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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 27 JUNE 2011

AT 10.05AM

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

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

THE COMMISSIONER: This public inquiry concerns allegations that the Commission is investigating which are as follows. Firstly, Mr Warwick Watkins in his capacity as Chief Executive Officer of the Land and Property Management Authority committed the New South Wales Government to the purchase of property at Currawong knowing that he did not have the requisite authority to do so. Two, the Honourable Tony Kelly in his capacity as Minister for Lands sought to authorise the purchase knowing that he did so without the requisite authority. Three, the Honourable Tony Kelly in his capacity as Minister for Lands backdated to 28 February, 2011 a letter to Mr Watkins intending that it would be used by Mr Watkins to falsely represent that he had written authority from Minister Kelly as of that date to purchase the Currawong property and, fourthly, Mr Watkins and Mr Robert Costello, the Chief Financial Officer of the LPMA, knowing the letter dated 28 February, 2011 was backdated, used the letter to falsely represent that Mr Watkins had written authority from Minister Kelly as of 28 February, 2011 to purchase the Currawong property. Thus, the general scope and purpose of this public inquiry is to gather evidence relevant to the, the allegations being investigated for the purpose of determining the matters referred to in section 13(2) of the Independent Commission Against Corruption Act.

I draw attention to the document headed Standard ICAC directions. I understand that all interested parties have been provided with a copy of the document. Those directions are hereby ordered to apply to this hearing. I shall invite counsel assisting to deliver his opening address. There will then be a short adjournment. When we recommence thereafter I will take appearances of counsel and the leading of the witnesses to be called will commence. Mr Alexis.

MR ALEXIS: May it please the Commission. Commissioner, this public inquiry principally concerns the circumstances under which the New South Wales government was committed to the purchase of certain land known as the Currawong site for \$12.2 million on 15 March earlier this year. The Currawong site is well-known and is located at the northern end of the Pittwater on Sydney's Northern Beaches. The site was formerly owned for many years by Unions New South Wales and provides beachside holiday accommodation in an environment that has been recognised as having heritage significance.

The contract for the purchase of the Currawong site was executed on behalf of government by Mr Warwick Watkins AM. Mr Watkins was the Chief Executive Officer of the Land and Property Management Authority that I will refer to conveniently as the LPMA as it was then known. He was also the Surveyor General and the Registrar General of New South Wales.

There are essentially two broad issues to be examined in the inquiry. The first is whether Mr Watkins and the then Minister for Lands, the Honourable Tony Kelly MLC had the authority to commit government to the purchase

without obtaining approval from cabinet. Although the evidence will demonstrate that no submission was ever made to cabinet for approval, it is apparent that Minister Kelly recognised, as did Mr Watkins, that approval from the then Premier, the Honour Kristina Keneally MP, was required.

10 In short, her written approval to engage in negotiations with the owner of the Currawong site with a view to purchasing the site was obtained on 25 February, 2011. It is alleged that no approval was given to Mr Watkins that authorised him to execute and exchange contracts, so as to commit the New South Wales government to the purchase.

The inquiry will examine whether Mr Watkins, so committed government to the purchase of Currawong knowing that he did not have the requisite authority to do so. The inquiry will also examine whether Minister Kelly purported to authorise the purchase knowing that he do so without the requisite authority.

20 Commissioner, I will open some detail in a moment, but it will be seen that the terms of the written authority from the Premier that Mr Watkins purported to act upon did not in turn authorise the purchase or was at least equivocal in that respect. And although his motivation to acquire the site may well have been in the public interest, that end could not justify the means he seems to have employed to get there.

30 The other issue concerns the conduct of Mr Watkins, Minister Kelly and Mr Robert Costello, the Corporate Secretary and Chief Financial officer of the LPMA after the contract of sale had been executed and exchanged, when questions were being raised about Mr Watkins' authority. This will focus on the preparation of a letter on or about 18 March, 2011 that was addressed to Mr Watkins and executed by Minister Kelly and allegedly backdated by him to 28 February, 2011. That is to a date after the receipt of the Premier's letter and before the contract was executed and exchanged. The letter on its face gives the impression that it was available to Mr Watkins before he executed the contract when it was not. This is plain, not only from the date of the letter but the terms of the letter itself.

40 The fact of the backdated letter and the circumstances of its creation raise a serious question about whether Mr Watkins believed that he had actual authority to execute and exchange contracts when he did not. Of course, if he thought that his authority was clear from the Premier's letter, then there would have been no need to procure the backdated letter from Minister Kelly.

In relation to the backdated letter, the inquiry will examine whether Minister Kelly intended the letter to be used by Mr Watkins to falsely represent that he had written authority at the time of the purchase of Currawong. The inquiry will also examine whether Mr Watkins and Mr Costello knowingly used the backdated letter to falsely represent that Mr Watkins had written

authority as at 28 February, 2011 to purchase the Currawong site. The inquiry will hear that Mr Watkins and Mr Costello used and relied upon the backdated letter during an internal investigation conducted by the Internal Audit Bureau referred to as IAB for short, pursuant to section 159A of the Public Sector Employment and Management Act to represent that Minister Kelly had given Mr Watkins authority as at the purported date of the letter in accordance with the terms of that letter.

10 The investigation commenced shortly after contracts were exchanged. The terms reference of that investigation (not transcribable) raised the question of whether Mr Watkins had authority to execute the contract. In the course of the investigation legal advice was sought from the State Crown Solicitors as to whether the letter from Minister Kelly to Mr Watkins dated 28 February, 2011, was a “delegation in writing” for the purpose of section 12 of the Public Finance and Audit Act. The findings of the IAB investigation is the report dated 7 April, 2011 that will be tendered in evidence before the Commission shows that the backdated letter heavily influenced the outcome of that investigation.

20 The inquiry will also hear that after the IAB report was delivered to the then Director General of the Department of Premier and Cabinet and was made available to Mr Watkins, he, that is Mr Watkins, responded to the director general with written submissions that were supported by legal opinion, including that of senior counsel, all of which relied upon the existence of the backdated letter at the time Mr Watkins executed the contract.

30 The terms of these submissions and legal opinion would suggest that the senior lawyers then acting for Mr Watkins were not made aware that the letter dated 28 February, 2011 had been backdated. Importantly, the written submissions made by Mr Watkins to the director general requested that they be provided to this Commission as part of its investigations.

40 Commissioner, before turning to some detail concerning the recent acquisition of the Currawong site it is appropriate to note public speculation in recent times concerning the negotiations between Unions New South Wales and a company known as Eco Villages Australia Pty Limited that led to that company acquiring the Currawong site. The Commission’s jurisdiction is limited to conduct that involves a public authority or a public official as defined by the Independent Commission Against Corruption Act. As there was no evidence of any involvement of a public official or public authority in the negotiations between Unions New South Wales and Eco Villages the Commission has not made those negotiations the subject of its investigation.

However, in the course of its investigation it was necessary to obtain an understanding of those negotiations and in order to do so the Commission obtained and considered relevant evidence. The following salient facts have

been ascertained from that evidence and I will enumerate them now as follows.

10 Firstly, on 22 December, 2006 a put and call option was granted giving Eco Villages the right to purchase the Currawong site for \$15 million by 22 November, 2007 with a security deposit of \$1 million paid to Unions New South Wales. On 22 November, 2007 the put and call option was varied to extend the date for purchase to 20 May, 2008 with a further security deposit of \$500,000 paid to Unions New South Wales.

Next, on 2 June, 2008 the put and call option was again varied to extend the date of purchase to 20 November, 2008 with a security deposit of \$2 million to be paid to Unions New South Wales on or before 20 June, 2008 and another security deposit of about \$146,000 to be paid to Unions New South Wales on or before 20 September, 2008. May I note that both of those security deposits were paid.

20 On 5 December, 2008 the put and call option was again varied to extend the date for purchase to 22 December, 2009 with a further security deposit of \$100,000 to be paid to Unions New South Wales on or before 22 December, 2008. On 3 August, 2009 Eco Villages served Unions New South Wales with a notice of termination on the basis that Unions had failed to attach to the contract of sale a document referred to in item 15 of schedule 1 of the applicable conveyancing sale of land regulation, namely the smoke alarm warning. Correspondence between the respective solicitors for the parties then ensued. A demand was made for Unions New South Wales to refund the security deposit sums that had been paid to that date totalling \$3,746,778.

30 On 26 November, 2009 the parties executed a settlement deed providing for Eco Villages to forfeit \$1.5 million of the security deposits paid to Unions New South Wales as compensation for the termination of the put and call option.

40 On the same day as the settlement deed Eco Villages entered into a contract to purchase the Currawong site for \$9.5 million excluding GST with a completion date of 26 November, 2010. Taking into account the forfeiture of the \$1.5 million Eco Villages was, in effect, to pay \$11 million for the acquisition of the Currawong site. The agreement to reduce the price from the original 15 million agreed to in December, 2009 was the consequence of the commercial negotiations between these parties. There is no evidence of anything untoward in the reduction in price to be paid by Eco Villages. On 29 November, 2009 solicitors for Unions New South Wales served a Notice to Complete on solicitors for Eco Villages. Eco Villages disputed the validity of that notice, further correspondence and discussions then ensued.

On 14 December, 2010 Unions New South Wales agreed to extend the date for purchase to 5 January 2011 in return for Eco Villages acknowledging the

Notice to Complete to be valid. On 23 December, 2010 Unions New South Wales agreed to extend the date for purchase to 31 January, 2011. And, finally, Commissioner, on 28 January, 2011 the contract to purchase was completed. The Commission is satisfied that the dealings between Unions New South Wales and Eco Villages including the changes in the price to be paid by Eco Villages and the length of time taken to complete the transaction were based on rational, commercial and legal considerations between those parties. There is no evidence that any Unions New South Wales officer or any person associated with Eco Villages acted corruptly.

10 In consequence this inquiry will not focus on the dealings between Unions New South Wales and Eco Villages.

As I have noted, Commissioner, the inquiry will examine the circumstances of Mr Watkins negotiating the purchase of the Currawong site from Eco Villages for \$12.2 million and committing government to that purchase and it is to those circumstances that I will not turn. It seems that there has been ongoing discussions over many years between Mr Watkins in his capacity as the Chief Executive of the LPMA and Pittwater Council regarding the possible creation of a state park at the northern end of Pittwater. In about

20 October 2005 when the Currawong site was placed on the market and before it was ultimately purchased by Eco Villages in the way I've outlined Mr Watkins on behalf of the Department of Lands submitted an expression of interest which contained an offer to purchase the site for \$11.3 million plus GST.

The EOI described in terms the proposal as follows. "The Department of Lands regards the Currawong site as a strategic piece of land that should be retained for the people of New South Wales as part of its dedicated Crown land reserve system. It is proposed to add this land to the Crown land state park system. We believe that the acquisition and classification of this land as a state park with the provision of a range of services for the people of New South Wales is also consistent with the spirit and purpose for which the land was originally purchased by the Labour Council of New South Wales in 1949."

30

The offer appears to have been based, in part, on a valuation that was obtained by the Office of the New South Wales Valuer-General from Preston Rowe Paterson, New South Wales, a firm of valuers, that value the Currawong site assuming that approval would be obtained for the

40 construction of one additional dwelling and associated improvements within 12 months of the date of that valuation at \$10 million. That expression of interest was subsequently withdrawn to avoid the potential for political issues arising from the appearance of the state government purchasing the site from Unions New South Wales.

In more recent times Eco Villages had submitted a development application seeking approval to build 25 private dwellings on the site. This was dealt with under part 3A of the Environmental Planning and Assessment Act as

the site was regarded by the then Minister for Planning, The Honourable Frank Sartor, MP, as having “state significance”. It was Minister Keneally, as she then was, as the Minister for Planning before she became the Premier, who refused the development application, determined that any further DA should be made to Pittwater Council and placed the entire Currawong site on the State Heritage Register.

10 Eco Villages made a further development application to people at the council in September 2010 for 12 new dwelling houses on the site and October 2010 that development application came to be on exhibition. There was a meeting between Mr Watkins and the general manager of Pittwater Council, Mark Ferguson and others in early October 2010 that centred on the development of a strategy to acquire the Currawong site for a possible state park and in principle agreement was reached at that meeting. The broad content of that agreement was then set out in a briefing document prepared by Mr Watkins and his staff for Minister Kelly that is dated 8 October, 2010.

20 The briefing document records a commitment by Pittwater Council to “jointly fund” the purchase of lands and include areas of its own lands adjoining the Currawong site in any proposal to create the state park as a joint initiative to provide recreational facilities in this area. This was to be achieved by way of a gift to the state of “excess” council land adjoining waterfront crown land at Newport, said to be valued at approximately five to seven million dollars. It would also sell council land adjoining the Currawong site to the state at a significantly reduced rate with the aim of this sale and the gifted land providing 50 per cent of the approximately \$12 million purchase price for the lands in question.

30 The briefing document then referred to the “gifted council land” being the subject of “private treaty sales at a later date” to provide funds for the state park. In the interim it was proposed that funds for the purchase would be made available from existing reserve trust funding and from the Sydney Regional Development Fund, to which I will refer to as the SRDF through the Planning Ministerial Corporate, SOL. The briefing document also referred to the pending development application before Pittwater Council and noted the need for consideration of the perception that the joint purchase arrangements with Pittwater Council did not prejudice the outcome of the DA. Ultimately, however, council did not determine the DA and Eco
40 Villages appealed to the Land and Environment Court on the basis of a deemed refusal of its application.

The briefing document to the Minister expressly sought approval for the following. First, the LPMA entering into a memorandum of understanding with Pittwater Council regarding the proposal to jointly purchase the Currawong site and other freehold lands and water. Second, the LPMA entering into negotiations with council and other landowners for the purchase of lands to be included in the state park with land acquisition costs

to LPMA to be limited to \$13 million. And finally, that funding through Crown land and the SRDF together with future sale of lands gifted to the Crown from Pittwater Council.

On or about that day, mainly 8 October, 2010, Minister Kelly endorsed his handwritten approval on the briefing document in the following terms, “approval to proceed to negotiations, but final approval to come to me and possible budget committee for final okay (before concrete agreements concluded)”.

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The terms of this endorsement make plain that Mr Watkins had the minister’s approval to proceed with negotiations but had no authority to make any contractual commitment. The endorsement also indicates that the minister then contemplated referring the matter to a budget committee for final approval. In this respect it is to be noted that the ministerial handbook published in November 2009 provides that new policy proposals and significant or sensitive variations to existing policies or proposals requiring additional funding that cannot await consideration in the budget context would normally come before cabinet unless the Premier specifically approves otherwise.

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In early November 2010 the minister’s chief of staff, Stephen Fenn, requested LPMA staff to prepare a cabinet, to prepare a minute for cabinet or the budget committee for cabinet for approval. According to the contemporaneous material there seems to have been some pressing urgency about this. On 17 November, 2010 for example, Mr Fenn emailed Mr Watkins and asked that he “hurry up” with the budget minute. On 25 November, 2010 Mr Watkins’ chief of staff, Mark Matchett, described the position in an email to the draftsman of the cabinet submission as follows: “The Currawong cabinet minute is now critical.”

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Mr Matchett received the draft cabinet submission on 30 November. It expressly sought approval to negotiate the purchase of lands required for the creation of the proposed Currawong state park. It also sought cabinet approval for the funding of the purchase of the lands for the proposed Currawong state park from the SRDF and “the LPMA through the sale of the land identified at Newport adjoining the gifted land from council.” The draft cabinet submission attached a final impact, a financial impact statement that recorded the total financial impacts as “nil.” It would appear from the evidence gathered by the Commission so far that the draft cabinet submission never progressed beyond that draft. It was never executed by Minister Kelly or ever put up to cabinet for its consideration by or on behalf of Minister Kelly.

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On about 7 December, 2010 there was a meeting between Minister Kelly, Mr Ferguson and the Mayor of Pittwater Council. Council’s desire to proceed with the joint purchase and the preparation of a memorandum of understanding between the minister and the council was discussed. The

meeting noted that a cabinet decision would likely be made before the MOU was finalised, such that any approval for the purchase of Currawong would be subject to the completion of that document.

At about this time Pittwater Council obtained a valuation of the Currawong site “for possible acquisition purposes” from Knight Frank Valuations. Although the valuation report is dated 9 December, 2010 it does appear that instructions were first given by council officers to the valuers to prepare the valuation in early November. It provided a market value range of between
10 10 million to \$11.5 million GST inclusive.

Commissioner, by about mid-December 2010 a draft memorandum of understanding had been prepared. It is to be noted that the draft in terms provided that it was not intended to be a legally enforceable contract and that progression to an enforceable agreement would be subject to further consideration and approval of a further detailed draft state park proposal by both the minister for lands and Pittwater Council. The minutes of the Pittwater Council meeting on 20 December, 2010 show that the
20 recommendations contained in a confidential mayoral minute regarding the proposed state park, including the acquisition of Currawong, were noted and endorsed.

The recommendations were expressed to be subject to “the New South Wales government endorsing the proposal to create a state park at North Pittwater and commencing acquisition action regarding Currawong.” One recommendation was to endorse the Mayor and the general manager continuing to negotiate the establishment of the state park in accordance with the proposed MOU and to execute all documentation in regard to the acquisition and transfer of lands for the establishment of the state park.
30

Another recommendation was that council, as part of the MOU agree in principle to the transfer of council’s ownership of the land known as Beaconsfield Reserve at Newport to the New South Wales state government for the specific purpose of assisting the purchase of Currawong and the subsequent incorporation of Currawong into the proposed state park.

It would appear from the evidence that after the council meeting on 20 December, 2010 the draft memorandum of understanding never progressed beyond the draft. It was never executed by Minister Kelly or Mr Watkins
40 on behalf of the Minister for Lands or by Pittwater Council. Further, it would appear that the New South Wales government never endorsed the proposal to create a state park, which was required by the council resolution before the Currawong site was acquired.

I made reference earlier, Commissioner, to the briefing document provided to Minister Kelly on about 8 October, 2010 that referred to the council land adjoining waterfront Crown land at Newport that was said to be valued at approximately \$5 million to \$7 million. On 23 December, 2010, Pittwater

Council obtained a valuation of that land which comprise two separate lots from BEM Property Consultants, a firm of valuers. That valuation noted that the land was zoned 6A open space and recreation under the Pittwater Local Environment Plan and assumed that a rezoning to permit single residential housing would be approved. The valuation also assumed the highest and best use taking into consideration the nature of the surrounding development and the most likely development option that would be approved.

10 On this basis lot 5 was valued at \$1.3 million and lot 6 at \$1.6 million, totalling \$2.9 million. The valuer also postulated a “marriage value” that would be generated once the council land and the adjoining Crown land was amalgamated and sold and this was valued at \$785,000. So according to the valuation evidence at the time, and assuming a rezoning and development consent for residential development, the value of council’s contribution by the land to be gifted was \$3.685 million and it seems far short of the value postulated to the Minister in October.

20 I also refer to Eco Villages lodging an appeal to the Land and Environment Court against the deemed refusal of its DA. This occurred on 22 December, 2010 and as I have indicated, Eco Villages subsequently completed the contract for the purchase of Currawong on 28 January, 2011. These events appear to have been the catalyst for what followed. In an email from Mr Matchett, that is Mr Watkins, Chief of Staff, dated 1 February, 2011 he said, “we have heard second or third hand that the purchase may have gone through, in which case the government would be free to negotiate with Eco Villages on any acquisition or purchase. We are awaiting confirmation of this position and will commence negotiations if possible in the near future.”
30 The Eco Villages appeal to the Land and Environment Court was before that court on 3 February, 2011. The appeal was adjourned to 3 March and was then listed for a hearing to commence from the week commencing 20 June, 2011.

On about 8 February, 2011 Mr Watkins and Mr Matchett prepared and executed a minister for the minister recommending that approval be granted for the chief executive of the LPMA to “negotiate” with Eco Villages to secure the purchase of Currawong and that the minister sign a letter to the Premier, the form of which was attached to the minute, to give authorisation accordingly.

40 This appears to have occurred as a result of a conversation between the Premier and Minister Kelly in the cabinet room following the conclusion of a cabinet meeting in late January or early February 2011 when the Premier requested the minister to write to her formally seeking authorisation for his delegate to participate in negotiations. The letter to the Premier that Minister Kelly approved and signed was headed “Possible purchase of Currawong and creation of a state park” and relevantly sought approval in the following terms and I quote, “I am seeking your approval for the chief

executive of the LPMA, Warwick Watkins, to be authorised to hold direct negotiations with Eco Villages Pty Limited with a view to purchasing the Currawong site recently acquired by the company. Based on an understanding of the purchase price paid by Eco Villages, consideration of their holding charges and relevant development costs to date and their possible costs in litigation that could ensue before any development might be approved, it is considered that there may be a positive negotiating environment. Against this knowledge I believe that the site be available, I believe that should the site be available for purchase that this could be achieved by the LPMA with no additional cost to the budget. Accordingly, I seek your approval for Warwick Watkins to be authorised to hold negotiations with Eco Villages Pty Limited for the purchase of the Currawong site on the basis that there is no additional funds sought from the state budget.”

Commissioner, there are at least three points to be made about the minister’s letter to the Premier. The first is that it did not seek approval for Mr Watkins to execute a contract, assuming negotiations be successful and commit government to the purchase. The words used in the letter “authorised to hold direct negotiations with a view to purchasing” or the words “authorised to hold negotiations for the purchase” could not as a matter of ordinary language extend to making a contractual commitment.

The second point is that it does not seek approval for negotiations or the making of a commitment up to a specified price. The plain inference from the letter is that further approval would be sought if the negotiations were successful and the parties had reached agreement on the price.

The further point is perhaps self-evident but the minister by seeking approval from the Premier for Mr Watkins to negotiate indicates that both he and Mr Watkins must have then understood that the Premier’s authority was required.

I expect the evidence to indicate that Mr Watkins initiated contact with Mr Allen Linz, a director of Eco Villages, in about mid-February and intimated that government was interested in purchasing the Currawong site for between \$11 million to \$12 million. Mr Linz valued the site, particularly having regard to the holding costs, legal costs and development application costs incurred, at \$20 million and conveyed that view to Mr Watkins. This communication between Mr Watkins and Mr Linz occurred before Minister Kelly received a formal reply to his letter from the Premier.

The evidence will show that on about 16 February, 2011 and in the course of the then prevailing election campaign the Premier and Minister Kelly had a brief conversation at ANZ Stadium about authorising negotiations for Currawong with the Premier indicating in effect that it was fine to negotiate. On 25 February, 2011 the Premier responded in writing to the minister’s

letter in the following terms and I quote, “Thank you for your letter dated 9 February, 2011 seeking approval for the chief executive of the LPMA, Warwick Watkins, to hold direct negotiations with Eco Villages Pty Limited with a view to purchasing the Currawong site. I note there are no additional funds being sought from the budget. I am happy to provide that approval and look forward to your advice on these important negotiations.” It is plain from the letter that the Premier anticipated the receipt of further advice on what she described in the letter as “these important negotiations”. Ms Keneally gave evidence to the Commission during a private hearing on 17 June 2011 because of prearranged plans to be overseas during this public inquiry. Minister Kelly’s legal representative were invited to participate in the private hearing and Ms Keneally was cross-examined by my learned friend Mr Branson of Queens Counsel. Her evidence given on that occasion will be tendered during this inquiry and made available to all parties that have sought leave to appear.

Ms Keneally give evidence to the effect that she indeed expected Minister Kelly to report back on the outcome of the negotiations. Ms Keneally confirmed that her letter did not authorise Mr Watkins to proceed any further the negotiations and did not authorise him on behalf of the New South Wales Government to execute contracts with Eco Villages. The former Premier also gave evidence to the effect that she expected a briefing of Cabinet before contracts were exchanged, particularly as the matter had such political interest and complexity involving, as it did, Pittwater Council as a third party and that the transaction would have required the endorsement of Cabinet.

On 4 March 2011 the Legislative Assembly of the New South Wales Parliament was dissolved and the caretaker period pending the general state election commenced that day. The guideline entitled Caretaker Conventions and Other Pre-election Practices 2011 General State Election was a document circulated back in October 2010 to all ministers and directors-general for the information of the public sector as a whole. The caretaker convention has generally provided that “no significant new decisions, appointments or contractual commitments should be made” and that “government avoids entering major contracts or agreements during the caretaker period” which is to be determined by “the dollar value of the commitment, the content and extent of other financial and non-financial obligations and the duration of any commitments.” It also provides that “contracts which are likely to be politically contentious should particularly be avoided.”

The guidelines also provided as follows. “The caretaker conventions are not black letter law and their application to individual cases requires judgement and common sense. The Department of Premier and Cabinet is available to provide advice and assistance to agencies and ministers should any difficulties arise in the application of the conventions to particular circumstances.” The evidence will show that neither Mr Watkins nor

Minister Kelly sought any advice from the Department of Premier and Cabinet about the application of the caretaker conventions before contracts were exchanged.

10 Commissioner, the evidence before the inquiry will expose the course of negotiations that occurred between Mr Watkins and Mr Linz of Eco Villages, although there does not appear to be anything untoward about the agreed price of \$12.2 million when it is considered that Eco Villages purchase the site for \$9.5 million or 11 million with the forfeited security deposits incurred significant costs in seeking a development consent and the other issues that informed these negotiations are brought to account. Ultimately, it appears that on Thursday, 10 March, 2011 Mr Watkins confirmed by email to Mr Linz the material terms of the sale, namely, the purchase price of \$12.2 million, the payment of a ten per cent deposit on exchange of contracts by close of business on Tuesday, 15 March, 2011 with a four week settlement and the vendor Eco Villages discontinuing the Land and Environment Court appeal.

20 The contract for sale was urgently prepared, executed by Mr Watkins on behalf of the Minister administering the Crown Lands Act and exchanged on Tuesday, 15 March. The completion time provided for in the contract was reduced to three weeks instead of four. The deposit cheque for \$1,220,000 to the vendor was drawn after Mr Watkins and Mr Costello had each given a written certification of authority under section 13 of the Public Finance and Audit Act.

30 Curiously, the standard provisions in the contract for sale with respect to the conveyance being a taxable supply and thus subject to the payment of GST were crossed through and the contemporaneous documents appeared to suggest that Mr Watkins and those acting on the purchase understood that the purchase was GST free. However, on completion GST in the sum of \$1,220,296.62 was paid to the vendor which took the gross purchase price over \$13 million to \$13,423,262.84. It may be that the LPMA obtained an import tax credit on the GST paid and this will be looked at during the course of the inquiry.

40 Mr Watkins executed the contract and committed government to the purchase without the negotiations that had culminated in an agreed purchase price of \$12.2 million being referred back to the Premier. Importantly, no cabinet approval was sought or obtained for the purchase. This was particularly significant in light of the applicable caretaker conventions.

Word of government's purchase of the Currawong site spread very quickly. On 16 March, 2011, that is the day after the execution and exchange of the contract, Brendan O'Reilly, the then Director General of the Department of Premier and Cabinet contact Mr Watkins and raised questions about his authority to exchange contracts for the purchase of the site. According to Mr O'Reilly, Mr Watkins expressed a belief that he had authority from the

Premier's letter. Mr O'Reilly requested Mr Watkins to prepare a "full report" and he and Mr Costello then prepared a briefing minute that day. The briefing minute was signed by both Mr Watkins and Mr Costello and was provided to Mr O'Reilly and also to Minister Kelly. It referred to and attached the Minister's letter to the Premier and her reply dated 25 February, 2011 and said, "the Premier gave approval for the CEO of the LPMA to enter into direct negotiations for the purchase of Currawong." The briefing minute seems to confirm therefore that Mr Watkins was acting under the authority conferred by the Premier's letter and nothing else.

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On 17 March, 2011 Mr O'Reilly had a scheduled meeting with the Premier. He informed her that Mr Watkins had exchanged contracts with Eco Villages. She was angered by what Mr O'Reilly had told her. Ms Keneally said in her evidence to the Commission that she regarded the making of this commitment to be a breach of the caretaker conventions and a breach of the authorisation she had provided to Mr Watkins via her letter to Minister Kelly. Had she received a written briefing with respect to the negotiations she would have as Premier, conveyed that to the then leader of the Opposition and sought his views in accordance with the caretaker conventions.

20

Ms Keneally has given evidence to the effect that she spoke to Minister Kelly by telephone on the evening of 17 March, 2011. She was less than cheerful and conveyed to Minister Kelly her disquiet about the exchange of contracts.

Reference was made in the telephone conversation to Mr Watkins having acted in breach of his financial delegations as well as the caretaker conventions. According to Ms Keneally, Minister Kelly responded by saying, "Gee, why did Warwick do that? He must have thought he had some authorisation." If that conversation be accepted then Minister Kelly either didn't know on the evening of 17 March that Mr Watkins had exchanged contracts for the purchase of Currawong two days before or was feigning ignorance to the Premier.

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As I have indicated, further questions were raised about Mr Watkins' authority to execute the contract and commit government to the purchase. The inquiry will hear evidence from Mr O'Reilly and the detail of his communications with Mr Watkins on 17 and 18 March, 2011. Mr Watkins was informed that there would be an internal investigation. On 18 March, 2011 the director general removed Mr Watkins from the position of chief executive of the LPMA pursuant to section 17 of the Public Sector Employment and Management Act with immediate effect. He also engaged the IAB to conduct the internal investigation to which I have already referred. The director general also notified this Commission about the matter on 21 March, 2011.

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It was in this particular context that Mr Watkins allegedly telephoned Minister Kelly on about 18 March, 2011 and asked him to sign the letter which confirmed his authority to enter into negotiations for the purchase of the Currawong site for a price up to \$13 million and execute the contract. It is alleged that Minister Kelly agreed to provide Mr Watkins with such a letter. The letter was then prepared between Mr Watkins and Mr Costello and it was in the following terms and I quote, “Following my determination in October 2010 on papers DOC/10/87920 and consistent with my letter of 9 February, 2011 to the Premier and the Premier’s response of 25 February, 2011 approval is given for LPMA to enter into direct negotiations for the acquisition of the Currawong site for a price of up to 13 million including the execution of relevant papers.”

Minister Kelly and Mr Costello then met at a café in Martin Place and Minister Kelly signed the letter and then dated it by hand. It is alleged that Mr Watkins, Mr Costello and Minister Kelly each well understood that the letter would be backdated when it was prepared. The letter confirmed that approval is given rather than confirming that approval was given. It must have been intended that the letter would be backdated otherwise the letter would have made no sense. The minister dated the letter 28 February, 2011, that is about a fortnight before Mr Watkins executed and exchanged contracts.

As I have indicated, Mr Watkins and Mr Costello used the backdated letter as part of the information provided to the IAB investigation. Mr Watkins also used the backdated letter in his submissions to the Director General of the Department of Premier and Cabinet in relation to the IAB report and specifically requested that his submissions be referred to this Commission. Nowhere in any of this material did Mr Watkins or Mr Costello seek to correct the false impression that was conveyed by the backdated letter.

Further, and on 25 March, 2011, Mr Costello provided the director general by email with a document entitled, “Summary of delegation and funding model” and, which set out the financial delegations Mr Watkins held at the time. It is alleged that he prepared the document in collaboration with Mr Watkins. It noted that Mr Watkins had a general financial and purchasing delegation for LPMA activities of \$5 million, a financial delegation for the Crown leaseholds entity of \$5 million, and a general financial delegation for the Sydney Regional Development Fund activities of \$5 million and one for the acquisition of land of \$50 million.

Mr Costello’s document then continued, however, as follows and I quote, “In regard to this particular transaction (purchase of Currawong) in a letter dated 28 February, 2011 from the minister to the chief executive (which followed the minister’s earlier letter to the Premier and the Premier’s reply) the minister specifically gave approval for ‘LPMA to enter into direct negotiations for the acquisition of the Currawong site for a price up to 13 million including the execution of relevant papers.’” This letter and other

material have previously been given to IAB as part of this investigation. “Accordingly,” so the document said, “the LPMA chief executive has an authorisation of expenditure up to 13 million to acquire the site.” It is plain from this document provided as I say to the director general in the course of the IAB investigation, that the backdated letter was used to demonstrate that Mr Watkins had the written approval of Minister Kelly before he executed and exchanged contracts for the purchase of the Currawong site when Mr Watkins and Mr Costello knew that he did not. Commissioner, that concludes the remarks I wish to make in opening.

10

THE COMMISSIONER: Thank you, Mr Alexis. The Commission will adjourn for five minutes.

SHORT ADJOURNMENT

[11.01am]

20

THE COMMISSIONER: I’ll take the appearances of counsel. Mr Branson, I think I’ll start with you, and if we could find, Mr Branson, some kind of order.

MR BRANSON: If the Commission pleases, I seek the Commissioner’s leave to appear in the interests of the Honourable Tony Kelly, MLC.

THE COMMISSIONER: Yes, you have leave, Mr Branson.

MR BRANSON: If the Commissioner pleases, thank you.

30

THE COMMISSIONER: Yes.

MR CURTIN: Commissioner, my name is Curtin.

THE COMMISSIONER: Mr Curtin.

MR CURTIN: And I seek the Commission’s leave to appear on behalf of Mr Watkins.

THE COMMISSIONER: Yes, you have leave, Mr Curtin.

40

MR DUNNE: My name is Dunne, D-U-N-N-E. I seek leave to appear on behalf of Mr Costello.

THE COMMISSIONER: Yes, Mr Dunne. Just one moment please. Yes, who’s next please?

MS FISHER: If the Commission pleases my name is Fisher, I seek leave to appear on behalf of Pittwater Council.

THE COMMISSIONER: Yes, Ms Fisher.

MS FISHER: Thank you.

MR WHITE: Commissioner, my name is White and I seek leave to appear on behalf of Mr Tony Pooley.

THE COMMISSIONER: Yes, Mr White.

10 MR TOSEVIC: Commissioner, I seek leave to appear on behalf of Andrew Simpson. My name is Tosevic, T-O-S-E-V-I-C.

THE COMMISSIONER: Yes, Mr Tosevic.

MR HALSTEAD: Commissioner, my name is Halstead and I seek leave to appear for Linda Pettersson.

THE COMMISSIONER: Yes, Mr Halstead.

20 MR TAYLOR: Commissioner, Taylor, solicitor, I seek leave to appear on behalf of Mr O'Reilly.

THE COMMISSIONER: Yes, Mr Taylor.

MR HARRIS: Commissioner, my name is Harris, solicitor, seeking leave to appear for Mr Stephen Fenn.

THE COMMISSIONER: Yes, Mr Harris.

30 MR HARRIS: Thank you.

MS McGLINCHEY: Commissioner, my name is Karen McGlinchey, solicitor, I seek leave to appear for Mr Matchett.

THE COMMISSIONER: Yes, Ms McGlinchey.

MR LEWIS: Commissioner, Lewis my name, I seek your leave to appear for the Honourable Kristina Keneally.

40 THE COMMISSIONER: Yes, you have leave.

MR McILWAINE: Commissioner, McIlwaine, solicitor, I seek your leave to appear for Mr Daryl Watkins and also Mr Brad Welch.

THE COMMISSIONER: Yes, Mr McIlwaine.

MR McILWAINE: Thank you.

THE COMMISSIONER: Is that all? Mr Alexis.

MR CURTIN: Commissioner, if I may. Commissioner, in this inquiry I anticipate that Mr Watkins will give evidence that he honestly believed that he had the authority to commit the New South Wales Government to the purchase of the property at Currawong based upon his understanding of the letter dated 25 February, 2011 from the Premier together with the various financial delegations he held. Whilst believing that he had that authority to negotiate and purchase the property Mr Watkins recognised after having discussions with Mr O'Reilly on 17 March, 2011 that another view of the letter was that he had only been granted authority to negotiate the terms of a possible purchase, but not in fact purchase the property without further authority.

At that point in time Mr Watkins had been a senior public servant for many years and in the eyes of the then Premier had been thorough in his approach to his work and had followed proper procedures. I anticipate Mr O'Reilly will describe him as an outcome-focused public servant. After speaking to Mr O'Reilly, Mr Watkins became concerned about the possibility of a significant impact on his professional career, standing and reputation. If it was determined by others that he had not in fact been granted authority to purchase the property. On 18 March, 2011 Mr Watkins then made a significant mistake in participating in producing the document backdated to 28 February, 2011 to which counsel assisting has referred purportedly authorising him as of that date to purchase the Currawong property.

Notwithstanding the belief of Mr Watkins that he held authority to purchase the property based upon the Premier's letter of 25 February, 2011 Mr Watkins knowing that the letter of 28 February, 2011 was backdated did use this letter to falsely represent to the Internal Audit Bureau and the others referred to by counsel assisting that it gave him the written authority as of that date to purchase the property. Mr Watkins acknowledges that the use of the letter in such a way was both inappropriate and dishonest. May it please.

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

MR ALEXIS: Thank you, Commissioner.

THE COMMISSIONER: Before you commence, Mr Curtin, I think, as I understand it from Mr Alexis you made that statement for the purposes of assisting the Commission and to reduce the number of witnesses that need to be called. I just want to confirm that that is the purpose of the statement you made.

MR CURTIN: That is the purpose. I should add it doesn't purport to deal with every detail but to give the broad thrust to assist the Commission.

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

MR ALEXIS: Commissioner, to assist, I hope, the efficient flow of material we have prepared a tender bundle of documents which comprise all of the material documents, and by saying that I don't suggest that it's exhaustive but it contains all of the material documents organised largely in a chronological order. Each document or series of documents has been both separately tabbed behind plastic sleeves and each page is separately paginated. We have, of course, multiple copies for distribution. Could I
10 tender that tender bundle of documents.

THE COMMISSIONER: Yes. The tender bundle of documents is Exhibit 1 in this public inquiry.

**#EXHIBIT 1 - FOLDER MARKED "FOLDER 1" IN OPERATION
NAPIER**

20 MR ALEXIS: Thank you, Commissioner. Commissioner, as I indicated in my opening Ms Keneally gave evidence during a private hearing on 17 June, 2011. I would seek to tender Ms Keneally's statement of evidence which she gave to the Commission on 8 June, 2011. And while that's being obtained, Commissioner, could I draw attention to the order that was made for the limited publication of the evidence that was given on that private hearing and make an application that that order be varied or lifted because I propose tendering the transcript of that evidence and making copies of that available to the parties who have sought leave to appear.

30 THE COMMISSIONER: Yes. The direction previously made suppressing the evidence of Ms Keneally, albeit to a limited extent is vacated.

MR ALEXIS: Thank you, Commissioner. Could I provide, could I tender please Ms Keneally's statement 8 June, 2011.

THE COMMISSIONER: Ms Keneally's statement of 8 June, 2011 will be Exhibit 2.

40 **#EXHIBIT 2 - STATEMENT OF MS KENEALLY DATED 8 JUNE
2011**

MR ALEXIS: Thank you, Commissioner. Can I indicate, Commissioner, that a copy of that statement was delivered, was provided to some but not all parties who have sought leave to appear. Mr Wong, who instructs me has copies of Ms Keneally's statement available for those who don't have a

copy immediately available to them. Could I also tender a copy of the transcript of the evidence that Ms Keneally gave, as I say on 17 June, 2011.

THE COMMISSIONER: The transcript of the compulsory examination of 17 June, 2011 when Ms Keneally gave evidence and was cross examined by Mr Branson is Exhibit 3.

10 **#EXHIBIT 3 - TRANSCRIPT OF EVIDENCE GIVEN BY MS**
KENEALLY UNDER COMPULSORY EXAMINATION ON 17 JUNE
2011

MR ALEXIS: Thank you, Commissioner. Commissioner, in the circumstances of Ms Keneally giving her evidence during the private hearing, it is appropriate in my submission that I just take some time with respect to the evidence contained in both her statement and in her oral evidence so that it can be understood, particularly those who perhaps are receiving that evidence in written form for the first time. May I start with
20 Exhibit 2 being Ms Keneally's statement of evidence to the Commission and can I pass over the introductory details and commence my reference to it at paragraph 7 on page 2. And there the Commission will see that Ms Keneally refers to an occasion in January, late January or early February 2011 when she recalls having a brief conversation with Minister Kelly. Over the page you will see Commissioner that this is a conversation which took place in the cabinet room after a cabinet meeting. And if I can pass over the detail in the remaining part of paragraph 7 and draw attention particularly to paragraph 8 where Ms Keneally says that she was aware of
30 of Currawong. She refers to advertisements that have been placed in a newspaper and then Commissioner, you will see that she says this, "I ask the Minister to write to me and formally seek authorisation for his delegate to participate in formal negotiations." And then in paragraph 9 Ms Keneally tells us of the receipt of a letter that she obtained from Minister Kelly in that regard. Could I draw attention to the documents contained in Exhibit 1, particularly that contained behind tab 8, where you will find Commissioner, the briefing minute that I referred to in opening that was signed by Mr Matchett on 8 February and also by Mr Watkins. And then on page 43 and over on page 44 there is the letter from Minister Kelly to the then Premier to
40 which Ms Keneally is referring to in paragraph 9 of her statement. And in particular on page 44 of Exhibit 1, that's the second page of the letter, you will see from the top of the page that part of the letter that I referred to and indeed quoted during the course of my opening.

Now in paragraph 11 of Ms Keneally's statement, Exhibit 2, she refers to a conversation with Minister Kelly after receiving the letter to which I've just referred, she there refers to it as a brief conversation advising him that I'd received his letter and I was preparing a reply. In her oral evidence to the

Commission, Ms Keneally accepted that that related to the ANZ Stadium conversation and I'll come to that when I come to Exhibit 3 in a moment.

10 You will also see Commissioner in paragraph 12 that on 25 February, 2011 Ms Keneally recalls being presented with a written response that had been prepared. She signed the letter and wrote Tony at the prefix and Commissioner, you will find that letter reproduced behind tab 9 of Exhibit 1 at page 47. And you will see the terms of the then Premier's letter to Minister Kelly in the terms that I referred to and indeed quoted you in my opening.

20 If I could then come back to Ms Keneally's statement, Exhibit 2, in paragraph 13 you will see Commissioner, that Ms Keneally says this, "there was no doubt in my mind what was being conveyed in this letter. I did not consider it to be vague or ambiguous. The meaning of the letter was that Mr Watkins was authorised by me to conduct negotiations with a view to purchasing the site. That was the purpose of the negotiation. There was no expectation that additional money would be sought from Treasury for an eventual purchase and I expected that Minister Kelly would report back to me on the outcome of the negotiations as stated in the final sentence. To my recollection I never have, I never had a conversation with Minister Kelly or anyone else about the financial value of Currawong. This letter did not authorise Warwick Watkins to proceed any further than negotiations and did not authorise Warwick Watkins on behalf of the New South Wales government to exchange contracts with Eco Villages."

30 Then in paragraph 14 she said, "caretaker conventions aside, I expect, expected that there would be a briefing for cabinet prior to contracts being exchanged particularly with an issue that has such political interest and the complexity of the transaction and the involvement of Pittwater Council as a third party. I considered that it was a transaction that would have required endorsement of cabinet."

40 And then in paragraph 15 you will see Commissioner a reference to the commencement of the caretaker mode on 4 March, 2011. It then appears from Ms Keneally's statement that on 16 March, paragraph 16, that is the day after contracts had been executed and exchanged, attention was drawn by her Deputy Chief of Staff, Mr Pooley, to a conversation that he had had with a Mr Darryl Watkins, the affect of which was as set out in Ms Keneally's statement that negotiations had concluded and that they were successful.

Then over the page, Commissioner, you will see that on 17 March, 2011, paragraph 17, Ms Keneally had a scheduled meeting with Mr O'Reilly, the Director General of the Department of Premier and Cabinet. That took place in her office and according to Ms Keneally, Mr O'Reilly advised her that Mr Watkins had on behalf of the New South Wales government exchanged contracts with Eco Villages and that he may have exceeded the

authorisation that Minister Kelly and I had provided, as well as his financial delegations.

There's then a reference to Ms Keneally signing a brief around 7.00pm, that's the bottom of page 6 of the statement, and on it provided a written direction to Mr O'Reilly that caretaker conventions applied and he needed to brief the leader of the Opposition.

10 Could I just take you, Commissioner, to that briefing document which is annexed to Mr, to Ms Keneally's statement and is at the very last page and could we go to that please, the very last page of the annexures.

THE COMMISSIONER: Yes.

MR ALEXIS: Now, this is the document to which Ms Keneally is referring in paragraph 17 and the purpose of the document is clear enough and its, it records in the comment section that attention has been drawn to the possibility of authorisation having been exceeded and then halfway through that page, Commissioner, you'll see a reference to the contract being
20 exchanged on 15 March and then Mr O'Reilly says, "It is my understanding that at no time did the minister for lands nor you as Premier approve of this purchase nor was any cabinet minute lodged seeking the government's consideration and endorsement of the purchase. The seriousness of this matter is exacerbated by the fact that New South Wales is in the caretaker period before the state election and the New South Wales government cannot enter into any significant financial commitment without the endorsement of the leader of the opposition," and you will see also in the next paragraph it is said that Mr Watkins has been contacted, advised that he
30 is proceed on leave immediately whilst an investigation is conducted into the matter and you will notice, Commissioner, under Ms Keneally's hand she's endorsed on this briefing note the words "director general, caretaker provisions apply here, please brief the leader of the opposition."

Now, could I come back to Ms Keneally's statement on page 7, paragraph 18 where she tell us of her reaction to being so informed by Mr O'Reilly that there had been an exchange of contracts. You'll see, Commissioner, in paragraph 18 that she says that she was angered by this, she says that it appeared to be a breach of the caretaker convention and a breach of the authorisation I had provided via Minister Kelly. She also in paragraph 18
40 refers to feeling frustrated because this was a potentially good community outcome that would now be placed in jeopardy et cetera. You will then see in paragraph 19 that Ms Keneally refers to the telephone conversation that I opened on earlier this morning with Minister Kelly. She puts the conversation at between 8.30pm and 9.00pm on 17 March, 2011 and she sets out in that paragraph her recollection of the conversation and having informed Minister Kelly, Minister Kelly responded by saying, "Why did Warwick do that? He must have thought he had some authorisation."

Ms Keneally then in paragraph 20 refers again to the caretaker period commencing on 4 March and sets out her expectations as to what would have occurred during that period. I perhaps don't need to go through that again and that continues over onto page 8 of the, of the statement.

10 Commissioner, can I now come to Exhibit 3 which is the transcript of the oral evidence that Ms Keneally gave on 17 June, 2011. You'll be pleased to know, Commissioner, that I don't propose reading it all but I wish to highlight the salient features and could I start, and using the page numbering in the bottom right-hand corner of each page as the point of reference, could I start on page 214 where the subject of the cabinet room discussion with Minister Kelly that I referred to earlier is dealt with. I'll just wait for that to come up on the screen and I'm on page 214 from about line 10 and you will see, Commissioner, that Ms Keneally recalls to mind the minister advising her that there was a possibility the government would purchase the site, that there was a campaign which I was separately aware of underway by the Friends of Currawong for the site to be purchased by the government, there was a possibility that the government would be in a good position to purchase the site and create a state park. You will then see around line 20
20 Ms Keneally said that the minister was to write to her, she was asked at line 22, "Why was that?" and she said, "The Currawong site was and continues to be a site that has a highly contentious political context. Given the proximity of the state election I was aware that anything we undertook in relation to Currawong would likely receive attention from the community and from the media and I did not want to provide authorisation for any negotiations on a passing conversation. I wanted to be certain there was a clearly outlined process put in place."

30 And then if I could draw attention to the question which effectively starts at about line 41, "Why was it not for the minister to so authorise Mr Watkins to engage in those negotiations and why was it necessary for you to give that authorisation," and you'll see her response, Commissioner, "In my view the minister was being exceptionally prudent in seeking the Premier's imprimatur for the negotiations for the negotiations to occur given the history of the site, the contentious nature of the site and the media attention that the government expressing interest in purchasing the site was likely to generate," and then over on page 215 at the top of the page it was put to Ms Keneally that, "It wasn't Minister Kelly being prudent, you're the one telling him to write to you and ask you formally for authority for
40 Mr Watkins to participate in negotiations. The question I'd ask you to attend to is why you asked for him to seek your authority formally on that," and Ms Keneally responded by saying, "The minister raised the matter with me. I believe that it was prudent of him to do so. I believe the most prudent measure for us in government was to be clear that there was authorisation from the Premier for the negotiations to occur."

Her evidence then deals with Minister Kelly's letter and down on about line 35 and following on page 215 there's reference to the content of the letter

from Minister Kelly to which I have referred, after that was noted at about line 43, Ms Keneally was asked, “Did you come to understand that the approval there sought was not only to hold the direct negotiations referred to but because of the reference with a view to purchasing the site approval was also being sought to enable Mr Watkins to enter into a contract to commit the government to the purchase?” And you’ll see her answer, Commissioner, “No, that’s not my understanding of that sentence.”

10 Then on page 216 of the transcript there’s reference to the occasion on
16 February when there was a conversation between the then Premier and
Minister Kelly and if I could pick that subject up, Commissioner, from
about line 32 and following on page 216, you’ll see that reference was made
there to the occasion at ANZ Stadium at Homebush Bay whereas part of the
then election campaign you were out there responding to a promise that the
then opposition had made about issues concerning the expansion of Western
Sydney and you were there and Mr Kelly was also there with staff from his
office. She acknowledges there that she recalls that occasion and then, just
passing over some detail at the bottom of that page Ms Keneally says, “I
20 can’t clearly recall the conversation. It was a very chaotic event. There
were approximately two dozen MPs and candidates there but I accept that
it’s quite likely that I did,” and then coming immediately to the content of
that conversation over on page 217 of the transcript, there was reference
between lines 10 to 20 of a conversation about Currawong and negotiations
for its purchase.

And then at line 25 Ms Keneally said, “I can’t recall the specifics of the
conversation”. And then further down the page she was asked, After you
were told, this is line 30 and following, “After you were told that or
something to that affect by the then Minister Kelly, you said words to the
30 affect, so what to negotiate.” He said “Yes.” And you said, “Well that’s
fine as long as it’s to negotiate.” And her answer was, “That sounds like
something I would have said”. Then she was asked this question, “Do you
recall there being any significance attaching to the time?” And this is at
page 217, Commissioner, from line 35. “Any significance attaching at the
time to steps for the acquisition of Currawong being limited to negotiations
only and not a step which included the commitment for the purchase of that
property?” And she said, “It was not a concern at the time given that the
Minister had raised the matter with me. I had been clear that I had asked
40 him to write and seek authorisation for negotiations. I was preparing a letter
back, and given my previous experience with the Minister and the LPMA I
had no reason to believe the matter would not come back to executive
government following the conclusion of negotiations. And indeed, the letter
that I subsequently signed to the Minister said that I look forward to his
advice on the outcome of the negotiations.”

Commissioner, at page 219 of the transcript comprising Exhibit 3, Ms
Keneally gave some more detailed evidence concerning her expectation that
the matter would be referred to cabinet. You will see, Commissioner,

particular questions directed to that subject matter on page 219 from about line 20 and 30 and following. And if I could pick up the answer that Ms Keneally gave to a question from you, Commissioner at about line 35 where she said, "I would have expected to receive information about the purchase price, about the involvement of any, of third parties, about additional liabilities the state may be taking on and about the communities desires and expectations in relation to the site."

10 And then she was asked about the expectation of cabinet being briefed, "with the issue did you expect, go to cabinet or to a sub-committee of cabinet or how would I have been dealt with?" And she said at line 43, "It most likely would have gone to a sub-committee at cabinet, bearing in mind that sub-committees of cabinet decision equate to cabinet decisions." And then at the foot of that page, you will see Commissioner, that she adds, "I considered that this transaction would have required endorsement of executive government that most likely would take the form of cabinet because of the contentious nature of the site, the political context of the site and given the particular complexities of the deal that was struck, that it is required government to take on additional liability and it required
20 government to commit an amount of funds." Then she said, "Now I may wish to promote here, that in strictly speaking, the amount of expenditure may not have met a threshold for a budget committee authorisation. But, she said, Given the other factors in relation to this site I would have expected that some form of endorsement by executive government before completing the transaction and exchanging contracts was a reasonable expectation. My authorisation was only for negotiation and I would have expected that some form of endorsement by executive government, either by the Minister or perhaps by cabinet committee would have been most appropriate".

30 The subject of the caretaker conventions was then dealt with in Ms Keneally's evidence, Commissioner. And from page 221 from about line 5, that subject was particularly dealt with in a cabinet context. And you will see, Commissioner, particularly from line 10, Ms Keneally said, "It is not unusual for the budget committee of cabinet to endorse or reject expenditure within an agency's budget, even if it is the agency is not seeking additional funds from Treasury, the available budget can be, is not only to approve the disbursement of funds from Treasury, it is also to provide oversight to an agency's budget and therefore a budget committee will often consider
40 minutes that come from an agency but seek to alter the agency's budget or commit funds from an agency's budget even if there is impact on the state budget." You then ask Commissioner, "But the budget committee will take political factors into account as well." And you'll see her answer in these terms, "Absolutely."

Then from line 35 and following there was reference to Mr Watkins conducting negotiations with the vendor, page 221, of the Currawong site, which culminated in the essential terms being agreed on 10 March. She was

asked to make an assumption about that. “The ultimate point of negotiations, line 40, were concluded on 10 March, therefore after the date of the commencement of the caretaker convention. In those circumstances if the matter had been brought to your attention, what would you have expected to have then occurred before any contract was executed and exchanged, which committed the government to the purchase?” And Ms Keneally responded by saying that there would be some endorsement by the executive government to proceed with the purchase as it had been negotiated. And given that the caretaker mode was in place, there would
10 also need to be concurrence from the leader of the Opposition. I do wish to point out, she says, that given that the caretaker convention was in place, budget committee and cabinet did not have the same authority as it did prior to 4 March, which is why the letter of the Opposition’s concurrence would have been required. But I say some form of endorsement by executive government, given the political nature of the site and as I said previously, the complexity, the apparently complexity of the negotiations and the proposed purchase.”

Now on page 223 of the transcript, Exhibit 3, there was reference made to
20 the telephone conversation that occurred between Ms Keneally and Minister Kelly on the evening of 17 March, and if I could pick up this reference, Commissioner, from about line 25 and following on page 223, you will see a reference there to the mobile telephone conversation and from line 30 Ms Keneally was asked how she was able to identify the half hour timeslot, you’ll see Commissioner, immediately above, she had referred in her statement to a timeslot of 8.30pm to 9.00pm. And she was able to explain from line 32 and following that she’d been at a function at the South Sydney Graphic Arts Club in Mascot. “I had to be at Parliament House by 9.00pm to get on the campaign bus to head westward and I recall that we stopped
30 for, we stopped to pick up some takeaway food and then I made the call to the Minister during that timeframe.”

And then over the page you will see, I’m sorry, let me go back a step. At the bottom of page 223, line 45 and following, you will see Commissioner that Ms Keneally said in her evidence, “I told him, that’s Minister Kelly, I told him I had been briefed by Brendan O’Reilly that Warwick Watkins had purchase the Currawong site and that this appeared to breach his financial delegations as well as the caretaker conventions.” I advised him that
40 Brendan was going to put work on me, was going to put work on me and commence an investigation and refer it to ICAC and that Brendan O’Reilly would be contacting Mr Watkins that evening or early the next morning to advise him of this. And your best recollection is what you’ve set out there from Minister Kelly, why did Warwick do that? He must have thought he had some authorisation. And you see her answer, Commissioner, “Yes.”

Now My learned friend, Mr Branson cross examined Ms Keneally from page 224, in relation to that conversation, could I ask you Commissioner to come through to page 232 of the transcript, starting from about line 10. And

you'll see that my learned friend took up that mobile telephone conversation with Ms Keneally and you'll see the question from line 10 and following. And my learned friend says, "Do you agree that, I'm not offering criticism, that he would have gained the impression that you were extremely angry?" And you see her answer, Commissioner, "I think he - - - But you said you were angry." Answer, "My mood was not cheerful." Then the question, "What I'd like to suggest to you is that and then just passing over a couple of lines, may I suggest this to you, please, that in fact you said to Mr Kelly, line 31, you said to Mr Kelly, why did Warwick do that? And that his reply was, Well he must have thought he had some authorisation." And you'll note Commissioner, Ms Keneally's response, she said, "In fact no. In fact in recall Minister Kelly saying, Gee, why did Warwick do that? And I'll be, I will say this, I in fact didn't include the Gee, because I thought it sounded rather colloquial. But my recollection is Mr Kelly said, Gee, why did Warwick do that? He must have thought he had some authorisation." Then the question, "Well now coming to your esteemed and respected Minister or colleague, did you not elicit from, did that not elicit from you a further comment or response?" Answer, "No, I was aware that this matter was going to be going to investigation and being referred to the ICAC. I said my response from recollection was I don't know, but this is what will happen and Brendan will be ringing Warwick. I'm letting you know that."

Commissioner, that's all of the references in the transcript that I wish to take the Commission to at this stage, unless of course my learned friend Mr Branson, would wish me to draw attention to other aspects, in which case I'd be happy to do so.

MR BRANSON: No, thank you. Well, I suppose, look, I'm sorry, there is one more matter, I do apologise. My learned friend, at 219, the Commissioner started reading about line 20. I think it's important that we just go after the proceeding question which is - that's at line 12 - "What did that mean in terms of what she expected to occur at that time." Answer. "What I expected to occur is the conclusion of the negotiations the proposed outcome would be reported back to executive government, either to the minister or directly to me and the executive government in some form would take a decision as to whether or not proceed with the purchase." Thank you, Commissioner.

MR ALEXIS: Commissioner, I now wish to call Mr Brendan O'Reilly.

THE COMMISSIONER: Mr O'Reilly, if you'd take a seat please.

MR TAYLOR: I can indicate, Commissioner, Mr O'Reilly will take an oath on the Bible and will be seeking a section 38 declaration.

THE COMMISSIONER: Yes. Pursuant to section 38 of the Independent Commission Against Corruption Act I declare that all answers given by Mr O'Reilly and all documents produced by him during the course of his

evidence at this public inquiry are to be regarded as having been given or produced on objection and accordingly there is no need for him to make objection in respect of any particular answer given or document produced.

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

THE COMMISSIONER: Mr Alexis.

MR ALEXIS: Thank you, Commissioner. Sir, is your name Brendan Michael O'Reilly?---Yes, it is.

10 And you are presently a consultant, but relevantly prior to the recent state election you were the Director-General of the Department of Premier and Cabinet?---Yes, I was.

And you held that position for about 15 months, is that so?---Yes.

Now, in relation to this matter is it the case that you've prepared two statements of evidence for the Commissioner?---That's right.

20 Can I show you a copy of each, with a copy for you, Commissioner. Now, Mr O'Reilly, should we understand that the first statement of evidence you gave was that of 1 June, 2011?---Yes, it was.

And I think there are a handful of corrections to be made to that statement? ---That's right.

Can I deal with that now. And firstly, I understand the first correction you wish to make is in paragraph 16, is that right?---Excuse me. Yes, that's right. The - - -

30 The reference to 28 March, 2011 should be 28 February, 2011?---Yes.

Thank you. The next correction I understand you wish to make is on page 8, paragraph 21. Do you have paragraph 21?---Yes, I do.

And should we understand that the date in the opening sentence of 18 March should be 17 March?---Yes, I think that's right.

40 If you perhaps just look at paragraph 23 you will see that you refer in that paragraph to an occasion which I'll come back to when you met Mr Watkins on the morning of 18 March. The conversation in paragraph 21 occurred the evening before?---That's right.

And then finally, I think, in this statement paragraph 27 do you wish to correct the reference to the Premier's Chief of Staff that you refer to there as Peter O'Connell to Peter McConnell?---Yes, but it's the Leader of the Opposition's Chief of Staff. The current Premier.

Yes, thank you?---Yes.

Now, Mr O'Reilly, I think that covers the corrections. Thank you. Is the statement of 1 June with those corrections true and correct?---Yes.

Now, the other statement is a short supplementary statement I think you gave also on 1 June, 2011, is that so?---That's right.

And is the content of that statement true and correct?---Yes.

Thank you. Commissioner, I tender each of those statements.

10

THE COMMISSIONER: Yes. The statement of Mr O'Reilly of 1 June, 2011 as corrected by him having 32 paragraphs is Exhibit 4A.

#EXHIBIT 4A - STATEMENT OF MR O'REILLY DATED 1 JUNE 2011 (COMPRISING 32 PAGES)

20

THE COMMISSIONER: And the statement by Mr O'Reilly of 1 June, 2011 having six paragraphs is Exhibit 4B.

#EXHIBIT 4B - SUPPLEMENTARY STATEMENT OF MR O'REILLY DATED 1 JUNE 2011 (COMPRISING 6 PAGES)

30

MR ALEXIS: Thank you, Commissioner, Now, Mr O'Reilly, do we see in paragraph 4 of your longer statement which has been marked Exhibit 4A detail concerning your background in the public sector?---Yes.

And then in paragraph 6 you've given us detail as to your responsibilities as they were when you were the Director-General of DPC, as you refer to it, the Department of Premier and Cabinet?---That's right.

And should we understand that in that role you attended Cabinet meetings of the then government?---Yes.

And provided secretarial support to those meetings?---Yes.

40

And should we understand that you attended Cabinet meetings during your time in that position as Director-General for the 15 months you refer to? ---Yes.

And did you miss any of those meetings?---In May.

May of which year?---2010.

Apart from May of 2010 did you miss any of those meetings?---I, I don't think I missed any others.

All right. Now, in paragraph 8 and following you commenced to deal with the subject of the Currawong site and you refer in the first sentence of that paragraph to Currawong being a problem for the government for years. Could I ask you to explain to us why you saw that as a problem?---Well, I was aware that there was a lot of community angst with regards to the initial sale of the site to Eco Villages, mainly because the community wanted it to be a public park and there was quite a bit of ill feeling with regards to any proposed development on that site.

Now, in paragraph 8, particularly the last sentence, you tell us that you were unaware that the government was planning to enter in negotiations to purchase the property. Do you see that?---Yes, that's right.

And do you mean by that that you were unaware of any proposal in that respect prior to learning of it on or about 15 March this year?---Yes.

20 And do you say that having been present at and providing secretarial services to cabinet during the course of your 15 month tenure?---Yes.

And the first time you learnt of negotiations for the acquisition of that property was on about 15 March, is that correct?---Yes.

Now, in paragraph 9 of your statement you deal with the caretaker conventions as they apply following the dissolution of the lower house of parliament on 4 March, 2011. Is that so?---Yes.

30 And you refer to the document entitled, "Caretaker Conventions and Other Pre-Election Practices," as something that was issued on 14 October, 2010. Do you see that?---Yes.

And I think you've attached to your statement as annexure 1 the relevant communication which circulated that document. Is that so?---Yes.

And is it to that email communication that you get the date 14 October, 2010?---Yes.

40 Commissioner, I would seek to tender annexure 1 to Mr O'Reilly's statement as a separate exhibit because I expect that there'll be ongoing reference to this document and just to identify the document clearly there is the email communication issued by the Department of Premier and Cabinet, you will see, Commissioner, the date at the foot of the page 14 October, 2010 and that attaches the guidelines entitled, "Caretaker Conventions and Other Pre-Election practices."

THE COMMISSIONER: And this is, yes.

MR ALEXIS: It's annexure 1 to Mr O'Reilly's statement but I'd seek to have it separately received as an exhibit because - - -

THE COMMISSIONER: Yes.

MR ALEXIS: - - - as I expect reference will be made to it during the inquiry.

10 THE COMMISSIONER: Yes, the annexure, annexure 1 to Mr O'Reilly's statement, Exhibit 4A, which is a copy of the Caretaker Conventions is Exhibit 5.

#EXHIBIT 5 - COPY OF ANNEXURE TO MR O'REILLY'S STATEMENT

20 MR ALEXIS: Now, Mr O'Reilly, before I leave that document, can I just ask you to go to the email of 14 October, 2010, being the first page of annexure 1 to your statement, do you have that?---Yes.

And should we understand that this was an email communication that was distributed to ministers and to directors-general of departments for the information of the public sector as a whole?---That's right.

30 And could I ask you particularly to look at the email communication and the second-last paragraph which commences with the words, "To assist ministers," do you see that?---Yes.

And do you see that that paragraph after referring to the attachment says that any difficulties arising in the application of the conventions or practices, in particular circumstances minister should contact the Director General, Department of Premier and Cabinet, do you see that?---Yes.

40 Now, before you learnt of the purchase of Currawong did Minister Kelly or Mr Watkins or anyone from either Minister Kelly's office or Mr Watkins' office contact you with respect to any issue concerning the application of the caretaker conventions on such a purchase?---No.

Now, can I bring you back to your statement, Mr O'Reilly, paragraph 10 I think you tell us as to the circumstances that you came to learn of the Currawong site being purchased and I think that came from Mr Pooley who was the Premier's then deputy chief of staff, is that right?---Yes.

And was it in result, in the result of learning that that you were given the letter that the Premier had written of 25 February, 2011?---Yes.

Now, could I show you please, can I show you please, Mr O'Reilly, Exhibit 1 which is the tender bundle of documents and if you could turn up to the document behind tab 9 and page 47 behind that tab and is that the letter to which you obtained from Mr Pooley?---Yes.

And as you tell us in paragraph 11 of your statement you read that letter, is that so?---Yes.

10 And on reading the letter in your view it contained no authority for Mr Watkins to purchase the property?---That's right.

Commissioner, best laid plans, there seems to be a slight difficulty with the pagination.

THE COMMISSIONER: Yes, I can see that.

MR ALEXIS: Could I seek to resolve it this way? Behind tab 9 we have the Premier's letter of 25 February, 2011. Could I ask everyone to annotate that as 47A and then behind tab 11 where we have the second page 47,
20 could I ask everyone to annotate that 47B.

THE COMMISSIONER: I'm afraid it goes on.

MR ALEXIS: Oh, does it?

MR BRANSON: It sounds like something I organised, Commissioner.

MR TAYLOR: There's a couple of page 46.

30 THE COMMISSIONER: I see. We can deal with that later.

MR ALEXIS: Well, Commissioner, rather than me ad-libbing can I try and resolve it after I consider the position further?

THE COMMISSIONER: Yes.

MR ALEXIS: In any event, Mr O'Reilly, we have the letter which I think everyone now understands is the Premier's letter of 25 February, you formed a view that you've just given evidence about and I think you also
40 sought some background from Mr Pooley about the preparation of that letter that we see in paragraph 11, is that right?---That's right.

Now, is it the case that you became concerned about the information you'd received, particularly the Premier's letter, so you decided to speak with Mr Watkins?---No, it was mainly as a result of requests from Mr Pooley to find out what was the current status with Currawong.

If you could just come over to page 5 of your statement, Exhibit 4A, paragraph 12. You see you tell us that you were concerned about the information that Mr Pooley provided, you decided to speak with Mr Watkins. You see that?---Yes.

And then we have the communication that you had with Mr Watkins set out in paragraph 14?---That's right.

10 Now, I'll come to the conversation, but are you able to recall, and if so can you tell us whether or not that was the conversation that occurred during the morning or during the afternoon or the evening?---From memory I think it was around, somewhere between 10.00 and midday.

And when you were having this conversation with Mr Watkins did you make a note of what was said?---No, I asked Mr Watkins if he could provide me with the full brief.

20 And when you gave this statement your best recollection is that that we see set out in this statement, is that so?---That's right.

And you raised with him, as we see at the bottom of page 5 of your statement, what was going on with Currawong. He confirmed at the top of page 6 that he had purchased it?---Yes.

And then you had the conversation that we see set out on page 6 of your statement, is that so?---That's right.

30 And you raised with him your view of the Premier's letter, is that right? ---Yes.

And you told him, "No, Warwick, it says negotiate, it doesn't say purchase and the issue I've got is the expenditure delegation, where did the money come from to buy and where is the Cabinet process?"?---Yes.

And that proceeded your request for a full report that we see in paragraph 15?---That's right.

40 THE COMMISSIONER: So may I just ask you are you able to recall what Mr Watkins' reply was to the question that you asked him?---When I raised it with Mr Watkins, firstly, he was, he did express his surprise that there was any problem with this at all. He expressed that he thought he had approval to go ahead. That's when we discussed the word negotiate as against the word purchase and it was at that time I also asked for a full briefing to the background of the whole purchase, how it was made, who was involved and the price.

If you look at paragraph 14 of your statement, the last question that you ask is where you say, "No, Warwick, it says negotiate, it doesn't say purchase

and the issue I've got is the expenditure delegation. Where did the money come from to buy it and where is the Cabinet process?"?---Yes.

It's that question that I'm asking you about whether you recall his reply?
---Only that Warwick believed that he had been authorised to be able to purchase it and - - -

That doesn't answer the question?---I know. He didn't address that, that issue.

10

He didn't address it?---No.

MR ALEXIS: Can I invite you, Mr O'Reilly, to look at paragraph 15 and particularly the conversation you set out in the last three lines of that paragraph?---Yes.

Was that said, as best you recall, following the question that the Commission just asked you about, concerning the question you posed to Mr Watkins set out above in paragraph 14?---Yes.

20

So you have a recollection that he said, "I might've exceeded my financial delegation but this is a very good deal not only for the government but also for the public."?---Yes, and he was referring to the fact that he believed he had the authorisation to do it, but the paperwork hadn't caught up.

Now, in paragraph 16 you tell us that at no time during the conversation did Mr Watkins mention the existence or refer to the letter from Minister Kelly dated 28 February which is the date you corrected earlier?---Mmm.

30

And can I just ask you to look at Exhibit 1, the tender bundle behind tab 10 which is before you.

THE COMMISSIONER: I think we better call out 46B because there is behind tab 9 another 46 which we'll have to call 46A.

MR ALEXIS: Can I suggest, with respect, Commissioner, we just refer it presently as the document behind tab 10 because it's the only document behind tab 10.

40

THE COMMISSIONER: Yes.

MR ALEXIS: Pagination perhaps over lunch. Now, Mr O'Reilly, you see the letter under the hand of Minister Kelly to Mr Watkins which has the handwritten date 28 February, 2011?---Yes.

Now, I think we appreciate that you didn't learn of this letter until later. But is the point you're making in paragraph 6 of your statement that when you spoke with - - -

THE COMMISSIONER: 16.

MR ALEXIS: Paragraph 16 of your statement when you spoke to Mr Watkins there was no reference at all during that telephone conversation to this letter behind tab 10 dated 28 February, 2011?---That's right.

10 Now, did you then receive a briefing document in response to this conversation you had with Mr Watkins? I think you've annexed part of it to your statement. Can I ask you to look at Exhibit 1 which is the tender bundle before you and open it to tab 15. Might be the quicker way to find it, Mr O'Reilly. And, Mr O'Reilly, do we see behind tab 15 the briefing minute relating to the acquisition of Currawong, if you look at paragraph 1, and over the page you'll see that it has been signed by Mr Watkins and Mr Costello and you see the handwritten date 16 March, 2011. You see that?---
Yes. Yes.

20 And so is it your recollection, Mr O'Reilly, that after the telephone conversation you had with Mr Watkins on 16 March you then received that day the briefing document behind tab 15 of Exhibit 1?---Yes, I think that is the case.

And did it have attached to it the attachments that are reproduced behind tab 15?---Yes.

Firstly, Minister Kelly's letter to the Premier, the Premier's reply that we've already spoken of and other documents including letters from Pittwater Council?---Yes.

30 Now, may we take it that you read the briefing minute?---Yes.

And you tell us in paragraph 17 you were still concerned?---Yes.

And if I could just ask you to go back to the briefing minute on the first page. In paragraph 2 you see the heading Background?---Yes.

40 And you'll see in paragraph 2.3 there's reference to the sale of the Currawong site to Eco Villages, "It become a significant community issue", do you see that?---Yes.

And then in the next paragraph there's reference to the Premier's letter of 25 February, I think it should be 2011 not 2001, do you see that?---Yes.

And it is said that that letter gave approval for the CEO of the Land and Property Management Authority to enter into direct negotiations for the purchase of Currawong, do you see that?---Yes.

Now, I think we know that you didn't appreciate this at the time you got the briefing minute, but should we now note that that doesn't refer to the letter from Minister Kelly to Mr Watkins of 28 February, 2011?---That's right.

Now, was it following the receipt of that briefing minute that you decided that the issues raised were significant enough to warrant an independent investigation?---Yes.

10 And did you, at that time, also decide that a decision that you ought to remove Mr Watkins from the position of CEO of the LPMA?---That's right.

And if I could ask you to look at paragraph 18 of your statement and just passing over the first two sentences of that paragraph which deal with that subject matter do you see that you tell us there that you conveyed this to Mr Watkins?---Yes.

20 And should we understand that what you conveyed to Mr Watkins was that you had decided to have an independent investigation of the matter and you had decided to remove him as CEO of the LPMA?---Yes.

Now can I ask you to tell us when you conveyed that to Mr Watkins?---That refers to my statement where we changed the date to the evening before. I spoke to him on - - -

THE COMMISSIONER: 17 March?---The 17th, thank you, Commissioner. The 17th. The evening before and then I arranged to meet with Mr Watkins the following morning.

30 It's paragraph 21.

MR ALEXIS: Thank you. Now should we understand that before that telephone conversation and before the meeting that occurred with Mr Watkins the following morning, you had a meeting, which I think was a stand in meeting with the Premier on 17 March?---Yes.

And do we see you provide us with the detail of that in paragraph 19?---Yes.

40 And you record there that the Premier was extremely shocked and angry that the property had been purchased without cabinet approval?---Yes.

Do you recall what she actually said on that subject?---She, it came up, I had it on my agenda to speak to her about it, but she actually raised it and said, "We've been looking at the possibility of purchasing the, a property called Currawong." And I made the comment, "What do you mean thinking about buying it, you did. It was, the exchange was the day before." And that's when she expressed her disappointment that this had happened and also raised the issue how could it happen. There was, I gave approval to negotiate. I expected it to come back before her and the cabinet committee.

That hadn't occurred so why did that happen? And mentioned also the caretaker situation.

And was it in the result of that, was it in the result of that that she asked you to speak with the leader of the Opposition and brief him about the purchase?---Yes.

10 And was it then that you prepared that briefing note that we went to earlier?
---Yes. And I had mentioned to the Premier the action I planned to take to get to the bottom of the whole thing.

And did that include informing the Premier that you had decided to move Mr Watkins aside pending the outcome and investigation?---Yes.
Are you able to recall Mr O'Reilly, about what time on 17 March that stand in meeting with the Premier occurred?---I'm sorry?

Are you able to recall to mind about what time of day on 17 March that stand in meeting with the Premier occurred?---Around 3 o'clock.

20 Now did you, in this context, seek some advice from the department's general counsel to see whether or not you were alone in your interpretation of the Premier's letter?---Yes.

And what did you do in that regard?---The advice I received from general counsel was that, no, there should not have been confusion about the word negotiate and also that the matter required investigation.

30 So after that you then spoke with Mr Watkins on the evening of 17 March?
---Yes.

And you conveyed what you tell us in paragraph 21 of your statement. Is that so?---Yes.

And it was the result of that conversation that you then agreed I think to meet with Mr Watkins early the following morning in a coffee shop at the Governor Macquarie Tower?---Yes.

40 And should we understand the reasons for meeting in the coffee shop rather than in your office as relating to what you've set out in paragraph 23, mainly that you wanted to keep the issue and this conversation one of low visibility?---That's right.

Now do we then see in paragraph 23 that you've set the essence of what was discussed with Mr Watkins during this meeting at the coffee shop?---Yes.

And should we understand that you made fairly plain to him your interpretation of the Premier's letter and that it was one to negotiate but not execute and exchange a contract?---Yes.

And you also told him that you'd obtained legal advice from Paul Miller?---
Yes.

MR BRANSON: Is he E-R or A-R?

MR ALEXIS: I think A-R.

MR BRANSON: It doesn't matter. Sorry.

10

MR ALEXIS: And I think it's fair to say Mr O'Reilly that there was
discussion which sought to persuade you not to implement what you had
decided to do with respect to Mr Watkins' position?---Yes.

Now in paragraph 24 of your statement you tell us that you engaged the
Internal Audit Bureau on 18 March, 2011. Do you see that?---Yes.

20 Should we also understand that it was on that day that you prepared both a
letter and an instrument that was then sent to Mr Watkins concerning his
ongoing tenure?---Look, because I don't have the source documents with
me, it was on or around that time.

Well let me take you to what I hope is the source document which is behind
tab 16 of Exhibit 1. And behind tab 16 you will see firstly a letter under
your hand to Mr Watkins bearing the date 18 March, 2011?---Yes.

And that proposes the instrument of removal unattachment?---Yes.

30 And is there any doubt about that letter being prepared and executed by you
on that date?---No.

And if you turn over the page, I'll refrain for the moment referring to page
numbers, but you see the next document - - -?---Yes.

- - - is the instrument to which I just referred?---Yes.

And also bearing the date 18 March, 2011?---Yes.

40 Now were those documents prepared by you and signed by you shortly after
your early morning meeting with Mr Watkins in the coffee shop on 18
March, 2011?---Well they were prepared by general counsel under my
instruction.

But at about what time during that day do you recall the preparation of them
being complete in a form which enabled you to sign them as we see behind
tab 16?---Yeah, from memory it took a bit of time because having discussed
the issue with Mr Watkins, who expressed his concern about the visibility of
him not being in his office and, and the fact that there was, there was

allegations and there was an independent investigation going on, we needed to work out whether or not he could still have some delegations, but not in the LMPA environment. So hence those, the wording at the bottom, made as a consequence of the removal. Mr Watkins no longer exercised the functions of the afore associated position Offices of Chief Executive of the Harbour Foreshore Authority, et cetera, et cetera. We just had to confirm by going through the acts what actions we could to safeguard should there be a problem, that Mr Watkins wouldn't be exercising delegations in the future.

10 Now how long did the café meeting, which I think you've told us commenced at about 7.30am go for?---Oh 45 minutes to an hour.

And during that discussion what did you convey to Mr Watkins about what was going to occur after that discussion concluded?---What I explained to Mr Watkins is the matter I thought was serious. I wanted an independent investigation conducted. I intended to remove him from office. That's when we got to the discussion about could he remain in the position and I told him that I'd be formerly advising him of those actions that day.

20 And is it in that context that we see in the bottom of, at the bottom of page 9 of your statement, in paragraph 23, what you've attributed to Mr Watkins, namely he said to you, "Don't do that, please don't do that because it will spread like wildfire when they don't see me in the office"?---Yeah, Mr Watkins was referring to, to removing him completely from any role or any position within LM, Land and Property Management Authority. That's what he was referring to. I could understand his concerns, particularly because it wasn't an allegation, an investigation had to be underway, the caretaker period and rather than seeing Mr Watkins be on, under suspension so to speak he could still perform the duties of the surveyor general and one
30 other position so that he could still go to his office. There was no need for anyone else to know that there was an investigation underway and that was agreed upon.

All right. Now, are you able to tell us at about what time that day the letter behind tab 16 and the instrument was sent to Mr Watkins?---Look, I'm sorry, I, I couldn't pick a time.

All right. Now, in paragraph 25 of your statement you tell us that you received a number of telephone calls from Minister Kelly, do you see that?
40 ---Yes.

And you preface that by referring to a point in time "after I stood down Watkins". Do you see that?---Yes.

Now, can I seek to get the timing of this clear. What do you mean by after I stood down Watkins in connection with the receipt of the telephone calls from Minister Kelly?---It could have been that day or within a couple of days of that occurring.

And when you say that occurring do you mean the early morning discussion with Mr Watkins at the café - - -?---Yes.

- - - which I think you've told us occurred for about 40 minutes from about 7.30am - - -?---Yes.

10 - - - or do you mean after the sending of the letter behind tab 16 with the instrument of removal?---Look, from memory it was probably the same day, it was probably after Warwick was told, after I'd told Warwick what I was intending to do. I'm assuming Warwick reported that to his minister.

THE COMMISSIONER: Mr O'Reilly, do you know, can you recall how your letter dealing with the standing down was given to Mr Watkins? Was it sent to him, posted to him or hand-delivered to him?---I think I asked for it to be hand-delivered.

That day?---Yes.

20 MR ALEXIS: Now, Mr O'Reilly, you tell us in paragraph 25 that you received a number of calls and you then tell us that you had not informed Minister Kelly what you were doing in relation to Mr Watkins before you stood him aside, do you see that?---Yes.

Now, I think you said a moment ago that you assume that Mr Watkins had told his minister what you had informed Mr Watkins that morning. Have I got that right?---Yes.

30 Is that what you assumed? Can you tell us why you make that assumption? ---Well, only, I wasn't aware that the Premier had spoken to Minister Kelly the night before. Having spoken to Warwick that, it must have been the same night that the Premier spoke to Minister Kelly and then my follow up meeting with Mr Watkins the next morning, I made the assumption that given that Mr Kelly then called me that he was informed that Warwick had been stood aside. Now, I didn't tell him so I assume Warwick did.

40 And can I ask you to recall to mind what Mr, Minister Kelly said to you during the first of those various telephone conversations?---Mr Kelly was surprised that there was a problem. He expressed that he couldn't understand why there was any issues associated with the finalisation of Currawong.

What was the problem he referred to?---Being that, the word negotiate as against purchase.

I see. All right?---And he said he was surprised about that, he couldn't understand what the, what the problem was. I then explained that well, I have to investigate it, the Premier has concerns et cetera and, and he rang

maybe once or twice after that not, and I want to impress upon everyone that it wasn't to intimidate me or to do anything like that, it was look, we're in caretaker mode, if Warwick (not transcribable) this could impact on him and his professional career.

Now, during the conversation over the telephone with Minister Kelly do you recall any reference to the Internal Audit Bureau and their appointment to investigate the matter?---Only that I said it would be done external to Premier's and Cabinet which is called the Internal Audit Bureau.

10

And well, perhaps you could look at paragraph 25 of your statement on page 10 and if I could just draw attention to what you tell us there about the conversation, just passing over the reference to this issue impacting on Mr Watkins' career, do you see at the foot of that page you record or at least attribute to Minister Kelly that he said, "I believe Warwick acted correctly," do you see that?---Yes.

And then you say, as set out in your statement, "I have appointed IAB, we'll sort all this out?---Yes.

20

And he then made some reference, according to your statement, "Warwick is being punished here by you," and you then respond in the way that you've set out in your statement. Do you see that?---Yeah.

So is there any doubt in your mind that when you had the conversation or conversations with Minister Kelly that you've told us about, you conveyed to him that the IAB had been appointed and would be carrying out an investigation?---No, there's no confusion there.

30

Now, was it also apparent from this conversation that you had with Minister Kelly that he and Minister Kelly well understood that Mr Watkins had been stood down?---Yes.

And that Minister Kelly understood that you had stood him down because Minister Kelly had committed the government to the purchase of Currawong without authority?---Well, I didn't know who had committed the government. That was the whole reason why I wanted the investigation, to work out who approved what, whether or not the transaction was fair and reasonable, all the valuations, all of that process side.

40

And what I think you're saying to us is that Minister Kelly well understood from your conversation with Mr Watkins had been stood down because there was a question that required investigation?---Yes, yes.

As to whether or not he had committed, if it be Mr Watkins, that he had committed the government to the purchase without authority?---Yes.

And that that's why the IAB had been appointed to investigate the matter?

---Yes.

Thank you.

THE COMMISSIONER: The burning issue was authority?---Yes.

MR ALEXIS: Now, Mr O'Reilly, in relation to - - -?---Excuse me, can I just make a comment on that - - -

10 Yes, of course?--- - - - point, Commissioner? It, the burning issue was initially authority but I also, knowing that the Premier had expressed well, how did this happen? How much and why and all the rest, that I did ask for more detail than just the authority, I wanted to know, you know, who did the valuations, what was the value, where did the financing come from, that's what I was after for - - -

THE COMMISSIONER: These are matters that would ordinarily be dealt with as a matter of routine procedure?---Absolutely, absolutely.

20 And you wanted to see whether they had been and how?---Yes.

And you made that clear?---Yes.

To the minister?---No, it was to, because we were in caretaker mode I wrote to what I, I explained to Warwick, Mr Watkins, what I was after. I got the first briefing that I understand Mr Watkins and Mr Costello prepared. That came to me. I then thought no, I need more information and I also sent a email followed up by a letter to Mr Costello asking more detailed questions.

30 MR ALEXIS: Now, in relation to the investigation you tell us in paragraph 24 of the drafting of terms of reference, do you see that?---24, sorry.

THE COMMISSIONER: 24 in your statement?---Yes.

MR ALEXIS: And if I could ask you to look at Exhibit 1, the tender bundle and open it to the documents behind tab 17. And just passing over the first document which is an email from the investigator to Mr Watkins and the letter that was attached to that email do we come to the terms of reference which set out the specific matters in paragraphs A to E inclusive?---Yes.

40

And should we understand that subsequently those terms of reference were amended and extended to include other matters requiring investigation the terms of which are set out in the document behind tab 18?---Yes.

And if you go to tab 18 behind the email from the investigator to Mr Watkins we see the terms of reference which have the expanded subject matters from paragraphs A to J inclusive?---That's right.

Thank you. And I think it's plain, Mr O'Reilly, that matter A in both the first set of terms and the amended set of terms of reference relate to the issue of Mr Watkins' authority?---Yes.

Now, Mr O'Reilly, could I bring you through to paragraph 28 please of your statement, Exhibit 4A. And you see you tell us there that on 25 March Ms Pettersson who was the investigator from IAB sent you a list of questions by email, do you see that?---Yes.

10 And just so that we get the timing of things clear this is one week after you met with Mr Watkins in the café in the Governor Macquarie Tower on the morning of Friday, the 18th?---It was probably that, around that time, yes.

And this is the Friday before the state election on Saturday, the 26th?---Yes.

Now, if I can ask you to go to tab 21 of Exhibit 1?---Yes.

20 And we see there the email from Ms Pettersson to you of 25 March, is that the email that you're referring to in paragraph 28 of your statement?---Yes.

And when you read that email did you particularly note under the first subheading entitled Background a reference to a letter dated 28 February, 2011 from Minister Kelly to Mr Watkins the terms of which are then quoted in the email?---Yes.

30 Now, when you received this email from the investigator and you read its content did you react to the reference in it to that letter of 28 February, 2011 and if you did what was that reaction?---Well, it was the first time I'd actually seen this letter or extract from that letter and I was surprised because had I had that letter and I'd been told that I'm being – there's an investigation or whatever into whether or not I have the authority to do that I would've straightaway produced that letter because that actually – the wording in that gave the authority to Warwick or Mr Watkins to be able to carry out that complete transaction. And having not, having only at this, what was a later stage, having seen that for the first time I couldn't understand why it suddenly appeared out of the blue.

40 And is that because you appreciated when you read the terms that had been quoted in the investigators email to you that if the letter was genuine in terms of its date and content it may well have vindicated Mr Watkins' position?---Absolutely.

And so, having received that email did you take any steps to try and verify the authenticity of both the date and content of that communication referred to in the investigator's email?---Yes, I did.

And what did you do?---There's a minute called Ministerial and Parliamentary Services, it's known as MAPS as an acronym, who often look

after the – or look after the IT systems for minister’s offices and, and I felt, well, if that letter’s there that actually brings the issue about authorisation to a close.

THE COMMISSIONER: That letter’s where?---If that letter is on the records the - - -

10 Is that TRIM?---TRIM. Yes, if it’s on there that will actually save this whole problem with regards to the authorisation. They couldn’t find it, they also said that they didn’t have access to that material because they didn’t look after the Minister for Lands and Property’s IT system so I then thought, well, the only way I can find the authenticity of the date of that letter was to actually request the ICAC to do their forensic search of the computer.

MR ALEXIS: Now, did you seek some advice from the LPMA about the existence of the letter, that is, the letter from Minister Kelly to Mr Watkins bearing date 28 February, 2011 on the authority’s IT systems?---No. Because, because the matter was now at the stage where it was – we had an independent investigation going on, we were well into the caretaker period,
20 I removed Warwick from the duties of the CEO, I checked with Mr Costello about access to the computers, I was told at that time, I think it was a Sunday, I was told that the computers had been wiped as a result of the change to government and so I asked for the computers to be secured.

And as you understood it were the computer systems secured?---I was advised by Mr Costello that it happened.

THE COMMISSIONER: That it happened?---Yes, that he had secured them and I then gave that information including the location to the ICAC.
30

MR ALEXIS: Now, did any of those steps, and from what Mr Costello told you, lead you to be able to conclude one way or the other as to whether or not the letter and the content of the letter as set out in the investigator’s email to you of 25 March was genuine or not?---No.

Now, do you recall on Friday, 25 March speaking with Mr Costello about subjects other than the securing of the IT systems?---Look, I’m not too sure whether it was 25 March, I did have discussions with Mr Costello from the time the investigation was underway until probably the Sunday after the
40 computers were secured.

Just have a look, if you don’t mind, at the document behind tab 22 of Exhibit 1 and you will see, Mr O’Reilly, that we have an email from Mr Costello to you of 25 March, 2011 which is the Friday before the state election on the Saturday sent that afternoon, do you see that?---Yes, yes, I do.

And do you see the opening part of that email refers to a discussion - - -?
---Yep.

- - - that's put my Mr Costello as occurring a couple of hours ago?---Yes.

And then he refers to having put the attached together to better explain delegations and funding sources, et cetera. Do you see that?---Yes.

10 Now does that assist in you recalling to mind what the discussion was that he's put a couple of hours before the dispatch of this email?---Not really. I'd need to go back to see when the questions came from IAB, the supplementary questions to see if that date, then I, if because of the questions I then contacted Mr Costello to find out further information for IAB.

If you come back to the document behind tab 21, to which I've already referred, you'll see that the investigator - - -?---Oh that's, yep.

20 - - - sent you the email raising the questions - - -?---That's probably it.

- - - particularly the letter. And you'll note the time of dispatch of the email 12.54pm, Mr Costello is responding to you at 17.39. Do you see that?
---Yes.

So the timing would rather suggest wouldn't it that - - -?---Yes.

- - - out of the subject matter of your conversation with Mr Costello at least was the questions that the investigator had asked you?---That's right.

30 Well can you recall to mind whether that's so or - - -?---That would be the case. That's, 'cause I mean when I was looking at it cold, that's why I said it could have been because of the IAB, IAB sent me this on midday, half past 12.00, I then got on to Mr Costello. I would have also got on to Treasury and sent them a list of questions that, that came up that they needed, as you can see page 2 of that number 21, is questions for the Treasury. I would have sent that to Treasury to get answers from them. And I would have asked Mr Costello can he provide any information with regards the process for where the funds come from and that sort of thing.

40 Well just if I can explore a little further what you mean by that sort of thing. If you look for example at the attachment to Mr Costello's email behind tab 22. You'll see that the attachment is a document headed, Acquisition of the Currawong Site, Summary of Delegations and Funding Model. Do you see that?---Yes.

And the first subject matter deals with delegations?---Yes.

And the second subject matter deals with funding sources that you see continues over the page culminating in a description of the funding model for acquisition. Do you see that?---Yes.

10 Now just come back if you would to the email from the investigator behind tab 21. Can you tell us please what your best recollection is as to the subject or subject matters that you asked Mr Costello to think about and respond to you on, which led to him responding to you at 17:39 that day?---Look from, from memory, I'm thinking it could be that where it says the exchange of
10 contracts on 15 March, 2011 was reliant upon funding from the Sydney Regional Development Fund and a contribution from Pittwater Council of land owned by the council. It could have been in connection with that, saying well what's this Sydney Regional Development Fund? That's the funding source side of things.

THE COMMISSIONER: So you were querying the funding source?
---Yeah. I am assuming that it does relate to this, the reason why Mr Costello sent me that. But obviously I spoke to him because he says I refer to our previous conversation a few hours earlier. So I'm assuming it is this
20 and it's about, also there's a question here, I'm just looking, about the \$5 million delegation. That's a question to Treasury. Treasury don't necessarily, Treasury don't give the financial delegations to departmental heads, ministers do. So I would have had to confirm that what was the financial delegation Mr Watkins had as given under ministerial delegation to him.

MR ALEXIS: Now, Mr O'Reilly, you've already told us, I think that when you got the email from Ms Pettersson you'd read and noted the reference which you saw as a reference for the first time - - -?---Yes.

30 - - - to the letter from Minister Kelly to Mr Watkins of 28 February, 2011 and the content set out in the email?---Yes.

And you've already told us I think that that surprised you because if the letter as to its date and content be genuine then it might vindicate Mr Watkins' position, do you remember saying that?---That's right.

40 Now, did you raise that subject, and just so we're clear, the reference to that letter in this email with Mr Costello when you spoke to him on the phone?
---I don't think I did.

Well, could I invite you to look at the document that Mr Costello sent to you behind tab 22 and do you see in the attachment to that email under the subject of delegations, do you have that?---Yes.

And after setting out the essence of the financial delegations arising with respect to LPMA and like activities, do you see the paragraph commencing, In regard to this particular transaction identified in brackets as the purchase

of Currawong, there is a then a reference to that letter of 28 February and you'll see that its terms are then set out?---Yes, but - - -

Now, the question I wish to ask you is this: does that assist in you recalling to mind that when you spoke to Mr Costello some hours before you raised with him the fact that you had seen or learnt of the existence of a letter of 28 February, 2011 from Minister Kelly to Mr Watkins?---Look, I, I may have, that, that would make sense.

10 THE COMMISSIONER: It would make sense but it seems to me that you don't have a recollection today?---I don't have a, I don't have a clear recollection, I'm sorry.

MR ALEXIS: And perhaps I should add to the mix of matters for consideration the fact that when you spoke with Mr Costello I gather you understood that he was the corporate secretary and chief financial officer of the LPMA?---Yes.

20 Hence your reference to questions about funding?---Yes.
All right.

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

MR ALEXIS: Now, Commissioner, I'm about to finish so could I perhaps finish - - -

THE COMMISSIONER: Sure.

30 MR ALEXIS: - - - and then that will assist all of my learned friends I think. Now, Mr O'Reilly, in your supplementary statement I think you deal with the receipt of the email that I've just asked you some questions about Mr Costello behind tab 22, is that so?---Yes.

And we should understand from what you tell us in paragraph 5 that when you gave this statement to the Commission in early June you were then unable to exactly recall, and I'm in paragraph 5 - - -?---Yeah.

40 You were then unable to exactly recall if the email and the attachment were sent voluntarily or if you asked for the information as a result of the questions from the investigator, do you see that?---Yes.

Is that still your position?---Well, having now seen the source documents, because I didn't have access to these, I would be comfortable in assuming that this information from Mr Costello came as a result of me asking him questions following the material from Linda Pettersson.

And after receiving Mr Costello's email behind tab 22 and the attachment should we understand that you then passed that material on to the investigator, Ms Pettersson?---Yes.

Yes. Thank you, Commissioner, that's all I wish to ask Mr O'Reilly.

THE COMMISSIONER: Thank you, Mr Alexis. The Commission will adjourn 'til 2.00pm.

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LUNCHEON ADJOURNMENT

[12.59am]