn't spelled out a particular year so, as I said, there may have been some way of transferring it but my belief was that it needed to be sold that year.

And when you say that year you mean by the end of - - -?---Of the financial year.

And settled, completed?---Receive the money.

Receive the money?---Yes.

All right. Now, in 3.2.2 you refer to the pledge from the Friends of Currawong up to \$2 million to assist, do you see that?---Yes.

10

Now, were you aware at the time you came to sign the letter to the Premier whether or not that pledge of that amount had been recorded and confirmed in some written contract or written arrangement?---Other than here and verbally mentioned, no.

And you don't recall being present at a meeting where any such pledge was made?---No.

20

Now, in 3.2.3 there's reference to SRDF funding and can I ask you whether - - -?

THE COMMISSIONER: 3 point - - -?---3.2.3, yes.

MR ALEXIS: 3.2.3, yes.

THE COMMISSIONER: Yes.

30

MR ALEXIS: And can I ask you whether at the time you came to sign the letter to the Premier that you aware as to whether or not Mr Watkins had received any valuation evidence for the Currawong site and in particular the open space component of that site?---No.

And did you ask whether he'd received any valuation evidence to support funding from the SRDF?---I can't remember whether I asked, I can't recall whether I asked or not but I did know that it was 72 per cent of the area but it would be valued at less than the value of the rest of the area.

40

Could I then come to the letter please - - -?---And there had been other figures suggested along the way.

Thank you. Now, if you look at the letter which we've been through many times now on page 44 of Exhibit 1, if I could ask you focus please on the last sentence of the second-last paragraph which contains the reference to the belief that - - -?---Yes.

- - - Currawong could be achieved with no additional cost to the budget? ---Yes.

Now, as the signatory of this letter I gather when you signed it knowing that it was going to be then delivered to the Premier you appreciated that you were there expressing your belief about the effect of the transaction on budget?---Based on the advice that I'd been given.

10 And should we understand that you were content to rely upon what Mr Watkins had conveyed to you as to his belief and accepted his belief as your belief in conveying this to the premier?---That's the normal situation with a minister and a chief executive, that they provide you with briefings then you, you accept that they've done the necessary work to see that those briefings are correct.

Now, during the conversation at the meeting with Mr Watkins when the Briefing Note and the letter was dealt with, were you provided with any projections, be it cash flow or otherwise, to inform the belief about no additional cost to budget?---No.

20 Were you provided with any sort of financial analysis which identified the source of the funding and how this acquisition was going to be achieved with any additional cost to the budget?---No, other than the, the information that was provided in the Briefing Note and verbally at the meeting that, as I said, you accept the word of a, of the Chief Executive, you don't go back and check every supporting document that he may have in his file.

And do you recall questioning Mr Watkins particularly about this expressed belief to satisfy yourself that the belief there recorded was accurate?---Yes, we did discuss it and he, he went through it and it was, we believed that he could achieve it.

30 And would you accept that in the course of this discussion he either said or at least you formed the view that Mr Watkins was guaranteeing that the purchase of Currawong would have no additional cost to the budget?---He'd certainly formed the view that it would have no additional cost to the budget.

40 But I don't mean to play with words, Mr Kelly, but you'll see the belief there is expressed as the purchase could be achieved, do you see that? Could be achieved with no additional cost to the budget and what I'm suggesting to you is that Mr Watkins before you signed this letter said to you that Currawong would be purchased with no additional cost to the budget?---Well, it depends whether the Premier approved this, not whether it would be.

Of course, but at the time you (not transcribable)?---But my, my understanding is that if she approved it then it would be.

But your belief based on what Mr Watkins told you is that if the site was available for purchase and if the Premier approved the purchase it would be purchased - - -?---Yes.

- - - with no additional cost to the budget?---Yes, yes.

Have I put to you - - -?---Yes, yes.

10 - - - accurately your belief based on what Mr Watkins told you before - - -?
---Yes.

- - - you signed this letter?---Yes.

20 Thank you. Sorry. Now, this may be obvious, Mr Kelly, but I need to ask you, I gather at this point in time, namely your signing of the letter before its dispatched to the Premier, Mr Watkins had no authority from you to both negotiate and conclude a contract with Eco Villages?---Well, no. The October the, October the 8th, was it, Briefing Note, gave him authority to go out and negotiate back then I believe up to 13 million.

My question might have been a bit subtle, Mr Kelly - - -?---Sorry.

- - - but, and let me put it to you again, at the time you're signing the letter to the Premier you knew that Mr Watkins had no authority to negotiate and execute a contract so as to conclude the purchase of Currawong?---That's correct.

30 All you'd given him authority to do back in October was to negotiate, nothing more, correct?---That's, that's correct.

So the question of approval depended entirely on the Premier's reply. Is that right?---That's correct.

Now, at the time of signing this letter, did you consider whether or not it was necessary to have a submission put through GAMC?---No.

40 Did you consider whether or not it was necessary to have the possible purchase of Currawong the subject of a Gateway Review?---They're not things that the Ministers, well, I don't know about the Minister's office, but certainly the Ministers get involved with. In fact- - -

Do you recall speaking with Mr Watkins at all prior to sending this letter as to whether or not one or other or both of those processes were applicable or not?---No, and I'm not really aware of what those processes are until this hearing.

Now, can I take you to an occasion when you were at the ANZ Stadium, I think on 16 February and- - -

MR BRANSON: What's the answer? Did he answer?

MR ALEXIS: Well, I haven't finished my question yet.

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

10 MR ALEXIS: And do you recall being out there on that occasion?---Yes.

And at that stage your understanding was that the letter at pages 43 and 44 had been sent up to the Premier's Office?---Ah, yes.

And you were out at the ANZ Stadium at Homebush Bay as part of the then election campaign where you and other Ministers and the Premier were responding to a promise that the then opposition had made about issues concerning the expansion of western Sydney. Is that right?---That's correct. There was probably 10 Members of Parliament there.

20 And in addition to those Members of Parliament your staff was out there as well, Mr Fenn?---Yes.

And there was a point reached where an opportunity presented itself for you and the Premier to have a conversation about Currawong?---Yes.

And that was organised I think by the respective chief of staff on your side and one of the Premier's policy advisers- - -?---Yes.

30 - - - Mr Darryl Watkins?---Yes.

And when the opportunity presented, did the Premier say to you, so, something to this effect, "So what are we talking about here, Minister?" And you responded by telling her that you were looking at buying Currawong, there is money in the State Property Authority, or something to that effect. Do you remember that?---No, it wasn't the state Property Authority, we were talking about the SRDF, but yes.

40 In any event you conveyed to her that you were looking at buying Currawong and that you, and when I say you I mean your office, was talking to the Council, there were funds, there, "We can talk to the developer and have some negotiations with them." Do you remember that? ---I can't remember the words exactly but basically.

Mmm. And Ms Keneally responded and said to you, "So what, to negotiate?" Remember that?---No, I don't recall that.

And you responded and said, "Yes." And she responded and said, "Well, that's fine, so long as it's to negotiate."?---No, I don't recall that. What I do

recall is she said, "Well, send me a letter." And Darryl Watkins said, "Premier, he's already sent the letter."

I see?---And she then said, "Well, get him a positive response."

All right. So your recollection of this conversation with the Premier in the midst of the election campaign was that she was to provide you with a response to your letter?---That's correct.

10 All right?---And Mr Watkins had already, sorry, Darryl Watkins had already said that they already had the letter. My letter, sorry.

Now, can I just- - -

THE COMMISSIONER: Sorry, Mr Alexis. I gather your evidence, Mr Kelly, to be this, and please correct me if I'm wrong. You can't recall Mr Watkins putting to you the words that Mr Alexis has mentioned but you don't deny that they might have been said, or I'd better just find out whether you deny that they were said?---I don't recall them, them being said.

20

Do you deny they were said?---Yeah, I don't recall they were said.

MR ALEXIS: Well, Mr Kelly, can I just draw attention to an important difference in what you've said in responding to the Commissioner's question. Are you telling us that you don't recall the conversation or are you telling us that you do recall and based on that recollection you deny what I've suggested to you?---I recall the conversation, yes, because I just, I just said what Mr Watkins had said as well, Darryl Watkins, so I recall the conversation. I don't recall the Premier saying those words about negotiate.

30

You don't recall the Premier saying, "Well, that's fine, as long as it's to negotiate?"---No, I don't recall that.

Well, what do you recall her saying?---As I just said, that, "Well, send me a letter." And Darryl Watkins said, "Premier, he's already sent you a letter." And she responded to him, "Well, get him a positive response." Or something like that.

40

Well, Mr- - -?---It was a very, it was a very short and rushed conversation.

Could, could I just seek to get this clear understanding from you, Mr Kelly. I gather when you left the ANZ Stadium after having this conversation with the Premier you didn't think that she had conveyed to you an approval to go ahead and negotiate and purchase Currawong?---No. What I thought she'd conveyed to Darryl Watkins, sorry, could you repeat that?

When you left the ANZ Stadium having had this conversation with the Premier, you didn't think that she had given you approval there and then to

negotiate and purchase Currawong?---That's correct. What I, what I thought the result of that conversation was, that she'd instructed Mr Darryl Watkins to go away and get a response to the letter, to my letter.

Now, I'm just going to step forward in time if I may to an occurrence that occurred after contracts were exchanged on 15 March. And do you remember the Premier ringing you late at night?---Yes, I do.

10 And she may have woken you up, got you out of bed?---She, she did, if I can explain what that day was.

Well, I'll come back to some detail?---Okay.

But I just want to- - -?---She certainly did wake me up.

- - -identify the conversation that I think occurred on 17 March. And do you agree that that's about the time of the receipt of that phone call from the Premier?---Yes.

20 The evening of 17 March?---Yes.

Now- - -?---On St Patrick's Day.

You didn't speak to the Premier between the ANZ Stadium conversation and that evening conversation when she perhaps woke you up on 17 March about Currawong, did you?---I don't recall any conversation with the Premier between 16 March and that St Patrick's evening conversation or subsequent to that.

30 You mean I think 16 February?---Sorry. Sorry?

You mean you don't recall any conversation with the Premier between the ANZ Stadium conversation on 16 February- - -?---Sorry, yes.

- - -and the evening conversation when she perhaps woke you up- - -?
---That's correct.

- - -which occurred on 17 March- - -?---That's correct.

40 - - -about Currawong. Is that what you're telling us?---That's correct.

Now, could you go to the Premier's letter, please, behind tab 9 at page 47A. And, Mr Kelly, could you tell us, please, when it was that you first actually saw this letter?---I can't recall when I saw the letter.

Just, and just so we're clear, I'm asking you, not the first time someone told you about what it contained- - -?---And that was my answer.

--I'm asking you when was it that you actually first saw and read the Premier's letter of 25 February, 2009?---I can't recall when I saw and read that letter. I was away out of the office a lot at that time.

Well, can I just put this itinerary to you- -?---Ah hmm.

--and tell me whether you agree or disagree. On 25 February, which was a Friday, you were in Lithgow?---That's correct.

10 You came back to Sydney for a function I think on the Friday night?---Ah, I can't remember what function, yes, yep.

And then first-up Saturday morning you jumped in the car and drove to Wellington?---That's what my diary shows but I think I was a little bit late getting away, but yes, that's correct.

And then you remained at home after you arrived there on the Saturday at Wellington until the morning of Monday, 28 February?---It was more likely lunchtime. I think I went to the farm on the Monday morning.

20

But eventually you drove to Narrabri on Monday, 28?---In the afternoon I drove, in the afternoon I drove to Narrabri and stayed overnight.

And you had meetings at Narrabri, didn't you?---Yes.

And the subject matter of those meetings by and large was over issues concerning coal seam gas and some related issues with local farmers? ---That's correct. The big issue then was coal seam gas right around the state and coalmining in sensitive areas and we were trying to work out as a Government a strategy going forward and I'd been at a number of places around about that and that, and there was a particular issue in Narrabri.

30

Yeah. And you stayed in Narrabri overnight on the Monday into the Tuesday?---Yes.

So we should understand, Mr Kelly, that the closest that you were in to Sydney on 28 February was in Wellington the Monday morning before you left for Narrabri?---That's correct.

40 Now, can I ask you whether, just coming back to the Premier's letter, you have any recollection of seeing it, that is actually seeing the Premier's letter before or after the contract to purchase Currawong was exchanged on 15 March?---I can't recall that.

So is your evidence, Mr Kelly, that you can't recall one way or the other whether you saw, actually saw the Premier's letter before the contract was exchanged on 15 March or afterwards?---(NO AUDIBLE REPLY)

THE COMMISSIONER: Or are you saying you didn't see it?---No, I'm not saying I didn't see it, because the copy you have here actually has been underlined by me. You might see there two underlines. So I have seen it. Underlined Currawong and approval.

How do you know it's been underlined by you?---Well, I can understand that's my pen and I recall doing it, but I just can't tell you when I did it, but it certainly wasn't around about that time when it was received in the office.

10 MR ALEXIS: It was some weeks later?---Sometime later. I can't- - -

All right. Well, can I just comment again, and I'll ask you your answer to it. Can you tell us whether or not you first actually saw this letter before or after the contract was signed and exchanged on 15 March?---I can't recall exactly when I saw it.

THE COMMISSIONER: Is it possible that you might have seen it afterwards for the first time?---I think that's unlikely.

20 Why is that?---I, I, I can't tell you reliably, I'm sorry.

MR ALEXIS: Now, Mr Kelly, you receive a phone call from Mr Watkins on Monday, 28 February, 2011 perhaps while you're on the road or after you'd arrived at Narrabri?---I, I can't recall that but- - -

But do you recall that he- - -?---Tell me the time?

- - -rang you and told you that he'd got the approval from the Premier?
---He, he rang me and told me he got the approval from the Premier. I
30 thought that call was on 25 but I might be wrong.

In any event, should we understand that at the time you had this conversation with Mr Watkins you actually hadn't seen the letter and you hadn't actually read the letter?---I'd been told about it and its content from, from, sorry, from Mr Watkins.

THE COMMISSIONER: You were told about its content?---Yes.

40 Does that mean he summarised the content to you?---Well, he, he, well, there wasn't much of the letter there to read, but he told me basically what was in it and my memory was it's as it is here.

Well, what I'm trying to find out, Mr Kelly, is whether he read the letter verbatim to you or whether he paraphrased it?---No, he, that, the first call was to say that we have approval, we have the approval from the Premier, we have the letter giving approval from the Premier.

MR ALEXIS: But, Mr Kelly, when Mr Watkins said that to you, he didn't actually read the letter to you over the phone, did he?---Not that I'm aware.

And- -?---I assume he had it but not- - -

- - -it was, it was a, it was a pretty short conversation, wasn't it, when Mr Watkins rang you and said that he'd got the approval from the Premier?
---Ah, it would have been ah, I was pretty, pretty busy. Currawong wasn't one of my major, major things on my agenda.

10

Yeah. But what I want to suggest to you, Mr Kelly, is that your knowledge as to the receipt of the letter from the Premier came from Mr Watkins?
---That's correct.

And your knowledge as to the content of that letter also came from Mr Watkins during a short conversation on 28 February?---That's correct.

And during that conversation all he said to you was that he'd got approval from- - -?---Sorry, you said 28 February. I'm not sure whether that date- - -

20

Be it the 25th or the 28th, all I'm suggesting to you, Mr Kelly, is that Mr Watkins told you that he'd got approval from the Premier and that's all he said?---I, I can't recall whether he said any more.

Now, after- - -

THE COMMISSIONER: Whatever more he said didn't make an impression on you sufficient to allow you to remember it?---No. It was, he may have given me a précis then of this letter but I can't recall, I can't tell you whether he did or he didn't exactly.

30

MR ALEXIS: Now, after- - -?---But at some time they did.

But you can't recall whether that was before or after 15 March?---Oh, no, it was before 15 March. I, as I said, I can't recall whether it was the 25th or, you know, some of the days following.

THE COMMISSIONER: Sorry. So what happened before, I'm not sure if I- - -?---Sorry.

40

What happened before 15 March?---Um- - -

I'm trying to find out what your answer was to the last question- - -?---
Yeah, yeah.

- - -'cause I didn't hear properly?---I think Mr Alexis' question was, was I given a précis of it before 15 March and I said yes.

MR ALEXIS: All right. And who gave you that précis?---Ah, it would have been Mr Watkins.

And- -?---And I may well have seen the letter by then.

And was this over the telephone?---A lot, a lot of the dealings were over the telephone.

10 But in giving this précis to you, what did he say as you best recall it?
---Basically the details of the letter.

THE COMMISSIONER: Well, the details of the letter are a subject of considerable contention, so it's really important to know what he said to you?---Well, that the Premier had given approval, using the words that we had used or that he had used in the letter that I sent up to the Premier, which was, "approval to negotiate with a view to purchasing", and then it also mentioned that, not to affect the budget.

20 MR ALEXIS: Now, after this discussion which I'll call the précis
discussion, Mr Kelly, did you speak again to Mr Watkins about the
Premier's letter before you learned that he'd exchanged the contract?
---There were, there were some other discussions but I can't recall what they
were. Just let me think. No, I can't recall.

30 Would it be fair to say that after having the conversation, whether it be on
25 or 28 February, when Mr Watkins told you that he'd got the letter and
he'd been approved to proceed by the Premier, and after the further
conversation where you said that he gave you a précis of the letter, after that
you had no involvement at all in the steps taken to purchase Currawong
until after the contract had been exchanged?---Well, there is that discussion
where he gave me the précis and at some stage I probably saw that letter,
but there was no other involvement by my up until it was purchased- - -

All right. Thank you---?- - -that I can recall.

Now, I want to just- -?---It came, it came at a very very busy time.

40 Mr Kelly, do you have any recollection of discussing with Mr Watkins
either in the first conversation on 25 or 28 when he told you that he got the
letter and the Premier approved him to proceed or during the précis
conversation you've told us about, do you remember him ever saying to you
that, I'll withdraw that, I'm sorry. Do you recall ever saying to him that the
Premier wished the land to be purchased and that the Premier wanted him to
go out, negotiate and purchase the land?---No, I, as I said before, I hadn't
had a conversation with the Premier other than those ones you've recorded.

Well, let me just come to it directly and for you, Commissioner, I'm my
minds eyed at page 901 of the transcript, that's a reference for the

Commissioner, Mr Kelly. Can I ask you whether or not you ever understood and conveyed to Mr Watkins that the Premier had wished the land to be purchased during one or other or both of those conversations?--- Well, I understood from the basis of the correspondence we'd sent to the Premier and that she'd sent back in her letter that she'd okayed the purchase.

THE COMMISSIONER: That's not what you were asked Mr Kelly.---And wished for it to be purchased but I have never said that she said it to me.

10

MR ALEXIS: Well, the suggestion I wish you to deal with is whether or not you told Mr Watkins during one or other or both of these telephone conversations that we're dealing with that the Premier wanted him to go out, negotiate and purchase the land?---I can't recall using those words to him. Obviously, we had discussed where he said, well we've now got approval from the Premier to go out and do it and I agreed with that. I can't recall saying that I used those words.

20 If we assume that you did say that to Mr Watkins you wouldn't have been able to base that on anything the Premier had said to you, would you?---No, as I said - - -

And it would come from nothing more than the letter which Mr Watkins had told you he'd received?---All I had from the Premier was the documents, she did, as I said, mention in that very first conversation that you alluded to was it an environmental issue? But other than that, it was just an exchange of letters.

30 And do you recall at all speaking with Mr Watkins about the interpretation to be put onto the Premier's reply letter and so interpreting the letter to provide or confirm an instruction from the Premier to proceed to negotiate and purchase the land?---It was a general discussion that we'd had based on, you know, it flowed from my letter to the Premier that he'd produced. The briefing note, as a background and I know the Premier didn't have that but the briefing note that was given to me on the 9th said to one of the recommendations was to secure the purchase and then the letter that went up to the Premier and her response.

40 Now at the time that we're speaking of during these telephone conversations, do you recall whether you had at that stage actually seen and read the Premier's letter?---No, I can't say whether I did or I didn't.

So, should we understand that during the conversation that you had on this subject with Mr Watkins, you were to some extent at least reliant upon what he, Mr Watkins, told you about what the letter meant?---Yes, well, what it said.

Well, what it said and what it meant?---Yes, but it used the same words as the letter we sent up to a large degree.

THE COMMISSIONER: To use some of the words according to your evidence he didn't, you didn't read the letter after – so I understood you. Is that right?---But the main thing, the main two issues were that it didn't affect the budget and also that other issue of approval to negotiate with a view to purchase.

10 MR ALEXIS: Now, Mr Kelly, can I show you an email with a copy for you, Commissioner.

MR BRANSON: Thanks Todd.

MR ALEXIS: And you see, Mr Kelly, on 1 March some legal advice concerning your power as the then Minister for Planning to approve projects and development applications during Caretaker period had been sent to your chief of staff, Mr Fenn?---Yes.

20 And may we take it that Mr Fenn sent this email onto you and you might care to look at the email at the top of the page from Mr Fenn and to you of 1 March 2011 at 4.06pm?---Yes, I don't recall receiving it but I do recall the letter.

And you recall looking at the - - -?---I thought it was actually given to me (not transcribable)

- - -advice or at least understanding the advice from Mr Ray, the General Counsel of Department of Planning?---Yes.

30 And the essence of that was - - -?---Actually, it was more the Premier, the Premier sent me a letter didn't she?

THE COMMISSIONER: I can't hear Mr Kelly.

THE WITNESS: Sorry, as near as what I recall is that the Premier sent me a letter rather than seeing this, but yes.

40 MR ALEXIS: Just take a moment, if you would, you'll see that Mr Ray General Counsel of the Department of Planning is writing to the Director General concerning the Premier's memorandum on Caretaker Conventions, do you see that opening sentence?---Yes.

And then he goes on to deal with issues concerning matters of routine business of government and whether or not determinations would or would not amount to significant new policy decisions that are likely to commit a new government. Do you see that?---Yes.

And then in the second last paragraph you see about half way through, the sentence commencing however, “care should be taken in submitting determinations to the Minister on highly contentious matters if they would not be able to be classed as the routine business of government.” Do you see that?---Yes.

Now whether you saw Mr Ray’s advice in the terms that we’ve just been through or not – may we take it that you were well understanding of this being an issue shortly prior to the commencement of Caretaker on 4
10 March?---It was an issue - - -

THE COMMISSIONER: Sorry, what was an issue Mr Alexis?

MR ALEXIS: I’m sorry, the question of whether or not you could proceed to give approval under Part 3A of the Environmental Planning and Assessment Act to development applications that might be part of routine business of government?---It was an issue in the Department of Planning, yes, for planning issues - - -

20 The Premier – I’m sorry, please continue.---I think you were about to ask me the question I would give you the answer to.

The Premier wrote to you - - -?---That’s correct.

- - -in terms didn’t she after this - - -?---That’s what I recall.

- - -and told you not to exercise any part 3A planning powers while in Caretaker?---Or approve, sorry, and approve LEP changes but also had an exemption for the Planning and Assessment Commission because they were
30 not part of government, they’re independent I’m sorry, is what she said.

Now Mr Kelly your, I should thank you. Can I tender that email please Commissioner.

THE COMMISSIONER: There’s a string of emails with a letter from Mr Fenn to Mr Kelly’s address dated 1 March 2011 at 4.06pm is Exhibit 65.

40 **#EXHIBIT 65 - STRING OF EMAILS WITH EMAIL FROM MR FENN TO MR KELLY’S PRIVATE EMAIL ADDRESS SENT ON 15 MARCH 2011 AT 4:06PM**

MR ALEXIS: Thank you Commissioner.

Now, Mr Kelly, as senior politician at this point in time that we’re dealing with I gather that you were well familiar with the provisions of the Caretaker Convention and the Premier’s guideline that was circulated back

in October last year?---Well, I can't say that I saw the guideline but I generally understand it.

Could Mr Kelly be shown Exhibit 5 please. And, Mr Kelly, if you look at page 3 of Exhibit 5 which is page 3 of the Premier's guideline document attached to the circular email, do you see in paragraph 1.2 a reference to the Caretaker Conventions and the general rule that no significant new decision, appointments or contractual commitments should be made, do you see that? ---Yes.

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And that was consistent with what you understood the position to be at 4 March, 2011?---Yes, as I said, I haven't seen this document before.

Thank you but I just want to check that your understanding nonetheless is consistent with - - -?---Yes.

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- - - the terms of - if you come down the page you'll see under the heading "Major Contracts and Agreements", you see the reference to "the convention is that the government avoids entering major contractual agreements during the Caretaker period"?---Yes.

And you see that to determine what major means in that context one looks, if you see the following paragraph, "to the dollar value of the commitment" you see that?---Yes, but as I said, I didn't see this.

THE COMMISSIONER: I'm sorry, Mr Kelly, I can't hear you?---As I said, I'm sorry, as I'd said, I hadn't read this.

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MR ALEXIS: But we, we should understand though, shouldn't we, Mr Kelly, that you well understood that the Caretaker Convention meant that if it was a major contract or commitment that's one that the government should avoid entering into during Caretaker?---Yes, if it hadn't been dealt with before.

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And major you understood was to be considered not only in relation to dollar value but also the content of financial and non-financial obligations, the duration of any commitment and whether or not the contract was likely to be politically contentious?---Generally I did but as I said, I hadn't read the details of this document.

And you also understood if you look at page 4 that the Caretaker Convention, third paragraph down, does not prevent the government taking action that it has already committed to and announced prior - - -?---That's correct.

- - - to the Caretaker period commencing. You see that?---Yeah.

And you see under the heading “Compliance with Caretaker Conventions” it refers to the need for judgment and commonsense?---Yes, but I hadn’t seen this, as I said.

But did you nonetheless well understand by this stage of your political career that the entering into of any commitment and the consideration of whether or not it was in the teeth of the Caretaker Convention required judgment and commonsense?---I hadn’t seen this so my, my understanding of it was that if there was a major contentious issue or an issue that hadn’t been agreed to before then, yes.

MR BRANSON: Can I just inquire what - - -

THE WITNESS: But generally - - -

MR BRANSON: Excuse me, I’m sorry, just inquire in terms, with respect to the Terms of Reference, is it being suggested that - and so my, the Minister deliberately set about breaching the Caretaker Convention, I don’t understand from the Terms of Reference that that’s asserted, Commissioner, with respect.

THE COMMISSIONER: We’re investigating the circumstances under which the Currawong sale took place. I regard this as one of those aspects that’s within the ambit of the investigation.

MR BRANSON: Thank you, thank you, Commissioner.

MR ALEXIS: Now, Mr Kelly, by 4 March the date of commencement of Caretaker, you well understood, I gather that the government had not committed to the purchase of Currawong nor made any announcement for the purchase of Currawong?---My understanding is that the Premier’s letter, response, my letter to the Premier, her response, was a commitment to go ahead.

And how did you come by that understanding, Mr Kelly?---We thought we had the Premier’s approval.

Approval to do what, though?---To purchase Currawong, to go out and negotiate with a view to purchasing and complete the deal.

But as at the date of commencement of Caretaker had you learnt that Mr Watkins had had a conversation with Mr Linz from Eco Villages?---No, but the agreement was there with, well, the approval was there for the Premier, from the Premier to go out and purchase it.

So, Mr Kelly, from that answer should we understand that you were not even aware by the date of commencement of Caretaker that Mr Watkins had

commenced any negotiations?---I can't tell you the exact time but he did tell me he, he'd contacted them.

But even if you had knowledge of contact that hardly amounts to the government making a commitment to the purchase of Currawong, does it? ---A commitment in my view was that the government had committed to do it, they hadn't got agreement to purchase it.

10 So a - is your position on this that provided there was a commitment to enable Mr Watkins to negotiate and purchase that was a commitment that predated caretaker and therefore those conventions were inapplicable?
20 ---That was my understanding of it.

THE COMMISSIONER: So if the government made a secret decision to do something that was really contentious it could go ahead and do it and not contravene Caretaker?---If we leave aside for a moment the, the really contentious part of your question, the government did make lots of decisions prior to Caretaker and make those announcements during Caretaker. For example, there were hundreds of grants for heritage that were made and signed off before Caretaker but then during the Caretaker period the cheques were actually handed out and the press releases were issued.

Let me rephrase the question, I gather from answers you gave Mr Alexis that you understood what kind of contracts were subject to the Caretaker Conventions?---What I, what I believe I've answered is that if the government had decided to go ahead - sorry.

30 Sorry, Mr Kelly, let's leave aside the exemptions. I'm asking, I understood from your answer, the answers you gave to some of Mr Alexis' questions that you understood what kind of contracts would ordinarily be subject to the Caretaker Conventions?---No, I don't think we talked about contracts, it was the agreement I thought.

Well, do you understand that - you understand there to be a significant difference between a contract and an agreement?---Well, I believed it was if the government had agreed to go ahead as opposed to necessarily actually undertake a contract. My understanding was that if there was a, an agreement to, to pursue, the contracts could still be or the tenders could be let during the Caretaker period.

40 You're talking about an agreement within government?---Yes.

So if the government had agreed to do something which depended on entering into a contract with another party - - -?---Well - - -

- - - the fact that the government had come to the agreement internally, that is as a matter of policy it should do something, it was enough to take it outside the application of the Caretaker Convention even though no

agreement or no contract had been entered into or no agreement had been entered into with the third party concerned?---That was my general understanding because there was also - part of my understanding of the Caretaker was that if tenders had been called but not let you could actually let them during that period which is an equivalent of the suggestion.

Yes, Mr Alexis.

10 MR ALEXIS: One thing was plain though, Mr Kelly, and that is that as at the date of commencement of Caretaker no announcement had been made prior to Caretaker about the government's purchase of Currawong?---No announcement, there'd been a fair bit of local discussion and, and it was generally known the government originally had an interest in it.

20 And if I could ask you to go back to the Premier's letter as page 47A behind tab 9, can I suggest to you that when you finally came to read the Premier's letter whenever precisely that was and you saw that she had concluded the letter by reference to her looking forward to your advice on these important negotiations, you understood what that meant was that after negotiations had concluded, if they did conclude, then approval would need to be sought pursuant to the Caretaker regime from the Leader of the Opposition before a contract could be exchanged?---No, I didn't understand that. I, I took that to mean that she wanted to know the results, in other words, whether it had been purchased or not.

THE COMMISSIONER: Well, she doesn't say that. It says, "advice on these important negotiations"?---But I took this to be an approval to go ahead and purchase, that's the view.

30 MR ALEXIS: Mr Kelly, Mr Kelly, did Mr Watkins make you aware before he was going to exchange the contracts on 15 March that he was about to go ahead and exchange the contract (not transcribable)?---No. No, I don't recall any discussions about that.

And should we understand that you first learnt that contracts had been exchanged when the Premier rang you on the evening of 17 March?---No.

Well tell me when you first learnt that contracts had been exchanged?
---Well I believe I would have got a phone call.

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THE COMMISSIONER: You believe you would have got a phone call?
---Yeah, yeah.

What does that mean Mr Kelly? Does that mean that you are trying to work out what must have happened or are you saying that this is what happened?
---I'm trying to work out, I would have, I would have got a phone call from Mr Watkins to say that he'd purchased it.

Do you recall such a call?---I can't recall a call, sorry.

MR ALEXIS: Now could I ask you to look please at the document behind tab 15 of Exhibit 1, which is the 16 March, 2011 Briefing Minute?---Yes.

On page 68. Do you have that?---Yes.

10 And do you recall actually seeing this Briefing Note before the Premier rang you on the evening of 17 March?---No.

Could I ask you when it was that you first came to see this Briefing Minute of 16 March?---I can't really recall.

Was it the following weekend?---I can't recall. I can't recall seeing this in its entirety.

THE COMMISSIONER: Did you see part of it?---I, I can't recall I'm sorry.

20 Why did you say in its entirety? (not transcribable)?---Commissioner, the attachment there from Pittwater, I hadn't seen until this inquiry started, when I believe you may have shown this to me during the private hearing. And I hadn't seen these letters before this inquiry.

MR ALEXIS: And these are the letters which are attached to the Briefing Note from page 73. Is that - - -?---Yep.

30 - - - what we should understand Mr Kelly? Sorry, page 73?---Yes. Nor have I, nor had I seen that contract either before this inquiry.

But you'd obviously seen your own letter of 70, and the Premier's letter at 72, but when you say you hadn't seen these letters, which ones are you referring to?---Oh, sorry, the Pittwater letters and the contract.

So that's pages 73 and 74, being the letter and - - -?---73 - - -

- - - the contract at 75 and 76?---That's correct. And then the further Pittwater letter on 77.

40 So - - -?---Yeah, no, I didn't sign this Briefing Note. And I believe I've never signed this Briefing Note. The normal thing with this would come to my office and then I sign it and then it goes back to the department.

All right?---But to my recollection I have never signed this Briefing Note. I don't believe I was in Sydney around that time anyway.

THE COMMISSIONER: I'm not sure if you're saying that you've never seen it or not? That is before the, the investigations of this Commission

commenced?---Yeah, I can't recall seeing it before the investigations of this Commission and I certainly never signed it.

You mean you may have seen it and you can't recall or you didn't see it?---I don't think I've ever seen it.

MR ALEXIS: Mr Kelly, could I ask you to look at paragraph 3.4 and could you focus on the subject matter - - -?---This is page 68 is it?

10 Page 68, I'm sorry. I should have made that clear. If you could focus in on the content of paragraph 3.4 and particularly what's said there about the acquisition of Currawong being affected with no net impact on the budget as the funding is being sourced from and you'll see the three sources of funding there?---Yes.

Additional Crown sales, the sale of land gifted from Pittwater Council and the use of open space funding?---Yes.

20 Now did you ever agree to the acquisition of Currawong being funded via those three sources?---Well that's the first time I've seen the word open space funding. I presume that means the SRDF fund. And obviously the gift of land from Pittwater was always in all the Briefing Notes. And some of them, the previous ones did refer to some additional sales or more particularly reserve, Crown reserve funding.

So are you - - -?---As I said, I hadn't read that before.

30 - - - are you accepting, subject to what you've said about the open space funding reference, but are you content that you had approved those sources of funding back at the time that you signed the letter to the Premier of 8 February?---Well I'll have to go back and look at those previous Briefing Notes.

Now on the evening of, Commissioner, were you proposing to sit til 1.00 or adjourn?

THE COMMISSIONER: Yes.

40 MR BRANSON: I'm sorry, I've got a note saying 12.45.

THE COMMISSIONER: Yes, because - - -

MR BRANSON: I'm sorry.

THE COMMISSIONER: - - - because it's taking so long we're sitting until 1.00.

MR ALEXIS: Now Mr Kelly, on the evening of 17 March, do you recall around about 9.00pm receiving a telephone call from the Premier?---Yes, I originally told you it was a later time, I thought, because I was asleep. And that's correct. If I could explain that. I think it's important. That, as I mentioned earlier, that was St Patrick's Day. I had been in Canberra the day before, the night before, flown back and basically travelled straight to a lunch, that St Patrick's Day lunch that I'd organised for the Prime Minister to attend. The Premier also attended and also Barry O'Farrell. And it was a long lunch that went 'til, well it went to about 5 o'clock. I didn't stay quite
10 that long, but it was probably 4.30 when I left and I went to another function 'til about 6.30 or 7.00. So I believe I was home about 7.00 or 7.30 and because I had a long lunch and a number of, a fair bit to eat that day, we didn't have dinner, my wife and I went to bed. So when the Premier rang, I was asleep.

But is around 9.00pm consistent with your recollection, give or take?---I think I told you before I thought it was later because I was asleep, but I - - -

You did?--- - - - now agree that - - -
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Around 9 o'clock?---I agree with the suggestion it's around 9 o'clock.

All right?---'Cause I would have been asleep well before that.

Thank you. Now did she tell you that she had been briefed by Brendan O'Reilly that Warwick Watkins had purchased Currawong and that this appeared to be a breach of his financial delegation as well as the Caretaker Conventions?---It was, I don't know whether she said all that. It was a very short conversation. She said, "Warwick has purchased Currawong. Why
30 would he do that?" And I said that I thought he had, he thought he had the authority. She then went on to say that if Warwick hadn't already, he would shortly get a call from Brendan O'Reilly and that he was going to have an internal investigation into it. And that was the limit of the conversation.

So she told you that Mr O'Reilly was going to commence an investigation?
---An internal investigation.

And did he, did she also tell you that he was going to refer it to this Commission?---I don't think she did. My only recollection was that she
40 said an internal investigation, there will be an internal investigation.

She didn't say - - -?---I don't recall that she said ICAC.

Did she tell you that Mr O'Reilly was going to contact Mr Watkins that evening or early the next morning to advise him of that?---Well what her words were as I just said was that Mr O'Reilly would if he hasn't already contact Mr Watkins.

And did you say to the Premier words to this effect, "Gee, why did Warwick do that? He must have thought he had some authorisation?"---No, I thought the first part, as I said earlier, the first part of that was what she said, "Why did Warwick do that?" The second part was, I said, were my words.

And your words were, "He thought he had the authority."?---Yes.

Is that right?---Yes.

10 That's your best recollection, you said to the Premier, "He thought he had the authority."?---Yes.

You didn't say to her, "Well, why is there an issue, you wrote us a letter and it was clear."?---As I said, I was woken up, it was a very short conversation, the Premier was cranky with Warwick and that as far as I recall was the end of the conversation.

20 THE COMMISSIONER: Mr Kelly, I, since 25 February you say you had been under the belief that the Premier had authorised Mr Watkins in effect not only to negotiate but to purchase Currawong?---That's correct.

The Premier then phones you really out of the blue, on your evidence, I know you'd been asleep, but she tells you, well, she's obviously- - -?
---Agitated.

- - -agitated and not pleased. That's correct?---Yep.

30 And she's I gather, and this is my own words, you haven't said this, and please, but I get the impression that she was, she was agitated, she was angry?---Yes.

And, and the focus of her anger was directed at Mr Watkins?---That's correct.

Well, and you, you, Mr Watkins had been associated with you for a long time?---That's correct.

40 Did you not immediately think to yourself, but he's innocent, he's, he's innocent, you, the Premier has authorised the entering into of a contract?
---Premier, I can't, Premier, Commissioner, I can't tell you what I, what I thought then. As I said, I was asleep, I had to be up at 5 o'clock the next morning to go to Bathurst again with the Premier and I obviously thought once they did the inquiry they'd find out he did have the authority, but I didn't say anything to the Premier other than what I've said.

You actually thought that once they had the inquiry they'd find out the truth?---Yes, that they'd, that he'd had the authority.

But you didn't attempt to defend Mr Watkins?---Not then, no.

MR ALEXIS: Can I suggest to you, Mr Kelly, that when you said on your version to the Premier, "He thought he had the authority"- - -?---Ah hmm.

- - -by that stage, that is the evening of 17 March, you actually hadn't seen and read the Premier's letter of 25 February?---I can't say that.

10 Well, can I suggest to you that if you had in fact seen and read the letter and if in fact you had interpreted the letter as conferring authority on Mr Watkins to purchase Currawong, then the first thing that would have spilled out of your mouth in response to the Premier's question was her own letter? ---No. As I said, I'd been asleep, I'd had a big day and there was going to be an inquiry, they'd find that out.

20 And I want to suggest to you that you said either he must have thought he had some authorisation, or on your version, he thought he had the authority, because that's what Mr Watkins had told you?---And I believe I would have seen the letter by then, but let me point out that I don't believe that I was thinking terribly clearly or quickly at that time, having just been woken up.

Now- - -?---And there was no further conversations with the Premier on it.

Now, the next morning- - -?---Even though I was with her in the morning.

Even though you were with her the next morning?---Yep.

She didn't speak to you again about it?---No.

30 And I gather you didn't speak with her again about it?---It's never been raised since.

And that's because you understood that it was going to be dealt with during - - -?---And sorted out, yep.

- - -an investigation? And in that respect you spoke with Mr Watkins a number of times during the morning of 18 March, didn't you?---Ah, I assume I did, I don't know, sorry.

40 And you learned from those conversations from him that he'd been stood down?---Ah, yes, I think so.

You learned about the investigation being conducted by the IAB would be commencing?---I don't know what time I learned that.

And you understood that the matter in issue and the subject of the investigation concerned Mr Watkins' authority to commit the Government to the purchase and also whether or not his actions were in breach of the

Caretaker Convention?---No, I can't recall whether all that was passed on to me by Mr Watkins.

Well, when you say all of that- - -?---What, what time of- - -

- - -what do you mean?---Well, the list of things you just said. I know he did ask me one call to contact Brendan O'Reilly.

And you did so?---Yes.

10

And- - -

THE COMMISSIONER: Sorry. Please proceed.

MR ALEXIS: And you rang Mr O'Reilly and spoke to him on a number of occasions during the course of 18 March, on the Friday?---I would have. I rang him, I don't know whether it was all on that day or, but I did have a number of, excuse me, a number of conversations with him over a period of time.

20

But prior to- - -?---And my trip to, to Bathurst was through the Blue Mountains and the phone dropped out a lot, so it may have been sometimes one conversation that dropped out.

But continued when you'd re-established a connection?---Possibly.

Now, had you spoken to Mr - - -

THE COMMISSIONER: Sorry, Mr Alexis, I just want to find out whether you were indignant and - in the morning when you heard from Mr Watkins what had happened weren't you indignant?---Well, I believed he'd been, his contention was that he'd been targeted but - - -

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Unfairly?---Unfairly.

And you must have agreed?---Well, I didn't necessarily agree that somebody was out to get him but I believed it would be sorted out once they got all the paperwork together.

40 And were you indignant?---Oh, I was flat out, I thought he had been poorly done by but I wasn't indignant.

But you and he had agreed that he'd been authorised to executed the contract?---Yes.

And here the Premier was, had stood him down. Wasn't that a really terrible thing for her to have done when she had - - -?---I didn't understand - - -

- - - by her own hand authorised him to do something and then stood him down because he'd done what he'd, what she had expressly authorised him to do?---I didn't understand it was the Premier who'd stood him down, I understood it was - - -

Mr O'Reilly?--- - - - - Mr O'Reilly.

10 Well (not transcribable)?---And that once he got the additional information, particularly relating to the October briefing I think is what I'd thought that he'd be okay.

20 So you were content for Mr Watkins to be stood down while the investigation continued even though you knew that the Premier had in her letter expressly authorised what he was being investigated about?---Well, I didn't have a lot of choice in the matter but I understood that they were going to supply the, the additional information. My understanding was that they hadn't given all the information up, I wasn't sure what but I understood that the October briefing was not in the information they'd given to them.

Did you tell Mr O'Reilly that the Premier had herself authorised Mr Watkins to enter into this contract for the purchase of Currawong?---I can't remember, recall exactly what I told him but I would have said that we wrote to the Premier and the Premier wrote back authorising it.

Yes.

30 MR ALEXIS: Are you sure about that, Mr Kelly?---As I said, I can't recall exactly what I would have said to Mr O'Reilly.

Well, Mr O'Reilly was here two weeks ago and gave evidence on this very subject matter at pages 41 and following of the transcript and I think I'm correct in saying that it was never suggested to him that you referred in terms to the Premier's letter during your conversation with him?---I don't recall what he said then but the conversations, there were a couple of conversations with him on that day and I believe I would have said - - -

All right?--- - - - I don't know whether you asked him that.

40 THE COMMISSIONER: Mr Alexis, is this a convenient time or do you wish to go on?

MR ALEXIS: Yes, it is, no, no.

THE COMMISSIONER: We'll adjourn until 12.45 - no, 1.45.

LUNCHEON ADJOURNMENT

[12.59pm]