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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 TUESDAY 28 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: Mr Alexis.

MR ALEXIS: Thank you, Commissioner. If we can have Ms Pettersson recalled.

<LINDA PETTERSSON, on former affirmation [10.07am]

10 THE COMMISSIONER: You're still under the oath that you took yesterday, Ms Pettersson. The section 38 order continues to apply to you? ---Ah hmm.

MR ALEXIS: Ms Pettersson, yesterday afternoon before we adjourned I had taken you, I think, to the email that you had received behind tab 20 of Exhibit 1, if you would be good enough to open that please, which was the unsigned statement of Mr Watkins, you recall that?---That's right, yes.

20 And I asked you whether or not you'd read it before you conducted the recorded interview with Mr Watkins which I think occurred on 23 March, is that right?---That's right.

Now, could I show you please this document, with a copy for you, Commissioner, and we have multiple copies for distribution. I might just pause, Ms Pettersson, while the copies are being distributed so that everyone can follow?---Ah hmm.

Do you have a copy, Commissioner?

30 THE COMMISSIONER: Yes, I do. Unfortunately our technical facilities have broken down so as I understand it we're not in a position to display this, we know, so that in addition means that members of the media will not be able to, as I understand it, obtain copies of these, but we should try and have more available so that anybody who wants copies will be able to get them as soon as possible. If that can be arranged it would be appreciated. That applies to all exhibits that are, all documents that are tendered.

40 MR ALEXIS: Of this particular document, Commissioner, I understand that there are enough copies available to provide a small army of people so in this particular case I think we should be okay.

THE COMMISSIONER: Right.

MR ALEXIS: Now, Ms Pettersson, could I ask you to turn to the second page of the email stream and can I just firstly confirm that at the bottom of that page we have the start of the email stream which we see behind tab 20 in Exhibit 1, that is, the email under cover of which you were sent the unsigned statement from Mr Watkins?---That's right. Yes, I see that.

And then if we move up the page we see that you've responded to that with thanks and then at the top of the page and you're starting at the bottom of the first page, the receipt of Mr Watkins' email due on 23 March, early that morning it seems, to draw attention to some, some errors that he picked up in checking his statement. Do you see that?---Yes, I see that.

And so you had all this before you conducted the interview with him I take it?---That's right, yes.

10

Now, we see in the next email which is about halfway down the first page of the bundle that you sent to Mr Watkins on Saturday, 26 March the copy of his record of interview from the previous Thursday, do you see that?

---That's right, yes.

And we should understand that that was sent for the purpose of enabling him to read it and check it and make any corrections that were appropriate?

---Yes, that's right.

20

And so do we see then at the top of the page the response from Mr Watkins that provided the corrected record of interview?---Yes, if it's there.

If we turn over the first two or three pages do we then see the commencing page of the interview that you conducted with Mr Watkins?---Yes.

And when you received this as a scanned attachment to the email of 28 March did you understand that the handwritten amendments to the document which is otherwise in a typed form were amendments made by Mr Watkins under his hand?---Yeah, that's correct.

30

Now, should we understand that in preparing your report you read the typed record of interview in addition of course to what you'd heard Mr Watkins say during the course of that interview?---Yes, that's correct.

And could I ask you please to just go to the record of interview on page 4, if you just go to the page numbering in the middle of the top of each page. Do you have that?---Yes.

40

And do you see that the subject matter of authorisation was raised by you, you see the reference LP next to line 6?---Ah hmm, yes.

And we then have, do we, Mr Watkins' answer to the question that you raised there from lines 10 down to 39?---Yes, that's right.

And should we understand that in dealing with the subject of authority he dealt with not only the communications culminating in the Premier's letter that we spoke of yesterday but if we look at, for example, from line 30 and following Mr Watkins said in his interview, "Subsequently in discussions

between the minister and myself when this letter was received we discussed that and we discussed the caretaker and all the things material to that and I subsequently received what I regard as a direction from the minister clearly articulated and I will find it, the quote, that is the letter dated by Tony Kelly on 28/2 and I read onto the record,” and then just pausing there if you would turn if you would in Exhibit 1 to the document behind tab 10, should we understand Ms Pettersson that during the course of this interview where Mr Watkins said that he wanted to read into the record and then he appears to have quoted something, he was holding in his hand and quoting from the letter, a copy of which we see behind tab 10 at page 47B of Exhibit 1?
10 ---Yes. I mean, look, I don’t remember specifically that he was holding that document in his hand but it makes sense that he was if he was quoting directly from it.

And do you then see from line 41 on that page you raised a question concerning consideration being given to the caretaker conventions?---Yes.

And we see his response from line 44 over the page. And do you see at the top of page 5 from about lines 3 and 4, Mr Watkins refers to meeting with his corporate counsel of the organisation, “Corporate secretary, chief financial officer and my chief of staff went through and analysed the whole situation. The analysis was over the letters I had received and the direction from the minister, the history of this going back to 2010 et cetera?” Now, the direction that he was referring to there, can I understand what you understood him to be meaning by that?---The case that I believe he was attempting to make was that there had been a history of ministerial involvement and engagement with the process and that all of that was culminating in providing approval to purchase the Currawong site.
20

Mmm. If I can just ask you to come back to page 4 and if I could just go back without reading to what I drew attention to earlier between lines 31 to 34. And do you see particularly on line 33 the reference to Mr Watkins referring to what he had received from the minister as a direction? Do you see that?---Yes, I do.
30

And so what did you understand over the page on page 5 line 5, Mr Watkins to be referring to when in responding to the question concerning the Caretaker Convention, Mr Watkins was referring to that direction from the minister?---Well, I, again I understood that although he was answering a question regarding the Caretaker Convention, he had come back to the question of whether he had the authority to pursue the purchase, that there was a history to that authority and that there was in fact a direction from the minister that he do so.
40

THE COMMISSIONER: And what was the direction?---The direction was that he would finalise the- - -

Was the direction, sorry to interrupt, but was the direction contained in a, in a letter of was it some separate direction?---The direction that I understood was the direction in the letter of the 28th of the 2nd.

MR ALEXIS: Now, Ms Pettersson, perhaps to round off the point, if I could ask you to come down on page 5 of this record of interview to the question you asked at line 33, a question about capacity to carry through the transaction. Do you see that?---Yes.

10 And then a couple of lines down you see Mr Watkins responded to your question from say line 38, "I was operating under the approval given by the minister in the briefing note of October 2010 where he clearly gave me approval to negotiate up to the amount of 13 million. That was subsequently reinforced in his letter of approval to me and direction on 28 February post receiving the advice from the premier?"---Yes, I see that.

20 So should we understand that in this interview when Mr Watkins was referring to a direction from the minister or a direction from his minister, he was referring to the letter of 28 February which we find behind tab 10 of Exhibit 1?---That is how I understood it.

Thank you. Now, before you, let me withdraw that, I'm sorry. Commissioner, can I tender, please, the email stream ending in the email from Mr Watkins to Ms Pettersson of 28 March, 2011, which attaches the amended record of interview between Ms Pettersson and Mr Watkins.

THE COMMISSIONER: The email stream ending in the email of 28 March, 2011 at 10.08am, is Exhibit 7.

30 **#EXHIBIT 7 - EMAIL STREAM ENDING WITH EMAIL DATED 28 MARCH 2011 AT 10:08AM**

MR ALEXIS: Can you just pardon me a moment. Now, Ms Pettersson, you told us yesterday, I think, that you conducted a record of interview with Mr Kelly, that is, Minister Kelly shortly before you attending Mr Watkins' office and conducting the interview with him, is that so?---That's correct.

40 And can I show you please, and I will come back to this, but can I show you please the IAB report of 7 April, 2011 which is the first of the four volumes of that report and I'll ask you to come to Minister Kelly's record of interview behind tab 4. Now, Ms Pettersson, the typed record of interview that is contained behind tab 4 of the IAB report was that sent to Minister Kelly for review and certification as to its correctness?---No. Do you want me to explain what happened with that?

Well, let's just take it a step at a time if we may. After the interview was the transcript that we see in tab 4 of your report and on the screen otherwise provided to him?---No, it was not.

And why was that?---That was because the election happened on the weekend when the transcripts were being prepared. I did attempt to send it to him by contacting his advisor Mike Fleming on the Monday, the 28th of March, but I didn't receive any reply to my phone message to Mike Fleming regarding this matter.

10

All right. Now, after the transcript of that record of interview became available to you did you read it?---Yes, I did.

In the course of preparing your report?---That's right.

And did you assess the transcript for its accuracy having regard to the fact that you conducted the interview and no doubt made some notes during the course of it at the time?---That's right.

20 And did you satisfy yourself that its content was an accurate reflection of that interview that you had conducted with him?---Yes, I did.

Now, Ms Pettersson, can I ask you to come through to page 5 of that record of interview, again, following the pagination in the centre top of each page. And do you see that you've raised there the question of authority, and if you look at line 30, for example, there's your question relating to the letter from the Premier, do you see that? The letter from the Premier - - -?---Yes, I do, yes.

30 - - - clearly authorises the CEO to engage in direct negotiations, but there is nothing in the letter to suggest that he was authorised to enter into a legally binding agreement following those negotiations, you see that?---Yes, I do.

And is the reply that Minister Kelly gave you as we see set out there which starts with the response, "Not necessarily"?---Yes, I see that.

And then you see the following questions and answer from line 43 and following which raised the question about the budget?---Yes.

40 Minister Kelly telling you there provided there was also the proviso that was within the budget that seemed to be the main issue, do you see that?---Yes.

Then if I could ask you to come over the page, page 6, do you see at line 15 the question, "Did you discuss with Mr Watkins the terms or intent of the Premier's letter?---Yes.

And is that how Minister Kelly responded, "We both had the view that it authorised him to go ahead"?---Yes.

And then did you ask the question, "Did Mr Watkins make you aware beforehand that he was going to exchange contracts on 15 March?---Yes.

Do you see that?---Yes.

And do you see at line 22 Minister Kelly's answer, "No"?---Yes.

10 Is that an accurate recording of what - - -?---Yes, I believe so.

- - - he said in response to your question?---Yes.

And the further part, "I was with the Premier somewhere back in February, the end of February when these letters were done"?---Yes.

"I sent him a note subsequent to that but that was all done back in February - - -?---Yes.

20 - - - so I just assumed they would go ahead and do it. I think we were under the impression at that stage that they would be hopefully able to get it for that sort of money." Do you see that?---Yes.

Now, the note that is referred to by Minister Kelly in that letter, and just let me read it again for you, he referred to being "with the Premier back in February, the end of February when these letters were done. I sent him a note subsequent to that but that was all done back in February." Now, are you able to assist us with what the note was that Minister Kelly was there referring to?---I believe he was referring to the letter dated 28 February.

30 And just so we're clear that's the letter behind tab 10 of Exhibit 1?---Yeah, that's correct.

And what led you draw that conclusion from what he said?---Well, he was referring to a note, if you like, at the end of February. That, that was the only document I had that related to the end of February between Minister Kelly and Mr Watkins. The earlier letter of 25 February was from the Premier.

40 Did you understand from what Minister Kelly told you that in terms of existing documentation which authorised or led to the purchase that was all completed by the end of February?---Yes.

Thank you. Now, yesterday afternoon I took you to paragraph 33 of your statement, Exhibit 6A if you have that available to you and Commissioner, I should indicate that Minister Kelly's record of interview will be tendered as part of the IAB report. And you recall yesterday, Ms Pettersson, I raised with you what seems to have been Ms Colby's surprise at hearing of the existence of the letter of 28 February?---That's correct.

Now, by this stage I think you had received the letter of 28 February not only in the bundle that you'd obtained from Mr Costello, that's behind tab 9 - - -?---That's right.

- - - but also you'd received it as attachment K to the signed statement that Mr Watkins had provided to you?---That's right.

10 You'd also been told, I think, from what you've referred us to in the record of interview with Mr Watkins that the letter of 28 February was part of the paperwork authorising the transaction as he saw it?---That's correct.

And similarly you had from what Minister Kelly told you during the record of interview the reference to the paperwork being completed by the end of February and in particular to the note which you referred to as the letter of 28 February?---Ah hmm.

20 So when Ms Colby raised this surprise with you did you have any reason to think that the letter of 28 February, 2011 that had been the subject of all those communications was anything but a genuine letter?---No, I didn't believe so. I did have some concerns about the letter but I certainly didn't believe that it was anything but a genuine letter.

And was the concern that you had about it whether it was one that provided a written delegation within the meaning of the Public Finance and Audit Act?---That's correct.

30 And was it in that respect that you sought legal advice because you regarded that as a legal issue which was outside your area of expertise?---That's right, yes.

And so should we understand that you then made contact with the Department of Premier and Cabinet to arrange for that advice to be sought and obtained?---Yes, that's correct.

40 Thank you. And if I could ask you to go to your statement, please, and could we go to annexure 7, and if you could pass over your communication with Mr O'Reilly and the response from Treasury, we come to an email from Rachel McCallum to you of 28 March, 2011, at 6.12pm?

THE COMMISSIONER: Mr Alexis, I'm sorry, I didn't, I didn't make a note of where you were going to here.

MR ALEXIS: It's annexure 7 to Ms Pettersson's statement. The actual document is up on the screen if that's of assistance to you, Commissioner. Now, Ms Pettersson, does this assist in the timing of this part of your investigation that by about 28 March you had sought the advice and the

advice was sought in terms of what we see in the second-last paragraph of this email?---That's right.

And just let me read it so it's clear. The question was whether the former minister's letter dated 28 February, 2011, was an effective delegation for the purpose of the Public Finance and Audit Act?---That's right.

And did you subsequently receive advice in that respect?---Yes, I did.

10 Thank you. And if we just turn the page in your statement do we see the cover page of the advice from the State Crown solicitors dated 29 March, 2011, at the bottom of the page?---Yes, that's correct.

And is that the legal advice that you obtained on the question that I just read a moment ago?---Yes, that's correct.

20 So should we understand, Ms Pettersson, that in determining your investigation as we see in the terms set out in your report, it's absolutely crystal clear that you accepted for the purpose of your findings the genuineness of the letter of 28 February, 2011, the only issue was whether or not as a matter of legal opinion it was a delegation within the meaning of that Act?---That's correct.

Yes, thank you. Now, could I ask you also to look at, please, the document behind tab 22 of Exhibit 1, please. And, Ms Pettersson, do you see there that we have a copy email from Mr Costello to Mr O'Reilly of 25 March, 2011- - -?---Yes.

30 - - -which attaches the three-page document entitled Acquisition of the Currawong Site – Summary of Delegation and Funding Model?---Yes, I see that.

Now, in the course of your investigation before delivering your report, did you receive this email together with the attachment?---No, I didn't.

So should we understand that this email and attachment formed no part of your consideration or your report?---That's correct.

40 All right. Thank you. Now, Commissioner, could Ms Pettersson be shown, please, the four volumes of her report which I seek to tender for the purpose of having her identify them and then I'll tender them. Now, firstly, Ms Pettersson, should we understand that your report is a thirty-one-page document, the last page of which summarises the attachments to the report and is dated 7 April, 2011 under cover of a letter to Mr Eccles, the director general of the Department of Premier and Cabinet?---Yes. I don't have that document here, that folder here. Or do I? Oh, sorry, yes, I do have it.

So if we could just firstly identify that folder as the one containing your report together with the attachments referred to in the list which goes up to attachment 11?---Yes, that's correct.

Thank you. And then we have three folders which are referred to in the report as attachment A, attachment B and attachment C, do you have those?
---That's correct.

10 Firstly, is attachment A the folder of documents which were referred to in the signed statement of Mr Watkins which includes the attachment K that I made reference to earlier?---Yes, I believe so.

Thank you. And is attachment B to your report the folder of documents that you were provided with by Mr Costello when you attended the LPMA - - -?
---Yes, that's correct.

- - - offices I think on 22 March?---Yes, that's correct.

20 And the first document in that folder is the index that we've already referred to?---Ah hmm.

And is attachment C to your report a further bundle of documents to which you make reference in your report?---That's correct.

Thank you. Commissioner, can I tender those four volumes, the first as I say being the report, the second, third and fourth being the attachments to that report.

30 THE COMMISSIONER: Yes. The four volumes of the IAB report are Exhibit 8A to D respectively.

#EXHIBIT 8A – D - IAB REPORT AND ANNEXURES A, B & C (4 VOLUMES RESPECTIVELY)

40 THE COMMISSIONER: Ms Pettersson, how long did you spend on, how many hours approximately did you spend from the time this matter was reported to you until the time you delivered your report?---Look, it's an approximation because I do have records of that but I just don't remember exactly, I think it was probably around 40 hours.

And did you work alone?---I worked alone largely, but I was in discussion with our other senior investigator Helen Colby and also at times Steven Horne who's the managing director of IAB Services. So we did have some conversations about, you know, about where it was going.

So would it be fair to say that you spent about 50 hours approximately in investigating this matter on the basis of the letter of 28 February was a genuine letter?---Yes. Yes.

MR ALEXIS: Commissioner, to resolve some slight confusion at the bar table could I ask you to repeat the exhibit reference to the report.

THE COMMISSIONER: 8A to D.

10 MR ALEXIS: Thank you very much. Commissioner, that's all I have for Ms Pettersson.

THE COMMISSIONER: Yes. Mr Branson, can you tell me, let me into the secret that you have with Mr Curtin. Who goes first?

MR CURTIN: Well, - - -

MR BRANSON: I think he's keen for me to go first and until the tender of - - -

20

THE COMMISSIONER: I'm sure you'll gratify him.

MR BRANSON: - - - 8A, B, C and D I wasn't going to ask Ms Pettersson anything. Can I have ten minutes just to look - - -

THE COMMISSIONER: Ten minutes?

MR BRANSON: Two minutes, one minute? I'm not criticising my learned friend, I mean, I've been to these commissions and things, it's the way of the world.

30

THE COMMISSIONER: All right. Well, perhaps you can, let's just proceed with Mr Curtin first to see whether he's in a position to start.

MR BRANSON: Thank you, your Honour.

THE COMMISSIONER: Mr Curtin, do you also need time?

MR CURTIN: No, no thank you, Commissioner.

40

Ms Pettersson, do you have Exhibit 7 with you and if not, might it be shown?---Thank you.

Tell me if you need the folder which is Exhibit 8A which were Mr Watkins' attachments that he sent to you, that in those attachments, in addition to the backdated letter of 28 February Mr Watkins also provided you with a copy of Minister Kelly's letter to the Premier of 9 February, 2011?---That's correct.

And a copy of the Premier's reply to Minister Kelly of 25 February, 2011?
---That's correct.

And if you can just turn please to page 4 of the record of interview in Exhibit 7, if you go to line 41 there is your question to Mr Watkins about the caretaker conventions. Do you see that?---That's correct, yes.

10 And commencing at line 44 he mentioned to you some discussions he had with Minister Kelly and then in line 46 said to you, "We noted that the response from the Premier," but that response was the Premier's letter of 25 February, 2011 is that right?---That's how I understood it.

Thank you.

THE COMMISSIONER: Sorry, Mr Curtin, I'm lost. Do you mind just telling me where you are?

MR CURTIN: Line 46.

20 THE COMMISSIONER: What page?

MR CURTIN: Page 4.

THE COMMISSIONER: That's the, the interview between Ms Pettersson and Mr Kelly?

MR CURTIN: That's correct.

30 THE COMMISSIONER: And, and you - - -

MR CURTIN: Oh, sorry, no, between Ms Pettersson and Mr Watkins.

THE COMMISSIONER: I see. My mistake so - - -

MR CURTIN: Exhibit 7.

THE COMMISSIONER: Yes, I have that. Yes, thank you.

40 MR CURTIN: So in line 46 on page 4 of the record of interview in Exhibit 7 Mr Watkins said to you that he and Minister Kelly noted the, the response from the Premier being the Premier's letter of 25 February, 2011 as you understood it?---Ah hmm.

Is that right?---Yes, that's right.

It was dated some three or four days prior to caretaker, now that date of caretaker was 4 March, 2011?---Ah hmm, yes.

And then Mr Watkins expressed to you or said to you "I believed then that the Premier was not only conscious of caretaker but consciously and demonstrably gave us the approval to go ahead and purchase with the full knowledge that caretaker was only a few days away"?---Yes, I see that.

And as, as you understood it what Mr Watkins was referring to in that sentence was the Premier's letter of 25 February, 2011?---Yes, that's correct.

10 Yes. Thank you, Commissioner.

THE COMMISSIONER: Thank you, Mr Curtin. Other than Mr Branson, is there anyone else who would like to ask Ms Pettersson any questions? Yes, Mr Dunne.

MR DUNNE: Ms Pettersson, do you have Exhibit 7A in front of you?

THE COMMISSIONER: 7A?

20 MR DUNNE: Sorry, 6A, excuse me. That's your statement of 26 May? ---Ah hmm.

If I could take you to paragraph 16 of your statement, page 5 of 11 numbered at the bottom?---Ah hmm.

And that indicates, you indicate there that on 22 March you attended on the LMPA offices?---Ah hmm.

30 And if you turn over the page, the following paragraphs indicate that you held interviews with Mr Kelly and Mr Watkins?---Not on the 22nd. Those interviews were two days later.

On the 24th?---On the 24th, yes.

Okay. Now, following the 24th, perhaps not on the 24th but maybe a couple of days later, do you recall having a discussion with Mr Costello at all? (not transcribable)---Look, I don't in particular but if you give me a subject about then I might recall then.

40 Do you recall a conversation where Mr Costello asked, used words to the effect of, while you're here, when are you likely, when am I likely to be scheduled for an interview?---Yes, I do.

And do you recall responding words along the lines of, we've taken the decision not to interview you or Stephen Fenn?---I recall saying to him that I had decided that I didn't need to interview him. I- - -

Mr Costello?---Mr Costello. I don't recall referring to Stephen Fenn.

Thank you. And at the time of that discussion were you able to form an opinion as to whether Mr Costello expected or wanted to be interviewed? ---I believe he expected that he would be interviewed and I regard that expectation as being quite reasonable, but given the terms of reference as they were, from my point of view he didn't seem to be particularly relevant because the terms of reference were very much framed around Mr Watkins and Mr Kelly. So, and I saw Mr Costello's role as being one more of the traditional CFO role, which is to assist and advice et cetera, but not necessarily to be executing these sorts of purchases.

10

Thank you. No further questions.

THE COMMISSIONER: Yes, thank, you. Ms Fisher?

MS FISHER: Ms Pettersson, my name is Fisher. I represent Pittwater Council?---Ah hmm.

THE COMMISSIONER: Do you mind speaking up, Ms Fisher?

20 MS FISHER: Can you hear me now?---Yes, I can.

Do you have Exhibit 1 in front of you?---Mmm.

Ms Pettersson, if you could turn to tab 18, you'll see there an email that you sent on 21 March, 2011?---Yes, I see that.

If you go down to numeral 8- - -?---Yes.

30 - - -you'll see there that you've requested, correct me if I'm wrong, but you've requested documents, is that right, in relation to the matters set out at 8?---That's right.

Is it the case that you made no direct inquiries of Pittwater Council in relation to the matters that are set out?---That's correct, yes.

Thank you.

THE COMMISSIONER: Mr Halstead, do you have any questions?

40 MR HALSTEAD: (not transcribable)

THE COMMISSIONER: Pardon?

MR HALSTEAD: No, nothing.

THE COMMISSIONER: No. Mr Branson?

MR BRANSON: Your Honour, I just spoke to my learned friend (not transcribable) Could we just look at these attachments to Ms Pettersson's report overnight? I think it unlikely that- - -

THE COMMISSIONER: Yes, certainly.

MR BRANSON: And then we'll get her back at a time convenient to everybody.

10 THE COMMISSIONER: Perfectly in order.

MR BRANSON: (not transcribable) Thank you.

THE COMMISSIONER: Perfectly in order. Ms Pettersson, thank you for your evidence. You may be called back, depending on whether Mr Kelly's legal representatives want to ask you any questions having read the annexures to your report, which they have not yet had an opportunity to read. You may well not be asked to come back, but if you could hold yourself available, please?---Ah hmm. Okay. Thank you.

20

THE WITNESS WITHDREW

[10.49am]

THE COMMISSIONER: Mr Alexis?

MR ALEXIS: Commissioner, can I now call Mr Anthony Robert Pooley.

THE COMMISSIONER: Mr Pooley. Mr White?

30

MR WHITE: Commissioner, Mr Pooley proposes to give an affirmation and also seeks a declaration pursuant to Section 38.

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

40

PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY MR POOLEY AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON

**OBJECTION AND ACCORDINGLY THERE IS NO NEED FOR HIM
TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR
ANSWER GIVEN OR DOCUMENT PRODUCED.**

THE COMMISSIONER: Will you administer the affirmation please.

THE COMMISSIONER: Mr Alexis.

MR ALEXIS: Thank you. Sir, is your full name Anthony Robert Pooley?
---It is.

10 And should we understand that you are currently occupy, I withdraw that,
I'm sorry. Currently work as a consultant?---No, that's not correct. I'm a
public servant at, in the Department of Ageing, Disability and Homecare.

Thank you. And in this particular matter you provided a statement of
evidence to the Commission dated 8 June, 2011. Is that so?---Correct.

Can I show you a copy of your statement and a copy for you,
Commissioner.

20 THE COMMISSIONER: Thank you.

MR ALEXIS: And Mr Pooley, is that a copy of the statement to which we
refer?---It is.

Thank you. And is the content of that statement true and correct?---Yes, it
is.

Thank you. I tender that statement, Commissioner.

30 THE COMMISSIONER: Yes. Mr Pooley's statement is Exhibit 9.

**#EXHIBIT 9 - STATEMENT OF MR TONY POOLEY DATED 8
JUNE 2011**

MR ALEXIS: Now, Mr Pooley, should we understand from paragraph 4
that you were formerly the chief of staff of Minister Keneally when she was
made a minister after the 2007 state election?---That's correct.

40 And when Minister Keneally was appointed the Premier you then occupied
the position of deputy chief of staff?---Correct.

And in that capacity should we understand - or those capacities, I should
say, you had a range of responsibilities over various ministerial portfolios?
---Yes.

And in relation to matters of planning, should we understand that that was predominantly dealt with by a gentleman known as Brad Welsh?---We're talking about while I was in the Premier's office?

Yes?---Yes, that's correct.

Thank you. While the Premier was the Minister for Planning I think it was Darryl Watkins who was Minister Keneally's then deputy chief of staff, is that so?---Correct.

10

And he was largely involved in and responsible for communications concerning the Currawong matter?---Correct.

And we should understand, I think, that it was Mr Darryl Watkins that attended the site visit to Currawong with Minister Keneally as she then was as planning minister as part of the deliberations concerning the assessment of the development application under part 3A?---Yes.

20 Now in paragraph 9, if I can just come to some relevant detail, paragraph 9, Mr Pooley, you tell us that when Minister Keneally became the Premier the Currawong matter was handed to Mr Welsh, do you see that?---I do.

30 And what should we understand that to, that to mean and perhaps you could explain it in this context: Minister Keneally as planning minister when she became Premier I think Mr Kelly became the Minister for Planning so how did it transpire that the Currawong matter was handed to Mr Welsh is really what I - - -?---Well, within the Premier's office there was a number of half a dozen-odd policy advisers and each policy adviser had a range of portfolios that they were responsible for and planning was substantially dealt with by Mr Welsh within the Premier's office.

Now in December of last year do you recall just before Christmas having a conversation with Mr Welsh concerning the subject of Currawong?---I do.

And do we see that conversation set out in paragraph 9 of your statement over to the top of page 4?---Correct.

40 Now, we see in paragraph 9 on page 4 that Mr Welsh responded to your questions by referring to Minister Kelly's office and the putting up of a budget committee minute, do you see that?---I do.

Now, in this conversation did you learn who it was that Mr Welsh had spoken to about that subject matter?---I assumed it was Stephen Fenn but I could not give you an absolute guarantee.

So the conversation didn't elaborate on to whom he was referring when he said in the conversation to you, "I said what we always say to Kelly's office, put up a budget committee minute."?---Correct.

And you assume it was Mr Fenn because Mr Fenn was Minister Kelly's Chief of Staff, is that so?---Correct.

And it was with Mr Fenn that Mr Welsh had regular communications, I gather, on this subject matter?---Absolutely.

10 Now, in paragraph 11 of your statement you refer to an occasion when you were working in your office in the Governor Macquarie Tower when, as you refer to there, Mr Kelly approached you with a letter addressed to the Premier, do you see that?---I do.

Now, are you there referring to Minister Kelly?---I am.

And is your evidence that it was Minister Kelly who delivered the letter, in effect, seeking the Premier's authority to negotiate - - -?---Absolutely.

- - - with respect to Currawong?---Absolutely.

20 And before you, Mr Pooley, there should be a bundle of documents and if it isn't it will be shown to you, it's Exhibit 1 in this inquiry. And could I ask you please to open that bundle to tab 8 and within that tab you come through to page 43, do you have that?---I do.

Thank you. And you'll see that you've copied the letter to which I think you're referring to in paragraph 11 of your statement, is that so?---Correct.

30 Now, can I just draw your attention to the handwriting in the top right-hand corner of page 43. You see it says original delivered by hand to Tony Pooley 9.30am today, do you see that?---I do.

And does that accord with your recollection about the time at which the letter came to you from Minister Kelly?---It does.

40 Now, if I could bring you back to paragraph 11. When you gave this statement to the Commission back on 8 June was the conversation that you set out in paragraph 11 based on recollection or had you made some notes about this or was there any other record which enabled you to set out the conversation that you have in paragraph 11?---There were no notes that I made, it's a recollection of that discussion.

And your recollection was at the time of your statement, and I gather still is, that Minister Kelly said to you, "This is about us commencing formal negotiations for the purchase of Currawong."?---Correct.

Now, should we understand, then, that after receiving that letter you put it in a sleeve, placed it in the Premier's urgent tray and then you followed that up

with the Premier about a week or so later as we see in paragraph 13 of your statement?---Correct.

Now, were you involved at all in a gathering of ministers and minister, staff members at the ANZ Stadium on 16 February, 2011?---No, I was not.

Do you recall speaking with Darryl Watkins after the occasion that occurred at the ANZ Stadium and speaking to you about the subject of Currawong?
---I recall having had a very brief discussion about the fact that Kelly and
10 Keneally had got together at an event the previous night or two nights
previous or something like that.

And did he say anything to you about what, if anything, ought to happen as a result of that get-together and that discussion between the minister and the Premier?---If he did I don't recall what that, what that was.

Well, do you recall that he told you that there had been the discussion and that the Premier was content for approval to be given for negotiations to occur?---I must say I don't recall those specifics.
20

Do you also recall him saying to you that there would have to be, or there was a need for correspondence to be initiated to confirm the agreement to negotiate?---I certainly have a memory of me saying something like, yeah, I've got to get a response back to the Kelly letter.

And following those events did you then set about the task of drafting a response?---I think it was followed up again by Stephen Fenn, I recall having a conversation with him in which he said, you know, we need a response to the letter. I said I'd get it organised, this all happened within a
30 couple of days. I went back and saw the Premier, it wasn't easy to get to see the Premier at this stage, but I went and saw the Premier before I commenced any preparation of a response and I'd said, "Have you spoken to Kelly?" And she said words to the effect of, "Yes, yes, you know, it's fine for them to negotiate, do me a letter."

All right. And the communication with Mr Fenn, I think, we see in paragraph 14 of your statement. Can I just check that with you?---Yes.

All right. And then in paragraph 16 you tell us about the steps taken to
40 formalise the position by drafting the letter?---Correct.

Now, is there any doubt in your mind that when you were instructed by the Premier to draft the letter, the letter was to convey an intent to permit negotiations but nothing more?---Correct.

And if you look at the letter which came to be executed by the Premier behind tab 9 of Exhibit 1, that's the folder in front of you, Mr Pooley, if you

come through to page 47A which is the last of the three pages behind tab 9. Now, that's the letter you drafted which was signed?---That's correct.

Now, at paragraph 17 of your statement you refer to a budget committee and in the last sentence of paragraph 16 you refer to that same subject by telling us that there was no intent for the property to be purchased without a formal submission to the budget committee, do you see that?---I do.

10 And can you tell us the basis upon which you then understood, and by "then" I mean at the time you drafted the letter, that there was no intent for the property to be purchased without a formal submission to the budget committee?---It just never occurred to me that the property would be purchased without a minute to budget committee or Cabinet and for there to be an approval of all of those matters that surround the purchase of a property of this kind such as value for money, what else was involved in the negotiation, what was the link with Pittwater Council, you know, those were the kind of things that would all be detailed in a budget committee or Cabinet minute and then a decision would be made on whether the purchase proceeded.

20

But how did you know that would be the applicable procedure in this particular instance when you were preparing the letter?

---Well, all instances like that were subject to a budget committee minute. The whole time that I'd worked for the Premier, you know, we were constantly asking, you know, you'd, you'd get approaches from officers and the response was always, prepare a minute.

All right.

30 THE COMMISSIONER: Prepare a minute for the budget committee?
---Budget committee. Look, budget committee or cabinet. I mean, they're a bit interchangeable.

Mr Pooley, can you just elaborate on that. Are you talking about proposals for the purchase of land or, or what are you talking about?---I'm talking about the allocation of funds, proposal to purchase land, I mean, most things that require money have a process that goes through either budget committee or cabinet.

40 Does, does the amount involved have any bearing on the decision whether to send it to the budget committee or cabinet or not?---Well, I certainly dealt with budget committees much smaller than \$12million.

Like how much?---Two million. One million. You probably wouldn't put up a budget committee for hundreds of thousands of dollars.

But once you're talking about millions, that's the ordinary course?
---Ordinary course.

Is that what you're saying?---That's (not transcribable) Yeah.

MR ALEXIS: Now, Mr Pooley, in paragraph 17 you speak of an alternative formal process in the absence of a budget committee. Do you see that?

---I do.

10 And you describe that as one whereby the proposal can be examined by the treasurer and the Premier in order to assess aspects such as value for money, et cetera. Do you see that?---Sure.

20 Now, do you have a recollection at the time the letter was prepared of any alternative process as you there describe being implemented with respect to the purchase of Currawong?---No. My intention was, in that paragraph is to suggest that once we've entered caretaker, the whole of government didn't come to a halt, but there was an additional process that was required in order to seek the approval of funds to purchase a property such as this, solely because we were in caretaker mode. And that would involve an agreement at the executive level of government, Premier, treasurer, usually the other members of budget committee and then a brief would be prepared which would also require the signature of the Leader of the Opposition.

Right. Now, can I ask you to come through then to paragraph 20 of your statement. And you there tell us that both Minister Kelly and his chief of staff, Mr Fenn, to your knowledge were aware of the Caretaker Convention provisions. Do you see that?---I do.

30 And then you go on to explain why you had that knowledge and you example the circumstances relating to another matter which led ultimately to Minister Kelly receiving a direction I think from the Premier not to grant any Part 3A approvals under the Environmental Planning and Assessment Act during the caretaker period?---That's correct.

Now, in relation to Mr Fenn, what, what is it that enables you to say that he was well aware of the Caretaker Conventions as well?---Well, because he rang me after they received that letter.

40 And the letter you're referring to is the letter relating to the Part 3A- - ?
---Part 3A and re-zonings, a couple of other things, yeah.

Now, could I come through to the events of 16 March and you deal with that I think from paragraph 25 of your statement where you tell us about the receipt of a telephone call from Mr Fenn. And is that your best recollection of what he said during the conversation?---Yes.

Simply that he said, "We've bought it" and then you responded as we see?
---Absolutely, yeah, I was surprised.

And why were you surprised?---Well, I knew there hadn't, hadn't been a cabinet committee process and I knew we were in caretaker.

Now, in paragraph 27 you refer to some emails that passed between you and Mr Fenn and I think attachment B to your statement contains some but not all of those emails. Is that so?---Just, sorry, I'm just going to have a look at, attachment B to my statement is, appears to be the letter, sorry, the letter from the Premier to Mr Kelly, sorry, I don't, have I got a different attachment B?

10

THE COMMISSIONER: Just go over the page?---Sorry, just the - - -

MR ALEXIS: The page after the Premier's letter - - -?---Oh, sorry.

- - - should have in the top right-hand corner the words "attach B", do you see that?---The page after the Premier's letter has a letter from Pittwater Council on it, headed C. Sorry, am I looking in the wrong spot?

MR BRANSON: It's another one of my documents, your Honour.

20

MR ALEXIS: No, it's actually not one of my learned friend's document because it actually - - -

MR BRANSON: (not transcribable)

MR ALEXIS: - - - does contain the document I'm going to.

30

Mr Pooley, for the convenience of everyone else in the room, if we come to the end of your statement proper the first attachment is the minister's letter to the Premier, followed by the Premier's reply, we then should come to the third page which is headed "Attach B", do you have that?---I do.

Thank you. Now, about halfway down that page I think we have part of the email chain whereby Mr Fenn is sending on 16 March a communication about him still chasing the contract?---Correct.

40

And may we understand that at this point in time you were seeking to try and tie down some details as to what had actually occurred so that you could properly inform the Premier?---That's correct.

And then I suppose that explains the email above which causes you to ask the question, "What is the date of contract exchange"?---Absolutely.

So just coming back to paragraph 27 of your statement please, were there any other communications at all with Mr Fenn about the subject matter of the contract having been exchanged, particularly relating to questions of authority?---The next, apart from chasing the brief which was going to detail the steps, you know, I had subsequent conversations or email

exchanges but it was more by that stage after we got some inquiries from the media and that kind of thing. I, I, I, in terms of, you know, I chased the brief and, you know, I, I got the brief a day or two later.

And if we can just turn to the brief and go to tab 15 of Exhibit 1 in the folder before you, Mr Pooley, tab 15. Is that the brief to which you were referring?---(NO AUDIBLE REPLY)

10 You see on page 69 it's dated 16 March and it has the various attachments referred to in it?---Correct, yes.

And you'll see at page 68 down the bottom of the page the date 15 February is crossed through with the handwritten word "March", do you see that?---I do.

And that's the matter that you picked up when you read it as we see in paragraph 18?---Yeah, that's my March. I wrote March on that brief.

20 I see. All right. Thank you. I think initially you were relieved to see the date 15 February because it was before caretaker but - - -?---Partially relieved 'cause I still didn't think we, there'd been the cabinet committee process but it certainly would have been better if it was, contracts were exchanged in, in February.

And once you got the brief and once you made that handwritten amendment that we've just spoken of did you then walk the brief down to Mr O'Reilly? ---That's correct.

30 Now, in paragraph 30 of your statement you tell us about the receipt of a phone call from Mr Fenn shortly after this and I gather you mean by that shortly after receiving the brief, is that so? Paragraph 30 of your statement?---Yes, yes.

40 And can I ask you to explain why you told him then that this was a disaster or this is a disaster?---Well, I guess I was thinking about two things, certainly that we were in caretaker and that, you know, it had been signed in the middle, the contracts had been exchanged in the middle of caretaker mode, I was still only convinced from the brief that there had been an appropriate Cabinet committee sign-off.

Well, then in paragraph 31 you're referring to the basis of some comments and then in the next line – I withdraw that, I'm sorry. In the second sentence you say, "I told Fenn that all he needed to have done was to get a brief to the budget committee and that Keneally would sign it and send it over to O'Farrell to sign.". Do you see that?---I do.

Is that part of the same telephone conversation?---I imagine it is, yes.

And then over the page, top of page 11 of your statement you've recorded that Mr Fenn said to you, "Oh, we just thought we had the approval to do it." You see that?---I do.

Now, did you ask any questions at all of Mr Fenn about the basis of what he said to you there about thinking they had approval having read the brief?---I didn't then, but I'd had an earlier email exchange with, with Mr Fenn in which, you know, when I initially expressed surprise before I even saw the brief he said, "No, no, we've got approval to do it." And he sent me the two
10 letters, the 9 February letter and the Premier's response on the 25th. And I remember responding to him saying, "I know all about the letters, but where's the approval to purchase?" So I hadn't, I didn't follow it up at that stage because I, I think I understood his view. They took the 25th of February letter as approval to purchase the property.

But, Mr Pooley, after you got the minister's letter and the Premier's reply you must've thought, well, that doesn't satisfy me that approval had been given?---No, no, it certainly didn't and hence why I sought a brief.

20 And you got the brief which we've just gone to behind tab 15?---Sure.

And when you read the brief no doubt having particularly looked at paragraph 2 and paragraph 2.4 which in terms refers to the Premier's letter so that wouldn't have satisfied you that approval had been given?---It, it certainly didn't.

Right. Well, when Mr Fenn is telling you in this conversation after you had walked that brief down to Mr O'Reilly as we see at the top of page 11, "We just thought we had the approval to do it" what did you say to him?---I can't
30 recollect exactly what I said to him. I, I felt I made it clear that I didn't share his view that the letter of 25 February was approval to purchase the property.

But, Mr Pooley, didn't you try and get to the bottom of this because you had to brief the Premier didn't you?---Well, I did, but having received the brief personally thinking it had, it indicated some inadequacies I then provided it to the Director-General and I think he indicated that he would look at it and advice would be provided to the Premier.

40 So do you have a recollection of taking this issue up further with Mr Fenn, perhaps not in this conversation but in a subsequent conversation?---Well, I suppose it indirectly came up in subsequent conversations when we were preparing media responses and so on.

And how was it dealt with?---Well, in a sense after the preparation of the brief and me handing it over to the Director-General for him to deal with as he saw fit and, you know, beyond the management of certain media inquiries I didn't think I had much of a further role.

You collected, I think, a briefing note from Mr O'Reilly which we see referred to in paragraph 32 of your statement and conveyed that to the Premier, is that so?---That's correct.

And did you read that briefing note from Mr O'Reilly?---I did.

10 And did you understand that that briefing note raised some questions as to whether or not the purchase occurred with authority?---I certainly do recognise that that's what the brief indicated. It- - -

Now, I'm sorry?---Sorry. It indicated further things than I had considered because it raised the issue of the monetary limit which hadn't previously occurred to me.

20 Now, I can take you to that briefing note from Mr O'Reilly if you wish me to, but did the fact that you looked at that briefing note and conveyed that to the Premier cause you to think about the basis upon which the transaction had been authorised, given that Mr Fenn had sent you the briefing note which referred to nothing more than the Premier's letter?---Ah, yes, I, I, I, I think, I believe I did, it did occur to me ah, you know, the briefing note had a number of things. It had 25 February response, it had the original 9 February letter and it had the two, two pages on the front and all I can suggest is that the briefing note prepared by the Director General concurred with my view about the difficulties associated with the purchase, with additional matters.

30 All right. But having provided that to the Premier, having seen the Premier endorse it by reference to it being necessary to refer to the then Leader of the Opposition, you then spoke further with Mr Fenn, didn't you?---Ah, I did have a subsequent discussion with Mr Fenn in which he, he wanted to know where, kind of where we headed from, where we were going to head from there. And this was also in the context of some media inquiries.

40 Well, if we look at paragraph 35 of your statement, we see, don't we, that in the days after this all occurring, particularly in the context of some media attention, you had a conversation and Mr Fenn asked you what was going to happen to Mr Watkins? "This is all done for the right reasons." Do you see that?---I do.

Now, did that provide an opportunity to discuss with Mr Fenn the basis upon which the transaction occurred, having regard to the fact that he had only previously provided you with the Premier's letter and the briefing note behind tab 15?---It didn't, because there was a subsequent process which was then commenced from that time which was the IAB inquiry and, you know, that would, you know, it was my view that that would explore all the aspects of the sale.

Did he ever tell you in any of these conversations that you've referred to in your statement and told us about this morning, that the minister had signed a letter giving authority on 28 February to permit Mr Watkins to carry out negotiations and to execute relevant papers?---He did not.

Thank you, Mr Pooley.

THE COMMISSIONER: Mr Branson?

10 MR BRANSON: I'll probably be twenty minutes.

THE COMMISSIONER: Yes. Would you care to cross-examine?

MR BRANSON: Certainly. Mr Pooley, when did you first become aware of the proposal that the Currawong site be a state park?---There had been talk of a, of it being incorporated into a state park in approximately the middle of 2009, at the time at which the then minister for planning had declined the 3A, given it a Heritage order and referred it back to Pittwater Council. There was certainly talk at that time about, you know, possible
20 purchase, incorporation into a state park.

Was that at the time that Ms Keneally was the minister?---For planning, yes.

And were you chief of staff at that time?---I was.

Do you agree that at that time you had a full understanding as to what was then proposed?---Sorry, can you repeat that question?

30 Do you agree that at that time you've just mentioned, you had a full understanding as to what was then proposed for this- - -Oh- - -

Excuse me?---Sorry.

Currawong site, did you?---I'm not sure that I had a full understanding.

Well, let's go forward to the letter of 9 February that was received by the Premier from Mr Kelly. Do you want to get that in front of you please?
---Sure.

40 Find it and then read it to yourself again please.

THE COMMISSIONER: Do you know where it is, Mr Pooley?---I've got it.

MR BRANSON: Now, are you familiar with the, with the material set forth in that letter today?---I am.

Or do you need to remind yourself?---Well, I'll just finish reading it again.

You see, I want to suggest to you, Mr Pooley, first of all that you, you read that letter some time after it had been received in the Premier's office?
---That's correct.

And you, you read it and examined it for the purpose of dealing with it on behalf of the Premier, correct?---I read it with a view that I would have a subsequent discussion with the Premier about it.

10 Now, when you read it prior to the subsequent discussion did that resuscitate your memory about some of the matters that you become aware, had become aware of back in 2009 about the proposed state park?---I thought it was a fairly accurate summary of some of the issues surrounding Currawong. I, I wouldn't say that the state park issue was at the forefront of my mind but it was a summary of a number of the things that had occurred in relation to the Currawong site.

20 But you agree that when you read it that, this letter of 9 February between Mr Kelly and the Premier set forth in quite elaborate detail the nature of the proposed acquisition and the reasons why that acquisition should be given approval to proceed?---I agree that it was an accurate summary of many things that had occurred with the Currawong site and I saw it as a request to negotiate for the purchase of the site.

I didn't ask you that, did I? Can you just respond to my question? I'll repeat it for you. Did you see that letter as an accurate and detailed summary of a proposed acquisition of the Currawong site? Did you or did you not?---I suspect so, yes.

30 You suspect so. Well, have you got some doubt about it?---Well, no, what I saw was I received a letter which I took to be a request of the Premier for Mr Kelly and Mr Watkins to negotiate on the purchase of a property.

All right. Did you see any deficiencies in this letter in terms of the information being conveyed by Mr Kelly to the Premier about the proposal?
---I saw no deficiencies.

40 Thank you. Now, in the subsequent discussion with the Premier can you tell us the substance of, of, of that please?---It was an initial discussion in which I said, "Have you seen the Kelly letter?"

Yes?---She said, "Yes, I, you know, I have to talk to him." Then another couple of weeks elapsed, there was the discussion with Fenn, you know, we need a response. I went back to the Premier and said, They're chasing a response to, Kelly's office is chasing a response to the letter and she said, Yes, I've spoken to him or words to that effect and, you know, send them a letter back authorising the negotiations.

Right. And at that time was it your understanding that the proposal was to go ahead?---No.

THE COMMISSIONER: Mr Pooley, what is said to be a proposal to purchase land ordinarily in your experience would the proposal refer to the purchase price or would it not refer to the purchase price?---It would certainly, it would refer to the purchase price. You know, the, the whole process of the, the cabinet process details issues such as purchase price, how it fits into a broader plan, what the justification for is, that's, that's all the
10 detail that is included in a cabinet minute, including history of the site.

MR BRANSON: Are you finished, Commissioner?

THE COMMISSIONER: Yes.

MR BRANSON: But you see, the letter from Minister Kelly described much of that sort of detail that you've just referred to in your last answer, didn't it?---It did.

20 Yes. And you've told us in your statement you dictated the response that was subsequently dated 25 February I think you left it for the Premier, she took it home and the next morning Friday, 25 February she'd signed it and, sorry, did you walk it around to Mr Kelly's office or somebody else?---No, but I asked somebody to hand deliver it to Kelly's office.

Thank you. Right. Now, we're not debating that the nature of the authorisation, can you please understand?---Sure.

30 So can we just focus on some other aspects of this transaction. Now, from your perspective as the Deputy Chief of Staff of the Premier on 25 February when this letter was signed, well, you received the signed letter and you despatched it off to Minister Kelly's office, was it your understanding that negotiations may lead to the purchase of the site for the purposes of a state park?---My understanding on the, the response was yes, you can negotiate and I considered that there would be a further process which would agree or not to the purchase of the property.

40 Well, can we just come back to my question. 25 February, at that time that you despatched that letter signed by the Premier to Minister Kelly did you understand that negotiations may lead to a purchase of that site for a state park, yes or no?---Not without another process.

Look, can you respond to my question.

THE COMMISSIONER: That's a fair answer.

MR BRANSON: Well, your Honour, I'll try again.

THE COMMISSIONER: That's my ruling, it's a fair answer.

MR BRANSON: Well, I accept that, your Honour, I do, but I mean, it's tedious. Did you have any doubt that negotiations would not lead to purchase of the site as a state park as at 25 February?---Well, I was unable to say that, I didn't know what the, what the expense was, I didn't know what the source of funds was, I didn't know what the broader plan was. It is not conceivable to me that a two paragraph response from the Premier was an approval to purchase the property.

10

Well, we'll leave that alone. Now, you didn't find out about the purchase, you say, until Tuesday, 16 February, is that correct?---That's correct.

Right. And then I want to suggest to you that when you did find out about it that you were, that morning, busying yourself, as evident by these emails, with the preparation of a media release with respect to that acquisition, do you agree?---No. When I first heard about it I was, I don't believe that there had been a media request at that stage when I first heard of the purchase of the property.

20

Well, let's go to the email traffic can we? Have you got, it says on the top of my copy attachment B and there's a chain of emails that relevantly commence - - -

THE COMMISSIONER: That's an attachment to your statement, Mr Pooley?---I've got it, yes.

MR BRANSON: Thank you, Commissioner. Now, can you just read those to yourself starting at the bottom and going up to the top and then I'll ask you some questions please?---So starting at the bottom of the first page of attachment B I don't believe I saw that, that correspondence.

30

Right. What about when, well, please go ahead, I don't want to interrupt your - - -

THE COMMISSIONER: I just would like to make sure that I've got the right document. This is the document that's headed Attach B?

MR BRANSON: Yes.

40

THE COMMISSIONER: And you're asking Mr Pooley to look at page 1 of that?

MR BRANSON: Yes.

THE COMMISSIONER: That is the one that commences, Stephen?---Right at the top it says Stephen Fenn and it's from Stephen Fenn to Warwick Watkins.

That's right?---16 March, 9.58am.

Yes?---And there appear to be four emails, unless my counting's gone wrong, Your Honour.

No, that's correct. So you, you, and they start from the bottom going up, do they?---Correct, Your Honour.

10 Yes. You, you, you understand that, Mr Pooley?---I do, I do.

And you've been asked to read from the bottom up on that front page?
---I understand.

MR BRANSON: Please let us know when you've done that?---I've done that.

All right. Now, I think just in, in general fairness, could I trouble you, please, just to read over, there's a number 2 at the bottom of the, of the page
20 over, just so that there's no suggestion of any ambush about page 1?---Yes, I've done that.

All right. Now, just tell me, please, if you agree that this is the position as evident from the two emails, one on Wednesday, 16 March, sent to you by Stephen Fenn at 9.10am and the response from you to Mr Fenn on 9.35am. And the first question is this, that do you agree that it doesn't appear just from those emails that you were calling into question, vis-à-vis Mr Fenn, that contracts had been exchanged. Correct?---Well, I was seeking the date for the contract exchange.
30

Yes. I agree, yeah?---Yeah. And I indicate that I'm conscious we're in caretaker mode.

Yes?---And that was in my mind in that exchange.

Was there anything else in your mind?---Ah, well, I would generally say I wasn't aware of whether there had been the additional process I spoke to before.

40 Yes?---The approval.

All right. Now, in, in the third sentence of your email to Mr Fenn sent at 9.35am, you state, "The boss is very keen to talk to BOF before any announcement is made. Cheers, Tony." Now, can you explain to the Commission what you had in mind when you sent that message to Mr Fenn at that time on that day?---Well, if it was all organised and an announcement was going to be made, because it was in caretaker the Premier would need

to speak to the Leader of the Opposition in order for, or prior to that announcement being made.

But there's, there's not, there's not the, the tense, that expression used by you, "The boss is very keen to talk to BOF", meaning thereby Mr O'Farrell. Correct?---Correct.

10 "Before any announcement is made." Does that not suggest that as at that moment in time, so far as you were concerned, there's no particular issue and that an announcement should be made to indicate that the purchase of the Currawong site had taken place?---Ah, no, that isn't ah, the situation. I was concerned that we were in caretaker. I was concerned about the approval, and given that we were in caretaker I was concerned to ensure before any announcement being made, I've already been given an indication that it could get out shortly, that the Premier would need to speak to Mr O'Farrell.

20 And if you go back, can I just, just ask you this so I'm clear. The, the email traffic passing earlier that morning between Warwick Watkins, Fenn, copies to Costello and Charlie (not transcribable), was that, was that attached? It was forwarded to you, wasn't it?---I, I, I am making the assumption it was there.

30 And, of course, that letter from Warwick to Stephen – sorry, the email from Warwick to Stephen sent at 7.05am on Wednesday, 16 March said in its second half, the sentence commencing, "Accordingly, that gives a period up to Tuesday of next week so that would be 22 March. The announcement of the purchase of Currawong and the creation of the larger Pittwater state park, the close cooperation and support of council (not transcribable) the government has responded to the concerns of the community." New sentence. "I suspect that if an announcement is made this week/weekend that it may well leave anyway." And presumably you read all of that before you sent your email to Mr Fenn at 9.35am that day. Correct?---I, yes, I would've (not transcribable) yes, absolutely.

40 Now, do you want to revise your answer to my question about the third sentence of your email of 9.35am which says, "The boss is very keen to talk to BOF before any announcement is made, cheers, Tony." Now, do you not agree that was a very positive indication by you that putting aside the precise timing of the acquisition of the site that you, I should say, the New South Wales government wish to make an announcement that the site had been acquired for a state park. There's no negatives there, are there? ---Well, it's - - -

Are there?---It's unusual, it's unusual that the Premier would seek to want to talk to the Leader of the Opposition before a government announcement and I can only suggest at the time that I sent the email at 9.35 I was concerned about two things and I was concerned that if the contracts had been

exchanged during caretaker that the Premier would want to speak to Mr O'Farrell?

Yes. When did caretaker mode commence?---4th of March?

And this is 16 March, 12 days later?---Correct.

10 Right. But you didn't voice any concern that the 12 days had passed, that the acquisition may have taken some time in the preceding 11 or 12 days, did you?---Look, at that stage - - -

Did you?---At that stage I wasn't exactly sure when the contract had been signed hence I was seeking that information.

Did you speak to the Premier about the acquisition of the Currawong site prior to 9.10am, prior to 9.35am on Wednesday, 16 March, 2011, yes or no?---No.

20 You're absolutely confident about that?---I'm very confident.

You know, I'll just take you to the top email please, Mr Pooley, on attachment B, page 1 from Stephen Fenn to Warwick Watkins sent Wednesday, 16 March at 9.58am. Do I correctly understand that that was forwarded to you?---I don't recall it, I have to be honest.

30 THE COMMISSIONER: I'd like to find out because it's not clear to me what you receive, Mr Pooley?---No. I mean, that's an email that is directed from Fenn to Watkins, I'm not cc'd into it so I'm making the assumption that I didn't receive it, I certainly don't recall it.

With the email from Warwick Watkins to Stephen Fenn at 07.05am on March, the 16th which is the third email, I think, on the page, did you receive that?---I'm assuming it was attached to the, to the Stephen Fenn email, and I'm only, you know, I am assuming that from, this is the letter from council and I'm assuming that was kind of a summary of the letter from council, but I can't be 100 per cent certain, Commissioner.

40 MR BRANSON: We can probably sort it out, Commissioner, I mean, I just put it aside to my learned friend that - - -

THE COMMISSIONER: Yes, I'm just - - -

MR BRANSON: I mean, I don't want to be unfair to the witness.

THE COMMISSIONER: No, I think (not transcribable).

MR BRANSON: It's just not clear.

THE COMMISSIONER: Do you remember seeing this email or don't you?
---I, I don't, I don't recall the detail of the Watkins to Fenn cc'd to Costello
and Micali email, I don't recall that.

MR BRANSON: We can find out. Is that all right? Thank you. I'll, I'll
proceed. Do I correctly understand that, well, we better look at the letter of
25 February please Mr, from Premier to Mr Kelly. Can you just turn that up
please, sir. It's just before in one of these many bundles?---Sure.

10 Now you've told us that you drafted that for the Premier?---Yeah.

Or I think you dictated it to somebody in the pool typing area and gave it to
her to take home?---Sure.

Now, and it, it purported, did it not, in your perspective to respond precisely
to the request contained in the letter from Mr Kelly on 9 February?---It's
intended to respond to, to the 9 February letter, yes.

20 Now, do you agree that one of the matters of concern, quite appropriately,
was whether any proposed acquisition of Currawong as part of a state park
was whether any additional funds might be required from the annual New
South Wales budget?---That was one of the matters, yes.

Right. And do you agree I take it that the representation made in the letter
from Mr Kelly's office of 9 February was that there would be no additional
funds required from the 2010/2011 New South Wales budget, correct?
---Correct.

30 Right. Now, could I just suggest to you that you could have but did not
stipulate in that letter on behalf of the Premier that it was necessary and
appropriate that a budget committee or cabinet minute be obtained prior to
concluding negotiations, that's a hypothetical but do you agree that you
could have specified that?---Yes.

Did you give any consideration prior to dictating the letter for the Premier as
to whether or not it was appropriate that a stipulation to either effect be
contained in that letter?---I didn't because it, it didn't occur to me that it
would proceed without such an event.

40 And I think you've explained what in your experience as a senior public
servant was the usual alternative, namely refer to budget committee or the
cabinet?---Correct.

Correct. All right. Excuse me, your Honour. I beg your pardon, I'm under
riding instructions, Commissioner, improperly. Can I just take you please,
sir, to your statement, sorry, here we go. This is, it's called love on the run.
Now, I just want to put this to you and apologise for doing it this way and,
and Mr Alexis will re-examine if there's any unfairness to you and I don't

intend any, and I'll just indicate the source of this, that you know Mr Darryl Watkins who was on, on the staff of Mr O'Reilly?---No, he was on the staff of the Premier.

Whose is this? I'm sorry, Commissioner. This - - -

THE COMMISSIONER: No, no, take your time.

10 MR BRANSON: - - - it's unsatisfactory - - -

THE COMMISSIONER: Take your time.

MR BRANSON: - - - and I apologise to you.

THE COMMISSIONER: No, no, that's quite all right. I think you, do you, you may just need to take a couple of minutes to speak to your instructing - - -

20 MR BRANSON: Would you mind? I'm sorry, Commissioner, it's just that it, I had my plan and properly this is not an unimportant matter and it will be last topic for Mr Pooley?

THE COMMISSIONER: Do you want an adjournment?

MR BRANSON: Could I have, could I cover it at the morning break if you are having one?

THE COMMISSIONER: I don't have morning breaks.

30 MR BRANSON: You don't have them? I'm going to have to get my nurse and attendant here to help me up or something. I can do it now, yes. Well, let me just put this to you, and the reference for the Commission and anyone else is paragraph 16 of Mr O'Reilly's statement. It's on page 5.

THE COMMISSIONER: Mr O'Reilly's?---Mr O'Reilly's statement? I don't know if I've got Mr O'Reilly's statement.

40 MR BRANSON: Yeah. Well, look, we'll have to come back to it. I mean, it's, it's, it's one of these things that I'm, I'm, I'm very lukewarm about but if you- - -

THE COMMISSIONER: Well, look, I- - -

MR BRANSON: Well, let me, let me ask you this.

THE COMMISSIONER: Mr Branson, before you ask, I'm quite happy to adjourn for five minutes, you can discuss the matter with your- - -

MR BRANSON: Thank you.

THE COMMISSIONER: - - -instructing solicitor- - -

MR BRANSON: Yes.

THE COMMISSIONER: - - -and you can decide whether or not- - -

10 MR BRANSON: Thank you.

THE COMMISSIONER: - - -the question- - -

MR BRANSON: It's an appropriate question. Thank you.

THE COMMISSIONER: We'll adjourn for five minutes.

MR BRANSON: Thank you, Your Honour.

20 **SHORT ADJOURNMENT**

[11.50am]

MR BRANSON: Thank you for that, Commissioner. I'm glad that I did walk outside because in fact the statement to which I tend to refer when I ask this question of Mr Pooley is that of Ms Keneally.

THE COMMISSIONER: Right.

30 MR BRANSON: And it's at page 5 of 8 of her statement.

THE COMMISSIONER: And- - -

MR BRANSON: At paragraph 16.

THE COMMISSIONER: It was Exhibit 2.

40 MR BRANSON: Yes. Thank you, Commissioner. Can you just turn that up, please, Mr Pooley. I apologise to you, sir, for misleading you before the break. Just let me know when you've read all of that, please.

THE COMMISSIONER: What, what paragraph number was it?

MR BRANSON: Oh, 16, Commissioner. I apologise.

THE COMMISSIONER: No, no, fine.

MR BRANSON: So have you got the other page?---Yep. I've finished it.

Thank you very much. Did you ever say to Mr Darryl Watkins, member of the Premier's staff, those words that are in parentheses, "It appears that Warwick Watkins has concluded the negotiations with Currawong and there may be a successful outcome." Did you ever say that to the Premier?---I, I, I, I certainly never said them to the Premier, I was talking to Darryl Watkins.

Sorry. I'm sorry. This is most unsatisfactory, Commissioner?

10 THE COMMISSIONER: No, no.

MR BRANSON: I hate doing this on the run and it's a new matter. No, I apologise again. Did you ever say to Mr Darryl Watkins on 16 March, "It appears that Warwick Watkins has concluded the negotiations with Currawong and there may be a successful outcome?"---I don't recall those words. I, I certainly was in regular contact with Darryl Watkins and I think I would have indicated to him that I understand, you know, a contract has been exchanged.

20 All right. Now, can I just ask you this final question. From the email traffic on the morning of Tuesday, 16 March, between 7.05am and 9.58am, do you agree that it appears at least during that period of nearly three hours that, well, first of all that people had become aware that contracts had been exchanged to acquire the Currawong site by the government?---I, I certainly agree that I'd been informed that contracts had been exchanged.

All right. And that so far as one can discern from that email traffic, that there appeared to be no issues that, that, that people were then aware of. Correct?---Ah, well, I couldn't agree with that on my part. I was concerned that it was in caretaker and I was, I was seeking a brief as to the process for the purchase.

30

Well, where does it say there you were seeking a brief in that three-hour period?---It doesn't.

It doesn't?---No.

Well, can we just confine ourselves to that three-hour period approximately? ---Sure.

40

Yes, as you've pointed out, you're in caretaker mode and had been for twelve days. Correct?---Correct.

Right. All right. And, and my, my final question is do you agree that it appears from that email traffic during that approximately three-hour period that there, there was not any particular inhibition in a media release being made once the Premier had spoken to Mr O'Farrell?---I, I, I can't really give you that assurance. I, I- - -

I'm not asking for an assurance, sir?---Okay.

Do you agree that it appears so far as one can discern from that email traffic over a period of three hours that two things were going to happen, one the Premier's going to talk to Mr O'Farrell and two, a media release was going to be issued within a period of seven days?---Yes, I accept that that, it appears that way.

10 Thank you, Commissioner, and thank you, Mr Pooley.

THE COMMISSIONER: I just want to make sure about this email stream. Is that, does that have an exhibit number?

MR BRANSON: Not separately.

THE COMMISSIONER: Where is it? Is it part of, part of Mr Pooley's statement is it?

20 MR BRANSON: Yes. It would be inappropriate to mark it separately I suppose, Commissioner.

THE COMMISSIONER: Well, you, Mr Branson, are you, you did raise the possibility that you were going to find out I think from Mr Alexis something about the email of 16 March at 9.10am.

MR BRANSON: And, and what, what was forwarded and what was not.

THE COMMISSIONER: Yes.

30

MR BRANSON: And may I seek the indulgence of requesting that your staff and/or those reporting to Mr Alexis directly seek to make those inquiries?

THE COMMISSIONER: What precisely is the question that you, for which, for which you - - -

MR BRANSON: Well, it's, it's just a matter of fairness, fairness to the witness. I mean, I have exhausted the questions that I wish to ask the - - -

40

THE COMMISSIONER: And you don't wish to have him recalled then?

MR BRANSON: No, I do not.

THE COMMISSIONER: But it, it - - -

MR BRANSON: It's a matter for - - -

THE COMMISSIONER: You cross-examined him on the basis that he's seen the email - - -

MR BRANSON: Yes, yes.

THE COMMISSIONER: - - - of 16 March at 10 past 9.00 but it is not apparent whether he did or did not, that's, that is the position and you're asking the Commission to attempt to establish that.

10 MR BRANSON: Yes, please.

THE COMMISSIONER: Yes, I understand.

MR BRANSON: Thank you.

THE COMMISSIONER: Now, I'm sure steps will be taken.

MR BRANSON: Thank you very much.

20 THE COMMISSIONER: Yes, thank you. Mr Curtin?

MR CURTIN: Mr Pooley, my name is Curtin and I appear for Mr Watkins. Can I ask you, do you have a copy of your statement, Exhibit 9, with you in the witness-box?---Of my statement?

Yes?---I do have.

30 Can I take you firstly to about paragraph 25 and can I ask you have you known Mr Fenn professionally for long prior to March 2011?---Since he'd become the minister's chief of staff.

And you remember approximately how long that had been?---About, my recollection is it was about the middle of 2010.

40 All right. So, and in about so the nine months between him being appointed to that position in March 2011 did you have much professional interaction with him?---Oh, yeah, a fair bit. You know, the standard planning stuff up until when Mr Welsh left the office was handled by, was handled by, as I say, it was handled by Mr Welsh and after that I picked up the planning stuff, there was also a fair bit of interaction around the transfer of the responsibility from Barangaroo from the Minister for Planning to the Premier, you know, we had regular contact.

And in the course of your professional dealings with Mr Fenn in this nine months or so before March of 2011 how did you find him to deal with? Did he - - -?---Good, yeah, he was fine, he returned phone calls, he engaged, he was good.

And at least so far as your perception was concerned in your previous dealings with him he had been up front and frank and honest about the various things you discussed from time to time?---Yes.

10 And I think you, in reference to your conversation in paragraph 25 and 26 Mr Fenn's reply by email in paragraph 27, that is he sent you Minister Kelly's letter of 9 February and the Premier's letter of 25 February in response to your inquiry and in paragraph 31 at the top of page 11 Fenn told you that "we just thought we had approval to do it." Now, I think this morning in answer to one of Mr Alexis' questions you said something to the effect that what Fenn expressed to you was that he had read the Premier's letter of 25 February as giving authority to purchase which was contrary to your reading and your intention in drafting it. Is that - - -?---Correct.

20 And on the 25th - I'm sorry, in paragraph 25 on 16 March when Mr Fenn rang you and told you that the property had been purchased was that a telephone call you would expect somebody in Mr Fenn's position to make to convey a routine piece of information? And by routine I simply mean - - -?---I think he was updating me on what he thought was a process that was underway.

Yes. And in paragraph 26 you said to him, "The government was in caretaker mode how could you possibly exchange contracts?" And Fenn said, "No, we had approval to negotiate." Now, when he said to you, "No, we had approval to negotiate" the sense of that statement was negotiate and purchase, is that correct?---Plainly his sense of it.

Yes, quite?---Sure. Yes.

30 What he was conveying to you when he said though, "We had approval to negotiate" in the context of the conversation was we had approval to negotiate and purchase was his view?---Yes.

You gave some evidence of budget committee and things that might find their way to the budget committee?---Sure.

I think you're aware that various Director-Generals or CEOs of government departments have various financial delegations?---I am.

40 And putting aside political considerations and what I might just call generally special considerations those officers were entitled to exercise those delegations without necessarily going to the budget committee, is that right?---Yes, I, yes, I think that's fair.

And it would be a matter for judgement by them or their minister if, for example, they propose to exercise or spend money underneath a delegation but there might be special considerations or political ones for which a budget committee minute ought be prepared as a matter of prudence?

---Correct.

Or as a matter of prudence to go to Cabinet as distinct from the budget committee?---Correct.

And can I ask you in Exhibit 9, your statement, you refer to, commencing at paragraph 20, from paragraph 20 to paragraph 23 or 24 you give some evidence about a matter distinct from Currawong which concerned the caretaker provisions?---Yes.

10

And in this example you've given, a Mr Ray have given some legal advice about Part 3A of the Environmental Planning and Assessment Act, I take it. Is that right?---Yes.

And he had given some advice which was sent to you about whether the minister could or could not continue to administer Part 3A when in caretaker?---Well, I sought a copy of the advice after I was advised that they had, they had this advice.

20 And did you receive- - -?---I did.

Yeah?---Yeah.

And the substance of, I'll withdraw that. Mr Ray, did you know who he was or- - -?---I did.

30 And what position did he occupy in the Department of Planning?---Oh, I can't give you an exact title, but essentially senior legal officer, general counsel. I can't tell you his exact title but, you know, I dealt with him from when I was working for the Minister for Planning at that stage, Keneally.

And when you dealt with him, did you find him to be a, at least so far as your perception was concerned an otherwise competent- - -?---I did.

- - -senior legal adviser?---Yes, I did.

40 And the substance of his advice that you refer to in paragraph 20 was that the minister could continue to administer Part 3A during caretaker mode? ---Could make decisions about Part, Part 3A decisions during caretaker. That was the substance of the advice.

Yeah. That, that was Mr Ray as a senior legal adviser's view of Part 3A in caretaker, as you've described?---That was my reading on it, yeah.

And Mr O'Reilly sought legal advice from Mr Miller which advice was to the contrary of Mr Ray's?---Correct.

And Mr Miller was a legal adviser in the Department of Premier and Cabinet?---Yeah. I think he's corporate counsel or something.

And so if we take that one example of, of the caretaker provision, two senior legal officers had a difference of opinion, legal opinion, as to the exercise of certain Part 3A powers whilst under the caretaker?---Sure.

And with the caretaker provisions, I think as the Commissioner has heard, they were- - -

10

THE COMMISSIONER: Guidelines.

MR CURTIN: Guidelines, which called for the exercise of judgement?
---Yes.

That's the cross-examination, thanks.

THE COMMISSIONER: Mr Dunne? Mr Fisher? Any other counsel?
Yes, Mr Harris?

20

MR HARRIS: Mr Pooley, my name is Harris. I represent the interests of Mr Fenn. Thank you. Counsel assisting has taken you through your statement today. I think you've agreed with him that the conversations, specifically I'm referring to those with Mr Fenn, were based on your best recollections?---Yes.

Correct. Did you say I think that there were no contemporaneous notes made by yourself of those phone calls you've referred to in your statement?
---That's correct.

30

All right. And the statement was 8 June. Were any notes made by you before you've committed your recollections to writing in the statement? So not contemporaneously but sometime between those conversations and the statement?---And, what, meeting with the ICAC officers do you mean and - - -

Yes?---Yes. No.

40 All right. For example, I just wonder if I could take you to something we were discussing there, and if you've got it in front of you you're welcome to look, I trust at page 11, it's paragraph 31?---Is this, is this still of my statement?

Yes?---Yes.

Your statement. Just bear with me, please. You talk there about something Mr Fenn had said, to the best of your recollection, "Oh, we just thought we had approval to do it", or words to that effect?---That's my recollection.

All right. But wasn't the gist of what he was saying was that he didn't just think it, would it not be an appropriate interpretation of the gist of what he was saying that he actually and honestly believed they had the approval?
---That, that is my view.

Yes. Just bear with me. I presume to the best of your knowledge all email correspondence has been provided by you to the Commission?---Well, I don't have any email correspondence. I certainly indicated to the Commission that it would all be backed up, but I'm sure they can find it.

10

THE COMMISSIONER: I take it you mean relevant?---Yes.

MR HARRIS: If I could just also refer to page 8 of your statement in paragraph 26. You said you were shocked, said here, that contracts had in fact been exchanged?---That's correct.

And you said words to the effect, "I presume we're in caretaker mode how could you possibly exchange contracts." And you say Mr Fenn says, "No, we had approval to negotiate." You see that section there?---I do.

20

Is it not possible he's saying, he said to you, "We had approval to do this."?
---I think that was the intent of his statement.

Thank you.

THE COMMISSIONER: Any other question from any other counsel of Mr Pooley? No? Mr White?

MR WHITE: No.

30

THE COMMISSIONER: No. Mr Alexis.

MR ALEXIS: (not transcribable).

THE COMMISSIONER: Thank you, Mr Pooley, for your evidence, you're excused from attendance?---I just leave all this?

Yes.

40

<THE WITNESS EXCUSED

[12.21pm]

MR ALEXIS: Commissioner, can I now call Darryl Noel Watkins.

THE COMMISSIONER: Mr McIlwaine.

MR McILWAINE: Yes, Commissioner, you gave me previously leave to appear for Mr Watkins.

THE COMMISSIONER: Yes.

MR McILWAINE: Give his evidence on oath and he seeks a declaration.

THE COMMISSIONER: Please be seated.

10 MR WATKINS: Thank you.

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

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

THE COMMISSIONER: Please be seated, Mr Watkins?---Thank you.

Mr Alexis.

MR ALEXIS: Thank you, Commissioner. Sir, is your full name Darryl Noel Watkins?---Yes.

10

What's your current occupation?---Unemployed.

And in this matter is it the case that you provided the Commission with a statement of evidence on 16 June, 2011?---I did.

Thank you. And I provide you with a copy of your statement, with a copy for you, Commissioner?---Thank you.

20

Thank you. Sir, could you tell us please whether or not the content of that statement is true and correct?---Mr Alexis, there is one change I wish to make.

Thank you?---Which is - - -

(not transcribable) to that please?---Yes, sure. Which is under paragraph 13 and I wish to delete the reference there in the second line, "It was not a purchase but negotiations." I think that's incorrect. In my mind it was always negotiations, discussions with the Premier not a reference to purchase. So it should read "and stressed it was negotiations."

30

And is the point you're making, Mr Watkins, that the Premier in stressing that did not expressly refer, that is by the words she used, expressly refer to a purchase?---She did not, no.

Thank you. Subject to that amendment, Mr Watkins, is your statement true and correct?---It's correct.

Thank you. I tender Mr Watkins' statement, Commissioner.

40

THE COMMISSIONER: Yes. The statement of Mr Darryl Watkins is Exhibit 10.

**#EXHIBIT 10 - STATEMENT OF MR DARRYL WATKINS DATED
16 JUNE 2011**

MR ALEXIS: Now, Mr Watkins, by way of short background should we understand in paragraph 3 of your statement that before the state election in March of this year you were employed in various capacities with the then Premier?---That's correct.

And you in particular managed what you describe as the ministerial response for the Currawong property?--- Yes.

10 And what should we understand you to mean by that?---Ah, to be responsible in planning or giving, there was, each, each adviser or deputy chief of staff was given direct responsibilities pertaining to the planning portfolio, and one of those that I looked after was Currawong.

And, and that continued following Minister Keneally, as she then was's elevation to Premier?---No.

20 So after she became Premier, what was your role then in relation to Currawong?---I had no responsibility for Currawong. That was dealt with by a Mr Brad Welsh who looked after planning matters.

And so after Ms Keneally became Premier, your management of the Currawong issue came to an end. Is that so?---That's, once we got the planning portfolio my um, my dealing with Currawong, yes, finished.

And while it was within the planning portfolio, should we understand from paragraphs 4 through to paragraph 6 that you were involved to some extent in the Part 3A assessment that Minister Keneally then undertook in relation to that?---Yes

30 And ultimately I think you were present at a meeting that you tell us about in paragraph 6 with Mr Allen Linz, a director of Eco Villages, when the decision made by the then minister was conveyed to him?---That wasn't a meeting, that was a telephone conversation.

I see. Thank you. And it's that telephone conversation that you describe in paragraph 6 in the last sentence as, "Short but intense?"---I had discussions with all the stakeholders, yes, and I had a short and intense conversation with Mr Linz.

40 Now, after Minister Keneally became the Premier, you maintained a senior policy advisory role with, within her department. Is that so?---That's correct.

And insofar as you had been prior to that a point of contact, should we understand that you then referred inquiries that came to your attention to Minister Kelly's office?---That's correct.

And was that because he had taken over the relevant planning portfolio in that regard?---Yes. The first port of call would have been the adviser within the Premier's office who is responsible for planning and I would talk to them if I received a call from a stakeholder and then we would relay that, either the adviser or myself would relay that to the minister's office.

10 Okay. Now, can I come to the events of January this year, and in particular, paragraph 9 of your statement, where you tell us of a discussion that occurred with Mr Pooley, the Premier's then deputy chief of staff, concerning a request for a discussion from Minister Kelly's office. Do you see that?---Yes.

And should we understand that that was the event that led ultimately to the events that you describe in paragraph 10 and following, that is the conversation at the ANZ Stadium during the course of the then election campaign?---Yes.

20 Now, when this conversation occurred, and I'll come to the detail, can you just tell us when it was appropriate to raise the issue of Currawong and you then observed the communication occur between the Premier and Minister Kelly, who was present during that conversation?---Who was present was the chief of staff, Stephen Fenn, and myself and the, and the minister and the Premier.

So there was only the four of you?---Yes.

No one else?---Not that I can recall.

30 All right. And you then set out in some detail in paragraph 12 the conversation that occurred after introductions and arrangements were made as we see in paragraph 11. Is that so?---Can you repeat that, please, Mr Alexis?

40 Yes, of course. Paragraph 11 I think tells us how the conversation was arranged. Is that right?---That's right. I would not have, my protocol with the Premier was to always talk to her prior to arranging a meeting to see whether she was comfortable or was it appropriate and in light of that background it was, it was a busy day in relation to, to where we were and she said I'm happy to have that meeting.

All right. Now, I should have just checked one aspect of this with you before coming to the conversation. You tell us in paragraph 10 that this ANZ Stadium conversation if I could so describe it occurred on 16 February, 2011. How is it that you are able to identify that as the date? ---I didn't identify that as the date. I, in my conversations with the ICAC investigators I said that we were at the ANZ Stadium when we had the conversation or the meeting. I didn't recall the date until I saw that in my statement and I signed that.

Is your understanding that the date and your adoption of that date was based on records that had been independently obtained?---I asked, confirmed that and, and I did say to the investigators you could Google that because it was in the, in the media that day or the next day and that was the confirmation I received from the investigators when I signed the document.

10 And when you speak about it being in the media you're talking about the then government's response to the opposition's promise as we see in paragraph 10 regarding an expansion of Western Sydney?---That's correct.

All right. Now, could I just show you please Exhibit 1 in this inquiry which is a bundle of relevant documents and ask you to open the bundle to tab 8, you'll see that the documents are tabbed and if you could come through to page 43 behind that tab please?---Yes.

20 Now, funnily enough, Mr Watkins, the ANZ Stadium discussion occurred after the apparent date of this letter. I wish to ask you whether or not you were aware of the existence of this letter and its content before hearing the conversation that had occurred at the ANZ Stadium on the 16th?---I had not seen the letter or aware of its contents but in conversations with Stephen Fenn on that day it was the catalyst to arrange the meeting because Stephen Fenn has said to me we have not received a response from our correspondence and I, I said I'm not aware of the correspondence and he said, yeah, we've written to the Premier and we're awaiting a response so on that note in, in, in discussion on Tony Pooley's office I was aware that the parties had to meet and we concluded, Stephen Fenn and I, on that day that it would be appropriate if we could try and facilitate that meeting.

30 Now, in the course of that discussion did Mr Fenn say anything to you as to what he understood Minister Kelly's intentions were about the Currawong site?---He said that they, they were intending to buying it, that's, that's from what I recall.

40 All right. Now, if I could ask you to come to paragraph 12 of your statement and is what you've set out there concerning the conversation which came to be recorded in this statement on 16 June one based on your recollection or was there some note or record made of what was discussed? ---This is my recollection.

Thank you. And is your recollection that after the Premier said to Minister Kelly, "So what are you talking about here, minister?" You heard Minister Kelly respond in the way that you there set out?---That's correct.

And did you know in reference to the State Property Authority, you see the reference to that in what you attribute to Minister Kelly?---Yes.

And did you know back in February what that was if at all?---I understood it to be under Minister Kelly's portfolio, so the State Property Authority in my mind was the, the lands area.

Had you, in February this year, heard of something called the Sydney Regional Development Fund?---No, I had heard of it but I don't recall too much about that.

10 Could I asked whether or not you might be mistaken about the reference to the state property authority that you refer to there, and in fact, there was a reference to the fund that I just referred to, the Sydney Regional Development Fund?---I don't recall Sydney – I would have remembered Sydney Regional Development Fund.

What about the Crowns Leaseholds Entity or something to that effect?---No. In my mind it was State Property Authority.

20 All right, thank you. And you heard him say, did you, we could talk to the Council, there are funds there we can talk to the developer and have some negotiations with them?---Yes.

Do you have a recollection as to whether or not Minister Kelly said to the Premier anything about purchasing the land or there being an opportunity to purchase the land that was available and - - -?---I would have noted, I would have remembered the word purchase because in my mind it was always negotiations and that was the catalyst for the meeting.

30 And you heard the Premier say, "So what to negotiate?", as a question. ---Yes.

And you heard Minister Kelly respond in the affirmative?---That's correct.

And then you heard the Premier say, "Well that's fine as long as it is to negotiate."---Yes, that's fine, words to that effect, that's fine as long as it is to negotiate, yes.

THE COMMISSIONER: Did Mr Kelly respond?---He, from memory I believe he said, okay. That was the end of the meeting.

40 MR ALEXIS: Now, we then come, I think, to paragraph 13 where you set out the instruction that you were given by the Premier which you've amended for us earlier and then you spoke with Mr Pooley, did you, concerning the execution of that instruction. Is that right?---Yes, I spoke to Mr Pooley.

And can you just try and recall to mind as best you can what you actually said to Mr Pooley about the implementation of that instruction?---We've just had a meeting at ANZ Stadium pertaining to Currawong and the

Premier has given agreement for the parties to negotiate, something to that affect. And in light that it wasn't my responsibility I said, the Premier's instructed me to tell you to arrange some correspondence accordingly.

Now, the answer is probably no, because of what you've just said about your areas of responsibility but did you follow that up to see whether Mr Pooley had in fact executed the instruction that you'd conveyed (not transcribable) - - -?---No, once I passed that on I understood then Mr Pooley would follow up and I didn't need to deal with it any further.

10

And if you could just turn through please to tab 9 of Exhibit 1 before you in the folder and within that tab look at page 47A.---Sorry, what did you say, was it tab 9?

Tab 9, 47A in the bottom right hand corner.---Yes.

Did you ever come to see the letter under the hand of the Premier?---I never saw that letter.

20

All right thank you. Now finally Mr Watkins in paragraph 14 of your statement you express a view there for about cabinet minute process. Do you see that?---Yes.

And you tell us there that the Premier always wanted one on all matters. Do you see that?---Yes.

30

And was that as you would describe to the Commission, a practice that you understood applied on all matters that were coming to her attention and required that?---The Premier preferred cabinet minutes on all issues that I was with her on because it gave an argument for the fors and against and it went through the financial impact statement et cetera and it points out the sound argument as to whether it's a good idea or not, so on that basis and from experience working with the Premier it would be customary practice.

All right. Now did you have any conversations with Mr Fenn after the ANZ Stadium conversation about the subject of Currawong at all?---No, not that I recall.

40

All right. And after it became apparent within the Premier's Department that Currawong had been purchased, I think, by the 16th of March, did that cause you to have any conversations with anyone about that subject matter either within or outside her Department?---No.

Prior to the ANZ Stadium conversation had you had occasion to speak with Mr Fenn at all about the subject of a Cabinet minute?---No.

You tell us in paragraph 10 that in the preamble to the arrangements for the conversation between the Premier and Minister Kelly on that occasion he

had said to you, if we look at the last line of paragraph 10, the government were intending to buy it, do you see that?---Yes.

Now, did that cause any discussion or comment, at least, as to Cabinet minute processes or anything of that time with Mr Fenn?---No. No.

Thank you, Mr Watkins?---Thank you.

MR BRANSON: No questions, thank you, Commissioner.

10

THE COMMISSIONER: Yes. Mr Curtin.

MR CURTIN: No questions, thank you, Commissioner.

THE COMMISSIONER: Yes. Ms Fisher.

MS FISHER: Thank you.

20

THE COMMISSIONER: Sorry, I think I should ask Mr Dunne first, I beg your pardon.

MR DUNNE: Thank you, your Honour. No questions.

MS FISHER: Mr Watkins, my name is Fisher, I represent Pittwater Council?---Sorry, who do you represent?

Pittwater Council?---Okay.

30

Mr Watkins, I take you to your statement, Exhibit 10, do you have it in front of you?---Yes.

You say there in paragraph 4 that during the time you worked for the Minister for Planning you had responsibility for Currawong?---Correct.

And that you had a relationship with the General Manager of Pittwater Council Mr Ferguson?---Yes.

40

Could you describe the nature of that relationship?---My responsibility for looking after Currawong I had to talk to the stakeholders which was the Friends of Currawong, the proponents and thirdly, the council, Pittwater Council.

Thank you. Can I take you to paragraph 8 of your statement?---Ah hmm.

You say there that you spoke twice, is this what's to be understood, twice to Mr Shane Withington of the Friends of Currawong?---Yes.

In November and March of – November of 2010 and March of 2011?

---Correct. With the March one I did request Mr Pooley, I left a message for Mr Withington, I didn't speak to him to answer your question, Mr Pooley, I asked him to talk to Mr Withington on my behalf because I was on the campaign bus with the Premier.

I see. You say there in the second sentence that around January 2011 you received a call from Mr Ferguson?---That's correct.

10 I suggest to you that Mr Ferguson rang you on 4 February?---Okay.

Do you accept that, that it's possible?---Yes. Yes.

You also say there in the third sentence, "I referred all these inquiries to the minister's office for their attention."?---Correct.

So including this phone call on 4 February you referred that to the minister for his attention, did you?---Yes.

20 Mr Watkins, I suggest to you that on 4 February when you had this conversation with Mr Ferguson, Mr Ferguson said words to you of the effect that the Premier's office would be receiving a proposal regarding the acquisition of Currawong either from the minister responsible or from LPMA, do you recall that?---I can't recall that, no.

Do you recall during that conversation Mr Ferguson saying anything to you in relation to council supporting the acquisition of Currawong?---I recall the conversation with Mr Ferguson and from memory I said, "I would prefer that you go through the minister's office, Mr Ferguson."

30 Mr Watkins, I suggest that you didn't say that.

THE COMMISSIONER: Mr Watkins, this is a curious habit of lawyers, actually that is a question to which the answer is either yes or no?---Can you repeat the question, please.

40 MS FISHER: Well, your evidence is that you said to Mr Ferguson words to the effect that he had to go through the, through the minister's office and I'm suggesting to you you didn't say those words to Mr Ferguson in that phone call.

THE COMMISSIONER: And what is your question?

MS FISHER: Did you or did you not say those words to Mr Ferguson in that conversation on 4 February?---I am certain I said it would be better if your speak to the minister's about this, Mr Ferguson or Mark as I had a relationship with him.

Well, I suggest to you, Mr Watkins, that you said - - -

THE COMMISSIONER: I think it would be, just, instead of making suggestions put it to him so he can answer yes or no.

MS FISHER: Yes, thank you.

10 Mr Watkins, I put it to you that you said words in that conversation on 4 February to Mr Ferguson to the following effect and I'm inviting you to say yes or no at the answer of, at the end of my question, the words were that LPMA needed to get their act together and get their ducks in a row before it, being a reference to the, to the proposal, gets to the Premier's office?---I, I would not have said that.

Thank you.

THE COMMISSIONER: Yes, thank you. Does anyone else wish to ask Mr Watkins any questions? Mr McIlwaine?

20 MR McILWAIN: No, Commissioner.

THE COMMISSIONER: All right. Mr Alexis?

MR ALEXIS: Nothing further.

THE COMMISSIONER: Thank you, Mr Watkins?---Thank you.

You're excused?---Thank you, Commissioner.

30 Thank you for your evidence.

THE WITNESS EXCUSED

[12.47pm]

MR ALEXIS: Commissioner, I see it's nearly 10 to 1.00. I can call another witness.

40 THE COMMISSIONER: Yes, Mr Branson would be disappointed that you didn't?

MR McILWAIN: Is my client excused from his summons?

MR BRANSON: No, I'm very disappointed now that your Honour said that.

THE COMMISSIONER: Mr McIlwaine?

MR McILWAIN: Is my client excused from his part of the summons?

THE COMMISSIONER: I beg your pardon?

MR McILWAINE: Is Mr Watkins excused from the summons?

THE COMMISSIONER: Yes.

MR McILWAINE: Thank you.

THE COMMISSIONER: Mr Alexis.

10

MR ALEXIS: Sorry, have you finished?

THE COMMISSIONER: I think we might proceed while Mr Branson stands up and sits down again.

MR ALEXIS: Yes. Thank you, Commissioner. Commissioner, can I call now Brad Eron Welsh.

THE COMMISSIONER: Mr Welsh, do you have any legal representation?

20

MR McILWAINE: Sorry, Commissioner, you've previously granted leave to - - -

THE COMMISSIONER: Please sit down, Mr - - -

MR McILWAINE: Mr Walsh will give his evidence on affirmation and he seeks a declaration.

30 THE COMMISSIONER: Yes. Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by Mr Welsh 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.

40 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY MR WELSH 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: Would you swear Mr Welsh in please.

<BRAD ERON WELSH, affirmed

[12.48pm]

THE COMMISSIONER: Mr Alexis.

MR ALEXIS: Thank you.

Sir, is your full name Brad Eron Welsh?---Yes.

10 And in this matter is it the case that you've provided a statement to the Commission on 16 June, 2011?---That's correct.

Thank you. Can I provide you please with a copy of that statement with a copy for you, Commissioner. And, Mr Welsh, is that a copy of the statement to which I just referred?---Yes, it is.

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

Thank you, Mr Welsh. I tender that statement, Commissioner.

20

THE COMMISSIONER: Yes. The statement of Mr Welsh is Exhibit 11.

#EXHIBIT 11 - STATEMENT OF MR BRAD WELSH DATED 16 JUNE 2011

THE COMMISSIONER: Yes, Mr Alexis.

30 MR ALEXIS: Sorry, Commissioner. Now, Mr Welsh, is the position that you were employed within the ministries held by Ms Keneally both before she was appointed the Premier and whilst she was Premier?---I was employed as a policy adviser in both of those offices.

And we should understand that that role started in about November 2008. Is that so?---That's correct.

And came to and end on 7 January, 2011?---That's correct.

40 And should we understand that after 7 January, 2011, you were no longer involved in that capacity with the Premier?---That's correct.

And no longer involved in the matter concerning Currawong. Is that right? ---Correct.

All right. Now, should we understand from paragraph 5 of your statement that you had no involvement in the Currawong matter whilst the Premier was the planning minister?--- Yes, that's correct.

And as you understood the position, that was a role that was dealt with by a Mr Darryl Watkins?---Yes.

And is it the circumstance of you providing advice from time to time to the Premier with respect to matters of planning and matters concerning land that you came to involve yourself with Minister Kelly's chief of staff, Mr Fenn?
---Yes, that's correct.

10 And could you tell us, please, the regularity of the contact that you had with Mr Fenn? I know in paragraph 7 you tell us that it was weekly, but how did the contact manifest, was it telephone, was it face-to-face, was it both?
How, how should we understand- - -?---Generally in a week- - -

- - -how it has occurred?---Yep. Generally the weekly meeting was face-to-face. When that wasn't, when that wasn't schedule it was, it was by phone. We have regular contact over the phone, but we had, the regular weekly meeting was to maintain the dialogue.

20 Now, the purpose of you undertaking that regular communication with Mr Fenn I gather was to put you in a position so that you could keep in turn the Premier abreast of issues as they concerned her?---That's correct.

And insofar as the Currawong matter was concerned, was that a significant issue or a relatively small issue in the scheme of your communications with Mr Fenn during this time?---A relatively small.

And before 8 January this year, did that change?---No.

30 So prior to you leaving the Premier's office, the Currawong issue had not achieved or received any particular significance in your communications with Mr Fenn. Is that, is that what you're saying?---Other than, other than what's reflected in my statement, it wasn't, it wasn't a high order issue for our office.

All right. Can I ask what it was, and if you perhaps look at paragraph 8 of your statement, could you tell us what it was that occupied the three or four informal conversations that you tell us about there with Mr Fenn, about the Currawong matter, if it was such a minor matter at the time?---Yes.

40 Generally towards the end of the meeting Stephen Fenn would give me an update on things that were coming up and, and that was, in this instance, Currawong, and that there were negotiations happening between the council, the LPMA and, and the owner. So those regular updates were, or those updates were, were really informal conversations.

All right. And then in paragraph 11 you've referred I think so some communication with Mr Pooley in about November 2010 and you told him,

according to paragraph 11, that there was some consideration about Minister Kelly's office purchasing Currawong?---That's correct.

All right. Now, can you recall to mind as best you can what it was that Mr Fenn said to you on that subject which you then conveyed to Mr Pooley?
---From, from memory was that the LPMA and the council were in negotiations with the developer, they seemed to think that they had the capacity to purchase the property.

10 THE COMMISSIONER: Who had the capacity?---The LPMA. They had funds in a particular fund that could do it and I relayed that information to Tony Pooley.

MR ALEXIS: And was that the extent of it?---Pretty much.

And when I say the extent of it I mean the extent of your communications with Mr Fenn on that subject?---Yes, that's, that's what I recall about my - -
-

20 Now, in paragraph 13 you tell us that at the time you held strong views concerning budget committee or Cabinet process, do you see that?---Yes.

And you go on to describe the circumstance where if ministerial officers were of the view that an item was within an authorisation or delegation did not need to go to Cabinet, you, I gather, nonetheless, requested an email or something setting out the case for, do you see that?---That's correct.

Now, in your communications with Mr Fenn did you convey to him that view that you tell us in paragraph 14 was one that you held strongly?---No.
30 My, there was never, there was never a suggestion in those conversations with Stephen Fenn that this matter would not go to budget committee or Cabinet.

The question was whether there was reference in those discussions to that subject matter?---Sorry?

THE COMMISSIONER: Meaning?

40 MR ALEXIS: Let me withdraw the question and put it again, Mr Welsh?
---Yes.

You've told us that you held strong views about the need for budget committee or Cabinet process, is that so?---Yes.

And you've told us that in these communications that occurred from time to time with Mr Fenn he conveyed to you that there were steps being taken to try and negotiate and buy the Currawong site?---Yes.

And you were told that the funds either might be or would be available from within the LPMA budget?---Yes.

Well, my question is whether in the course of those discussions you conveyed your strong view about budget committee or Cabinet process to Mr Fenn?---Yes. I don't recall conveying that view, it would be a normal conversation, it was a normal conversation I had with ministerial officers on, on all of these types of matters that we would go to budget committee or Cabinet. I, I don't recall that from my words and I don't recall saying it to
10 Stephen Fenn, however, you know, I think that I would've said that in those conversations.

All right. Can I show you some documents in Exhibit 1 which is a folder that will be handed to you shortly. And can I ask you to open the folder please to some communications behind tab 4. Now, can I indicate to you at once, Mr Welsh, that there's no suggestion from me, at least, that you were involved in or privy to any of these communications. But can I just ask you to look at an email about halfway down on page 9 which is dated 4
20 November, 2010. And do you see that the opening line of that email refers to acquisition and it says, "I understand that it would need to go as an Ex Co minute, namely, executive minute and that may need Cabinet or budget committee of Cabinet approval in the first instance, do you see that?---Yes.

And if I can ask you to just come down to the foot of that page you'll see that there is a reference to a meeting and then it says, "S Fenn wants the submission prepared to go to Treasury to get approval (or not)." Do you see that?---Yes, I do.

Thank you. Now, could I just ask you to come through to the material
30 behind tab 5 and again I draw attention to the fact that none of these communications is suggested to have involved you but I just want to draw attention to the subject matter, subject matter if you follow?---Yes.

If you look at page 11 behind tab 5 you'll see at the bottom of the page an email from Mr Fenn to Mr Watkins, that's Mr Warwick Watkins, of 17 November which seems to be referring to a budget minute seeking endorsement to negotiate on the purchase of Currawong. Do you see that?
---Yes.

40 And then if you come over the page, page 12 about halfway down the page there's a reference there to, "The Currawong cabinet minute is now critical." Do you see that?---Yes, I do.

Now, can I just pause and ask you this question before I go to a few other documents, does my taking you through these communications which seem to relate to the subject matter of the preparation of a cabinet minute or a cabinet submission enable you to recall to mind whether you had any particular conversation with Mr Fenn about that subject matter at that time?

---It, it's highly likely that I expressed that view. I do not recall having the direct conversation and, and the direct formal words but in all, in all matters in dealing with Minister Kelly's office and other ministerial offices that I dealt with it was quite common that I requested budget committee minutes or cabinet minutes in, in these types of transactions.

10 If you just look at page 13 within that tab, Mr, Mr Welsh. You'll see that there's an email which refers as an attachment to a cabinet minute and you'll see in the body of the email a reference to the attached draft submission. Do you see that?---Yes.

And if you just turn over the page, just starting at page 14 and if you could look at the document starting at page 14 and running through to page 18, do you have that?---Yes.

And then if you then look at page 19 which seems to be the commencing page of various schedules through to page 21, I'm just identifying the document firstly. Do you see that?---Yes.

20 Now, is this what you would call a minute for cabinet or a committee of cabinet in relation to this sort of proposal?---Yes.

Now, are you able to recall to mind whether at any time, be it November 2010 or otherwise having any conversation with Mr Fenn about the preparation of a draft minute for cabinet or a committee of cabinet in the form that we see from pages 14 of Exhibit 1?---I, I have not seen this minute before and I, I don't recall the exact conversation but its highly likely that I requested a cabinet or budget committee minute for this matter.

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

MR ALEXIS: Yes, it is, thank you.

THE COMMISSIONER: We'll adjourn 'til 2.00pm.

LUNCHEON ADJOURNMENT

[1.03pm]