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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE DAVID IPP AO QC

PUBLIC HEARING

OPERATION NAPIER

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 29 JUNE 2011

AT 2.10PM

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

THE COMMISSIONER: Mr Alexis.

<STEPHEN WILLIAM CHRISTOPHER FENN, on former affirmation [2.09pm]

MR ALEXIS: Thank you, Commissioner. Mr Fenn, in light of the objection before lunch can I show you please, with a copy for you, Commissioner, an excerpt of this morning's transcript which,
10 Commissioner, can I indicate I've circulated to those who have leave to appear for their respective clients. And can I also indicate for the benefit of the profession that what has been circulated is a draft transcript, by that I mean, not the official transcript which is ultimately posted on the Commissioner's website later this afternoon.

THE COMMISSIONER: That is because it has not yet been finally checked.

MR ALEXIS: Thank you. Now, Mr Fenn, do you have the document that
20 has just been referred to, - - -?---Yes, I do.

- - - the transcript of your evidence before lunch?---Yes.

And could I ask you please to look at page 235, you'll see the pagination in the bottom right-hand corner. And you see the numbers down the left-hand side of the transcript and you'll locate the number 30, do you see that?
---Yes.

And so when I refer to this I'll refer to the page and also the line reference
30 by reference to those numbers down the left-hand side, do you follow?
---Sure.

So if you look at the question at 30 you'll see that I was asking you when the first time was that you saw the letter. And you know the letter I'm speaking of, the 28 February letter that the minister signed?---Yes.

And you told us there that, "The first time I saw that was on 25 March", and then you elaborated in the answer to my next question, "I was on a train up to Newcastle", line 35, "I had a package of relevant files around the
40 Currawong matter and this letter was amongst them." Do you see that?
---Yes. Yes.

And then I asked you whether "the occasion when you saw the letter in those papers, was that an occasion that caused you to look and read the letter?" And you said that it was. And then I asked you some further questions over the page about what you thought about the letter when you read it, and I won't take time on that. And then can I ask you to come over to page 237 of the transcript. And you see at line 20, I referred you to your

evidence concerning the train, going to Newcastle the following Friday, the day before the election, you found in the files the letter that we see attached to the exhibit. Do you see that?---Yes.

And then if you could come over to page 238 of the transcript. And do you see at line 8 or thereabouts I was showing you Exhibit 12, and just pause if we can for you to bring back to mind Exhibit 12 which was the email which contained the package that you'd earlier received and drew attention to the further documents after the map not forming part of that package. Do you
10 follow what I've just put to you?---Yes.

And then, if you can then look at the transcript again and you'll see at about line 15 and following reference was then made to Exhibit 15 and Exhibit 15 was the email that was sent to you on the evening of Sunday, the 20th attaching Mr Watkins' draft statement?---Sure. Yes.

And then do you see from line 25 or thereabouts I asked you whether you received the email together with the draft statement, you told us that you'd received it. And then I asked you, "Did you look at it, perhaps not late on
20 Sunday, but on the Monday when it was there in your inbox?". And do you see your answer, "I did see this statement, my recollection of this statement was amongst those documents that I saw on the 25th."?---Yes.

"I may have seen it earlier but my reading of that first off was that this was in relation to the IAB and I didn't want to really look at it because" et cetera, do you see that?---Yes.

Now, should we understand from the evidence that you gave as we see in the transcript at about line 30 you're saying to the Commissioner that the
30 statement that was attached to the email which is Exhibit 15 was amongst the files or the documents that you had with you on the train to Newcastle on Friday, the 25th?---Yes, I can recall seeing that, this document as part of the package.

Thank you. And should we understand that your reference in that answer, and I'm looking in particular at about lines 30 to 32 when you told the Commissioner that, "I may have seen it earlier." Is that a reference to an earlier occasion that week when you saw the email in your inbox?---Yes, I can recall seeing this, this document, the, you know, not reading, but seeing
40 that it was in my inbox and I, I, I had seen a, what I can recall as, as, as this document.

Well, in the answer that you've just given, Mr Fenn, you've said that you didn't read it, but do you accept that at 238 of the transcript, line 32, you gave evidence before lunch to the effect that you read the statement at least on one occasion? Do you see the reference, "My reading of that first off was", do you see that?---Sorry, I'm, I'm trying, trying to understand your point. I- - -

Well, let me try and put it to you as clearly as I can?---Yeah.

When I asked you a question about when you saw the draft statement you responded by telling me that it was amongst the documents that you saw on the 25th, and that's when you're going on the train up to Newcastle with the Currawong file. Is that- -?---Yeah.

- - -how we should understand- -?---Yeah.

10

- - -what you're referring to?---I, I can recall seeing this as part of the, the, the package that I saw on, on the way up on the train.

But in your answer you then said that you may have seen it earlier, "But my, my reading of that first off was that this was in relation to the IAB." So should we understand that evidence, Mr Fenn, to be telling the Commissioner that you had read the statement for the first time on an occasion prior to the train trip on the 25th to Newcastle?---No, I can't recall reading this statement.

20

THE COMMISSIONER: But I thought you said now about two minutes ago that you do recall seeing the statement before the train trip when you saw it in your inbox?---Yes. All I read was the first two lines.

Yes. So that when, so when I, I read this, please correct me if I'm wrong, is that you're saying from when you read it first off is when you looked at it in the inbox and then you realised that it was something in relation to the IAB and you didn't really want to look at it then. Is that what you're saying? ---Yes. Correct.

30

MR ALEXIS: But then on the train on 25 March heading to Newcastle, that was the occasion when you read the statement in draft form- -?---No.

- - -attached to this email, wasn't it?---No. I don't recall reading it on the train.

All right. Well- -?---But I saw it as part of a document. But what I'm, what I'm trying to say is that I didn't read it that day.

40

Well, have a look at page 239 of the transcript. And do you see at about line 15 or thereabouts, I put this question to you, "And you're telling us that you didn't look at the statement until the Friday of that week" And then you responded by referring to, "Opening it, saw the statement", and then you make reference to the IAB?---Yes.

And you told the Commissioner before lunch that you thought it was inappropriate for you to look at it?---Yes.

And then look down at line 35. Do you see my question, “Now, you tell us I think that you read this statement on the Friday of that week?” Answer: “Ah, yeah.” Do you see that?---Okay. Well, no, well, I, that’s not, my recollection is I didn’t read that statement so I didn’t mean to mislead anyone but- - -

10 So is your evidence to the Commission that you received the email, Exhibit 15, together with the attached statement and apart from the cursory look at it on your computer when it was sitting there in your inbox and realising that it related to or could relate to an IAB inquiry, you didn’t look at it further?
---No. Yeah, but that’s true.

That’s, that’s your position?---That’s my position.

20 All right. Now, after the occasion on the 25th when you looked at the letter in the file, the letter of 28 February, and after the occasion of the state election, did you go back and read this draft statement?---I, I believe the first time I read this statement in its entirety was basically when I was approached by, by the Commission to, to present, to, to give evidence.

Mmm. And can I ask what it was that prompted you to go back to this draft statement attached to this email when you’d been approached by investigators from the Commission?---Oh, I just wanted to apprise myself of what I, what I had in, in, in my possession.

30 And may we understand that when you went back and read this draft statement you realised then that in this draft statement Mr Watkins had referred to the letter of 28 February, 2011 as a letter that he’d received from the minister before the contract for the purchase of Currawong had been exchanged?---Yeah, I can, I can recall reading that.

And can I ask when you realised that that was the purport of the draft statement did that cause you any concern?---Concern. I suppose it clarified what was alleged to have occurred.

40 Yes. And because you were directly involved both prior to and immediately after the exchange of the contract and you well understood what the authority was that was being relied upon, namely the Premier’s letter, you knew that the letter that Mr Watkins was referring to in the draft statement didn’t exist at the time, didn’t you?

MR BRANSON: What times?

MR ALEXIS: The time of exchange of contracts.

MR BRANSON: I’m sorry, I beg your pardon, I’m sorry, I apologise.

THE WITNESS: Oh, sorry. I, as I, as I said previously I had concerns that this letter was, was not in existence at the time of 28 February.

MR ALEXIS: Well, when you read this statement attached to this email you realised, didn't you, that Mr Watkins was presenting the existence of that letter as one that was available to him before the exchange of contracts, when you knew that it wasn't?---Yes, when I, when I read this statement I realised yes, that, that was not true.

- 10 And did you come to then realise, Mr Fenn, that the circumstances surrounding the preparation of that letter and particularly the circumstances that came to Minister Kelly signing that letter would be very much in focus as far as the Commission investigators were concerned when they contacted you?---Yes.

And did you come to realise that perhaps questions might be asked as to whether or not you were in any way involved in the arrangements for the preparation or signing of that letter?---Yes.

- 20 Now, you recall that I asked you earlier today about communications with Mr Watkins on Friday, 18 March?---Yeah, I can recall.

And if you look at the transcript which I've given you, if you look at page 233 you'll see that before lunch I asked you at the top of the page a question about how you came to learn of Mr Watkins being stood aside, do you see that at the top of the page?---Sure.

And you told us that it was Mr Watkins who told you that directly?---Yes.

- 30 And then I asked you questions about anything else being discussed as you recall, particularly you see at line 28 or thereabouts, questions about the minister's itinerary that day and you told us you couldn't recall. Do you see that?---Yes, without a diary, no.

And then I asked you was anything else discussed in this conversation between you and Mr Watkins on the morning of Friday, the 18th and you said, "No, not that I recall, predominantly the fact that Mr Watkins was being stood aside." Do you see that?---Sorry, which - - -

- 40 I'm sorry, 233 line 45 and following?---Yeah, yeah, with - - -

Sorry, 35 and following?---Yeah, okay.

And then you see there's reference to Mr Pooley and the conversation I put to you about that, what's going to happen to him, namely Mr Watkins, do you recall that?---Yes.

And then over the page if you turn to it, please, page 234 line 15 and following, you see I put this question to you, "After you spoke with Mr Pooley did you then have a further discussion with Mr Watkins." Answer, "Not that I recall." Do you see that?---Yes.

10 Now, can you recall having further conversations by telephone with Mr Watkins throughout Friday, 18 March?---Not that I can recall. As I said previously I can recall a message that was left but I think it might have been an old message, I can't recall, it might have been a, a conversation about the, a letter that needed to be signed.

Can I suggest to you, Mr Fenn, that the first telephone conversation between you and Mr Watkins on 18 March occurred at about quarter to 7.00 that morning and it was a conversation that went for just over eight minutes?---I have no reason to doubt that. It's- -

And that was the conversation during which you were told that he was stood down and there was a discussion around that subject?---Yes.

20 And it was after that I think you told us that you then spoke with Mr Pooley?---Yeah, yeah, I can't recall specifically the conversation but I, I, I have no reason to doubt that that- -

And after speaking with Mr Pooley you rang Mr Watkins again, didn't you, at about a quarter past 7.00, having spoken to Mr Pooley at about 10 past 7.00 that morning?---I, I can't recall, but- -

30 And do you recall for about how long it was that you spoke to Mr Watkins during that second telephone conversation?---No, I can't recall.

And do you recall speaking with Mr Watkins again by telephone just before 8.00am that morning?---No, I can't recall.

See, what I want to suggest to you is that you and Mr Watkins had a number of conversations by telephone that day right through until the early afternoon?---Ah hmm.

40 Okay. Do you accept that or not?---Oh, if the records show that, yeah, that, that, that must be the case.

Well, I'm just asking you, Mr Fenn after the initial conversation about Mr Watkins being stood down, you having spoken to Mr Pooley and you having a further conversation with Mr Watkins, what else was discussed with Mr Watkins during the other conversations during the course of that day? ---From what I can recall it was just trying to find out the process from here in terms of the, in terms of the audit and where the whole thing was moving.

And anything else?---Not that I can recall.

Well, if the records show, Mr Fenn, that you initiated a call to Mr Watkins just before 8 o'clock on the morning of the 18th and you had a conversation with him, you then received a telephone call from Mr Watkins at about a quarter to 10.00 that morning, a conversation that went for about ten minutes. You then had a further conversation during a telephone call that you initiated to Mr Watkins just after noon. There is then another telephone conversation that Mr Watkins initiated to you at about 12.30. So we're up to six conversations that day. And then there were two further
10 conversations, one just after 1.00pm and one at about 1.15, during which you initiated each of those calls to Mr Watkins. So we have eight telephone conversations altogether. What were you talking to Mr Watkins about?
---My, my recollection was, as I said previously, a general conversation about where this whole thing is moving towards or moving, progressing, and, you know, I was concerned about Mr Watkins' welfare.

And he raised with you, didn't he, that he needed to have the minister sign a letter, didn't he?---I can't recall specifically when, but there was a, as a,
20 over the course of that weekend there was a reference to a letter that needed to be signed.

Well, you told the Commissioner earlier that that was over the weekend, but I'd suggest in fact that it occurred during one of the eight telephone conversations that you had with Mr Watkins during the morning of the 18th?---I, I, I can't recall.

Is that a possibility?---It is a possibility.

And during one of those eight conversations he raised with you the need to
30 arrange for the minister to sign the letter?---There was a, there was a reference to a letter that needed to be signed by the minister.

Yes. And you asked Mr Watkins what the letter was all about, didn't you?
---No.

Are you sure about that?---Yes.

Did he tell you what the letter was all about?---Not that I can recall.

40 So you accept from me that Mr Watkins is ringing you, raising with you the subject of needing the minister to sign a letter, and you didn't speak at all about what the subject matter or content of that letter was?---No, I can't recall any, any, any precise conversation about the content of that letter.

THE COMMISSIONER: It's all on the Friday, on the Friday.

MR ALEXIS: On the Friday, I'm sorry, yes. Now, could you look, please

THE COMMISSIONER: Did you know on that Friday that the issue was whether the issue which was being investigated was whether Mr Watkins had had the authority to enter into the contract?---In terms of IAB?

Yes?---I can't recall whether I knew that precisely at that moment but I, I was aware that there was an investigation underway.

About authority?---Yes.

10

And did you discuss that with Mr Watkins on that Friday in one of those, one or more of those conversations?---Not that I can recall.

But you were discussing the IAB investigation?---No, the conversations were more about the, where the whole, what was the process.

Yes, the process of the IAB investigation?---Yes.

20

You discussed the process, you say, but you didn't discuss the question of authority?---I can't recall any discussion specifically about - - -

You didn't discuss what complaint or what question was being raised against Mr Watkins in any of these eight telephone conversations?---I can't recall.

And when he told you about the letter he didn't tell you about the letter in the context of the question of authority?---No, I, I had no reason to believe at the time that it had anything to do with the inquiry.

30

MR ALEXIS: Mr Fenn, can I show you a further email, with a copy for you, Commissioner. Now, do you see on 22 March there's an email from Mr Watkins to you and to Minister Kelly in relation to the terms of reference for the inquiry?---Yes.

And you'll see attached to the email in terms the document issued from the Premier's department setting out the terms of reference of the inquiry, do you see that?---From Ms Pettersson, yes.

40

Now, should we understand that you were receiving the terms of reference because that was a subject that Mr Watkins had spoken to you about and you were wanting to be properly briefed so as to assist your minister on that subject?---I can recall, there would've been general interest about finding out what the terms of reference are for the inquiry.

And before receiving this email, and you'll see in the email from the investigator to Mr Watkins the opening sentence refers to the final terms of reference, do you see that?---Yes.

And had you already received the earlier terms of reference which had been expanded in the form that we see in the attachment?---I can't recall whether I had seen it or - - -

But you were aware, weren't you, as to the matters in issue that were being investigated?---Prior to this 7.50pm?

Yes?---I couldn't recall whether I was aware of the minute, it was a very, obviously went very early in the morning.

10

I tender the email, thank you, Commissioner. My learned friend has raised - - -

MR BRANSON: Sorry, sorry, I withdraw.

MR ALEXIS: - - - a question as to whether it forms part of an exhibit. The email from - - -

20

MR BRANSON: I withdraw that.

MR ALEXIS: - - - the investigator to Mr Watkins is behind tab 18 of Exhibit 1. The top part of the email which involves Mr Fenn is not part of an existing exhibit as I understand it.

MR BRANSON: I'm sorry.

THE COMMISSIONER: All right. It's the email on the top of the page at 5.39am is it, Mr Alexis?

30

MR ALEXIS: Yes.

THE COMMISSIONER: You're tendering that?

MR ALEXIS: Yes.

THE COMMISSIONER: The email of 22 March, 2011 at 5.39am from Mr Watkins to Mr Fenn is Exhibit 18.

40

#EXHIBIT 18 - EMAIL SENT AT 5:39AM ON 28 MARCH 2011

MR ALEXIS: Thank you, Commissioner.

Now, Mr Fenn, you told us in some evidence before lunch about a transaction that you had some involvement in concerning a property known as the Priory?---Priory, yes.

Priory, thank you. And should we understand that that was a parcel of land that formed part of the Gladesville Hospital site?---Yes.

And it was a parcel of land that was owned by the Department of Health or in more recent times New South Wales Health?---Yes.

And that the transaction to which you were making reference earlier concerned the transfer of that property owned by New South Wales Health to the Lands Department?---Yes.

10

And that was a transfer or a transaction that occurred in or about mid-2007? ---That would be about, about right.

So we should understand that your reference to that transaction and it being a matter that you had in mind at the time of the letters that we discussed earlier in February of this year was a transaction that was similar or related in some way to the Currawong transaction?---I saw it as a similar situation, yes.

20

And can you explain how you saw it as similar when the Priory transaction was a transfer between two government departments?---My recollection of the Priory transaction was that, that, there was a, the LPMA or Lands Department at the time acquired the site for - - -

THE COMMISSIONER: From the Department of Health?---From the Department of Health, yeah, for, for a sum of money, about nine, I, I, I - - -

30

It couldn't have affected the budget because it was one, a sale from one department to another?---Yes, but the actual authorisation to acquire and spend that money was, was what I can try to join the dots in terms of the similarities between the, it was an expenditure of money, my understanding from the Priory was that it was a, a, a transaction for \$9 million and it was paid for by, out of the sale of Crown lands.

MR ALEXIS: But, Mr Fenn, you well understood didn't you that this transaction was one that occurred between one department of government to another and the approvals relating to that that occurred within or between Treasury and the Premier related to a transaction of that type?---Yes.

40

You understood that. The Currawong transaction, of course, related to a prospective government acquisition from a third party so the two aren't similar at all, are they?---Well, in my, in my, in my opinion they, they were. I, I, I - - -

Well, how could they be in those circumstances that I just outlined to you?

THE COMMISSIONER: One's an arm's length transaction and one isn't? ---One is what, sorry?

An arm's length transaction and one isn't. One is a friendly arrangement between two government departments and the other is a market deal?---Yes, but the principle - - -

How could you possibly compare the two?---Well, I, I formed an opinion in my mind that, that they, they were a, similar, similar principles involved.

10 MR ALEXIS: Now, Mr Fenn, as I think you told us before lunch the fact that you saw some similarity was not a matter that you spoke to your minister about in relation to the Currawong transaction?---I can't recall talking precisely about the Priory but, but I think there was an, an understanding that this is similar to the Priory situation.

Well, an understanding based on what?---Well, the fact that we'd previously, we'd been through this before. I'm, I'm, I'm confident that the minister was aware of what I thought were the similarities between the - - -

20 But Mr Fenn, how did you understand that the minister thought that the Priory transaction was related in any way, shape or form to the proposed Currawong transaction. Did you speak to him about it or not?---I, I can't recall precise, specifically talking to the minister about the, the - - -

THE COMMISSIONER: That Priory transaction, there were recommendations from the Treasury and the Premier's Department, weren't there, in supporting the transfer?---My recollection is that we had to seek approval from either the Premier or, of the day or the Treasurer of the day in terms of authorising - - -

30 And didn't both, didn't, wasn't there a recommendation from your department, wasn't there a statement by your department to the Treasury saying that the transaction had been recommended by the Treasury and the Premier's Department?---I, I can't recall the precise details.

MR ALEXIS: Thank you, Commissioner.

THE COMMISSIONER: Yes. Mr Branson, do you have any questions?

40 MR BRANSON: Yes, just a few, thanks, Commissioner. Mr Fenn, when you, sorry, just let me take you back to this, just 25 February, that was a Friday, and that's the, that's the date the Premier's letter bears?---Yes.

Do you have a specific recollection of speaking with Mr Kelly on that day or not?---Not a specific recollection but I, I, I would over the normal course of business, have advised the minister that, that we were in receipt of that letter.

Yeah. You would have text, text him or left a message or something?
---Yeah. As I said, I can't recall whether he was in the office or not, but- - -

And if he, if he was away from Sydney it's your evidence that you believe you did get a message to him that- -?---I would have got a message to him and whether myself or- - -

Just let me finish the question?---Sorry.

Sorry, no, it's my fault, I was going too slowly. But it's, it's, it's your recollection that on that day you got a message to Mr Kelly that the Premier's letter- - -

10

THE COMMISSIONER: No, that's not what he said, Mr Branson.

MR BRANSON: Sorry?

THE COMMISSIONER: He didn't say- - -

MR BRANSON: I'm asking him if, if that is his evidence.

THE COMMISSIONER: He's already said he can't remember- - -

20

MR BRANSON: Oh, well, I'll move on.

THE COMMISSIONER: - - -and that it's something that he would have- - -

MR BRANSON: I'll move on, Commissioner. Thank you.

THE COMMISSIONER: He says he has no independent recollection of it.

30

MR BRANSON: Well, there's been a great deal of repetition in this inquiry. I wanted to get it clear, but we'll move on. Do you know whether or not you spoke to Mr Kelly at some time other than 20 February? Yes or no?

THE COMMISSIONER: About what?

MR BRANSON: About the Premier's letter?---(NO AUDIBLE REPLY)

If you don't know, well, say don't know?---I can't recall. I assume I would have.

40

Just let me, do you remember having any discussion with Mr Pooley on or about 16 March, about the issue of a media release following the acquisition of Currawong?---I can't recall specifically about a media release but it would have been, you know, my understanding would have been we'd, we'd have bought the site and then the next logical progression was, well, how do we make this known to the public.

Right. Well, I'm sorry. Do you think you had such a conversation with Mr Pooley or not?---I can't recall a- - -

All right---?- - -specific conversation with Mr Pooley about a media release.

10 Could I just ask you to look at this document, please. I can identify it's part of attachment B to Ms Pettersson's report, which is, see the 8C, it's unmarked at the moment. Just read that to yourself, please, and tell me whether or not you recall seeing that document before. I'm sorry, I should have given you- - -?---No, it's all right.

- - -(not transcribable) associate more notice or some notice, not no notice.

THE COMMISSIONER: Well- - -

MR BRANSON: I'm sorry.

20 THE COMMISSIONER: If it's a document that's already been produced then you didn't have to.

MR BRANSON: No, but I should as a matter of courtesy and efficiency (not transcribable) away when I suddenly was on my feet.

THE COMMISSIONER: Right. What is it?

MR BRANSON: I know, I got caught. So have you seen it before?
---I can't recall seeing this draft release.

30 All right. Just hand that back. Thank you. Was it your understanding as at, thank you, Your Honour, as at 16 March, I suppose I should get, no, that's all right, you didn't (not transcribable) Now, getting back to the plot. Was it your understanding as at 16 March that it was proposed that there would be a media release to be issued on behalf of the New South Wales Government announcing the purchase of the Currawong site as part of a state park?
---It, it would have been a logical progression from the, in telling Mr Pooley there would have been some thought about where, where we go from now.

40 Yes. And do you remember having any discussion with Mr Pooley about contacting Mr O'Farrell because you were then clearly in caretaker mode?
---I can recall a, my recollection is that the Premier's office wanted to contact Mr O'Farrell's office to discuss the announcement.

Was that a topic of any discussion you can recall having with Mr Pooley on or about 16 March or not?---I can recall, I think it might've been an email that that was, you know, the boss wants to talk to Mr O'Farrell.

We've got such an email and it was – I'll just hand this up and just read this chain of emails, we dealt with it yesterday and I don't think it got a separate

exhibit number. Attachment B to Mr Pooley's statement. Just read the chain from the bottom, bottom up please?---Up?

Yes, not down?---I can vaguely remember the course of the morning, whatever it is, yes, the morning.

Let me ask you this please. On the morning of 16 March do you recall Mr Pooley expressing to you any surprise in the sense of dissatisfaction with the acquisition of the Currawong site having taken place apparently the day
10 before?---I can't recall at this stage, my recollection was that Mr Pooley was just seeking information and trying to get to the heart of the matter and then he was obviously going to go off and talk to his, his, well, the Premier about where do we go from here.

Yes. And at least in that snapshot of the time do I correctly understand that to your knowledge it was seen as a positive and not as a negative in terms of the state of play in the course of the election being in caretaker mode, there was (not transcribable)?---Very much so. My understanding was that there
20 was a degree of bipartisanship over the merits of the acquisition.

And just remind me, when did you first become aware that the exchange of contracts had taken place on 15 March or you're not able to identify precisely?--- I can't recall, but I believe on 15 March at some stage it was, I was advised that it was a done deal.

And do you think that came from someone in Mr Watkins' office or Mr Watkins himself?---It would've come from either Mr Watkins or his office informing - - -

30 Mr Matchett maybe?---It could've been Mr Matchett.

But you're clear, aren't you, that on the 15th and at least the morning of the 16th there were no negative vibes as far as you were aware about this transacting having occurred apparently on 15 March?---Not that I can recall on that day, it was, as I said, more of a fact gathering exercise on their behalf.

Now, so far as you were concerned, I mean, at all material times that this proposed transaction was on your radar you were of the view, were you not,
40 that it would not have been inappropriate to have had it either, either to go to the budget committee or full Cabinet. Correct?---Not inappropriate.

Not inappropriate?---Not inappropriate.

Did you consider or have you considered whether the minister Mr Kelly may have taken it upon himself to specifically authorise this transaction subject to the approval of the Premier and/or the Treasurer?

THE COMMISSIONER: At what stage, Mr Branson?

MR BRANSON: Well, up until 15 March.

THE COMMISSIONER: At any time?

MR BRANSON: Yes. I just want to explore this. Was that something that as the Chief of Staff of Mr Kelly was ever within your contemplation?

10 THE COMMISSIONER: What is the question?

MR BRANSON: In terms of getting approval?---On receipt of that letter, and as I said in my opinion there was approval to - - -

From the Premier?---From the Premier. That, that letter of 25 Feb.

And was it your understanding albeit differently now that that letter responding to the letter of 9 February sufficiently authorised Mr Watkins to exchange contracts?---In my opinion it did.

20

Did you have any role to play at all in obtaining any legal opinion as to whether that was so or not prior to 15 March?---No, no.

Okay. Just in terms of Cabinet, in, at the end of year 2010 can you just give us some idea as to when the Cabinet would have last met that year?---In 2010?

30

At the end of 2010 approximately?---It was around early December, look, it could have been towards the mid, I, it was, as I, as I said it was a busy time of the year so I can't recall specifically the last Cabinet meeting of that year.

And then when in the New Year can you tell us approximately that Cabinet meetings would have resumed, 2011?---I, I, I can't recall, there may have been on in January, obviously there were a number of ministers away. I couldn't recall precisely the date of when Cabinet would have convened.

40

Can you turn your mind please to Friday, 18 March and you've agreed that if the records show that there were eight telephone conversations between you and Mr Watkins that day they're obviously things of substance being discussed and I suggest to you that a principal concern of Mr Watkins apparently was the duration of the IAB inquiry, do you agree?

THE COMMISSIONER: Mr Branson, I'm not sure, I don't understand how you're putting this, you're not acting for Mr Watkins.

MR BRANSON: All right. Well, well, I'm going from what I've read obviously, that the Commission has provided to me but I'll come at it another way. On Friday, 18 March during any one or more of the eight

telephone conversations that you had with Mr Watkins that day did he express any concern to you about the duration of the IAB inquiry?---My recollection is that Mr Watkins was very concerned about the duration in terms of, you know, his future.

Are you able to say whether or not from your perception during those eight, those eight telephone conversations that day that was his principal concern or not?---Not his, I couldn't, I couldn't say whether it was his principal, it was, it was a pressing concern of, of Mr Watkins.

10

All right. Thank you.

THE COMMISSIONER: Yes. Mr Curtin.

MR CURTIN: Mr Fenn, my name is Curtin and I appear for Mr Watkins. Between 2003 and October 2008 you were a policy adviser to Mr Kelly?--- That's right.

20

And when did Mr Kelly become the minister for lands et cetera in, during that period?---Oh, well, he was minister assisting the minister for 2003, I think he became minister for lands in his own right in 2004 I believe.

And you then went, you went to the LPMA in October 2008 and then back to Mr Kelly's office in July 2010?---That's right.

And being in those places at those times did you become aware in 2005, thereabouts, that Unions New South Wales was looking to sell the Currawong property?---Yes, I was aware of that.

30

And are you aware that I think the LPMA I think put in a tender for the purchase of the property which was subsequently withdrawn?---I, I, I, there was an interest from the LPMA but I'm not precisely sure what form that took but I believe there was some agreement that this would be a positive thing.

40

Yes. And did you, did somebody say to you or did you read in the media that the reason or a reason why that tender wasn't pursued was because of any political overtones of Unions New South Wales selling to a state government then - - -?---It was a, the, the politics of it were, were, it was, were, were a consideration.

A negative consideration?---Yes.

And did you, were you told or did you read that Unions New South Wales had entered into a put and call option with Eco Villages in respect of Currawong at the end of December 2006?---Oh, end of December 2006, I can't recall that, but I, you know, yeah.

Do you recall being told or reading that Unions New South Wales proposed to sell the property to Eco Villages?---Oh, I was aware that there, that that was the intention of Unions New South Wales.

10 Right. Excuse me. And after December 2006 and particularly in 2009 and 2010, did you become aware or did anybody tell you or did you read that the commercial arrangement between Unions New South Wales and Eco Villages was just to use broad terms, the subject of further negotiations and further agreements?---I was aware that there was a process in place to, to purchase it.

And did you become aware in 2010, I withdraw that. Do you, did you become aware that- - -

THE COMMISSIONER: Mr Curtin, I think much of this is common ground. There's no objection if you want to lead the witness.

20 MR CURTIN: Thank you. Thank you, Commissioner. Unions New South Wales entered into a settlement deed and a contract for sale, can I tell you, on 26 November, 2009, with completion contemplated to be 26 November, 2010. Can I just ask you to accept those facts?---Okay.

30 And so during the early part or, or the first six or seven months of 2010, according to those arrangements, Eco Villages would become the legal owner of the land on 26 November, 2010. And if, if the government broadly speaking wished to purchase the property, it would be initially, I withdraw that. If the government wished to purchase the property from Eco Villages, the first time that could be entered into was after 26 November, 2010, at least initially. Do you understand?---Yes.

But before the government could purchase the property, and depending upon how the government would purchase the property, whether in conjunction with Pittwater Council or taking into account which fund of money it might access, various preparatory steps needed to be taken. Is that - - -?---In terms of initial negotiations between the LPMA and- - -

Well, in terms of the government thinking?---Yeah. There, there, there, there was a degree of uncertainty about how- - -

40 THE COMMISSIONER: Eco Villages had to become the owner, that's the first thing that had to happen?---Sorry? Yeah.

Eco Villages had to become the owner of the land before the government could purchase the property from Eco Villages?---That would make sense, yeah.

MR CURTIN: And if the government was contemplating purchasing the land a few months into the future, it might also have to start to think how it will fund the purchase?---Yes.

And if, I think you described this as an exceptional case, Currawong, that is, and one reason why it was exceptional is because Pittwater Council wanted to, I'll just call it donate land to assist with the purchase?---That was, that was a consideration, part, part of the negotiations.

- 10 Yes. And from your experience in, that you've outlined first as a policy adviser and then with LPMA and back to Mr Kelly's office, did you become aware that Mr Watkins had a number of financial delegations?---I was, I was broadly aware that he had a number of delegation, financial delegations. I wasn't sure of the, the actual quantum.

And these delegations had a limit under which, or that Mr Watkins could spend money underneath that ceiling without seeking anybody else's authority?---Yeah, that, that was my understanding.

- 20 He may inform the minister and he may inform other people as a matter of prudence for various reasons but he actually had the legal authority if I could put it that way to spend up to those caps?---Yes.

THE COMMISSIONER: Well, that's subject to him being given other instructions by the minister or the Premier I take it?---I'm not too sure of that.

That, that is a legal question?

- 30 MR CURTIN: Yes. As, as you understood it if he was directed not to enter into a purchase for less than the cap of course he would need to follow the instruction?---Yes.

But absent any countermanding direction from the minister or Cabinet or perhaps the Premier he could exercise, exercise those delegations as he saw fit?---That would be my understanding, yes.

- 40 And if we assume for the moment he was proposing to purchase land for a sum of money less than the cap pursuant to one of his delegations he didn't need anybody's authority to negotiate as opposed to enter into a legally binding contract for the purchase of any land so far as you understood it? ---If it was under his financial delegation he'd have the, he, and if there were, as you say no countermanding direction not - - -

I want to draw a distinction between negotiating and entry into a legally binding contract?---Right.

MR ALEXIS: Commissioner, can I raise an objection not so much to a question but to the line of questioning.

THE COMMISSIONER: Yes, I was going to ask you, Mr Curtin, if this goes to Mr Fenn's state of mind it's one thing but if it goes to the actual legal situation it is another. If it goes to Mr Watkins' state of mind that's not been laid out in the questions that, that's a matter that no doubt will be raised when Mr Watkins give evidence or through other witnesses so that while these, these questions are, go to issues that are certainly relevant I don't know, quite see what Mr Fenn's opinion has to do with it.

MR CURTIN: If you can, if I go to something different and if I can have five to ten questions. If you draw the distinction between negotiation and entry into a legally binding contract, do you understand the difference?
---(NO AUDIBLE REPLY)

If I recall the negotiation, I - - -

THE COMMISSIONER: Well, do you understand it?---Oh, look, I'm, off the top of my head, no, sorry, sorry.

MR CURTIN: Can you just assume negotiation means talking with somebody - - -?---Yeah, to discuss a proposal.

To discuss a proposal?---Yeah.

But without there being a concluded contract at the end?---Yeah, okay, yeah.

30 If it put this to you: whether, if we take a piece of land as an example, whether the purchase price was below or above a financial delegation for Mr Watkins, he didn't need the minister nor the Premier's authority to discuss proposals with anybody, correct?

THE COMMISSIONER: Again, Mr Curtin, I mean, I don't want interfere in your cross-examination but I, this depends on political considerations as well. If you, to put the question accurately I think you'd have to say absent other political considerations which might have been obvious.

40 MR CURTIN: Yes, sure.

MR ALEXIS: And, Commissioner, could I add two further observations to that? The first is that the documentary material at least indicates that the proposition that my learned friend is advancing was not how Mr Watkins acted and, secondly, and meaning no disrespect to Mr Fenn, answers from the chief of staff in respect of these propositions is really of no utility.

THE COMMISSIONER: Well, I'm sure, Mr Curtin, you're getting to the point.

MR CURTIN: I've got, I've got eight questions left.

Mr Fenn, absent political considerations?---It was (not transcribable) piece of land.

10 So far as you understood the position Mr Watkins did not require his minister's nor the Premier's authority to negotiate, that is to discuss a proposal, is that right, so far as you understood it?---It seems a reasonable proposition.

So the letter from the Premier of 25 February, 2011 on one view only giving authority to negotiate was an authority that Mr Watkins did not need.

20 THE COMMISSIONER: Mr Curtin, I really do not think that Mr Fenn's answer to this is of any help because this, this is a matter of his opinion and I, it depends on so many, on so many other considerations which haven't been put to him so firstly whatever he says is not helpful because of his particular role, without any disrespect intended to him?---None (not transcribable)

And secondly the question is quite a complex one and there are a number of other factors that have to be put and, and considered before an answer is given so I won't allow that question.

MR CURTIN: Can I say one thing about - - -

30 THE COMMISSIONER: When I say I won't allow it, I mean, this is a fairly easy going inquiry as far as evidence is concerned but it really does, I'm really attempting to discourage you from this course because I just don't see the point of it.

MR CURTIN: Well, can I, accepting the second part, the point is that there is evidence of a contemporaneous view of the Premier's letter which existed - - -

40 THE COMMISSIONER: Yes.

MR CURTIN: - - - prior to I think 16 March.

THE COMMISSIONER: Yes.

MR CURTIN: The one possible finding in the inquiry is that various people including Mr Watkins had an honest and correct view of the Premier's letter, authority to purchase - - -

THE COMMISSIONER: I understand that.

MR CURTIN: - - - or an honest but mistaken view.

THE COMMISSIONER: Quite so.

MR CURTIN: And honest and mistaken is not corrupt conduct as I read section 8.

10 THE COMMISSIONER: Now, Mr Curtin, both you and I know that to be so but I'm still not sure what follows from that as far as Mr Fenn is concerned.

MR CURTIN: Well, Mr Fenn gave evidence of his view of the Premier's letter and his evidence - - -

THE COMMISSIONER: Well, not going to, that's to explain his own conduct. It has no bearing on the general issue that you raise.

20 MR CURTIN: Except that there was, there is evidence of various interactions between Mr Watkins and Mr Kelly's office and there's been some evidence of some of those people in those positions having a view of the Premier's letter - - -

THE COMMISSIONER: Yes.

MR CURTIN: - - - and if those views are accepted as - - -

THE COMMISSIONER: Genuine.

30 MR CURTIN: - - - genuine - - -

THE COMMISSIONER: Genuinely held.

MR CURTIN: Genuinely held - - -

THE COMMISSIONER: Yes.

40 MR CURTIN: - - - then they as it were act as corroboration.

THE COMMISSIONER: That's true. So why don't you ask, I mean, Mr Fenn has given that evidence, he has asserted over and over again that he genuinely held the belief that Mr Watkins was authorised to exchange the contracts and he has been asked many questions about that, but he has persisted in giving that reply, we know that.

MR CURTIN: Only insofar as this fact, if I can call it that, since his credit was under some challenge may be an additional fact for - - -

THE COMMISSIONER: What fact?

MR CURTIN: The necessity or otherwise for Mr Watkins - - -

THE COMMISSIONER: I think that's a matter for argument.

MR CURTIN: If your Honour please. Well, in those circumstances I have no further lines of cross-examination.

10 THE COMMISSIONER: Yes, thank you, Mr Curtin. Now, Mr Dunne, do you want to ask any questions?

MR DUNNE: No.

THE COMMISSIONER: No. And, Ms Fisher, are you here?

MS FISHER: Yes. I'm here and I don't have any questions.

20 THE COMMISSIONER: Does anyone else wish to ask Mr Fenn any questions?

Mr Alexis, do you have any re-examination?

MR ALEXIS: Just one, one matter which didn't strictly arise but in any event I'd seek leave to ask it. Mr Fenn, we know that the Premier's letter was received into your minister's office on or about the date of the letter, namely, 25 February?---Yes.

30 And we know that the contract for the acquisition of Currawong was exchanged on 15 March. Do you recall having any communications with anyone from the Premier's office between the receipt of that letter and when you first learnt that contracts had been exchanged for the acquisition of Currawong?---I can recall a passing – I bumped into Mr Pooley, I think I was getting a coffee, can't recall what day but it was probably, it was during the time in which Mr Watkins was negotiating and I simply said to Mr Pooley that the negotiations are continuing.

40 And was that the extent of the communication on that subject matter?---Yes, Mr Pooley just sort of nodded and - - -

Acknowledged your comment and moved on?---Yes. The intent was to keep them informed about what was going on.

And apart from keeping them informed in the way that you've mentioned, communication with Mr Pooley that negotiations were continuing, there was no other communications that you can recall occurring between Minister Kelly's office and the Premier's office during that period from the date of

her letter to the date of exchange?---No, I can just recall that, that passing conversation with Mr Pooley.

MR BRANSON: Commissioner, can I just raise something with my learned friend quickly and (not transcribable).

MR ALEXIS: Commissioner, thank you, I have no further questions of Mr Fenn.

10 THE COMMISSIONER: Yes, Mr Curtin.

MR WHITE: Can I just ask one question about that, Commissioner.

THE COMMISSIONER: Can you just explain who you are?

MR WHITE: Sorry. My name is White, I represent Mr Pooley?---Sure.

20 Just in respect of that conversation you're saying that took place in the intervening period do you recall when that was?---No, I honestly can't recall, but I did know it was during the course of negotiations between Mr Watkins and Eco Villages.

Yes, nothing further.

30 THE COMMISSIONER: Mr Curtin, before Mr Fenn is excused I just want to make one thing clear so that there's no misunderstanding between us. When I said the issue that you raised was a matter of argument I did not intend to rule that it is not something that you may wish to lead in some way from Mr Watkins to justify his conduct.

MR CURTIN: I understood that correctly.

THE COMMISSIONER: I do not think that it is a matter that concerns Mr Fenn because it's not a matter, that on the evidence, was ever discussed by him with anybody or that he even thought about.

MR CURTIN: I understood what you've just put to me. I've put my submission about why it might be helpful but - - -

40 THE COMMISSIONER: Yes. Just so that you understand.

MR CURTIN: Yes, quite.

THE COMMISSIONER: Yes, very well. Thank you, Mr Fenn, you're excused from the summons?---Thank you.

<THE WITNESS EXCUSED

[3.15pm]

MR ALEXIS: Thank you, Commissioner, I call Mr Kelvin O'Keefe.

MR WHITE: Commissioner, I also seek leave to appear on behalf of Mr O'Keefe.

THE COMMISSIONER: Yes. There is no conflict between Mr O'Keefe - -
-

10 MR WHITE: No, there's not. It's been clarified, there is definitely no
conflict.

THE COMMISSIONER: I hope you're right, Mr White.

MR WHITE: Yes, I am. I've made very special care that there hasn't been.

THE COMMISSIONER: All right. Do you wish me to make a section 38
order?

20 MR WHITE: Yes, I do and the witness wishes to be sworn, thank you.

THE COMMISSIONER: Pursuant to section 38 of the Independent
Commission Against Corruption Act I declare that all answers given by Mr
O'Keefe 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.

30 **PURSUANT TO SECTION 38 OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION ACT I DECLARE THAT
ALL ANSWERS GIVEN BY MR O'KEEFE 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: Mr Alexis.

MR ALEXIS: Thank you, Commissioner. Sir, is your full name Kelvin Ernest O'Keefe?---Correct.

10 And is your current position that of Corporate Counsel with, what was formerly known as the Land and Property Management Authority?---That's right.

Currently you are the Corporate Counsel with the LPI Division of the Department of Finance and Services, is that so?---Yes.

And should we understand that you have acted in the position of Corporate Counsel for the LPMA since about August 2007?---Yes.

20 And you're a legally qualified legal practitioner?---I am.

And for how long have you practised as a legal practitioner?---Since 1982.

And prior to being appointed Corporate Counsel to the LPMA in August 2007 could you just give us a brief rundown on your prior positions?---Yes. Predominantly within the public sector of New South Wales including an earlier stint at the Department of Lands in the 1980's and an extensive period of time at Sydney Water, a short period of time in the private profession before I was admitted as a solicitor.

30 All right. Thank you. Now, relevantly should we understand that you became involved in the Currawong acquisition at a point relatively shortly before the exchange of contracts on 15 March this year?---That's right.

And if you could be shown please Exhibit 1 which you will no doubt appreciate by now is the bundle of documents that has been tendered in the inquiry. Could you open it please to tab 11 and it's page 47C within the exhibit to which I wish to refer. Do you have that?---Yes.

40 And do we see there, Mr O'Keefe, an email that you received on or about the date indicated 10 March at 8.28pm that evening, perhaps you got it the next day, relating to the subject of the Currawong purchase?---Yes, that's right.

Now, does this provide us with a fairly clear marker as to the point in time by which you became involved relative to the exchange on the following Tuesday?---Yes, I think there may have been some discussion on the Thursday afternoon, I think that there were wheels set in train at that, on that day.

Yes. So the afternoon of Thursday, the 10th you had some discussion, did you, with Mr Watkins about - - -?---No, I didn't.

Not with Mr Watkins?---No, Mr Watkins, as I recall, was interstate.

Thank you. And I should've asked you this earlier and I do apologise. I gather you report to Mr Watkins as your CEO?---(not transcribable).

10 And prior to the email being received to whom did you have discussions about the subject of Currawong as best you recall?---I recall having discussions with Andrew Simpson, I think, unless it was the Thursday or the Friday, I think it may have been the Thursday but I could have my dates wrong, he had been requested by Mr Costello directly to act as the solicitor on the transaction. I found out about that and I spoke to Andrew about it and I subsequently spoke to Mr Costello about it.

Now, Mr Simpson is a solicitor working within legal branch, if that's the - - -?---That's correct.

20 - - -correct description of- - -?---That's correct.

- - -the branch within the LPMA of which you are the chief corporate counsel?---Yes.

Thank you. So it was that communication which led you to understand that there might be a conveyance on the horizon that Mr Simpson would be the relevant solicitor acting. Is that so?---Well, subject to my being satisfied in relation to allocation of work and court commitments et cetera, yes.

30 So- - -?---And I was happy for that to proceed.

So in terms of the essential elements of the transaction, was the receipt of this email the first time that you became aware of it?---I think I said before I may have been aware of it before I, before this email. This email came on the Thursday evening.

Mmm?---I think, I haven't really directed my mind directly to this, I think I knew about it on the Thursday afternoon.

40 Mmm?---So I think something was in the pipeline as well.

All right. Now, on the Friday, that's Friday the 11th, do you recall having any discussions with either Mr Watkins or Mr Costello concerning the transaction, the essential part of which was set out in this email?---Yes.

And firstly could you identify with whom you spoke and what the subject was?---I spoke with Mr Costello on Friday morning.

Thank you. And what was discussed during that occasion?---I asked Mr Costello, I said words to the effect of whether this transaction was okay, given that we were in caretaker mode.

All right. Now, just pausing there if you would. Could I have shown to you, please, Exhibit 5 in this inquiry?---Yes.

10 And may we take it, Mr O’Keefe, that the circular from the Premier’s Department back in October of 2010, you see the date at the foot of the email on the first page of Exhibit 5- -?---Yes.

- - -attaching the terms of the Caretaker Conventions and other pre-election practices was something that you were aware of on the Friday the 12th?
---Yes, I was aware of it.

And it was that subject matter that was uppermost in your mind, hence the question to Mr Costello about whether or not this transaction was okay?
---Yes.

20

And I gather your question was really founded upon a concern that absent proper authority and approval, the transaction would be either actually or potentially in breach of these conventions?---Yes.

Now, when you raised with Mr Costello whether the transaction was okay, can you tell me what his response was?---Yes. His response was to the effect that there was a letter from the Premier which the, well, which I presume Warwick was relying on, that a letter from the Premier was in existence and that it provided authority for this transaction.

30

THE COMMISSIONER: I’m not sure it’s my fault, but I don’t understand what the question of authority et cetera has to do with the Caretaker Conventions. I understand what the authority has to do with a binding contract but I have no idea what it has to do with the Caretaker Conventions.

MR ALEXIS: Okay. I’ll put it, okay.

THE COMMISSIONER: I assume that the Caretaker Conventions concern contracts that are entered into when, close to an election where the- -?
40 ---Yes.

- - -contracts, this, whether this contract was entered, I, is it not the case that you were asked to consider whether the contract was, breached the conventions because of the date in which it was entered into or did you ask something else, Mr O’Keefe?---I asked Mr Costello what I just said, was the effect of what I said.

That didn't go to authority, did it?---No, that's correct. When I, when I used the term authority I was referring to the ability to enter into this transaction without offending the Caretaker Convention.

I understand. Thank you.

MR ALEXIS: And the reply that Mr Costello gave you was to the effect of, we're relying on a letter from the Premier, or something to that effect, was it?---That's correct.

10

Now- - -

THE COMMISSIONER: And that meaning the date of the letter? Well, I still don't understand what the, how the letter, the existence of a letter from the Premier tells anybody whether the conventions have been breached or not. I mean, just explain that to me, please?---If there was an authorisation for a transaction to occur, which had taken place, or if the authorisation or the approval had been given prior to the government entering into caretaker mode, it was my understanding that it would be permissible for that particular transaction to be concluded.

20

I see. So your understanding was that provided the authority for the transaction had been given by a certain date- -?---Yes,

- - -the conventions were not breached, even though the transaction itself was entered into after that date?---That's correct.

And can you tell me where in the conventions that is set?---(NO AUDIBLE REPLY)

30

Or perhaps if you could, if it's going to take time I'd rather not know at this stage, but perhaps you could let the Commission know on what you're relying at a later time?---Yes.

MR ALEXIS: Now, Mr O'Keefe, when Mr Costello responded to your question about the transaction being okay by telling you that he was relying upon a letter from the Premier, did you ask to see the letter?---No, I didn't.

40

Did he show you the letter?---No, he didn't.

And so from what Mr Costello told you, you would not have known the date of the Premier's letter, let alone- -?---No.

Let alone the content. Is that so?---That's correct.

So how was the statement from Mr Costello to the effect, we're relying upon a letter from the Premier, able to satisfy your inquiry about whether

the transaction was okay?---It was a matter of my personal confidence in what Mr Costello said to me.

So Mr Costello saying to you, we're relying upon a letter from the Premier, was enough for you not to pursue that line of inquiry or question any further?---Yes.

THE COMMISSIONER: Did you know what the relevant date was?---Yes, it was a date around about the end, in terms of transactions?

10

Yes?---The end of February I think it was. I think it was about a month before the election.

And did Mr Costello know the relevant date?---Well, by my, I presumed that he did. I can't say whether he did or he didn't.

And did he tell you the date of the letter from the Premier?---No, he didn't.

20

Is that the kind of thing you'd do again, Mr O'Keefe?---I think I would be more careful.

I would hope so.

MR ALEXIS: Mr O'Keefe, if it be the case that Mr Costello had formed the view on his reading and interpretation of the Premier's letter that that was a letter which authorised the transaction notwithstanding the commencement of the caretaker period, but it was also a letter that authorised entry into the transaction, I gather you accept that you played no role in the formation of that belief?---No.

30

Now, did you speak with Mr Watkins at all about the letter from the Premier and whether that was sufficient to avoid application of the Caretaker Conventions and duly authorised him to enter into the contract?---No.

And so if it be the case that he formed the belief that the Premier's letter authorised him to enter into the transaction notwithstanding the convention provisions, that was a belief that he formed without any information or advice from you?---Correct.

40

And similarly if he formed the view that the letter from the Premier authorised him to execute and exchange the contract, that was a belief that he formed without any advice or assistance from you?---Correct.

Now, did Mr Watkins speak to you at all between the time that you came into the transaction and the time that you understood that the contract had been exchanged about the subject of financial delegations and/or authorisations concerning the transaction?---Not that I can recall. There, there was a general meeting I think on the Monday when Mr Watkins

returned from interstate and myself and I think two other lawyers and Mr Costello attended that, but that was more for a review of the terms of the contract because there had been some conditions which were of concern.

But during that meeting or those meetings on the Monday, and I'll come to some detail, you were never shown the Premier's letter, is that so?---No.

You were never shown the letter from Minister Kelly to the Premier that led to the Premier's reply?---No.

10

You were not shown any prior briefing documents that were put up to the minister seeking approval with respect to Currawong?---No.

And so your advice as chief corporate counsel of the LPMA was not sought on this subject matter at all, is that so?---That's correct.

20

Would you mind looking at the letter that we are discussing which is the letter from the Premier at page 47A behind tab 9 and, Mr O'Keefe, should we understand that part of your role as chief corporate counsel for the LPMA is to make yourself available as and when necessary to your chief executive for the purpose of providing legal advice or other associated advice on any matter that he requires?---In connection with the performance of his duties as chief executive officer, yes.

And so if there was ever any question relating to matters of interpretation or construction or any issues of law or matters related to that that he needed advice on, as you understood he could come to you at any time and ask you questions about that subject?---Yes.

30

THE COMMISSIONER: Where is your office situated in relation to his, Mr O'Keefe?---Down the corridor and through two buildings. I'm in the legal section of the LPI component of that Queens Square building and it separated by, it's a secure legal area.

A five to ten minute walk away?---No, a two minute walk.

A two minute walk.

40

MR ALEXIS: Now, Mr O'Keefe, do you have open in front of you behind tab 9 of Exhibit 1, page 47A?---Yes.

And you see there a copy of the letter under the hand of the then Premier to Minister Kelly - - -?---Yes.

- - - relating to Currawong?---Yes.

And no doubt you'd read the letter before?---Yes.

And may we understand this, that if your advice had been sought on the Monday before the exchange on the Tuesday the 15th as to whether or not this letter authorised Mr Watkins to execute and exchange the contract so as commit government to the purchase of Currawong, what would your advice have been?

MR WHITE: I object.

THE COMMISSIONER: Why do you object?

10

MR WHITE: On the basis of relevance to this inquiry. This witness did not see this document before contracts were exchanged. His opinion post contract in my submission is not relevant to any of the issues of this inquiry.

THE COMMISSIONER: I understand the basis of your submission but I overrule your submission.

MR ALEXIS: Mr O'Keefe, do you need the question again or - - -?---Yes, could you repeat the question?

20

Of course. Had this letter been tabled before you during the meeting or meetings on the Monday before contracts were exchanged on the Tuesday and your advice was sought as to whether the letter from the Premier authorised Mr Watkins to execute and exchange the contract, what would your advice have been?---I would have sought more information.

And what information would you have sought?---I would have sought information as to financial approvals, what, what financial approvals or limits were in place and I would have sought other correspondence relevant to that letter which gave rise to that letter, I would have wanted to see the complete picture.

30

All right. And if in response to that you were shown the letter, if you could turn back to the material behind tab 8 and look particularly at pages 43 and 44, if you were provided with that letter and I'll just wait for you to catch up, do you have the letter at 43 and 44?---Yes, but I don't have my glasses with me, they're in my bag. Can I get my glasses?

Commissioner, may Mr O'Keefe have leave?

40

THE COMMISSIONER: Sorry, yes, you have leave.

MR ALEXIS: Thank you.

THE COMMISSIONER: Mr Alexis, while Mr O'Keefe is getting his glasses I must say Mr White's submission, I'm still thinking about it. I'd like to hear you as to the relevance of this please.

MR ALEXIS: Yes, and the relevance is in a couple of words this: it is apparent that the Commission will receive a submission in due course for those who wish to contend that this letter from the Premier provided the requisite authority but if they be wrong about that as a matter of construction they nonetheless had an honest and reasonable belief. Now, the evidence that the Commission has heard so far is that the chief corporate counsel of the very organisation that undertook the transaction was not consulted about this. Now, that in my submission does have some bearing on the existence as to whether there was in fact an honest and reasonable
10 belief.

THE COMMISSIONER: That evidence has been given. That evidence has been given. He wasn't consulted. How does it help to know what his opinion would have been?

MR ALEXIS: Well, Commissioner, I don't wish to take time - - -

THE COMMISSIONER: Well, Mr White, I retrospectively uphold your objection.
20

MR WHITE: Thank you, Commissioner.

MR ALEXIS: Now, Mr O'Keefe, you told us I think that there was a meeting or a series of meetings on the Monday before contracts were exchanged on the Tuesday, can I - - -?---A meeting.

I just want to get clear whether I've misunderstood what you've said. You were involved in a meeting, is that right?---Yes.

30 And was that in Mr Watkins' office?---Yes.

And who was present please?---I recall myself, Mr Simpson, Mr John Callaghan who was another lawyer, Mr Costello and Mr Watkins. There may have been other, I, I can't recall whether Mr Matchett was there or not.

Right?---He may have been, I just, I just don't recall.

40 Now, I think the position is that the contract which was a rather intimidating document in terms of its thickness arrived in Mr Simpson's office on the Friday afternoon and he was tasked to review over the weekend that contract and provide some advice on the Monday morning during that meeting?---Correct, and I had a copy of the contract as well which I looked at.

And did you review the contract as well?---Probably not as thoroughly as Mr Simpson but I, I just wanted to get an overview of it so that I knew what people were talking about and there were some issues that I had with that contract.

And should we understand that having discussed those concerns it was Mr Simpson who understood the task of negotiating the special conditions of the contract with the vendor's - - -?---Yes.

- - - solicitor during the course of Monday?---Yes.

10 And so if I have questions concerning the formation of the final terms they're questions I really should address to Mr Simpson because he undertook those negotiations. Is that so?---That's right.

Thank you. But should we understand that having reviewed the draft form of contract one matter of concern related to the existence of a special condition which provided for the minister administering the Crown Lands Act providing the vendor with an indemnity?---Yes.

20 And what was that an indemnity in relation to?---I can't recall, I was concerned about the indemnity because it seemed to be all embracing and relating to the actions of past occupiers or proprietors of the land and we just weren't prepared to do that.

Now, during this - - -?---But that was my advice and there was a general consensus at the meeting.

So the consensus was that Mr Simpson should negotiate that indemnity out of the contract if he could?---Yes.

30 Now, were there other subject matters like that which formed Mr Simpson's negotiations just in terms of subject matter?---Yes, yes.

What were they?---There was a caretaker who had a position at the cottages and the, there were a number of accommodation cottages there and the facility was run as a going concern so there was an issue as to whether or not there would be a transmission of business as part of the sale and there were some GST implications that (not transcribable) upon that.

40 Now, just on GST, was there a discussion about whether or not the sale was subject to GST or not and the provisions of the contract in that respect?---Yes, there were discussions. In general terms, when land is acquired by the government, even though GST may be remitted to the Federal Commissioner of Taxation, it is subject to recoupment, so that there's a kind of a round-robin process that occurs.

So was the understanding that the transaction was subject to GST or not? ---There was the ability subject, well, I think Mr Simpson might be across the detail more than I am on that.

I'll leave it for him then. Thank you, Mr O'Keefe. Now, can I also ask you whether or not there was any discussion during this meeting around the price?---No.

By that I mean was there, because obviously the price had been agreed because you would have been able to see it on the contract?---Yes.

10 But was there any discussion about whether that reflected a proper market price at the time?---Not from our perspective, not, not from the point of view of lawyers doing a conveyance.

And is that how you saw your role?---Yes.

In other words, you were acting as a lawyer on the transaction for a client, the LPMA being the client?---Correct.

20 And it wasn't for you to test and ask questions as to whether or not the price was property-based as a matter of market value or not. Is that how we should understand your approach?---I wouldn't put it as baldly as that.

How would you put it?---I would put it on the basis that I did not put myself on specific inquiry to go into the finer details of the value of that transaction. The, the, the price that was to be paid for that particular piece of land relative to its physical dimension as I understood them and its zoning was not something that rang alarm bells for me.

30 Mmm. But did you discuss or ask any questions of either Mr Watkins or Mr Costello as to whether or not the price that was to be paid was based upon a market valuation that had been obtained at or around that time?---I think I may have discussed that with Mr Costello. I think I may have. I think, I recall that there was discussion and there was a Valuer General's valuation for that property.

Mmm. And did you understand whether that was a recent valuation or a valuation by that stage being some years out of date?---No, I wasn't aware of that. I was, it was on the basis that it was an applicable valuation and I think the applicable valuation was somewhere in the vicinity of \$10 million.

40 Well, if that be the valuation, the existence of which had been conveyed to you, did you seek to understanding why then the purchase price was \$12.2 million?---As a matter of some curiosity I did. Not in terms of any professional duty to do so.

Well, leave aside why you asked, but did you ask?---Yes.

And who did you ask?---Again I think I asked Mr Costello.

And what was his answer?---To the effect that there were court proceedings on foot. Those court proceedings involved a potential rezoning of the property which would considerably enhance its value and that a considerable portion of the property was affected by a compulsory, what, what was in terms a compulsory acquisition requirement, and as such at some future date it was open to either this particular would-be vendor or a subsequent proprietor to trigger that right, and that right arose from provisions under the Environmental Planning and Assessment Act attendant upon an earlier rezoning of the property. So on the, on, on the basis of those matters it wasn't a deal that I was involved in, but it was my view that there was a basis there for somebody to come to a view to pay a higher amount than, than what the valuation may be.

All right?---It was a matter of their professional discretion and judgement. I wasn't involved in the deal.

Now, during the meeting was there any discussion do you recall about how the acquisition was to be funded?---I don't recall the, the details of that. Not, not in terms of involving me as a lawyer.

And, and I'm not suggesting any criticism in this question, Mr O'Keefe, but is it the case that provided you were satisfied by those from whom you were getting instructions, that funding was arranged, you didn't concern yourself with the detail?---Yes, that would be correct. I had confidence in Mr Costello and Mr Watkins, they were experienced and senior public servants, more senior than I and more regularly dealing with matters of delegation and exercise of discretionary power.

So do you recall any discussion at all about where precisely the funds were going to come from or was that detail that just didn't concern you?---I recall discussing in general terms with Mr Costello where those funds were coming from, but he had the matter in hand and so in that sense it didn't concern me.

Do you recall what he told you about where the funds were coming from? ---I think that there was some funds coming from the Crown Lands Division and there may have been some funds coming from the fund constituted under the Environmental Planning and Assessment Act.

All right. Now- - -?---And the nexus there was the intended public recreational use of the site.

Now, during this meeting that you were part of on the morning of Monday the 14th, was there any discussion at all and any consideration of appropriate financial delegations and authorisations upon which Mr Watkins was acting to execute the transaction?---No. It was purely to discuss the way forward and whether or not we needed to amend terms of the contract and if so what our stance would be on particular clauses in the contract.

And just so that we're clear, I think we already are, but at no time, according to your recollection, during the meeting on the Monday morning was there any giving to you of the Premier's letter- - -?---No.

- - -or prior correspondence?---No.

10 Now, Mr O'Keefe, I just want to ask you to go to a document behind tab 20 of Exhibit 1, please. And you'll see that there's a covering email at page 90 which I'll just ask you to turn over. On page 91 I'll simply ask you to note the heading, Statement by Warwick Watkins. Do you see that?---Yes.

And I then want to just take you to a passage in this statement if I could? ---Yes.

20 And on page 96 in the bottom right-hand corner, can I ask you to come down and locate the bullet point lowest on the page commencing with the words, "Prior to executing the signed contractual agreement." Do you see that?---Yes.

And you see that it goes on to say that the chief executive on the morning of Monday 14 understood another series of due diligence steps- - -?---Yes.

- - -with his corporate secretary CFO, Mr Costello and his corporate counsel. Do you see that?---Yes.

And I gather you're the only corporate counsel that- - -?---Yes.

30 - - -is at the LPMA?---That is correct.

Thank you. And if you could just turn the page for me, please. Do you see the bullet point at the top of page 97?---Yes.

It said, "These included specific questions and exploration of the appropriate financial delegations and authorisations, the Caretaker Conventions and the overall financial and structural components of the formation of the state park, including the purchase of Currawong." Do you see that?---Yes.

40 I gather you would take issue with the suggestion that seems to be contained in this statement that as a matter of the taking of due diligence steps, you as corporate counsel were involved in any, "Questions and exploration of appropriate financial delegations and authorisations and Caretaker Conventions?"---Yes.

And when you accept that you're denying I gather any suggestion that in fact you had any role to play in relation to the exploration of delegations and authorisations?---Correct.

Thank you.

THE COMMISSIONER: And Caretaker Conventions, and to the, to the extent that you've said. That wasn't on the Monday?---I believe this was on the Monday prior to the, on page 96.

But when you were asked- -?---The morning of Monday, 14 March.

10 So is that when you were told by Mr Costello that he had a letter from the Premier?---No, that was on the Friday.

Yes. So that's what I'm asking?---Then there was another meeting on the Monday.

Yes. No. I understand that. But what I'm asking, sorry, I haven't made myself clear, Mr O'Keefe?---Yes.

20 What I'm asking is whether on that Monday you played any role in a due diligence exercise relating to the Caretaker Conventions?---I don't believe that the meeting, my recollection of the meeting is that it did not deal with that issue.

And what about the overall financial and structural components of the formation of the state park?---It may have been discussed but I didn't contribute to it because it's not the role of lawyer to advise on the financial dealings of how these state parks are set up.

30 And the structural component as well? I'm not sure what that means, you might know?---I don't know. I don't know what, I did not know the full extent of the deal, I didn't know about the purported deal with Pittwater Council or some of these other matters and perhaps that's what structural component is referring to that there were meant to be lands added to constitute the state park.

Thank you?---But my understanding was fairly clear, we were instructed to acquire a discreet portion of land known as Currawong.

40 So my impression from what you're saying, please correct me if I'm wrong, is that you played no part in a due diligence exercise on the Monday morning relating to the overall financial and structural components of the formation of the state park including Currawong?---I wouldn't characterise the meeting that I attended on the Monday morning as such a meeting. Whether others formed that impression it's not for me to say, but it certainly was not my understanding at that meeting.

You played no part in such a due diligence yourself personally?---There was due diligence in relation to the contract of, but not in relation to these other components.

Yes, thank you.

10 MR ALEXIS: Now, Mr O'Keefe, can I show you an exhibit before this inquiry, Exhibit 7 and you'll see that the first page of that exhibit is an email of 28 March and it attaches a document which you can see commences with the heading "Interview between Linda Pettersson, Senior Consultant and Investigator and Warwick Watkins", do you see that?---Yes.

And if you can just come through please to page number 4 and could I ask you to look at the question from line 6 attributed to LP which you can take from me is a reference to Ms Pettersson. And you see the question relating to the first term of reference, "Can you tell me why you believe that you were authorised to execute the contract for the sale of land?"---Yes.

20 And could I ask you to read please from line 10 to line 39, that is to say, Mr Watkins' response and let me know when you've done so?---Okay. Yes.

Thank you, Mr O'Keefe. Now, just to draw some threads together, it's apparent to you I gather from reading that answer that Mr Watkins' response to the question about authority is founded on some documents which are referred to in that answer, particularly what is described at line 33 as the receipt of what he regarded as a direction from the minister?---Yes.

30 Which he said was clearly articulated and we have a reference to the date 28 February?---Yes.

And then he reads onto the record and he quotes from a letter, do you see that?---Yes.

And then at line 41 do you see that the investigator puts a question concerning any consideration of the caretaker conventions?---Yes.

40 And then could I ask you to note Mr Watkins' response from line 44 and, particularly, just picking up the last line at 51, "Subsequently having verbally exercised and done the deal in regard with the proponent as detailed in my email from Perth I then subsequently convened a meeting here in my office where we are sitting today and met with the Corporate Counsel of the organisation, Corporate Secretary and Chief Financial Officer, Chief of Staff, we went through and analysed the whole situation. The analysis was over the letters I had received and the direction from the minister the history going back to 2010, everything coming forward, going right back to when I submitted an express of interest" so on and so forth, do you see that?---Yes.

Perhaps before I ask the next question I'll just get you to read the end of his answer down to line 12. Have you read down to line 12, Mr O'Keefe?
---Yes.

10 And I gather as Corporate Counsel you would deny being involved in any meeting with the Corporate Secretary and the CFO, the Chief of Staff going through and being involved in an analysis of the whole situation as there described, in particularly any analysis over the letters that had been received and the direction from the minister to which Mr Watkins had referred on the previous page. I gather you would deny being involved in that?---That's not, that's not my recollection of what was discussed at the meeting on the Monday that has been the subject of earlier evidence on my part.

THE COMMISSIONER: Well, you said you haven't seen those letters?---I beg your pardon?

You've said that you didn't see the letters at that stage?---Correct.

20 MR ALEXIS: So doesn't it follow that you deny being involved as Corporate Counsel - - -?---Yes.

- - - in a meeting and being engaged, in any way, in any analysis of those documents including the letters that you've already told the Commissioner you never saw?---That's correct.

30 Thank you. Now, there's just one other matter I wish to take up with you if I can. Can I ask you please to go to the document behind tab 15 and in particular I wish to draw your attention to a letter at page 73 which forms attachment C to that particular document. So if you could go to page 73 please?---Yes.

And do you recognise that as a letter apparently from Pittwater Council and Mr Watkins bearing the date of exchange, 15 March, 2011?---Yes.

Do you recall seeing that letter prior to the exchange of the contract on the 15th?---No.

40 Do you recall having your attention drawn to the receipt of that letter prior to the exchange of the contract?---No.

Thank you, Mr O'Keefe.

MR BRANSON: Can I just ask, Commissioner, - - -

THE COMMISSIONER: Yes, Mr Branson.

MR BRANSON: - - - do you wish to hear this lawyer's opinion on certain phrases and the relevant documents.

THE COMMISSIONER: I can't answer that without knowing what you're actually asking me (not transcribable).

MR BRANSON: No, but if I ask Mr O'Keefe for instance what, how do you interpret an authority to negotiate to secure the purchase? I don't want to waste time. Thank you. No questions.

THE COMMISSIONER: Yes. Thank you, Mr Branson.

10

MR ALEXIS: Commissioner, I do apologise, there's perhaps one or two further questions I should've asked. Mr O'Keefe, should we understand that you had no role to play in the management, for want of a better expression, of the conveyance after exchange up to completion?---No, I wouldn't -- well, I, I left it with Andrew Simpson who was an experienced lawyer, I do recall executing the transfer.

20

Yes. But apart from executing the memorandum of transfer were you involved in any hands-on way with the completion of the transaction?---I had discussions with Andrew when the review of the matter was announced because it was uppermost in our mind to point out to the government and to provide an assessment of the financial exposure to the government should a decision be taken to break the contract and that was both I think in the week prior to the election and then subsequent to the election.

I see?---So that was more of a conventional lawyer's assessment of what the potential liability and exposure was should the government elect not to proceed with the purchase after exchange.

30

And was that advice that was sought or was that something that was done internally for some reason or - - -?---It was done internally just so that we were ready in case that question arose. I thought that that was one possibility that might occur after both the Premier and the then leader of the opposition, soon to be, to be Premier had indicated their disquiet in a public fashion.

40

So is what you're saying to the Commissioner than when there was some publicity concerning the entry into the contract within the week or so after it was exchanged you considered whether or not the contract may not be completed and what the government's exposure might be in that event? ---Yes. I wouldn't say it was, it's not so much that there was publicity that drove that issue, it was the concern on the part of the Premier and the leader of the opposition concerning the transaction. Publicity was secondary to the issue. If the, if the concern had been expressed in a, in a letter or an email it still would have I think prompted that sort of a consideration.

Were you involved in any way in sourcing funds to enable the completion of the contract?---No.

Yes. Thank you, Mr O'Keefe.

THE COMMISSIONER: Mr Curtin, I take it you wish to question, Mr O'Keefe?

MR CURTIN: Yes, but I would appreciate some little time to get some instructions on some matters and, and if, if Mr O'Keefe has previously given a statement to - - -

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THE COMMISSIONER: Well, we'll adjourn 'til 10.00am tomorrow.

AT 4.02 PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.02pm]