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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 THURSDAY 30 JUNE 2011

AT 10.05AM

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MR ALEXIS: Thank you, Commissioner. Commissioner, we reached the point yesterday where Mr Curtin was about to commence his examination of Mr O'Keefe. My attention's been drawn this morning to something that I understand Mr O'Keefe wishes to seek to clarify.

THE COMMISSIONER: Yes.

MR ALEXIS: It's appropriate therefore that that occur before Mr Curtin's cross-examines so may I proceed with that?

10

THE COMMISSIONER: Yes.

MR ALEXIS: Thank you.

<KELVIN ERNEST O'KEEFE, on former oath

[10.06am]

MR ALEXIS: Mr O'Keefe, yesterday afternoon I asked you some
20 questions arising from the content of a statement of Mr Watkins that commences at page 91 and following of Exhibit 1 and in particular some questions concerning, just to put it very generally, the subject of due diligence occurring during the course of a meeting on the morning of Monday, 14 March, 2011 and I also asked you questions concerning that same subject matter as was dealt with my Mr Watkins in a record of interview that he gave to Ms Pettersson, the IAB investigator. Do you recall those series of questions and the answers you gave to that?---I recall, yes, I recall the series of questions. I don't recall the specific, I recall the gist of the answers that I gave.

30

Now, this morning I think you've properly raised through your solicitor some matters that you've had occasion to reflect on overnight. Is that so?
---That's correct.

And could you tell us what that is please?---Yes. I recall that you put to me words to the effect that I denied that a meeting, that the meeting dealt with matters of due diligence and my earlier evidence was at that meeting, the actual contract and matters relating to the contract itself, the contract of sale, were discussed and I would consider that the term due diligence did apply to
40 that meeting in relation to the terms of that contract. My recollection is that

THE COMMISSIONER: I understood your evidence to be to that effect?
---Well, I wasn't sure whether that was understood (not transcribable)

MR ALEXIS: I understand and you, you haven't had the benefit of - - -?
---I haven't got a copy of the transcript, I'm not able to interpret - - -

Just so we're clear, you haven't had the benefit of reading the transcript overnight?---No, I haven't.

So to the extent that clarification is necessary that's the extent to which you wish to clarify?---Correct.

Thank you, Mr O'Keefe.

THE COMMISSIONER: Mr Curtin.

10

MR CURTIN: Mr O'Keefe, at the meeting on 14 March, Monday, 14 March this year there was present at that meeting yourself, Mr Watkins, Mr Costello, Mr Simpson and, is that right?---Yes, I think there are, I think Mr Callaghan was also present at that meeting.

20

And that group of people collectively were the relevant officers of the LPMA who with different roles and responsibilities would give effect to this transaction, that is the purchase of Currawong. Is that right?---Yes. Well, the lawyers would primarily involve themselves in the actual conveyance and the payment would be remitted through Finance, through Mr Costello's area.

By the Monday morning you had seen Mr Watkins' email of 10 March to one of the directors of the vendor company, if you like, agreeing as to price and some other matters?---Is that the email of Thursday evening?

That's correct?---Yes.

30

And so far as the lawyers were concerned on the Monday morning, yourself and Mr Simpson your roles were to take care of the conveyancing aspects of the contract?---That is correct.

And Mr Callaghan – what was his position at the time?---Mr Callaghan – I think he was Acting Director of Crown Lands Legal because he incumbent in that position, if my memory serve me right, Ms Jennifer Jude was on leave overseas or had recently commenced leave at that time.

40

And yesterday you were asked this question at page 280 of the transcript, line 19, question, "What I'm asking is whether on that Monday you played any role in a due diligence exercise relating to the caretaker conventions?" Answer, "I don't believe that the meeting, my recollection of the meeting is that it did not deal with that issue." And then you were asked this question, "And what about the overall financial and structural components of the formation of the state park?" Answer, "It may have been discussed but I didn't contribute to it because it's not the role of a lawyer to advise on the financial dealings of how these state parks are set up." And my question to you is that at this meeting you and Mr Simpson and perhaps Mr Callaghan prime interest or role was on the conveyancing aspects of the transaction?

---That's correct.

And so in a sense that this meeting had all relevant LPMA people present it was a meeting whereby different aspects of the transaction were discussed and where somebody had a primary role such as yourself and Mr Simpson, Mr Callaghan there might be questions and answers about those particular matters?---Yes, I would agree with that.

10 And where there were other aspects that were the primary role or responsibility of others then they would address those other questions?
---Yes, I would agree with that. I might add that I do recall that there were time constraints on this transaction, on effecting the exchange and my recollection is that both myself and Mr Simpson, and I think Mr Callaghan left the meeting within about half an hour of it being convened because there was still a lot more work to do on the contract, but I don't know what happened, whether the meeting continued after we left because from then on it was just negotiate the contract and move towards exchange.

20 Yes. At the meeting on the 14th, the Monday morning, or perhaps at some earlier point in time, it was conveyed to you that exchange of contracts was at least pencilled in for 15 March?---That's correct.

And so as a conveyancing transaction there was a degree of urgency and many matters to attend to?---That's correct.

30 And when you and Mr Simpson left the meeting Mr Watkins and Mr Costello were still in the meeting room?---That's my recollection, I can't say that's my strongest recollection because I basically, once we had discussed the conveyance and we got instructions on negotiating changes to the clauses et cetera I basically left and concentrated on the job at hand with Andrew.

Was the, was the first topic of the meeting the conveyancing aspect?---I beg your pardon?

Was the first topic discussed at the meeting the conveyancing aspect?
---Commissioner, that's my recollection.

40 MR CURTIN: And when you say that it's not your strongest recollection that when you left the meeting Mr Watkins and Mr Costello remained in the meeting room- -?---Yes.

- - -that is your best recollection?---That's correct.

Right.

THE COMMISSIONER: And they were then alone, were they?
---I honestly can't say, Commissioner.

Who else would have been, might have been with them?---Mr Matchett might have been there, I just can't, I can't put it because we had instructions to get to work on the conveyance and negotiate the contract and I basically directed my attention to that and left the office and we proceeded to work.

10 MR CURTIN: Yesterday you gave some evidence at page 278 of the transcript, there were firstly some questions, Mr O'Keefe, asked by counsel assisting, that is asked of you by counsel assisting about the purchase price, and you gave some evidence I think to the effect that nothing about the purchase price rang alarm bells and you mentioned various factors. And then at line 21 you, and I'm just paraphrasing the questions and answers for brevity, that you were satisfied by those from whom you were getting instructions that the funding was arranged, and you said yes, that would be correct, you had confidence in Mr Costello and Mr Watkins?---Correct.

20 They were experienced and senior public servants, more senior than yourself and more regularly dealing with matters of delegation and the exercise of discretionary power. And then you were asked this question. "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?" Answer - "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." Now, that recollection of discussion in general terms with Mr Costello where the funds were coming from, was that at the meeting on the Monday morning of 14 March?---I'm struggling to recall whether it was discussed at that meeting or whether it was when I, when I had that brief discussion with him that I spoke about earlier on, on Friday when I asked about the Caretaker Convention issue.

30 On Friday, 11 March?---Yes. It may, no, I mean I'd be speculating as to when, when that discussion occurred.

Would it be fair to say that that discussion that was the subject of the evidence I read to you was either with Mr Costello at the Monday, 14 March meeting, or on the Friday, 11 March?---That would be fair, yeah.

40 And you gave some evidence that you have a discussion with Mr Costello about the Caretaker Convention on Friday, 11 March?---Correct.

And that evidence, Commissioner, commences on 269, line 43 of the transcript and at the top of page 270 Mr O'Keefe, you were asked what was discussed with Mr Costello about caretaker on Friday, the 11th and your answer was, "I asked Mr Costello, I said word to the effect of whether this transaction was okay given that we were in caretaker mode," and at line 26 you gave evidence that Mr Costello's response was to the effect that there was a letter from the Premier which you presumed Mr Watkins was relying on, that a letter from the Premier was in existence and it provided authority

for this transaction and I think you presumed, I withdraw that. You either presumed or took from Mr Costello's response that this letter predated 4 March, 2011?---Correct. I think I, in my evidence I elaborated on that because there was some confusion towards my, by my using the term authority when I was using it in the sense of a, an early decision of government taken before caretaker mode which according to my understanding of the convention, which I still have to provide comments on, allowed for such a decision to be completed within caretaker mode.

10 Allowed for such a transaction to be completed?---Correct.

If the decision to enter into the transaction had been taken before 4 March?
---That's correct.

And can I just ask you something about price, you mentioned that in the transcript at 278 about line 6 or 7 and to put you in context, Mr, Mr O'Keefe, counsel assisting asked you at 277 line 39 something about valuations and the purchase price of \$12.2 million, you expressed some or you gave evidence that you had as a matter of curiosity an interest in the purchase price but not in terms of a professional duty and you had asked Mr Costello and he had mentioned to you a number of factors including there were court proceedings on foot with involved a potential rezoning and that there was a considerable portion of the property affected by, I'll just quote your answer, "a considerable portion of the property was affected by a compulsory, 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 EP&A Act attendant upon earlier rezoning"?
---That's correct.

30 And did you during the course of a conveyance discover that a, what you called a, what Mr Costello called a considerable portion of the property was, had a particular zoning under the Pittwater Local Environment Plan which might trigger a compulsory acquisition by the state, by a government authority?---I didn't look at that on a first-hand basis. Perhaps that question might be better directed to - - -

40 But did you became aware of it?---I became aware of it, yes. I became aware of it.

THE COMMISSIONER: You became aware of it in the sense that someone told you about it?---Correct.

You don't know whether that's true or not?---No, I haven't sighted the zoning instrument.

MR CURTIN: And I apologise for jumping around a little bit, but can I take you, Mr Costello, to the meeting on the Monday morning with the various - - -?---I'm sorry, I think you called Mr Costello.

10 I'm sorry, that's probably true. Mr O'Keefe, on the Monday morning 14 March when you – do you recall when you arrived at the meeting room whether other people present before you arrived or whether you were the first to arrive?---I don't believe I was the first but I can't, I honestly can't recall that, I, it was – I know that it was a meeting which took place very soon after I arrived at work, but I just can't recall the order of people entering the room or whatever. I do recall that the meeting assembled in a very short time.

Do you remember where this meeting was held?---Yes. In Mr Watkins' office.

20 And when everybody had arrived do you recall Mr Watkins giving a brief overview of the – I'll just – about the Currawong property?---Yes. Yes, I suppose it would be a synopsis.

Yes. And can I ask you do you recall having discussions with Mr Watkins a month or two earlier about the possibility of a compulsory acquisition of Currawong by the Government?---No, I don't recall that.

When Mr Watkins gave, what you called, a synopsis - - -?---Yes.

- - - do you recall that he, in this synopsis, gave a little bit of history?---Yes.

30 And to the effect or the gist of it was some matters about Eco Villages purchasing the property, there being some interest in this property finding its way into public hands, is that right?---Yes.

Do you recall him mentioning a briefing note from October 2010 to the Minister?---I honestly don't have a specific recollection of that briefing note.

40 All right. Do you remember the synopsis touching upon, can I call it, instructions or authority from the Minister or above to proceed with the purchase of the property?---It may have but I can't – again, I cannot recall that in detail. My memory is, is fixed on my discussion on Friday morning with Mr Costello and then it was more acting on the, on the contract of sale and it may – he may well have said that but it's not within my recall, my recall is more focused, I'm afraid, on the terms of the contract and the negotiations to alter the term or to change the terms of the contract if necessary.

THE COMMISSIONER: My impression is, just to put it simply, Mr O'Keefe, is that you don't deny that Mr Watkins did this, but you don't

recall him having done so?---That would be – I’m not in a position to say that he did it, I’ll put it that way.

MR CURTIN: And do you recall Mr Watkins in this synopsis part of the Monday morning meeting informing the meeting that he had a letter from the Premier giving the go-ahead for the purchase, words to that effect?--- Again, I’d have to say he may have said that, I do not specifically recall those words.

10 And do you recall him in this synopsis conveying the information or conveying his view that he had the financial delegations to fund the sale?--- I, I do recall that.

And do you recall him expressing the view that he believed that there was no difficulty with the Caretaker Conventions to exchange contracts?
---I can’t, I can’t recall the Caretaker Convention being the subject of that discussion at that meeting.

20 Do you remember him asking Mr Costello at this meeting to confirm one way or the other whether Mr Costello believed Mr Watkins had the relevant financial delegations?---No, I don’t remember that.

And when you say you don’t remember, is that something that you deny- - - ?---No, I don’t deny it.

And the question of delegation, I’m talking about financial delegations- - - ?
---Ah hmm.

30 - - -or authorities, they were, so far as you were concerned on the Monday morning, be matters for others at the meeting, not yourself or Mr Simpson?
---Yes.

And you were taken to a, one description of the meeting as also concerning what was called the financial and structural components of the formation of the state park. And, Commissioner, that’s at 280, line 25 of the transcript. Do you remember being asked about those matters?---Yes.

40 And your answer was, “It may have been discussed but I didn’t contribute to it because it’s not the role of lawyers to advise on the financial dealings of how these state parks are set up.” And I think somewhere you might have also given some evidence that you didn’t understand what the word structural component was meant to convey?---Yes, I was a little bit confused about that and I, I think I speculated on, on what that may have meant.

Yeah. But as to the overall financial components of the formation of a state park, when you ceded it may have been discussed- - - ?---Ah hmm. Yes.

- - -is that, are you intending to convey to the Commissioner that you wouldn't deny that it was discussed, it may have or may not have, your recollection doesn't allow you to say one way or the other?---Yes, I think that would be fair. I think, I do recall at the meeting that it was, it was clear that this land was to form part of a state park but I don't recall the precise machinations of how, I mean, well, I understand the process for creation of a state park but I don't recall the discussion as to the precise machinations of how that state park was to be assembled in terms of the various portions of land that it was to consist of.

10

The proposal so far as you understood it on this Monday, viz-á-viz, state park was it the property being purchased would be either put into or be created as a state park?---Correct.

And Pittwater Council was also going to contribute other land to be added to this state park?---I was aware of that in general terms, I was not aware of the detail of that particular component of it.

20 THE COMMISSIONER: Did you know that they were going to contribute, or were you told that they were going to contribute land for the state park or simply that they would be going to contribute land that was going to help the state acquire Currawong? Did you know any of the detail of this? Were you told that?---I was - - -

What do you recall?---I was told – I recall being told there was a role for Pittwater Council in relation to the provision of land for use in connection with the State Park, that's my best recollection of it. I didn't query anybody at that meeting about that, again, because we had a particular task in hand which was the acquisition of those lots.

30

And while Mr Curtin is busy one other question, Mr O'Keefe, in the evidence that you gave yesterday you were asked about whether you played – and I'm talking about 280, line 40, "Have you played 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?" And your reply was, "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 of that meeting." And then I asked you whether you played a part in such a due diligence yourself personally? And you said, "There was due diligence in relation to the contract but not in relation to these other components." Now, I want to understand clearly whether anything you have said this morning is intended to detract from that reply?---My characterisation of that meeting on my understanding of due diligence is that from my perspective more rigour was applied to the terms of the contract than to the other, than to the other matters so as far as my answer was concerned I did not characterise that as a, as a due diligence meeting. So I

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suppose my response – I realise that there were other matters discussed and I fairly concede that, but it’s a matter of characterisation.

Precisely. I’m not quite sure what you’re saying. Can you just explain – do you understand that you’re saying that as far as you were concerned at that meeting there was a due diligence exercise in relation to the contract?---Yes.

10 But as far as you were concerned, that is, I withdraw that. As far as you understood what happened at the meeting while you were there there was no due diligence as that term is commonly understood in relation to anything else even though they might’ve been discussed?---Yes, but that’s how I characterise my participation in that meeting.

Yes. But also – I’m asking you about what happened while you were there. You’ve said that there was a due diligence exercise in relation to the contract?---Yes.

20 You said yesterday, “but not in relation to the other components that you mentioned.”?---Yes.

While you were there, that is, that’s how I understand your reply?---Yes.

I’m trying to find out were there any, whether you’re intending to change that evidence in any way this morning?---I have made, I have acknowledged that there were discussions on other matters at the meeting.

Yes?---My testimony stands, I do not wish to change it.

30 Yes, I understand. Yes, Mr Curtin.

MR CURTIN: Thank you, Commissioner.

The matters discussed other than the contract at this meeting on Monday, the 14th - - -?---Yes.

40 - - - about which you’ve been frank and told the Commissioner about the extent of your recollection, were matters that, would this be a fair description, in the circumstances of the meeting and what you needed to do with the contract et cetera, those were matters of lower priority in your mind compared to the primary, your primary role dealing with the conveyance? ---That’s correct.

All right. Which, and because of that they were not matters about which you were as concerned, perhaps not concerned at all, compared to the contractual matters?---Yes.

And would it be fair to say that when, and take out the Commissioner’s questions a couple of moments ago, because of these matters,

non-contractual matters I'll call them, weren't of the same priority as the contractual matters and concerned principally others, that you wouldn't sitting in the witness-box be able to fairly say whether the nature and extent of those discussions of non-contractual matters could be described as due diligence or described in some other way, would that be fair?---Yes, that would be fair.

10 Might the witness be shown, Commissioner, Exhibit 1. You have Exhibit 1. Mr O'Keefe, if you turn to tab 15 and if you go to page 73, 73 in the bottom right-hand corner?---Yes.

And you should have before you a letter of 15 March, 2011 from Pittwater Council?---Yes.

And did you see that letter on the 15th or - - -?---No.

Have you seen the letter before I've taken you to it?---No.

20 I'm sorry, apart from yesterday?---Yes, but no, I haven't.

Commissioner, that's the examination, may it please.

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

MR DUNNE: Mr O'Keefe, my name is Dunne and I'm representing Mr Costello?---Okay..

Following receiving an email on 10 March, on the Thursday- - -?---Yes.

30 - - -from, where you were copied in from Mr Watkins- - -?---Yes.

- - -you had two occasions where you had discussions with Mr Costello. Is that correct, one on Friday the 11th- - -?---Yes, and one on the, on- - -

- - -and then the meeting on the 14th?---Yes.

40 Is that correct? You were asked a question yesterday by counsel assisting on page 270 of the transcript at about line 25, where you were asked, if I may paraphrase it, you raised with Mr Costello whether the transaction was okay. And you said, "His response was to the effect that there was a letter from the Premier which Warwick, which I presume Warwick was relying upon that a letter from the Premier was in existence and provided authority for the transaction?"---Yes.

Can I suggest to you that Mr Costello used words to the following effect in response to your question. "I've been told he's", meaning Mr Watkins, "I've been told he's got the Premier's approval and the Minister's

approval.” Would you agree with that?---It may have been said as well as what my recollection was, that there was a letter from the Premier.

10 THE COMMISSIONER: I just want you to be very careful about that, Mr O’Keefe, because the question that’s been put to you introduces the Minister’s authority whereas your reply yesterday only referred to the Premier’s authority and the- - -?---That’s correct. That’s the only document that I understood was, that was in existence at the time that was being relied on by the Department as authority for this transaction to occur in caretaker mode. That’s what I took away from my meeting with Mr Costello.

MR DUNNE: (not transcribable)

THE COMMISSIONER: It’s not, but that’s not, I understand that?---Yes.

20 But the question that’s been put to you, as I understand it, you’ve referred to a document. I think what Mr Dunne has said to you is that Mr Costello said to you words to the effect that Mr Watkins had told him that he had the Premier’s authority and the Minister’s authority for the contract being entered into?---That’s not my recollection of the conversation that occurred.

MR DUNNE: And is that in respect of whether the reference was made to the Minister’s authority? Is that right? You, you, you don’t recall or you deny that there was any reference to the Minister’s authority?---That’s correct.

30 But do you agree that the words were used before commencing Mr Watkins’ reply, that “I’ve been told he’s got”, and leaving out the Minister’s authority, “The Premier’s approval?”---(NO AUDIBLE REPLY)

THE COMMISSIONER: Without reference to the letter. You see, this is the point. There is a certain inexactitude around this and I’d really like to know what your recollection is. You have given evidence to say that Mr Costello said words to the, to you to the effect that he had been told or, of a letter from the Premier which provided the authority. What’s now been put to you is that leaving aside the Minister, is that you were told that the Premier had given authority without reference to a letter. Now, I’m trying to find out from you whether you- -

40 MR DUNNE: I’m sorry, if I might assist, that wasn’t my intention.

THE COMMISSIONER: Well, that’s the question that you asked.

MR DUNNE: Yes. I might- - -

THE COMMISSIONER: It is really important that in dealing with this issue, Mr Dunne, to put the questions with precision.

MR DUNNE: Yes, Your Honour.

THE COMMISSIONER: All right. Well, proceed then again, please.

MR DUNNE: Thank you. If I leave aside the issue of the Minister's approval, the words to the effect which I am seeking your agreement or disagreement on is that he used the words, "I've been told he's got", he's being Mr Watkins, "A letter from the Premier." Would you agree or disagree with that?---That's not my recollection of what was said to me.

10

So you disagree that he said, used the words, "I've been told he's got"?
---Yes.

And can I suggest to you that those are the words that he used, do you agree or disagree?---My recollection is the words were to the effect of my testimony, that there was reference to a letter from the Premier and that who possessed the letter was not part of the response.

If I could then take you to a further discussion that you had with
20 Mr Costello. I think the discussion that I just referred to you agree occurred on the Friday?---Yes.

You were asked by counsel assisting at page 277 of the transcript at approximately line 26, "But did you discuss 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"?---Yes.

And your response was, "I think I may have discussed that with Mr
30 Costello."

THE COMMISSIONER: Read the rest of his answer.

MR DUNNE: I'm sorry. "I think he, I think he may, I think I may have. I think I recall there was discussion and there was a valuer, a, the Valuer-General's valuation for that property." Are you sure that that conversation occurred, or sorry, when did that conversation occur? On the Friday or the Monday?---(not transcribable)

40 Or could it have been either?

THE COMMISSIONER: I beg your pardon?

MR DUNNE: Or could it have been, you're uncertain which one?---I'm uncertain when it was. I may have been, yeah.

It could have been the Friday, it could have been the Monday?---Yes.

Can I suggest to you that it was the meeting on the Friday that you had with Mr Costello?---Yes.

THE COMMISSIONER: When you say you, you're agreeing that it was on the Friday. Are you now more certain?---No, I'm not. I'm sorry. When he said can I suggest to you - - -

MR DUNNE: I'm sorry. But you think - - -?---I, I am prepared to answer a question on the basis that the, that what I said took place at the meeting on the Friday, that's - - -

THE COMMISSIONER: Yes. You're saying that, you're really reiterating your previous reply?---Correct.

It could have happened on the Friday and it could have happened on the Monday?---Correct.

MR DUNNE: Can I suggest to you that the, Mr Costello used words to the effect - - -

THE COMMISSIONER: When, when?

MR DUNNE: On, at the, in this discussion, whether it occurred on - - -

THE COMMISSIONER: Which discussion? Oh, on whatever, whatever day it was?

MR DUNNE: Yes, the discussion which I've just - - -

THE COMMISSIONER: Is that, is that when he asked about - - -

MR DUNNE: The valuation.

THE COMMISSIONER: - - - the valuation.

MR DUNNE: Yes? He used words to the effect of I've been told he's, Mr Watkins, has Valuer-General's valuations for the property.

THE COMMISSIONER: Mr O'Keefe?---I don't recall him saying that, I, I just recall a discussion on, taking place on the, on the dollar amount. I - - -

Mr O'Keefe, I, you did take a long time to reply and that's perfectly proper but I think it's important that if you are uncertain that you say so and not, not (not transcribable) speculate?---Okay, all right.

MR DUNNE: So you're uncertain?---Yes.

He may have said it but he may not have, you're uncertain?---Correct.

Thank you. Can I suggest to you that in the discussion which you held with Mr Costello involving the question of valuation, whether it occurred on the Friday or the Monday, Mr Costello used words to the effect of, And there's going to be no additional cost to the budget?---Yes, I can recall that.

Now, when you answered your question yesterday to which I just referred about the valuation the question asked whether it was Mr Watkins or Mr Costello and you responded, "I think." Sorry, your response was, "I think I
10 may have discussed that with Mr Costello."?---In relation to?

The valuation?---Yes.

But the question was, "Was it Mr Watkins or Mr Costello?"?---Right.

And you used words, "I think it was Mr Costello."

THE COMMISSIONER: The question was precisely, "Did you discuss or
20 ask any questions of either Mr Watkins or Mr Costello as to whether or not the price that was to be paid was based on a market valuation that had been obtained at or around that time? That's the question you were asked. And you said, "I think I may have discussed that with Mr Costello" et cetera?
---Yes.

MR DUNNE: Further on you were asked on page 277 at line 39 after you had given an answer that the applicable valuation was approximately 10 million, "Well, if that be the valuation, the existence of which was conveyed to you did you seek to understanding why the purchase price was 12.2
30 million?" "As a matter of some curiosity I did. Not in terms of any professional duty." And the next question was, "Well, I leave that aside, leave aside why you asked, but did you ask?" You said, "Yes." And then you said, "And who did you ask?" The answer was, "Again, I think it was Mr Costello." Could it have been Mr Watkins?---I'm uncertain.

So it could've been either Mr Costello or Mr Watkins?---Could've been. I recall making that, making some inquiries, but I am, yes, I am uncertain. It could've been at the Friday or the Monday meeting.

And if I can, in closing, take you to your question asked at page 278 of the
40 transcript at approximately line 29, the question was, "So do you recall any discussion at all about where precisely the funds were going to come from or was that detail 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 so in that sense it didn't concern me." Did that discussion with Mr Costello occur on Friday or Monday or are you uncertain?---I'm uncertain.

It could've occurred on the Friday, on the Friday morning?---It could have and it (not transcribable).

THE COMMISSIONER: Have you finished, Mr Dunne?

MR DUNNE: Yes, thank you.

THE COMMISSIONER: Yes, thank you. Ms Fisher.

10 MS FISHER: No questions.

THE COMMISSIONER: Thank you. Ms McGlinchey.

MR WHITE: I have no questions.

THE COMMISSIONER: Yes, Mr White.

20 MS McGLINCHEY: Mr O'Keefe, my name is McGlinchey, I represent Mr Matchett in these proceedings. Mr O'Keefe, you've given some evidence both yesterday and this morning about the officers that attended the meeting on 14 March?---Yes.

And I think that your evidence has been that Mr Matchett might've been there, you don't have a specific recollection?---That's correct.

Mr O'Keefe, if I suggest to you that the records will show that Mr Matchett was in fact on leave on 14 March would you have any reason to contradict that?---No.

30 Thank you.

THE COMMISSIONER: Mr Alexis.

MR ALEXIS: Thank you, Commissioner. Apropos that last question and answer, particularly the reference to records, can I just note I haven't seen any and I'd be obliged to be provided with them if records are going to be relied upon in respect of leave.

40 THE COMMISSIONER: Ms McGlinchey, - - -

MR ALEXIS: She no doubt heard that, Commissioner.

THE COMMISSIONER: Pardon?

MR ALEXIS: She no doubt heard that and no doubt it will be dealt with.

THE COMMISSIONER: Yes, but there are new, there are standard directions that have now been issued, just to make it quite clear what counsel's obligations are.

MS MC GLINCHEY: Yes.

THE COMMISSIONER: - - -in these matters and I take it that you will be producing to Mr Alexis the records to which you referred?

10 MS MC GLINCHEY: Commissioner, I don't have access to (not transcribable)

THE COMMISSIONER: Oh, well then I don't understand the basis on which you put the question.

MS MC GLINCHEY: Well, I put the, the question (not transcribable) my client's instruction and on an understanding that these are matters that the Commission has access to.

20 THE COMMISSIONER: Well, I can tell you that I will attach no value to that reply until you, until the records are produced in some way or another.

MS MC GLINCHEY: I will be making a request from counsel assisting to ask the Commission officers to make a search for those (not transcribable)

THE COMMISSIONER: Yes. Thank you.

MS MC GLINCHEY: Thank you.

30 THE COMMISSIONER: Mr Alexis?

MR ALEXIS: Mr O'Keefe, can I just seek to obtain, dare I say, absolute clarity around what it was that Mr Costello told you when you raised the question of whether or not the transaction was okay or asked a question to that effect and can I seek to do so this way. Do you recall back on 31 May consenting to a record of interview with Senior Investigator Paul Grainger who's sitting to my right operating the machinery?---Yes.

40 And also Inspector Wayne Smith of the Commission?---Yes.

And at that time I think a month and a half or so had passed by after the approximate time of the exchange of contract and of course that was about a month ago now?---Yes.

And can I show you, please, this document together with a copy for you, Commissioner.

MR CURTIN: Can we have a copy?

MR ALEXIS: It's not proposed to circulate a copy, Commissioner. And the point I wish to make will be plain enough in a moment. Now, Mr O'Keefe, could I ask you please to just open the record of interview at page 6. And can I just invite you to look at the series of questions and answers that are set out on that page?---Yep.

And could I ask you in particular to pick up the reference to Mr Simpson looking at the contract over the weekend. Do you see that at about line 22? Do you see that reference to the weekend?---Yes.

10

And then you refer to the indemnity clause in the contract and you refer to the sale contract being in a conventional form. And then can I just ask you to look at this in particular. "I do recall noting that this was occurring in early March which was the caretaker time." Do you see that?---Yes.

And I think you accept from me that I'm reading aloud your answer on this subject. Is that so?---That's right.

20

Thank you. And then you're recorded as saying this, "I was uncertain whether this particular event would trigger any of the operation of the Caretaker Conventions, I meant it was a significant sum but I, but, but I think it was a deal or 10 or \$11 million dollars which on one view it was significant but on the other view it wasn't. And I went and spoke to Bob Costello and said, 'Do you know has any advice been taken on this in relation to, you know, this particular time, this sensitivity, is there any caretaker issue?'" Now, just pausing there. Do you agree that I just continued to read the answer that you gave on that occasion during your record of interview?---Yes.

30

And then do you see that you then told Inspector Grainger the following – "And he said", that's a reference to Mr Costello, is that right?---Yes.

40

"And he said to me words along the lines of, Look, we're relying on a letter from the Premier', and I left it at that and because while it's a convention it's not really a legal issue, it's not an illegal issue to take instructions and to exchange a contract as this, you know what I mean, it is still a validly enforceable contract." And then a further series of questions and answers follow. Now, do you accept from me, sir, that I've accurately read to you your answer which is recorded in this record of interview at pages 6 and 7? ---Yes.

And do you accept that when you were interviewed on the subject of the question that was asked you there said to the investigator that you put that question to Mr Costello?---Yes.

And that you responded in the terms that I've read out which includes, of course, a reference to him telling you that we are relying on a letter from the Premier?---Yes.

Yes, thank you, sir. Now, one other matter.

MR CURTIN: Can I seek an order for, that I be provided with a copy of the interview, Commissioner? I appreciate that it's an inquiry and normal civil proceedings et cetera but if counsel assisting wishes to use a portion of a record of interview to which I have not had access in a particular way and which presumably covers other material I'd like to see it.

THE COMMISSIONER: I'm sure you would.

10

MR CURTIN: Yes, and I know you know why I'd like to see it and I know why - - -

THE COMMISSIONER: I'm sure you know what the attitude of the Commission is to that, Mr Curtin.

MR CURTIN: One can only ask.

20

THE COMMISSIONER: And it's not only the attitude of the Commission, it's a matter that has been resolved by three judges of the Supreme Court in three separate cases.

MR CURTIN: May it please.

THE COMMISSIONER: But I will hear Mr Alexis on your application.

MR ALEXIS: In that respect could I, when we have Mr Branson's break in a minute or two, take some instructions - - -

30

THE COMMISSIONER: Yes, very well.

MR ALEXIS: - - - before we put our position and there's just one other matter I'd seek to explore with Mr O'Keefe if I may before we adjourn.

THE COMMISSIONER: Yes, yes. I should just say this to you, Mr Curtin, if the ordinary rules applied in a civil trial the whole document would become available, that's the rule of evidence.

MR CURTIN: Yes, quite.

40

THE COMMISSIONER: For the purposes of the, this is not, however, a trial and I, forgive me for saying that out aloud because I understand that you know that very well.

MR CURTIN: Yes.

THE COMMISSIONER: But the point that I am making here is that a limited, a limited part of the statement was read. There are other parts of the

statement which may or may not hamper the investigation if they are given general publicity. I should say that I have not read the statement myself and I have no idea what's in it but that is always the problem with these issues and that is the background that I think needs to be said aloud - - -

MR CURTIN: Yes.

THE COMMISSIONER: - - - and then Mr Alexis will make his submissions on this in due course.

10

MR CURTIN: Yes. I understand all of that in the purpose of an inquiry such as this and there are countervailing considerations. Simply on behalf of my client can I just add that where a witness has given some evidence and counsel assisting wishes to I suppose both on credit in terms of accuracy and recollection, use a prior statement for a beneficial purpose there may be other statements in there on a question of accuracy of recollection and other matters - - -

20

THE COMMISSIONER: Yes, and there may be, there may be material in here, as we all know, which you may want to use and others may want to use for cross-examining on entirely different issues.

MR CURTIN: Yes.

THE COMMISSIONER: Mr Alexis.

30

MR ALEXIS: Yes. I should say, of course, Commissioner, that the last series of questions and answers were prompted by Mr Dunne's question not my learned friend Mr Curtin's question.

THE COMMISSIONER: Yes, quite so.

MR ALEXIS: And so the premise for which the application is made does seem a little curious in those circumstances. However, I will seek instructions and consider the matter over the adjournment.

40

Mr O'Keefe, can I just raise one final matter with you if I may. You said in answer to some questions from Mr Curtin that you were not at the time of this important meeting on the morning of Monday, 14 March across the precise machinations I think the word you used was, the precise machinations of how the State Park was to work and did you nonetheless understand from what those involved had told you to this point, that Pittwater Council was performing a pivotal role in those arrangements because they were to contribute land that surrounded Currawong to form that State Park?---I wouldn't have formed that conclusion. I think I was, I was aware of a general involvement at Pittwater Council but I, I didn't have any understanding of the extent of that Council's role in this, in the establishment of this park.

But when, as I think you accepted from Mr Curtin, Mr Watkins provided a synopsis with some historical references, you would have at least understood from that point I suppose that when he was speaking about a state park it involved not just the Currawong land but surrounding land which was to be amalgamated to form that State Park?---That may have been said. I honestly do not have a recollection of directing my mind to that or even taking into any great account the role of Pittwater Council in the establishment of this park.

10

Can I just seek to understand whether you understood either actually or generally that the additional role that Pittwater Council was to make in these arrangements was to gift some land not associated with the proposed park but adjoining over the other side of the Pittwater some land at Newport which the LPMA would then utilise to ultimately sell and utilise the proceeds as a form of financial contribution. Did you have any understanding of that?---I can't say.

And - - -

20

THE COMMISSIONER: Did you discuss that?---I don't, well, no, not, not according to my recollection. If it, if, it may have been included in the - - -

Did you express any opinion about the, the merits or problems attached to that?---No, because I had no information. I just didn't have any documents in relation to it.

30

MR ALEXIS: All right. And, Mr O'Keefe, if I could ask you to assume in light of the answers that you've just given that Pittwater Council was to provide firstly land surrounding Currawong to be amalgamated with the Currawong site to form the proposed State Park and secondly, that land that the Council owned at Newport was going to made available to the Government for the purpose of rezoning and sale to realise funds so that in that sense there was to be a financial contribution into the acquisition of Currawong. Now, do you follow those two assumptions I've asked you to make?---Yes.

40

Thank you. Now, should we understand that when you were considering the subject of due diligence and I understand what you've told us about matters of a contractual nature and your evidence that more rigour was given to contractual issues as between vendor and purchaser apart from the other issues, but should we understand that if one was considering due diligence in so far as the role of Pittwater Council is concerned one would want to be satisfied that there was some contractual arrangement as between the government and the Council to effect the amalgamation of the adjoining lands to form the State Park and secondly some contractual arrangement with respect to the gifting of the Newport land? Now, would you just accept that as a proposition that when one is doing due diligence one would like to

be satisfied about those two things?---Yes, if that formed part of the total transaction.

And I gather from your evidence, sir, that you at no time on the meeting or during the meeting on the 14th or before the exchange of the contract had any idea about the existence of any contractual or other arrangements as between the government and the Council in relation to those two elements, namely the surrounding land to Currawong and any use to be put to the Newport land?---That is correct.

10

Yes, thank you, Mr O'Keefe.

THE COMMISSIONER: Mr Curtin.

MR CURTIN: It was observed by counsel assisting or he had the observation that somewhat curious I made the application, yesterday when Mr O'Keefe entered the witness-box I made the inquiry whether there was a witness statement of counsel assisting and was told the answer was no. Now, I did, and my question was witness statement but I was not told no statement but there is a record of interview.

20

THE COMMISSIONER: So there was no statement.

MR CURTIN: Yes, quite. But it was not volunteered that yes, there is a record of interview but we don't wish to distribute it so that satisfies the curiosity part, the first I've heard about the record of interview was in answer to Mr Dunne's question.

30

THE COMMISSIONER: Yes, that's fair enough, Mr Curtin. We'll adjourn for fifteen minutes.

SHORT ADJOURNMENT

[11.15am]

THE COMMISSIONER: Mr Alexis?

MR ALEXIS: Thank you, Commissioner. I won't take time regarding Mr Curtin's application. A copy of the record of interview that Mr O'Keefe provided as was referred to earlier has been provided to him and as I understand, copies are available to those legal representatives who wish to seek access to it.

40

THE COMMISSIONER: Yes. Very good.

MR ALEXIS: In those circumstances, Commissioner, I have no further questions for Mr O'Keefe, but perhaps if any counsel wishes him to be

recalled for any purpose arising out of the record of interview then arrangements can be made for him to be recalled.

THE COMMISSIONER: Yes. Well, I hope you won't need to be recalled, Mr O'Keefe, but thank you for your evidence. We'll let you know if we need you back, but for the time being you're free to leave?---Thank you, Commissioner.

10 **THE WITNESS WITHDREW** **[11.33am]**

THE COMMISSIONER: Yes. Mr Alexis.

MR ALEXIS: Thank you, Commissioner. Could I now call Mr Andrew Simpson.

MR WHITE: Could I just clarify, Commissioner, in view of the
20 circumstance with Mr O'Keefe, is there any objection from anybody to me
conferring with him as a general- - -

THE COMMISSIONER: No.

MR WHITE: Thank you.

THE COMMISSIONER: Has Mr Simpson been- - -

MR ALEXIS: Oh, sorry, I thought- - -

30 THE COMMISSIONER: I should say that just as a matter of clarification,
the general practice will be that statements, records of interviews and other
evidence obtained by the Commission during the course of its investigation
will not be made available to the parties but should the, should any material
be referred to in the course of evidence it will in the ordinary course be
made available.

MR ALEXIS: Commissioner, could I, in light of Mr Simpson's absence,
and we'll make inquiries to ensure that he- - -

40 THE COMMISSIONER: Somebody is here. Are you Mr Simpson?

MR SIMPSON: Yes, sir, that's right

THE COMMISSIONER: Now, are you legally represented?

MR SIMPSON: I am.

THE COMMISSIONER: Who is your counsel?

MR SIMPSON: Ah, Christopher Tosevic.

THE COMMISSIONER: I beg your pardon?

MR SIMPSON: Christopher Tosevic.

THE COMMISSIONER: Is he here?

MR SIMPSON: He is here today.

10

THE COMMISSIONER: Well, can you see him?

MR SIMPSON: No, I can't.

THE COMMISSIONER: Well, where is he if he's here today?

MR SIMPSON: I don't know.

THE COMMISSIONER: Mr Alexis, is there, perhaps can we fill in the gap
with someone else in the meantime?

20

MR ALEXIS: Yes, we can.

THE COMMISSIONER: Or should we wait?

MR ALEXIS: Perhaps we just, should just wait a moment, if we, if we can.
Perhaps we should adjourn for a couple of minutes.

THE COMMISSIONER: We'll adjourn for five minutes.

30

MR TOSEVIC: Commissioner, I apologise for not being earlier.
Commissioner, Mr Simpson, I will advise, wishes to give his evidence
under affirmation and on his behalf I think a declaration pursuant to section
38 (not transcribable).

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

MR ALEXIS: Mr Simpson, is your full name Ross Andrew Simpson?---
That's right.

You prefer to be referred to as Andrew rather than Ross, is that so?---Please.

10 Thank you. Now, should we understand that you are the principal legal
officer in the Crown Lands section of what was formerly known as the
LPMA?---That's right.

And you've had a long career in the public service as a solicitor working in
the area of land titles, is that so?---Yes, that's right.

For about the last 20 years?---For the last three and a half years in the
Crown Lands section and before that about 20 years with the Registrar-
General's office.

20 And before that I think you had a relatively short period at the Crown
Solicitor's office?---Before that about three years in public practice and with
the Crown Solicitor's office in about '02 for a year and a couple of years
after that briefly as well.

Now, can I ask you to tell us please when you first became involved in any
capacity in the matter concerning the purchase of Currawong?---It was 10
March, that was the Thursday.

30 And can I show you Exhibit 1 in this inquiry, Mr Simpson, that you'll be
shown momentarily. And can I ask you please to open it behind tab 11 to
page 47C?---Yes.

And is the receipt of that email that we see at page 47C your first
involvement in the matter or was it prior to that email, namely, of course
that it appears to have been sent to you, Mr Costello and Mr O'Keefe at
about 8.30 on the evening of Thursday, the 10th?---No, I think I was
involved a little bit before that.

40 Thank you. Can you tell us about that please?---I think I received an email
from Bob Costello early in the day and maybe in the middle of the day and,
yes, requested me to have some input into drafting a letter to do with a
potential purchase.

And if we look at the email we see that there's reference to the making of a
verbal contract in the opening line, do you see that?---Yes.

And we then see the material terms of the bargain and you'll see the
reference to the price and deposit, time for completion and a reference to the

cessation of current proceedings before the Land and Environment Court, do you see that?---Yes.

And if we jump over the next paragraph there's reference then to a letter will issue from LPMA today – tomorrow I should say – 11 March. So was the preparation of that letter to which you were tasked by Mr Costello?
---Maybe, but I don't think I ever saw that letter in its final form.

10 You're not alone in that respect, Mr Simpson. But do you recall preparing a letter and sending it to either the vendor, or who you understood was the vendor, or to Clayton Utz or to anyone else?---No, only internally. I just replied to Bob Costello's email and I did a letter that was the standard sort of thing, like an Invitation to Treat from a purchaser and said that the offer of the terms would be subject to contract. And I was just being cautious, that's the usual sort of thing one would do when first confronted with a potential purchase that if you wrote the vendor a letter that's the sort of thing you would say.

20 All right. Now, can you recall to mind what the next step was as far as you can tell us?---Well, I think just after I received the email from, from Bob I received a telephone call from Kel O'Keefe and he just, I think, said, "I think Bob Costello has something for you to do to do with the potential purchase. Are you on to that?" I said, "Yes, I've got his email." I think that's all the conversation was that he - - -

Now, can I ask you to look at the series of emails behind tab 12, and perhaps we ought to start at page 50 which is the third document behind tab 12?---Yes.

30 Third page I should say. And do you recall receiving the communication from Ms Taylor, the solicitor acting for the vendor from Clayton Utz?
---Yes.

And you then replied I think as you'll see on page 49, confirming title details and I think dealing with other matters, including the caretaker agreement. That's the caretaker/manager onsite at Currawong. Do you see that?---Yeah, that's right. Ah hmm.

40 And then you distributed an email which started on page 48, is that so, during the late morning of Friday, 11 March?---Yep.

And we see that you've communicated there with Mr Costello, Mr Malmberg, Mr O'Keefe and Mr Foster- - -?---Yep.

- - -and others. Do you see that?---Yes.

Now, can I just ask you to assist us with identifying the role of each of those persons, leaving aside Mr Costello and Mr O'Keefe because I think by now

we understand their roles, but can you explain why you were sending this email which attached the previous emails that you'd received from Clayton Utz to Mr Malmberg firstly?---Yeah, right. Mr Malmberg is a, senior manager with the ah, ah, associate with the Planning Corporation Sole and ah, based at Parramatta I think, and ah, Greg Foster is a ah, the local manager with some responsibility for the, for the area, so the manager of the Crown Lands local office or a position like that. I don't think he's the manager, but ah, and ah, John Callaghan, he's my immediate boss in the Crown Lands section, he's the manager of the, our section of Legal, and Jennifer Jude is the ah, ah, above him again, she is the ah, director of ah, our directorate of Legal, and again she's under Kel O'Keefe who's the corporate counsel.

All right. Now, in sending the email to Mr Malmberg in his capacity as manager or senior manager of the Planning Corporation Sole, what was the purpose of doing that?---It's a, because ah, apparently at that time the ah, instructions we had from ah, Bob Costello was that the purchase would be partly by the Minister administering the Crown Lands Act and ah, partially by the ah, Corporate Corporation Sole under the EPA.

Ah hmm. And so Mr Malmberg was sent this email because of his potential involvement insofar as the Minister administering the EP&A Act was concerned?---That's right.

Now, we know that ultimately the contract has exchanged, and you'll see it behind tab 13 at page 51 identify the purchaser as the Minister administering the Crown Lands Act?---That's right.

So at what point between about midday on Friday, 11 March and the exchange of contract on the 15th did the name of the purchaser change? ---I think we got instructions ah, through Mr Watkins from ah, Mr Costello on, it might have been early on the Tuesday morning, the 15th, from memory.

Now, while there was consideration about one of the purchasers being the Minister administering the Environmental Planning and Assessment Act, what was Mr Malmberg's role as you understood it to be?---Well, I remember I had to ask him some questions about if there was any separate valuation for the various lots that were part of the, the, the purchase and also I, I think briefly discussed with him the, the zoning of the, the land, it's- - -

THE COMMISSIONER: Are you talking about the Currawong land? ---The Currawong land. Yes, that's right. There's, there's four lots involved. Some of its zoned 9A, which is, which means that it's zoned for some sort of particular protection and can be resumed by an authority of the government if the owner of the land so chooses, and the, so that's why he was involved I suppose, but because, and also because the, the idea was that, that some of the ah, ah, money for the purchase would come from the

coffers of the Corporate Sole, the Planning Corporation Sole and some from the Crown Lands' coffers. So ah, Carl was also involved from that point of view. And there was a need, I mean, if the contract was to go ahead on that basis, for him to consider and all the senior managers to consider for example which lots would be bought by the Corporate Sole and which by Crown Lands or if it all bought together, what proportion of the purchase price would come from each source.

10 MR ALEXIS: Now, do you recall having any discussions at all with Mr Malmberg about the part of the coffers that he had some role to play in not being required when the decision was taken to acquire the land in the name of the Minister administering the Crown Lands Act?---No, I didn't.

Beyond sending him the email that we see on page 48 do you recall having any further communications with him at all about his involvement in the purchase and particularly any funding coming from the Planning Corporation Sole?---No. Like, like I said, I think our conversations were about the, an independent valuation of various lots and, also I think he sent me some information describing the, the various lots, a plan and, but that's
20 about all I can remember. I - - -

And - I'm sorry?---I didn't ask him about, you know, the, the rationale behind money coming from his coffers or not.

If I could turn your attention to Mr Foster who's also referred to in your email?---Yeah.

And you've told us I think he was the local manager, if you like, concerning Crown Lands. Did you have any discussions with him about his role in the
30 transaction and particularly with respect to funding?---I'd say not, not particularly in respect of funding. My discussions with him, with him were about, I think I asked him about valuations for, for each lot, if any such existed and I at some stage on Thursday or Friday circulated an email to him asking about, I think if there was any need for a submission to the Minister about, ask the Minister to decide if the land was needed for an essential public purpose which is something we, we do sometimes before settlement or sometimes before land is, is reserved under the Crown Lands Act.

And is your recollection that you raised that subject with Mr Foster or was it
40 with someone else?---I think it was with him.

And what was the response to that?---He sent me a, an email with an attachment which was a briefing note I think to the Minister about October last year and, and said I think, either an email or over the phone told me that this is what we have, it's nearly the same thing, it's, it's going to be used as a state park.

So is your recollection, Mr Simpson, that it was Mr Foster with whom the question or the issue of ministerial consent was discussed and that led to him sending you this document that you've just described?---Well, it wasn't really, sorry, it wasn't really ministerial consent that was discussed with him, it was the possibility of the Department doing a future submission to the Minister before or after exchange or settlement, dealing with the issue of the, if the land is needed or not for an essential public purpose.

10 Now, did you at this time, namely the Friday we see referred to in these emails, did you receive the, a briefing document or something of that type and read it?---I think I received it, well, I can't quite remember but I don't I read it until the Monday.

And could I ask you just to turn back in Exhibit 1, the folder before you, to tab 2 and could I ask you to look at the three-page document behind tab 2 comprising pages 4 to 6?---Yeah.

20 And can I ask you to identify for me, please, whether that's the document to which you are referring as having been received and probably not read by you until the Monday?---That's it.

And was the document that you read inclusive of the handwriting that we see on page 6 in the exhibit?---Yes, I think so.

30 Thank you. I'll come back to that. Now, in relation to Mr Callaghan and Ms Jude referred to again in your email at page 48 behind tab 12, did you have any conversations with either of those persons about the purchase of the Currawong site?---Yes, I did. I spoke to John Callaghan about it I think fairly regularly, he's in the next office to me and my direct supervisor so I spoke to him regularly about it and Jennifer Jude less so. I think she might have gone on leave, it might have been on the Monday or the Tuesday but I think I spoke to her briefly about it and, and cc'd her in the emails.

Now, the email that starts on 48 goes over to page 49 refers towards the end of that email to the contract being GST-free as a sale of a going concern. Do you see that?---Ah, yeah.

I'm looking at, towards the top of page 49?---Yeah.

40 So before you received the contract and you'll see, of course, your email ends with an indication that it's to be received later that afternoon - - -? ---Yeah.

Can I ask what the basis was that led you to say in this email that you thought the contract would be GST-free?---Because the, the vendor told us that that's what they proposed for the contract, that it would be GST-free as a going concern.

And how did you come by that information? What that something conveyed by the vendor's solicitor?---Yes.

All right. Now, just coming back to page 48 you'll see the email at the top of the page referring to a need to exchange contracts by Tuesday and settle in four weeks. Do you see that?---Yes.

Now, can I ask what the basis of that statement was in that email on Friday, the 11th? How did you know that the exchange was to occur by the following Tuesday?---Yes, I, I would have been told by Bob Costello that.

And no doubt you appreciated that at that point in time you hadn't seen the contract and so what was being proposed to you was the need for some urgent and particular consideration of this contract so as to enable and exchange within a relatively short timeframe?---Yes.

And did you understand from what Mr Costello said to you why that was? Why there was that urgency behind a need for an exchange the following Tuesday?---I'm not sure I understood it completely at that stage.

20

Did you come to understand it subsequently?---I, I learned more about it over those, over those few days but I, I think it wasn't until the, a meeting with Mr Watkins on Monday morning that we were firmly told by him that we had to exchange by Tuesday close of business or there was a risk that the deal would be lost.

And just while we're dealing with this subject matter was there some elaboration to what was put as the reason behind the deal potentially being lost if contracts weren't exchange by close of business on the Tuesday?---I think we were told- I can't quite remember what we were told about that at the meeting on the Monday morning. I know it was very firmly put to us that it needed to be done by then and Mr Watkins also said that he had been, or was in contact with Mr Allen Linz of the vendor company and that the company wants us to exchange by then, the deal may be lost if that doesn't occur. And I think I found out from the vendor's solicitor Ann Taylor that the vendor company would experience difficulties if there wasn't a quick exchange of contracts because of the court case they were involved in about the DA approval for the site, but if they didn't exchange then I would have to go into the next step of litigation and there would be further costs in the preparation of their litigation, but I think that's all I can remember about the need for urgency.

40

Now, should we understand that you came to receive the draft form of contract on the afternoon of Friday, the 11th?---That's right. I think it was after 4.30.

And that required some weekend work?---It did.

And you were in a position come Monday morning to speak to those interested about the form of the contract and particularly the content of some of the special conditions, is that so?---That's right.

And can you tell us then what happened – before I ask that question, and can I withdraw it. Before the end of the week and before you examined the contract over the weekend had you had any discussion at all with Mr Costello about the application of caretaker conventions at that time?---No.

10 And should we understand that at that time, namely, Friday, 11 March you well understood that there had been a dissolution of the Lower House on 4 March and the caretaker conventions applied?---I did, yes.

And you understood what that meant in terms of the entering into of significant contractual obligations and the like?---Well, I think I had glanced at the Premier's Department's circular about the caretaker period some time before that, yes.

20 Yes. Perhaps just in that respect I'll show you a document. If we could have Exhibit 5 shown to Mr Simpson please. And, Mr Simpson, could I invite you, firstly, to look at the covering circular email that emanated from the Department of Premier. You'll see the date of the circular email 14 October, 2010 towards the bottom, do you see that?---Yes.

30 And if you turn the page you will see that it refers to by way of attachment the caretaker conventions and other pre-election practices document relating to the then pending 2011 general state election, do you see that? So is that the document to which you were referring when you said that you'd previously looked at the guidelines or the document relating to this?
---That's right.

And you were therefore across the issues that the application of the caretaker conventions might have?---Well, perhaps in a general sense, yes.

Now, thank you, that can be returned. Now, prior to you looking at the contract over the weekend of 12 and 13 March do you recall having any conversations at all with Mr Watkins about the application of caretaker conventions?---No.

40 Do you recall having any discussions with either Mr Costello or Mr Watkins before the start of the weekend about whether or not the transaction was authorised? And by that I mean independent of the application of caretaker conventions whether it was nonetheless a transaction authorised by Government?---No, not at all.

Now, on the Monday morning can you tell us what occurred as best you recall?---Yes. I, I did an advice on the contract so that was sent out, I think, on Sunday evening and so I sent that to all concerned and I first saw Mr

Watkins and Mr Costello actually walking into the office at about 9.00 in the morning and they said to me, "Let's have a meeting straightaway." And they proceeded to Mr Watkins' office. I went to my office to get a pad and a pen and I think I invited Mr Callaghan to the meeting too and I know Kel was invited as well and I think they were the only people present. Jennifer Jude, I think, well, I'm not sure if she was on leave then or not, but I, I can't remember her being there. But the meeting, I think, started out with a short presentation from Mr Watkins which basically said that the, it's a very important purchase, that he said something of a background of the matter
10 that there was some sort of partnership with local council that it was going to be a state park, but then, I think, long consideration of the matter and, and negotiations with the vendor company. He said that he'd been speaking to Allen Linz about that. He said that the matter was – well, as I said before, the matter was very urgent that we exchange by close of business Tuesday. He said that he would be available to sign the contracts only up until the Tuesday morning. And after that sort of presentation, I suppose, there was discussion by – I think led by Kel O'Keefe on some of the matters raised in my advice about the contract and he said that two of the indemnities to be
20 given by the Government to the vendor company were not appropriate and Mr Watkins agreed with that. Let me think. I think there was some discussion between Mr Watkins and Mr Costello about the, the identity of the purchasers that would be needed for Corporation Sole and our Minister and also a discussion between themselves about where the money would come from. And at the end of the meeting there were directions given to me which I took down of just what had passed on at that stage to the vendor's solicitor. I think that's all I can remember of it really.

Now, can I just come back to some elements of what you've told us about that meeting. Firstly, with respect to what was described as a partnership of
30 a local council did you understand from that meeting that the broader proposal, by that I mean beyond the actual contract to purchase the Currawong site, involved arrangements whereby surrounding land would come to be amalgamated with the Currawong site to form the state park? ---Well, I don't remember if that was said specifically or not. I mean, it's hard to remember because later on I've learnt about those things, but if it was mentioned to me first then I just don't know.

And you recall whether or not there was any reference to the arrangements being funded in part by the Council gifting some land at Newport which
40 would then be realised by the Government as a form of financial contribution to the purchase of Currawong?---Again, that may have been mentioned, but it doesn't stick in my memory in particular at all.

Do you, do you have any recollection of looking at any documents relating to those, and I put the expression loosely, but those partnership arrangements with the council?---Oh, no, at that time there were no documents shown to us whatever.

I see. And so before the contract ultimately was exchanged, which I think was late on the Tuesday, is that so?---Yes, 4.30 I think.

Thank you. But before the exchange of the contract, did you see any documents which either referred to or in some way underpinned the partnership that had been explained to you between the State and the Council?---No, not that I remember.

10 Now, you've also raised a discussion about special conditions in the contract providing for some indemnity in favour of the vendor. Is that how we should understand it?---Ah, yes.

And may we take it that the advice that you'd prepared the evening before and circulated made reference to the form of indemnity in the special conditions and- - -?---Yes.

- - -your recommendation that it not be agreed to?---Yes.

20 And that was discussed at the meeting and you received an instruction to have that negotiated out of the contract?---That's right.

And you duly did that. Is that so?---That's right.

Could I just ask you to assist me with this. If you look at the contract behind tab 13 you'll see that we've reproduced for the purpose of the exhibit obviously a reduced part of the contract, and passing over the two first pages of the standard conditions- - -?---Yeah.

30 - - -we've reproduced in whole the special conditions from special condition 30 through to special condition 43?---Ah hmm.

And could I ask you to look at page 63 of the exhibit in the bottom right-hand corner where there's an indemnity provision contained within the general provision of the special conditions? Do you have that?---Ah, 42.7 indemnities?

40 Yes. And do you see (a) tells us that each indemnity by the purchaser in this contract is a continuing obligation separate and independent from the purchaser's other obligations and survives completion, rescission or termination of this contract. Do you see that?---Yes.

Could I ask you to explain to us what that indemnity there is referring to? ---Well, it's a, it's a catch-all that refers to any other indemnity that may appear in the, in the contract, and this is not an indemnity itself and ah, that subclause just means that any other indemnity that may exist would not merge on completion.

And a lawyer would understand that as a term that's within the general provision of the contract to ensure that any separately identified provision of indemnity doesn't merge on completion. Is that the position?---That's right. So it doesn't end on completion.

So should we understand then that there were, as the special condition might at least suggest on its face, otherwise some indemnity provided for in the contract?---Well, not necessarily.

10 Well, that's what I'm asking you. Was there other, was there another indemnity provided for in the contract- -?---Well, I- - -

- - -which is picked up by 42.7(a)?---I don't remember offhand.

THE COMMISSIONER: Was that just left in there on the off chance that there was an indemnity?---Well, it, well, sort of. It was in the special conditions originally and ah, it wasn't taken out.

20 You removed the indemnities but didn't remove that?---Maybe.

MR ALEXIS: All right. Now, the other matter, just dealing with the contract if I may, relates to the subject of GST. And if you come back to page 51 which is the schedule on the front page of the Form of Contract, we see that the schedule provisions concerning GST and taxable supply have been crossed through?---Yes.

30 Now, if we then go to special condition 39 on page 61, there's a provision which effectively postulates what is to occur if GST is payable in relation to the supply being provided under the contract. Do you see that?---Ah, yes, that's right.

Now, you've told us earlier that you had a conversation with the vendor's solicitor and reported in your email to Mr O'Keefe and others, that's the email at page 48 and 49, an understanding that the contract would be GST-free?---That's right.

Do you recall I referred to that earlier?---Yes. Ah hmm.

40 Now, how should we understand what your knowledge of the position was at the time the contract was exchanged when the standard provisions of the schedule on the front page of the contract had been crossed through and we nonetheless had the special condition that I've just referred to which would apply if there was a taxable supply?---Yeah. I think that it became impossible for the GST exemption for a going concern to apply because it can only apply if both parties agree that it does.

Perhaps you didn't understand my question, Mr Simpson. My question was, what was your knowledge about the GST issue at the time you exchanged

this contract, was it a taxable supply that would attract a GST obligation or not?---Yes, yes.

So your understanding between when you sent the email and the time the contract was exchanged had changed?---Yes.

10 Can you tell me what was discussed about that subject and that change of understanding with either Mr Costello or Mr Watkins or indeed anyone else within the Department?---Yes. Well, it was specifically dealt with in emails between myself and others involved, I think the lawyers involved and Mr Costello. It was also mentioned specifically to Mr Watkins in a meeting I think just after lunch on Monday. So it was described to Mr Watkins that the ah, ah contract would be as proposed then, subject to GST, that the ah, ah, purchaser would get a GST tax invoice, and on the basis of that, the government could claim back the GST component of the, the purchase price paid and that the GST 10 per cent would go to the vendor company who would have to remit that to the Tax Office.

20 So does that mean then that by the time Mr Watkins came to execute the contract, from what you've told us he well understood that on completion the balance of the gross price, taking into account of course the deposit, would include GST of about \$1.2 million?---That's right.

Now, can I also- - -

THE COMMISSIONER: Sorry, Mr Alexis. Just so that I understand that, that means that the pricing, the amount of money would increase from 12.2 million to over \$13 million?---That's right.

30 MR ALEXIS: \$13,423,262.84, to be precise?---Yes.

40 Thank you. Now, you also mentioned that there was discussion at the meeting, and we're back to the Monday morning meeting, about the identity of the purchasers. And I think you told us earlier in the context of the emails that raised questions and particularly your email at page 48 and 49 raised a question about whether there would be a joint purchase between separate ministries or there be a singular purchaser. And you told me that that had been resolved through the meeting. So can you explain how that was resolved through the discussion at the meeting?---Oh, I don't know if it was resolved at the meeting, there was discussion between Mr Watkins and Mr Costello about it and I think that the plan persisted that we would at that time go ahead with two potential purchasers and ah, but I mean there wasn't a complete discussion of the pros and cons of that arrangement, there was just some discussion between those two people and they didn't ask questions of other about that, so I don't know if you'd use the word resolve, that's all.

Okay. And you also mentioned that there was discussion about where the funds were going to come from to complete the purchase?---Yeah, there was a mention of that.

And what was the mention of that?---Well, I think that a proportion of funds would come from both sources, but beyond that I can't remember.

10 THE COMMISSIONER: What do you mean, both sources?---Oh, from the Crown Lands source, which is the Minister administering Crown Lands Act and the other source of the money, of the Planning Minister's Corporation Sole.

And was there any money coming from assets from the Council, was that discussed?---No, I, I don't think that was, I think I said before, I can't really remember if that was mentioned at all.

20 MR ALEXIS: Now, Mr Simpson, did you obtain any detail or information during this meeting about how much money was coming from the various sources that had been identified and how that was going to be procured?
---I can remember a mention that the deposit may come from a particular source but I can't remember which source that was but otherwise I can't remember any detail about that, whatever.

But as the solicitor acting on the purchase of this site surely you'd be concerned about the purchaser's capacity to be able to complete the purchase?---Well, not as such because that's probably the responsibility of Mr Costello and Mr Watkins.

30 So do we understand from that answer that apart from what I think you described as a mention, namely a mention of the possible sources of funding - - -?---Yes.

- - - that was really the extent of it?---I think that's about it, yeah.

And you didn't concern yourself with any further detail as to, for example, how funds might be procured from within the Department to complete this purchase?---No, that wasn't my responsibility.

40 All right. Now, I've just gone back to examine, I think, the elements of what you said was discussed at this meeting. Can I ask you whether there was any other subject discussed during this meeting on the morning of Monday, 14 March?---Well, not that's coming to me just now.

During the meeting, let me withdraw that. You told me I think that as a result of some discussions with Mr Foster you'd received that ministerial briefing note that I took you to earlier which is behind tab 2 of Exhibit 1, remember that?---Yeah.

And I think when I asked you about whether you'd read it you said to me that it wasn't until about the Monday that you'd read it and understood what it said?---I think that's right, yes.

Now, was that before the meeting that you've just given evidence about or did that occur after the meeting when you'd left Mr Watkins' office?---Oh, it was after.

10 Thank you. And what was the occasion which caused you to read that briefing document behind tab 2, pages 4 to 6?---Yes. I, I received a phone call from Bob Costello and he, well, I don't remember it too well but I think he said that I'm doing the cheque requests for the deposit and have you got any, any information on approvals for the, or anything that may help me with that and I said well, I've got a briefing note but it deals to some extent with that and I sent that to him.

20 THE COMMISSIONER: What do you, what did you understand he meant by approvals?---Well, I understand that it's his responsibility to draw up the cheque request and that on the standard form includes a, a need to attach any of, of the paperwork to do with the approval for the expenditure of the money or at least to certify that the money is available and it may be expended for the, the purpose so to do that paperwork he was probably casting about for anything that, along those lines.

So the approvals don't include approvals for the contract, it's approvals for the, for the payment of money?---Yeah, the financial approvals, that's right.

30 MR ALEXIS: And, Mr Simpson, if you look at the document behind tab 14 of Exhibit 1 - - -?---Oh, sorry, just a, I think in a contract for sale situation the Finance branch would, would probably look to, to both to be on the cheque request, an approval to buy and also the financial approvals.

THE COMMISSIONER: So what approval to buy would you expect in a case like this?---Oh, well, I mean, I'm not really sure because these things are done by, by Finance but - - -

So that's not, you've not participated in this exercise before?---No, not, not directly, no.

40 MR ALEXIS: Mr Simpson, could you look at the document behind tab 14 of Exhibit 1?---Yes.

And you'll see this is a payment voucher relating to the cheque for the deposit which you'll see a copy of on page 67?---Yeah.

And you'll see in relation to this payment voucher that there's a section underneath the long column running across the page entitled "Expenditure approved." Do you see that?---Yeah.

And we have details there concerning Mr Watkins and Mr Costello's signature under the reference to "certified correct under section 13 of the Public Finance and Audit Act," do you see that?---Yes.

Now, is that the document to which you were making reference about approval for having the cheque for the deposit drawn?--- Yes.

10 And can you perhaps in light of your attention being drawn to this document just recall to mind what the conversation was with Mr Costello about this?
---I don't remember anything more about it.

Well, was the briefing note to which you received on the Friday discussed with him at all?---I think I just said that I've got something that may be relevant, I'll send it to you.

Could you just go back to that briefing note ever so briefly?---Where's that?

20 Behind tab 2, sorry and if you look at page 5 of Exhibit 1 you'll see under the heading "Recommendation" subparagraph (d) which refers to approval being sought to enter into negotiations et cetera and you'll see the reference to a limitation to \$13 million there?---Oh, yes, ah hmm.

Now, and if I could ask you to just go up the page to paragraph 3.5 and you'll see there's a reference there to arrangements with respect to which it was there indicated that Council had given a commitment to and you'll see at the end of paragraph 3.5 a reference to a \$12 million purchase price for the lands in question, do you see that?---Yes.

30 Now, just having drawn your attention to that, are you able to recall to mind whether you had a conversation with Mr Costello about the transaction being authorised or not by the Minister?---Not just at that time. I, I sent it to him some time before 12.00 and there had been a meeting suggested, it was going to be about 12 o'clock with Mr Watkins and I think 12.00ish or just after 12.00 Mr Costello came and got me and said let's go and see the, the boss now and so, so I followed him and going into the meeting I think I said something like I'm not sure the briefing note authorises the, the sale and purchase and Bob said to me, I'll ask, ask him about that or words to that effect and so we, we went into the meeting. Mr Watkins started out by
40 asking for a, for, me for a run-down of how we were going with the contract and I told him the latest to-ings and fro-ings between ourselves and the vendor's solicitors and then Mr Costello basically put the contents of this briefing note to Mr Watkins and without reading it again I think he, he said that there's authorisation to negotiate up to a certain amount and, and perhaps not more and, and (not transcribable) the exact words that were used there but - and in reply to that Mr Watkins said that I'm authorised by the Premier to buy the land and he, I think he said authorised up to 13 million and, and then on hearing that I started to talk about the GST issue

then Bob took over and also explained that with the GST being added that the purchase price would be more than 13 million, but that we would, on the GST tax invoice, get back an input tax credit for 10 per cent which would take the purchase price below 13 million in reality or words to that effect. And Mr Watkins said, "Yes, I understand that, but I have approval for that." But there was more to the meeting than that. I think after that I mentioned the idea of putting a submission up to the Minister to have the land noted as being needed for an essential public purpose and Mr Watkins said in reply to that, "I'm not going near the Minister on that." And I think he just meant that we can wait for that, for that issue, it's not, it's not essential. And I also put to him then that in the usual sale of business one usually gets the financial details of the business and has a chance to look into and investigate the business before contracting and he said, well, I suggested there isn't time to do that. He said, "Yes, that's all right."

Sorry, "he" being?---Sorry, Mr Watkins. He said, "That's all right." And so I think Mr Costello and I both thought then that – we were told that the Premier had authorised the transaction, I thought, in every respect.

20 MR ALEXIS: Now, the discussion that you've just outlined in that answer, Mr Simpson, should we understand that that was a discussion that occurred between the three of you, namely, Mr Watkins, Mr Costello and yourself?
---That's all, yes.

No one else was present?---No.

And that was some hours after the meeting that had occurred earlier that morning?---That's right.

30 And between the two occasions you'd been negotiating with the vendor's solicitor about contractual issues?---Yes.

Now, when you made reference to putting a minute up to the Minister with respect to the subject land being acquired for an essential public purpose can I just ask you to explain why you raised that as an issue for discussion?
---Because it can be an important issue for us.

40 And why is that?---It's the, the status of the land is important if it's bought by the Minister administering the Crown Lands Act because it's very often made Crown land at some later stage and Crown land is claimable land under the Aboriginal Land Rights Act and if land has the status of it being needed for an essential public purpose it may not be claimable. So it's an important thing to raise.

So that related to the proposition that it might in some way afford some protection in due course with respect to any native title claim, is that what you had in mind?---Land rights claim, that's right.

I see. Thank you. And Mr Watkins' response was to say, "No, we're not going to the Minister on that" or something to that effect?---Yes.

THE COMMISSIONER: We'll do it later?---Sorry.

My impression was that he said, Well, we don't have to look at it now we can do it later?---I'm sorry, that was my explanation, I might've thought at the time, well, we can do it later.

10 So that's something that no one said it's something you thought?---Yes, I'm sorry, I didn't express that very well. Yes, it was something that I thought and no one said, that's right.

And when you said, "Well, what about this issue?" What did Mr Watkins say?---He said, "I'm not going near the Minister on this."

I see. Would that have taken time?---Yes. Usually.

How much time?---At least a few days usually.

20

But what would the Minister – assuming that the Minister had said yes you would then have to take further steps?---Well, depending on what we wanted to do, but let me explain it. It's not something that we would need to do before exchange of contracts.

Yes.

30 MR ALEXIS: Now, Mr Simpson, when, in the course of this discussion involving as you've told us Mr Costello, Mr Watkins and yourself, reference was made to the October briefing note and you heard Mr Watkins say, "I had been authorised by the Premier" and you took that as a reference to authorisation for the whole transaction I think you told us?---Yes.

40 Did you, at that point, ask to see or inquire as to whether that authorisation was in writing?---Well, I remember now that once, I think after Mr Watkins said that he had the authorisation of the Premier, Bob Costello asked him, "Is there a briefing note on that?" And Mr Watkins said, "No." He may have finished off the sentence with something else, but I don't recall it. But in answer to your question no, neither of us asked what do you have in writing or anything like that.

And when you say, "neither of us asked" you're referring to both yourself and Mr Costello to the extent, of course, that you were privy to the conversation that he was involved in with you?---Yes.

Thank you. Now, could I ask you please just to look at the documents behind tab 8 please of Exhibit 1. And I'll ask you, if you would, to come through to page 43 and 44. And do you see that as a letter from the Minister

for Lands, Minister for Planning, Minister for Infrastructure to the Premier -
- -?---Yes.

- - - dated 9 February, 2011?---Yes.

And may we take it from your evidence that you never saw that letter before
the contract was exchanged?---No.

10 And did you see this letter before the contract was completed?---No, not that
I remember.

And if you turn over to tab 9 you'll see document 47A which is a letter
under the hand of the Premier dated 25 February, 2011, do you see that?
---Yes.

And did you see that letter or a copy of it either before exchange or before
completion of the contract?---No.

20 And if you could look at the document behind tab 10, page 47B you'll see
this is a letter under Minister Kelly's hand to Mr Watkins dated 28
February, 2011, do you see that?---Yes.

And did you see that letter either before exchange or completion of the
contract?---No.

30 Now, we see, I think, when we look at the form of contract that was
executed that we've reproduced in the exhibit behind tab 13 the execution
page at page 64, if you could turn to that please. Mr Simpson, should we
understand that Mr Watkins signed the signature in your presence and you
witnessed his signature?---That's right.

And was there any further discussion that you were involved in concerning
Mr Watkins after the conversation you've just given evidence about before
the occasion, I think, on the Tuesday morning when this was executed?---I,
I, no, I don't think there was anything that passed directly between myself
and Mr Watkins until the execution of this.

40 And was anything discussed with him before execution?---At the time of
execution.

And what was that?---I explained to him that the version of the contract that
we have on hand for him to sign is one that contains both forthcoming
purchasers and that as instructed by him through Bob the final version of the
contract will have only one purchaser, the Minister for Crown Lands and he
said to me, "Okay, I will cross out the other purchaser and initial the
change." And he said, "If there's any amendments to the contract needed",
he might've said it in a minor way, I just forget, "then the team, you know,
Bob, yourself may make those amendments."

And what you're telling us I think is that Mr Watkins executed the execution page in advance of the final and complete Form of Contract being prepared- -?---Yeah.

- - -and in anticipation of an exchange to occur later that day of the contract, the form and content of which you'd be satisfied with?---That's right.

10 Thank you. Now, was anything else discussed with Mr Watkins at the time of execution?---Oh, he said that, I'm going to be available on the phone, Bob can give me call.

Did you speak with Mr Watkins again that day before exchange later that afternoon?---No.

Did you speak with Mr Costello at all about the transaction to be undertaken after it was executed by Mr Watkins and before exchange?---Yes.

20 And can you tell us about the matters that were discussed during that conversation or conversations?---Well, I might have spoken to Bob more than once or I can't quite remember 'cause there were so many issues that were outstanding, but I do remember speaking to him about organising the place of exchange and that would have been about 3.00 in the afternoon and he said, "Well, let's exchange in the Blue Room", which is the major conference room near Mr Watkins' room. And, "Okay", I said. And ah, when the vendor solicitor's representative, Ann Taylor, arrived, it was probably quarter past 4.00 I suppose in the afternoon. And I showed her into the Blue Room and then collected Bob, he came in too. We, we spoke about the process of exchange I think and there was some discussion about
30 some final amendments to the special conditions. I think Ann Taylor called her principal and Bob outlined to us what Warren's instructions were on, on that point, which isn't quite coming to me at the moment, but ah, so once things were clear, Bob said, "Well, I'll leave you to get on with the legal business to exchange." So he left the room. Then Ann and I checked the contracts, exchanged contracts, we made some minor amendments in handwriting as instructed, the deposit cheque was handed over. Um, when that was done I went to Bob's room and said, "We exchanged contracts, here it is." He said, well done, or words to that effect. And I think we both
40 saw Ann out then and ah, and then I think Bob asked me for the contract so he could make a copy of it.

Now, Mr Simpson, after contracts were exchanged, should we understand that you then attended to the ordinary inquiries, the sending of requisitions, that sort of thing- -?---Yes.

- - -to move towards a completion of this contract?---That's right.

And in the course of those steps, did you come to understand at all how the balance of the amount due under the contract, including of course the amount for GST, was going to be funded?---No, not while, not really, but I think that, oh, I think that by ah, that stage the ah, the, the new Cabinet had approved the, the purchase and ah, but I don't actually know the source of the funds.

Did you ever seek to understand where the funds on the final cheque or cheques handed over on settlement came from?---No.

10

And who did you understand was arranging for the production of the cheque or cheques to be handed over on completion?---Oh, Bob Costello was organising the approvals for the expenditure of the funds and ah, I was involved in the, in the cheques in that I had to, with the vendor, do the settlement figures and ah, so advise Bob what cheques were needed and what amounts and what payees. And ah, and I also had to ah, make sure that our Finance branch was happy with the GST tax invoice, but that's it.

20

And just in that respect, can I show you this document, please, with a copy for you, Commissioner. And in terms of the tax invoice you just referred to, should we understand that this is a copy of the tax invoice that was received that was accepted on completion in relation to the purchase?---That looks like it, yeah.

Thank you. Can I tender, can I tender the tax invoice, Commissioner?

THE COMMISSIONER: Yes. The Eco Villages tax invoice of 6 April, 2011 is Exhibit 19.

30

#EXHIBIT 19 - COPY OF TAX INVOICE FROM ECO-VILLAGES

MR ALEXIS: Thank you, Commissioner. Thank you, Mr Simpson.

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

MR BRANSON: Just, Mr Simpson, could I just take you to the meeting- - -

40

THE COMMISSIONER: Could you just tell Mr Simpson who you are?

MR BRANSON: Oh, I'm sorry. I beg your pardon. I'm appearing for Mr Kelly. I'm sorry. I apologise to the Commissioner. Just the meeting on the morning of Monday, 14 March, are you able to elaborate on your description (not transcribable) been told firmly by Mr Watkins, well, the substance of it was that if you didn't exchange contracts by close of business the following day, we lose the deal. Just the use of the word

firmly, can you add to that or not?---No, no, it was, well, maybe I can. I mean, he's, I suppose Mr Watkins was, seemed to be very determined.

Thank you. Commissioner, you'll tell me if this is helpful or not. Were you at any time prior to completion asked to consider if the (not transcribable) exchange that the purchaser may have been able to terminate or rescind the contract?---We were asked a question from, no, I don't think I was.

10 All right. Well, that's the end of that. I think you mentioned some advice that you prepared on the weekend. I just (not transcribable) Commissioner, it hasn't been tendered. Do we leave it alone? I mean - - -

THE COMMISSIONER: I think that was Mr O'Keefe, wasn't it?

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

THE COMMISSIONER: Well, what advice is it that you- - -

20 MR BRANSON: The advice, remember on Sunday over the weekend you prepared an advice- - ?---Yeah.

- - -prior to the meeting on Monday, the 14th?---That's right

Have you provided that to the Commission?---Yes.

Well, it's a matter for you, Commissioner. I don't need to go burrowing around, but I, I would be personally- - -

30 THE COMMISSIONER: I don't know what the relevance of it is.

MR BRANSON: I'm not disinterested in looking at it, but it's just not of vital concern to my client.

THE COMMISSIONER: Well, you're asking, you want to see it, Mr- - -

MR BRANSON: Yeah. Maybe I could- - -

THE COMMISSIONER: Do you want to speak to Mr Alexis?

40 MR BRANSON: All right. We'll leave it at that. Thank you. That's it. Thank you.

THE COMMISSIONER: Mr Curtin?

MR ALEXIS: I just rise, Commissioner, to indicate that we haven't seen it. And I have, and I have asked that questions and the response to it is that we haven't seen it.

THE COMMISSIONER: Sorry, the response to it from whom?

MR ALEXIS: Oh, from those instructing me.

THE COMMISSIONER: Oh, right. So the Commission does not have it?

MR BRANSON: Thank you very much. I should have raised it (not transcribable) and I apologise.

10 THE COMMISSIONER: Mr Curtin?

MR CURTIN: Mr Simpson, my name is Curtin and I appear for Mr Watkins. Can I ask you some questions about the GST component of the Currawong purchase. One of the documents you received on, at some point of the conveyancing transaction was the tax invoice which is now exhibit 19 from Eco Villages?---That's right.

20 And we'll just, if we just round off the amount to \$1.2 million, that amount is then claimable by the purchaser from the Federal Government?---Yes, input tax credit.

And tell me whether, if you don't know the answer don't answer it but is the net effect that the purchaser gets back the sum of the GST recorded in that, I withdraw that. With the Currawong purchase, the purchaser being the Minister administering the Crown Lands Act - - -?---Yeah.

- - - receives back either as a paper entry or perhaps a cheque, the amount of the GST?---I believe that's right.

30 And you gave some evidence about a submission to the Minister - - -

THE COMMISSIONER: Sorry, Mr Curtin, I'm just thinking about that, I, I, do you know whether that's correct?---Well, I suppose - - -

This is a question of law I take it?---And also practise, I mean, I'm told that's correct by our Finance branch and I think as a, a matter of law I'm happy with it as well but - - -

40 MR CURTIN: And when you say you've been told this by your Finance branch - - -?---Yeah.

- - - when, when was that discussion or when was this information conveyed to you?---Well, in this particular case I had long discussions with people from our Finance branch about the proper form of the tax invoice and, and through the course of that they assured me that they do get an input tax credit.

So you had in respect of this particular transaction lengthy discussions with the Finance branch as a result of which both they and you held the view that the purchaser would receive back the entire GST component?---Yes.

Could I take you now to the - - -

THE COMMISSIONER: How long would that take?---I don't know. This tax year I suppose but - - -

10 I beg your pardon?---I suppose this tax year but I, I don't really know.

You have no idea?---I have no idea.

MR CURTIN: I presume the Minister administering Crown Lands does not submit quarterly Business Activity Statements does he?---I don't know.

All right. Can I ask you about the evidence you've given in relation to the submission to the Minister concerning public purpose?---Yeah.

20 And you've mentioned that one effect of such a, I withdraw that. If such a submission was made and the Minister agrees, is it a declaration or - - -?
---It's just a decision of the Minister that that is so.

THE COMMISSIONER: Sorry, can you just, the Minister simply has to decide that the purchases were public purposes, is it?---Well, that the land is required for an essential public purpose.

30 And, and what happens then?---Well, I, I think the Aboriginal Land Rights Act provides for and contemplates that decision being made and it sets out consequences for them.

I see. So the consequences are, are simply dependant on the making of a decision by the Minister?---That's right.

MR CURTIN: And are you aware and please tell the Commission if you are not, Mr Simpson, are you aware of the types of things which fall within the description "essential public purpose"?---Yes. I think it can be fairly broad and - - -

40 THE COMMISSIONER: A state park would be within the - - -?---A state park would definitely be within it.

MR CURTIN: And when you are first, and my note is, and it may be wrong, you, you gave some evidence of a conversation with Mr Watkins, I withdraw that. In, in your examination by counsel assisting the first time that was touched on was that you had mentioned to, or after a discussion on GST with I think Mr Watkins and Mr Costello - - -?---Yeah.

- - - you then raised the question of a submission to the Minister for a decision concerning essential public purpose?---Yes.

Mr Watkins from your recollection had said "I'm not going near the Minister on this," and just tell me whether you remember giving this piece of evidence, that Mr Watkins went on to say we can wait on that issue?---Oh
- - -

10 THE COMMISSIONER: No, Mr Curtin, you've first got to establish, if you're asking whether he remembers saying this I think you have to - - -

MR CURTIN: Yes, yes, right. Do you remember whether or not you gave some evidence after, I withdraw that. After recalling that Mr Watkins said, "I'm not going near the Minister on this," do you recall what you next said in your evidence earlier?---Yes, I think I did say something about that this wasn't necessary at that time and in saying that I'm sorry, I didn't mean to suggest that those words were said, that was just my comment on, on it.

20 THE COMMISSIONER: You explained that's what you thought?---Yeah, that's what I thought.

MR CURTIN: And in so, so far as your understanding was concerned with your experience with conveyancing for the LPMA and your time in the Registrar General's office I think you also gave some evidence that to put up such a submission and get a response in the ordinary course might take a few days?---Yes. Well, if, if it was very rushed it might take a few days but in the ordinary course it'd be a lot longer.

30 All right. But on the assumption that such action was, that people had decided, having a decision to declare the land essential for a public purpose was required or, or desired, that was not something that needed to be attended to before the exchange of contracts with, with the vendor?---That's correct.

And, well, it, it, such a decision could actually be done by the Minister if so advised and if agreeing at any time after the purchase of the property?
---That's right.

40 THE COMMISSIONER: Provided no claim had been made before then?
---That's right.

MR CURTIN: And you certainly wouldn't anticipate a claim before completion of the contract of sale?---No.

As in, no, you agree with me?---I agree with you.

Yes. You mentioned that you were told by Mr Watkins, I think your evidence was, or it may have been Mr Costello or both together, that there was authority from the Premier to purchase the land, purchase Currawong? ---Yes, Mr Watkins said that.

Yes. And you were asked by counsel assisting whether you saw the letter and I think your answer was no, you had not?---That's correct.

10 There was no need for you to see such a letter or – I withdraw that. There was no requirement for you that you were aware of under your, whatever governed your employment or the rules of the LPMA or anything else for you to see that letter, was there?---No, I was really only asked to do the conveyancing aspect of the transaction so - - -

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

MR CURTIN: Yes, thank you, Commissioner.

20 THE COMMISSIONER: The Commission will adjourn till 2.00pm.

LUNCHEON ADJOURNMENT

[1.00pm]