

CRIME AND  
MISCONDUCT  
COMMISSION



QUEENSLAND

## CRIME AND MISCONDUCT COMMISSION

### TRANSCRIPT OF PUBLIC INVESTIGATIVE HEARING

10 CONDUCTED AT LEVEL 2, NORTH TOWER, 515 ST PAULS TERRACE,  
FORTITUDE VALLEY AT LEVEL 2, NORTH TOWER, 515 ST PAULS  
TERRACE, FORTITUDE VALLEY WITH RESPECT TO

File No: MI-09-1057

HEARING NO: 08/2009

DAY 3 - WEDNESDAY 25 NOVEMBER 2009  
(DURATION: 208 MINS )

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#### LEGEND

Presiding Officer – Robert NEEDHAM, Chairperson, CMC

Counsel Assisting – Russell PEARCE, Director, Misconduct Investigations

30 Hearing Room Orderly – Alicia VIEIRA

Witness – Craig MATHESON

Legal Representatives – Mr HUNTER, instructed by Neil LAWLER (Bell Miller  
Solicitors)

THE PRESIDING OFFICER: Yes, Mr PEARCE.

MR PEARCE: Good morning, Mr Chairman.

I call Craig Andrew MATHESON.

CRAIG ANDREW MATHESON ON OATH, EXAMINED:

10 MR PEARCE: Your name is Craig Andrew MATHESON?

THE WITNESS: That's correct.

MR PEARCE: You are currently the Deputy Director-General, Sport and Recreation Services, in the Department of Communities?

THE WITNESS: Yes, I'm on leave at the moment from that position.

THE PRESIDING OFFICER: Mr PEARCE, just -- Mr HUNTER?

20 MR PEARCE: Oh, I'm sorry, Mr HUNTER.

MR HUNTER: Mr Chairman, my name is Mr HUNTER, initials JR, Senior Counsel, instructed by Bell Miller. I appear for Mr MATHESON.

I understand Mr PEARCE was good enough to inform you of a difficulty I have this morning, and Murphy's Law being what it is, at the precise moment you walked into the room --

30 THE PRESIDING OFFICER: You got a message --

MR HUNTER: -- an issue has arisen in the trial that I am currently engaged and I wonder if I might ask the indulgence so that I can have five minutes to sort out whatever difficulty that might be.

THE PRESIDING OFFICER: As I understand it, unfortunately, a criminal trial you were in was expected to finish yesterday and the jury has still not reached a verdict and they are out at the moment.

40 MR HUNTER: One juror is ill today so it may be that the problem is solved --

THE PRESIDING OFFICER: Well, not for him.

MR HUNTER: But if I could have a moment or two --

THE PRESIDING OFFICER: All right. We will adjourn and allow you to check out what is happening. I understand these situations. We will fit in with you as best we can.

THE HEARING ADJOURNED AT 10.11 AM

THE HEARING RESUMED AT 11.05 AM

MR PEARCE: Mr MATHESON we will start again. You are now the substantive Deputy Director-General, Sport and Recreation Services, Department of Communities?

THE WITNESS: Yes.

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MR PEARCE: When did you assume that position in a substantive capacity?

THE WITNESS: When was I appointed?

MR PEARCE: That's correct.

THE WITNESS: Right. I was appointed to that position in December 2008.

MR PEARCE: And --

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THE WITNESS: That was the Deputy Director-General's position in the former Department of Local Government, Sport and Recreation.

MR PEARCE: And that changed with the change in machinery of government following the most recent general election?

THE WITNESS: In March this year and I transferred to the Department of Communities with Sport and Recreation Services.

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MR PEARCE: Do I take it that you are in essence doing the same job?

THE WITNESS: Not entirely because in the role -- in the former Department of Local Government, Sport and Recreation I also had local government related responsibilities as well.

MR PEARCE: Have those responsibilities been replaced or have they just dropped off your workload?

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THE WITNESS: No, the role that I perform now also has direct line responsibility for the Queensland Academy of Sport. I didn't have direct line responsibility for the Queensland Academy of Sport.

MR PEARCE: I understand. For what period were you acting as the Deputy Director-General?

THE WITNESS: From April 2007 through until when I went on leave on 25 July 2008. And I resumed acting in that role when I returned from leave on 29 September 2008 through until 21 or 22 November 2008.

MR PEARCE: What was the cause for such a lengthy period of acting? Was the position vacant or was the incumbent doing something else?

THE WITNESS: No, the incumbent -- this is in the period 2007-2008?

MR PEARCE: That's correct, yes?

10 THE WITNESS: The incumbent was off line essentially overlooking the local government reform process which was the council amalgamations process, and the oversight then of processes associated with the 2008 local government elections.

MR PEARCE: I understand. In terms of professional qualifications you hold a bachelors degree in business management; is that correct?

THE WITNESS: That's correct.

MR PEARCE: When did you obtain that qualification?

20 THE WITNESS: I graduated in 1989.

MR PEARCE: As I understand it, you've been employed in the Queensland public sector for over 20 years?

THE WITNESS: Yes, just over 20 years.

MR PEARCE: You commenced employment in the public sector in the Premier's department in June 1989; is that the situation?

30 THE WITNESS: That's correct.

MR PEARCE: You then worked in various positions within that portfolio until 1994?

THE WITNESS: That's correct.

MR PEARCE: You then moved to the Department of Housing, Local Government and Planning.

40 THE WITNESS: Yes.

MR PEARCE: And that entity eventually became the Department of Innovation and Information or more than that, the Department of Innovation, Information, Economy, Sport and Recreation?

THE WITNESS: Part of that department went through a series of machinery of government changes in the late 1990s and eventually part of that department ended up in the Department of Innovation, Information, Economy, Sport and Recreation

Queensland in 2001.

MR PEARCE: You commenced in the role of Executive Director Sport and Recreation in October 2002?

THE WITNESS: That's correct.

MR PEARCE: Can you tell us a little bit about that role.

10 THE WITNESS: The role of the Executive Director of Sport and Recreation is, or was at that time responsible for the provision of policy advice to the Director-General and minister and the oversight of programs and services that were the responsibility of Sport and Recreation Queensland.

MR PEARCE: In terms of the government grants to sporting bodies, were you responsible for that as the executive director?

20 THE WITNESS: The sport and recreation funding programs were administered by Sport and Recreation Queensland.

MR PEARCE: As the Executive Director Sport and Recreation you were, if you like, the first port of call for those matters; is that correct?

THE WITNESS: It would -- well, it would depend if a sporting club or organisation was seeking advice on a --

MR PEARCE: Your subordinates might be?

30 THE WITNESS: That's correct.

MR PEARCE: You were the number 1 man in the area responsible for administering --

THE WITNESS: I was responsible for the area that was responsible for the sport and recreation grants, that's correct.

MR PEARCE: Thank you. Do you know Mr Simon TUTT?

40 THE WITNESS: Yes, I do.

MR PEARCE: When did you first meet Mr TUTT?

THE WITNESS: I first met Mr TUTT in September 2007 following the machinery of government changes at that time when the minister Judy SPENCE became responsible for the sport portfolio.

MR PEARCE: Can you describe for the Commission, please, your association or relationship with Mr TUTT.

THE WITNESS: It was a working relationship. It was -- generally, I believe it was a good working relationship. He was the minister's senior policy adviser or, I think, some people refer to it as Chief of Staff but senior policy adviser. And at that time I was the acting Deputy Director-General of the department.

MR PEARCE: Did you ever experience difficulties in dealing with Mr TUTT?

THE WITNESS: There were some occasions when I did, yes.

10

MR PEARCE: Tell me about those, please.

THE WITNESS: There was an occasion when the Director-General and I had been invited to attend and had attended, sorry, a meeting with the department of the Premier and cabinet officials and Queensland Treasury officials, Stadiums Queensland officials and representatives of the AFL in relation to -- at that time they were seeking to develop a stadium for the then proposed Gold Coast AFL team. We -- neither Mr KINNANE nor myself had informed Mr TUTT prior to attending that meeting that we were attending that meeting. Mr TUTT found out about it and was quite irate that we had done that and not informed him previously, prior to attending, and getting agreement from him as to what we should or should not say or commit to in that meeting.

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MR PEARCE: Is that the only occasion upon which you had experienced difficulties with Mr TUTT?

THE WITNESS: No, I don't think so. I can remember another occasion where the department's policy area provided some comments on a draft cabinet submission that had been produced by -- I'm sorry, I can't recall if it was police or corrective services but one of the minister's other portfolio agencies, which questioned aspects of the -- questioned aspects of the submission. Mr TUTT was quite irate because the minister was also one of the ministers for our department, and he was quite irate that our department had raised issues or concerns about that submission with me. And he instructed me to have those comments withdrawn.

30

MR PEARCE: What did you do about that?

THE WITNESS: I spoke to the I -- I think it was the acting Executive Director at the time of that area and got a copy of the comments, clarified those comments and then I believe I then followed that up with the departmental officer -- I think it was police, it was police I'm sorry, not corrective services. It was police. I spoke with the departmental officer who was in police who was managing that matter and advised them that we were withdrawing our comments on the submission. If I recall correctly, the comments that the department had provided weren't opposing the submission as such or it wasn't seeking to radically change the submission as such but I guess they weren't -- they weren't strongly supportive, if I remember correctly.

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MR PEARCE: The example you've just given is one where you say you were given some instructions by Mr TUTT. In terms of the day-to-day operation of the department, what was Mr TUTT's role vis-à-vis the giving of instructions?

10 THE WITNESS: Right. Pardon me. Mr TUTT as I said, was the senior policy adviser. He was, I guess, the principal channel really between, as I saw it, and I think as others would say, the principal channel, communication really, between the minister and the department. He regularly, he regularly asked for things from the department, gave instructions in relation to a whole wide range of, of varying matters in relation to what he wanted to see happen, be done.

MR PEARCE: What was the policy if there was one concerning the department's response to instructions that may be issued by Mr TUTT as opposed to the minister?

20 THE WITNESS: I don't recall there -- I don't recall there being any written policy per se. Certainly, I guess it was our understanding the Director-General had a clear view that we were here to serve the minister and the government of the day, and that the needs of the ministers and the minister's office should be met.

MR PEARCE: The Director-General throughout this period was Mr KINNANE; is that true?

THE WITNESS: That's correct, yes.

MR PEARCE: Did Mr KINNANE ever, if you like, verbally espouse that policy or that direction to you or to others?

30 THE WITNESS: Yes, I believe he did.

MR PEARCE: In what way and in what circumstances?

THE WITNESS: I think pretty much along the lines of what I've just said, that the department's role is to serve the minister and the government of the day and --

MR PEARCE: How did he communicate that?

40 THE WITNESS: I'm sorry. That was communicated verbally I think in, in meetings. There may have been executive -- it may have been in the executive management team meetings. I think it was also probably in other forums as well. I can vaguely recall in other forums with departmental staff that that would be communicated.

MR PEARCE: So this was, this was a view routinely expressed or repeated? It wasn't just a --

THE WITNESS: I wouldn't say that it was said on a weekly basis or anything like that but it was certainly a view expressed more than once.

MR PEARCE: And certainly that was your understanding of the Director-General's view of the relationship between the minister's office and the department?

THE WITNESS: Yes. To be -- to be honest, though, it is fair to say, however, that that view prevailed within the context of any ministerial office, I believe, that we served.

10 MR PEARCE: Very well. From what you are saying you acted with the assumption that anything Mr TUTT said he was saying on behalf of the minister; is that correct?

THE WITNESS: I, I, I, I had no reason to believe that he wasn't communicating with the department the minister's views or desires or, or requirements.

MR PEARCE: Did you ever question him about that? Did you ever ask whether what he was asking you to do was something the minister wanted done or something that he, Simon TUTT, wanted done?

20 THE WITNESS: I, I don't recall. I don't believe so, but I don't -- I could not say definitively that I never asked that question.

MR PEARCE: I'm going to move on now to the issue of the money that was paid to the Queensland Rugby Union. When did you first become aware that the Queensland Rugby Union was interested in seeking funding from the Queensland Government?

30 THE WITNESS: There was a meeting in February 2008 at Parliament House. In attendance were the minister, Mr TUTT, Peter LEWIS and Ken FREER. That meeting was following on from the decision by the federal government to withdraw the funding commitment -- sorry, the former federal government's funding commitment, to the redevelopment of Ballymore. And at that meeting Mr LEWIS, I think it was who did most of the presentation and talking, outlined I guess their disappointment and their dissatisfaction with the decision that had been made by the federal government, that they were endeavouring to, you know -- I'm sorry, these are my words.

MR PEARCE: That's what we want.

40 THE WITNESS: Get a further hearing with the federal government about that decision, and so forth. They were very keen to continue to progress the redevelopment plans for Ballymore. If I recall correctly, I think they said they were interested in seeing if the state government could assist.

THE PRESIDING OFFICER: Were you at that meeting?

THE WITNESS: Yes, I was at that meeting.



MR PEARCE: That was my next question.

THE PRESIDING OFFICER: Sorry.

THE WITNESS: I believe it was on 12 February. I was the departmental representative at that meeting.

MR PEARCE: Did you or to your knowledge did anybody else make notes of what took place at that meeting?

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THE WITNESS: I do not know if anybody else made any notes at that meeting.

MR PEARCE: Did you?

THE WITNESS: I don't think so. I don't think so. I think I attended the meeting at relatively short notice.

MR PEARCE: Would another reason for the failure to take notes be that the discussion was in rather vague or general terms?

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THE WITNESS: It was in general terms, and I think the only -- if I recall correctly, I think the only commitment, if you would call it that that was made at that meeting, was that minister would see what she could do about -- or the minister or the minister's office would see what they could do about getting the QRU an appointment with the federal minister.

MR PEARCE: Could the witness be shown what is currently document 2, not yet an Exhibit. Mr MATHESON, I'm going to show you now what appears to be an email dated 19 June 2008. What can you tell me about that document?

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THE WITNESS: In early June of 2008, if I recall correctly -- I'm sorry, I can't give you a precise date. But in early June, Mr TUTT tasked the Director-General and I with developing up a list of concept proposals for consideration by the minister as potential announcements or opportunities. And this document -- the document that is attached to the email, is the document that was prepared. In tasking us with that exercise Mr TUTT had indicated some of the things that he would like included on the list that's attached to the email.

40 The first item that he had flagged was the \$4 million for the Queensland Rugby Union. My recollection is he said that he wanted there to be something equivalent for cricket. He indicated to look at some of the other major sports as well, plus I think he also said -- I can't be 100 per cent certain on this aspect but I think he also said to look more broadly at other, other matters that were not necessarily sport but more in the physical activity, recreation sort of area. I can't be definitive, though, about the precise words.

MR PEARCE: I understand what you are saying. Is it the case that this then is a list of issues or items in respect of which it was thought there might be scope for

government funding or opportunities for government funding?

THE WITNESS: It is a list of concepts/proposals that reflect either the matters that Mr TUTT asked to be included on the list, firstly, or secondly, other matters that we were aware of in the environment that sports were considering at that time. Or thirdly, other ideas that we had come up with.

10 MR PEARCE: Do you know whether in respect of any of the items identified in this document there had in fact already been an application made to the department?

THE WITNESS: An application for funding?

MR PEARCE: Yes.

THE WITNESS: Look, to the best of my knowledge, no, I don't think any of those matters at that time had been the subject of a formal application to the department for funding.

20 MR PEARCE: This was, if you like, a prospective list of matters that you thought might arise?

THE WITNESS: Yes, as I said, they were -- as we saw it, they were concepts for the minister's consideration of matters for -- that could be potential announcements. And to -- it was our understanding that any of the matters that she might then agree to and so forth would then have to be worked up with the relevant organisations for her consideration.

30 MR PEARCE: I appreciate that. To the extent therefore that there are dollar figures mentioned against the specific items, are you able to tell me where the dollar figures came from? Were they estimates the department had put together or were they based on information --

THE WITNESS: Look, my recollection is that the Rugby Union figure was the figure that we had been instructed by Mr TUTT. The Cricket Association figure was the same figure as the Rugby Union figure because we'd been asked to include something similar to rugby union for there. The AFL Queensland figure was based upon a briefing that I had had and -- from AFL Queensland about some plans that

40 MR PEARCE: There is no need go further. It's a combination of both in that case. It's a combination of figures that were given to you or suggested to you by Mr TUTT?

THE WITNESS: Yes.

MR PEARCE: And in some instances it may be that the figure was something that was known to you?

THE WITNESS: Broadly known to us or --

MR PEARCE: Or in some cases a guess.

THE WITNESS: Or estimated --

MR PEARCE: Or guessed?

10 THE WITNESS: Yes, in other cases, yes.

MR PEARCE: The information that you've given in respect of the Queensland Rugby Union issue --

THE WITNESS: Yes.

MR PEARCE: -- is simply one sentence.

20 THE WITNESS: That's correct.

MR PEARCE: It reads, "\$4 million over three years to progress the redevelopment at Ballymore." In respect of, I think every other item, there is a paragraph or more by way of explanation.

THE WITNESS: Yes.

MR PEARCE: Is there anything that we should read into the fact that there's only one sentence?

30 THE WITNESS: That reflected the advice that had come from Mr TUTT at that time. We weren't aware of the specifics of what was intended there, so it was written to reflect that advice.

MR PEARCE: You just knew there was an intention or a desire to give \$4 million over three years to progress the redevelopment of Ballymore?

THE WITNESS: It was a proposal that we were asked to put on that list.

40 MR PEARCE: Very well. This was a list of possible future commitments, as you've described it?

THE WITNESS: Yes.

MR PEARCE: Your email to Mr TUTT on 19 June at 1 minute to 8 in the evening says, "Simon, as discussed attached is the list that Di and I have put together"; that's a reference to Di FARMER?

THE WITNESS: That's correct.

MR PEARCE: "The DG"; that's Director-General?

THE WITNESS: That's correct.

MR PEARCE: "Plans to present this to you tomorrow morning." Et cetera, et cetera.

THE WITNESS: Yes.

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MR PEARCE: Was there a planned meeting between the Director-General and Mr TUTT for the Friday morning?

THE WITNESS: The Director-General and Mr TUTT had a meeting in their diaries, generally, for coffee on Friday mornings. It did not occur, as I recall, every Friday morning but there was a meeting in their diaries for Friday.

MR PEARCE: Was that a weekly opportunity for them to catch up?

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THE WITNESS: That's correct.

MR PEARCE: And they did it informally?

THE WITNESS: Yes. Sorry, if I could just make the point, the meeting did not always occur.

MR PEARCE: I understand. I tender the email from Mr MATHESON to Mr TUTT of 19 June 2008.

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THE PRESIDING OFFICER: And the attachment?

MR PEARCE: And the attachment.

THE PRESIDING OFFICER: That's Exhibit 26.

ADMITTED AND MARKED EXHIBIT 26

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MR PEARCE: May the witness be shown Exhibit 9, please. Mr MATHESON, this appears to be an email with attachments sent to you on Wednesday, 25 June by Naomi ENCHONG. Now, I understand Ms ENCHONG is a departmental officer who works as a liaison officer in the minister's office or certainly did at that time; is that correct?

THE WITNESS: That's correct.

MR PEARCE: Can you tell me what you know about this email and the attachment, please?

THE WITNESS: Yes. Earlier that week I had been advised by Mr TUTT that he was meeting the following week with Mr FREER from the Queensland Rugby Union and he asked me could I attend that meeting with him. If I recall correctly, he said he had some papers related to that meeting and he'd have them sent through to me. This email was sent through to me by Naomi ENCHONG, which my understanding was the papers he was going to have sent through to me.

MR PEARCE: What did you do when you received the email and attachment?

10 THE WITNESS: I read the papers. I assumed that the various matters that were outlined in the papers were the matters that were to be discussed when the meeting was to occur the following week.

MR PEARCE: Did you open a file or any such thing to record the documents?

THE WITNESS: A physical file?

MR PEARCE: Yes, what did you do with the documents?

20 THE WITNESS: I -- to the best of my recollection I think I printed them out so I had them for the meeting. I'm not sure what else -- I can't recall what else I did with the papers.

MR PEARCE: I ask that the witness be shown what is currently document 7. It has not yet been tendered. This appears to be an email from you to Mr TUTT dated Friday, 4 July at 1 pm. Again, the subject line -- the subject line indicates that this is a revised announcement document and attached is "Possible Future Commitments DSR document". Can you tell us what you know about this email and what is attached to it.

30 THE WITNESS: Yes. This is an -- sorry, the document attached to this email is an updated version of the document that was emailed to Mr TUTT on 19 June 2008, and I believe handed to him by the Director-General the following day. The attachment to the email updates the possible future commitment/announcement relating to the Queensland Rugby Union, which is to reflect the information that was outlined in the meeting that I attended with Mr TUTT and Mr FREER on 2 July, and the information that had been subsequently emailed to me by Mr FREER on 3 July. It also included a proposal for rugby league. The 19 June version -- was that the date on the other one? The 19 June version, the previous Exhibit?

40 MR PEARCE: Yes.

THE WITNESS: I think if you look at that, it didn't include a proposal for rugby league. If I recall correctly, we, we, we had come up with a proposal or an option around contributing some funding to a rugby league museum or something of that nature. I can't recall specifically. Mr TUTT didn't -- I think had advised the Director-General he didn't particularly like that one and wanted to see something that wasn't facilities based. And so we can come up with a rugby league proposal

that was comparable to the AusKick program that's run by AFL Queensland and so we put that into the document as well as, as I said, updating the information in relation to the Queensland Rugby Union proposal based on the information that had been obtained earlier that week.

MR PEARCE: If I can just take you back to that meeting on 2 July, what do you recall of that meeting?

10 THE WITNESS: I travelled to the meeting with Mr TUTT in his car. On the way to the meeting Mr TUTT indicated to me that we want to provide funding to start the Ballymore redevelopment. He gave me to believe that they wanted to provide that funding to, to get the redevelopment started and so as to avoid future requests for funding from the Queensland Rugby Union for the redevelopment. I believe a comment may have also been made that it would also get things started until the QRU was able to get a new or fresh -- "fresh" is my word -- commitment from the Commonwealth, and that my role was to outline to Mr FREER what documentation they would need -- he would need to provide to support the funding. He also indicated to me that the minister wanted to announce the commitment at the forthcoming QR Reds Ball, I think is what it's called, on 11 July.

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MR PEARCE: And this was a conversation you had on 2 July?

THE WITNESS: On 2 July on the way to the meeting with Mr FREER.

MR PEARCE: And the meeting with Mr FREER was at what venue?

THE WITNESS: It was at the Ballymore complex at Herston in Mr FREER's office.

30 MR PEARCE: Did Mr TUTT mention a figure in terms of the intended grant?

THE WITNESS: My -- I can't be exactly sure. I have a recollection it was, it was mentioned on the way back from the meeting but I cannot be absolutely sure of that. But I have -- I have a recollection of the figure of \$4 million coming up at some stage between the trip -- during either the trip to the meeting, at the meeting or the trip back from the meeting.

MR PEARCE: The figure of \$4 million is consistent with the figure you put in your previous possible future commitments document?

40

THE WITNESS: That's correct.

MR PEARCE: Was the figure of \$4 million mentioned at all during the meeting with Mr FREER?

THE WITNESS: I'm sorry, I can't recall specifically if that figure was mentioned during that meeting. As I said, the figure was mentioned either on the way to the meeting, during the meeting or subsequent to the meeting. It was in that horizon.

MR PEARCE: You don't recall the figure being mentioned during the meeting?

THE WITNESS: I can't definitively say that it was mentioned in the meeting.

MR PEARCE: Are you able to talk me through the meeting? What was it that you said, what did Mr FREER say and what, if anything, did Mr TUTT say?

10 THE WITNESS: Yes. The meeting was not overly long. I can't remember exactly how long it was. Probably 25, 30 minutes, if I recall correctly. During the meeting Mr TUTT indicated to Mr FREER that I was there to outline what they'd need to submit for the funding for the facilities that the QRU wanted to build at Ballymore. I asked what facilities are proposed to be developed, and I was advised that they were looking at a swimming pool, another playing field and I believe some seating, corporate seating or something of that nature, if I recall correctly. I indicated that we'd ordinarily -- what we'd ordinarily require are things like detailed costings, plans, a quantity surveyor's report estimates, and that's the type of information that we would, we would need to support the, the funding.

20 MR PEARCE: You had already received some documents to that effect in the bundle that Naomi ENCHONG had sent to you.

THE WITNESS: The bundle that Naomi ENCHONG had sent to me on 25 June was information on a range of issues. But there was a reference in that documentation to the redevelopment of Ballymore. I'm sorry, can I see another copy of the document, please?

30 MR PEARCE: Yes. Exhibit 9. If we just step our way through it. Other than the cover sheet and the agenda list there's a page headed "Meeting Notes Tuesday 3rd June" which sets out at least in some form details of the QRU financials, sport and recreation funding. There is a third line item "Souths".

THE WITNESS: Yes.

MR PEARCE: If we go over, QRU's financial position, over the previous few years?

THE WITNESS: From 2004 to 2009.

40 MR PEARCE: Yes. And there's, it looks like an extract from the strategic plan 2008?

THE WITNESS: Yes.

MR PEARCE: With some sketch plans. And a page with -- the following pages concerning sport and recreation funding --

THE WITNESS: Yes.

MR PEARCE: -- on Queensland Rugby Union letterhead, so one presumes it's a document produced by the QRU; have you seen that before?

THE WITNESS: Yes, this is the documentation that Ms ENCHONG emailed to me on 25 June.

MR PEARCE: Yes. Then there is some further documentation concerning the predicament facing Souths.

10

THE WITNESS: Yes.

MR PEARCE: It looks like a letter concerning an application that was made under the Major Facilities Program in 2006. That's concerning Souths?

THE WITNESS: Souths.

MR PEARCE: So it's all about Souths. Did any of the material in that bundle fit the description of the type of material you were seeking from Mr FREER at your meeting in early July?

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THE WITNESS: The meeting on 2 July?

MR PEARCE: That's correct.

THE WITNESS: No.

MR PEARCE: What about the financials or the financial figures for the previous few years?

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THE WITNESS: The financials provide -- sorry. I guess the financials provide an overview of the operating position of Queensland Rugby Union.

MR PEARCE: In a very vague way.

THE WITNESS: Yes. But it doesn't provide -- this doesn't provide any of the information that I had raised in the meeting with Mr TUTT and Mr FREER as what we would look for in terms of --

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MR PEARCE: Nor is it anywhere close enough to the sort of material you would require for a proper assessment of a \$4 million grant?

THE WITNESS: No, it is not.

MR PEARCE: Thank you. Just bundle that up again.

MR CARMODY: Mr Chairman, I'm just not sure that I get the last -- the significance of the last couple of questions. This document was prepared before the



2 July meeting, wasn't it, so why would you expect it to contain anything coming out of that meeting? Did I miss the point?

MR PEARCE: Yes, you have.

MR CARMODY: Okay.

MR PEARCE: Just leave it on the top there, thank you.

10 THE PRESIDING OFFICER: Can you give a little bit more detail of what you told Mr FREER with Mr TUTT present, of what detail would be required from the QRU for the assessment of an application for funding.

THE WITNESS: The specifics that I remember are that we would need detailed cost estimates.

THE PRESIDING OFFICER: You mentioned quantity surveyors' reports.

20 THE WITNESS: Yes, plans and quantity -- any quantity -- sorry -- any quantity surveyors reports, as these are the things that we ordinarily would seek for funding for the development of facilities of that nature. My recollection is Mr FREER said that they had that documentation, he would be able to get that to me and I gave him my contact details.

THE PRESIDING OFFICER: What about the financials, though? You said the financials that came with the June material were not sufficient. Did you enumerate what would be required in the way of financial information about the QRU?

30 THE WITNESS: I don't recall whether I mentioned anything about financial information in relation to the QRU itself as an entity.

THE PRESIDING OFFICER: Okay.

40 MR PEARCE: May the witness be shown Exhibit 10, former document 6. This appears to be an email from Mr FREER to you dated Thursday, 3 July, which is the day after your meeting at Ballymore. The subject line reads, "Ballymore Redevelopment", the attachments "Ballymore Redevelopment Preliminary Costings July '08" and the "Development Application Drawings, Ballymore Redevelopment"; do you recall receiving that email and attachments?

THE WITNESS: Yes, I do.

MR PEARCE: If we read the body of the email, "Attached is a covering page with the preliminary costings for the entire project. We would apply the proposed funding to the first three items listed"; do you see that?

THE WITNESS: Yes.

MR PEARCE: If you go, then, to the next page in, headed "Ballymore Redevelopment", the first three items listed are: the new rugby field, the indoor heated swimming pool and new corporate facilities in the western stand. They are the three matters that you had identified with Mr FREER the previous day, are they not?

THE WITNESS: They are the three matters that had been identified in that meeting on 2 July.

10 MR PEARCE: The cost for those three items equates to \$4 million?

THE WITNESS: On this sheet, yes.

MR PEARCE: Precisely, it's \$4 million, is it not?

THE WITNESS: Yes, for those first three items, yes.

MR PEARCE: The -- correct me if I'm wrong, but it would seem to me that the material contained or attached to this email really doesn't give you much more  
20 guidance than the material provided to you previously under cover of Naomi ENCHONG's email; would you agree with that proposition?

THE WITNESS: Yes, I would agree.

MR PEARCE: Certainly it goes nowhere toward the type of documentation that you told Mr FREER that you would require.

THE WITNESS: Yes, that's correct.

30 THE PRESIDING OFFICER: The second paragraph of that email, talking about the new corporate facilities, explains that they would enable the QRU to convert their existing offices into a share office environment for other sporting organisations. Was there any talk about whether the facilities that could be funded would have to be -- it was a benefit if it benefitted more than just the QRU, it had more community benefit.

THE WITNESS: At the meeting on 2 July?

THE PRESIDING OFFICER: Yes.

40

THE WITNESS: I don't believe there was. I can't definitively recall but I don't believe there was.

THE PRESIDING OFFICER: You can't recall anything that might have prompted the inclusion of that extra information?

THE WITNESS: At the meeting on 2 July, I think as I said previously, had -- when I asked the question what were they looking to develop, they -- Mr FREER had

indicated the additional rugby field, the swimming pool and, if I recall correctly, additional corporate seating. I think that was raised in that meeting. If I recall correctly, I think I said at that meeting that corporate seating would not be a high priority.

MR PEARCE: Why would you have said that?

10 THE WITNESS: For a number of reasons. Firstly, the higher priority areas that we ordinarily fund are what we call direct participation facilities. By that what I mean is a swimming pool or a playing field or a cycle track or an indoor venue, basketball venue and so forth. Seating is ancillary and is a much lower priority for funding. Secondly, the other issue, I guess in a broader policy context, is that the government invests significant money each year to operate and maintain its own major facilities, and so forth. So, to -- I guess to enhance, I guess -- I'm sorry, I'm not sure if I'm expressing this very well. But to enhance the capability of another facility that might potentially enable it to compete with the -- with one of the government's own facilities, for example, would not be a high priority for us.

20 MR PEARCE: Okay. Do you recall whether during the meeting of 2 July it was ever suggested that grant monies to the QRU might be used to fund operational or recurrent expenditure?

THE WITNESS: No, that was never mentioned in the meeting.

MR PEARCE: Are you confident about that?

THE WITNESS: I am confident of that.

30 MR PEARCE: Why are you so confident about that?

THE WITNESS: Well, if that had been raised in the meeting I would have questioned about it. I would have endeavoured to obtain a better understanding of what that's about and what was actually being sought in that context. And I -- categorically that was not raised in that meeting.

MR PEARCE: Was that raised with you at any time prior to the announcement of the grant?

40 THE WITNESS: No.

MR PEARCE: I previously asked you to look at a document -- and I think it's on the ledge in front of you, what is still currently document 7, that's an email of 4 July. The one without the sticker on it. That's it. It's not yet an Exhibit. That's your email to Mr TUTT dated 4 July.

THE WITNESS: Yes.

MR PEARCE: So this is the day after Mr FREER's email to you, which was itself

the day after your meeting. And you've said in the email, "Simon, please find attached the updated potential announcements document", and you flag for him the two changes. This is the two changes from when you had previously given him this document a couple of weeks earlier. The two changes are 1, the inclusion of further information on the Ballymore proposal and, 2, as we mentioned previously, inclusion of the new announcement we discussed for Queensland Rugby League; do you see that?

THE WITNESS: That's correct.

10

MR PEARCE: If you go to the attached document, you would agree that those two items indeed are the only two that, if you like, have suffered any change from the previous draft?

THE WITNESS: I think that's the case, yes, they were the two, two changes.

MR PEARCE: You see --

THE WITNESS: Two substantive changes.

20

MR PEARCE: -- the paragraph, it's still the number 1 item on the list of possible future commitments, the Queensland Rugby Union item, the figure mentioned there is still \$4 million over three years?

THE WITNESS: That's correct.

MR PEARCE: In the additional material -- the additional material concerns -- you have added the words "the first phase of the redevelopment of Ballymore"?

30 THE WITNESS: Yes.

MR PEARCE: And what follows? Everything else that follows was an amendment or an addition.

THE WITNESS: That's correct.

MR PEARCE: Because you only had had a one-line statement previously.

40 All right. Can you tell me how that document came to be emailed, or why that document came to be emailed to Mr TUTT at 1 pm on Friday?

THE WITNESS: If I recall correctly, we had had advice back on the rugby league, around the rugby league proposal so that was added into the document. As I said, I updated the Queensland Rugby Union, based on the -- proposal based on the information we received. And I believe I then sent it through to him so that he had an updated version.

MR PEARCE: Is this something, that is, the sending of the amended document,

was it something you did of your own volition or had you been asked to do?

THE WITNESS: I'm sorry, I can't recall precisely whether -- sorry, I'm just trying to think. Sorry, can I just have a moment to think through the sequence?

MR PEARCE: Certainly.

THE WITNESS: Look, I'm sorry, I can't be definitive.

10 MR PEARCE: I will show you a document in a moment that might assist you in that regard. Mr Chairman, can I tender please the email from 4 July sent at 1 pm.

THE PRESIDING OFFICER: That email and the attachment will be Exhibit 27.

ADMITTED AND MARKED EXHIBIT 27

MR PEARCE: I'm now about to show Mr MATHESON document 8 as it currently is. What I'm showing to you now is another email from yourself to Mr TUTT, again, it seems sent on Friday, 4 July, only this one has been sent at 1.24 pm. So 24  
20 minutes after the previous email. The subject line is identical to the former email, as is the title of the attached document. The body of the email reads, "Simon, updated as we discussed a few minutes ago. Regards", et cetera.

THE WITNESS: Yes.

MR PEARCE: Can you tell me how this document came to be sent to Mr TUTT?

THE WITNESS: Yes. Following sending the previous email, which I think was 1  
30 o'clock.

MR PEARCE: It was, yes, 1 pm.

THE WITNESS: I had a phone call from Mr TUTT about -- in response to that email. He indicated to me that they -- that he wanted the -- he wanted the minister to be able to say that they had provided more than \$4 million to the Queensland Rugby Union, and he asked me to -- sorry, he asked me that that be \$4.2 million, as the commitment to the Queensland Rugby Union. And so I amended the document, which you will see now says \$4.2 million.

40 MR PEARCE: Yes.

THE WITNESS: And updated the table that's attached to it and sent it back to him as had been discussed.

MR PEARCE: Why did you do that? Why did you amend the figure of \$4 million to read \$4.2 million?

THE WITNESS: Because he -- because of what I've just said. He indicated to me

that he wanted the minister to be able to announce that they provided over \$4 million for the redevelopment and that he wanted it to be \$4.2 million.

MR PEARCE: Can I tender, Mr Chairman, the email and attachment of 1.24 pm on 4 July 2008.

THE PRESIDING OFFICER: That will be Exhibit 28.

ADMITTED AND MARKED EXHIBIT 28

10

MR PEARCE: Are you able to tell me what occurred subsequently in terms of the preparation of a ministerial submission in respect of this matter?

20

THE WITNESS: Yes. I think we've already -- following the receipt of the email from Mr FREER on 3 July I went back to Mr FREER and -- by telephone -- and advised him that we needed more detailed information in relation to the costings for the facilities that were proposed to be developed, along the lines that we had talked about at the meeting. I also indicated to him that we would also need a formal written request to the minister for funding for the project, and -- and I ask for those documents to be provided to me.

MR PEARCE: Do you recall when it was that you had that telephone conversation with Mr FREER?

THE WITNESS: I have turned my mind to that matter. I cannot give you the exact date or the exact time, but I believe it was either later in the afternoon of 3 July or it was on 4 July.

30

MR PEARCE: We have heard some evidence about efforts that were applied to creating a ministerial submission on, I understand, 8 July.

THE WITNESS: Yes.

MR PEARCE: Can you tell us about what happened on 8 July?

40

THE WITNESS: On 8 July I spoke with Mr TUTT. I indicated to him that we were experiencing difficulty getting detailed information from the Queensland Rugby Union. If I recall correctly, he restated or reminded me that the minister wanted to announce this at the QR Reds Ball which was coming up on the 11th, that Friday night, and he was quite direct. He said, "You need to get this moving", or words to that effect.

MR PEARCE: The conversation, was this a telephone conversation or a meeting in person?

THE WITNESS: It was a telephone conversation.

MR PEARCE: Do you recall who had called whom?

THE WITNESS: I think I had called him but I'm not 100 per cent sure on that.

MR PEARCE: What was the purpose of the call?

10 THE WITNESS: To inform him how this was -- that we were having difficulty getting information from the Queensland Rugby Union. I was conscious of what I had been advised previously, that the minister wanted to do this and wanted to announce it on the Friday. And as I said, we were experiencing -- well, sorry, I was experiencing difficulty getting more detailed information from the Queensland Rugby Union.

MR PEARCE: You have told us that you were told to get it moving, or words to that effect?

THE WITNESS: Yes.

20 MR PEARCE: How on earth could you get it moving given that you didn't have what you considered to be sufficient information?

THE WITNESS: I formed the view that we would have to get a briefing note or -- sorry, ministerial submission, prepared as quickly as possible based on the information that we had. It was my understanding that that was -- that this was -- it was my understanding that this was a matter that the minister wanted to happen, and that we would have to go with what we had, that we would need to point out some of the risks in the briefing note around the proposal and I guess the lack of information. And, and those risks would have to be -- they would have to be managed.

30 MR PEARCE: There would be nothing wrong with the minister wanting to make a grant of \$4.2 million to the Queensland Rugby Union, would there?

THE WITNESS: No, it is my understanding that the minister -- he or she, the minister --

MR PEARCE: Has the absolute discretion.

40 THE WITNESS: -- retains the prerogative to grant -- approve grant funds for whatever purpose.

MR PEARCE: Why did you not simply give that advice?

THE WITNESS: Because I had -- if I recall correctly, I had, I had been asked to, to get a briefing or submission up on this basis.

MR PEARCE: We will come back to that point in a moment. Having had that conversation with Mr TUTT, what did you do?

THE WITNESS: I conveyed to Ms Tracy O'BRYAN and Mr Ben KLAASSEN that we needed to prepare a ministerial submission, that I needed it urgently. And I conveyed to them the information that -- that I was privy to at that time.

MR PEARCE: Which was?

10 THE WITNESS: The information that had been provided to me by Mr FREER on the 3rd, on 3 July, and the information that was provided at the meeting on 2 July. And I -- and -- sorry, I think I said that -- I think I have already said that I needed  
10 that -- we needed that urgently. I conveyed to them that, that -- it was clear to me that this was something that -- it was my understanding this was something the minister wanted to happen, that she was going to announce it at the QR Reds Ball. I said we would need to highlight some of the risks attached to the project and how we would manage that, which would be through the funding -- through the funding agreement. I wasn't entirely comfortable with doing this because we didn't have in my view sufficient and adequate information and that's -- and I had advised Mr TUTT, as I said previously, earlier that day that we had difficulty, we didn't have sufficient information from the Queensland Rugby Union, but it was my -- it  
20 was my understanding -- was that based on the advice and instructions I had received was this was something that the minister wanted to do and I acted on that basis.

MR PEARCE: Ms O'BRYAN was job sharing in your substantive role, as I understand it; is that correct?

THE WITNESS: That's correct. She was job sharing with Dianne FARMER.

30 MR PEARCE: Did Ms O'BRYAN and/or Mr KLAASSEN raise any objection to your direction to them or did they simply click their heels and go away and do what you tasked them to do?

THE WITNESS: I don't recall any objection being raised.

MR PEARCE: Did they say anything at all by way of resistance?

THE WITNESS: Sorry, could you give me an example of what you mean by "resistance"?

40 MR PEARCE: Did they question the direction you were giving to them?

THE WITNESS: As in, "Why do we have to do this?"

MR PEARCE: I wasn't there.

THE WITNESS: Sorry, I was just trying to clarify the question you were asking. I don't -- look, I don't recall there being, there being any, any objection and I don't recall there being -- they may have raised, "Well, what have we got to work off" and I think I said, "Very little, and this is what I've got" and so forth, but it was my



understanding this was what the minister wanted to do and we had to, we had to get on -- and this was, sort of, the timeframe and we had to get on and do it.

MR PEARCE: About what time of day was it that you had this conversation with Ms O'BRYAN and Mr KLAASSEN?

THE WITNESS: I recall it being I think mid to late morning.

MR PEARCE: Did you set a deadline?

10

THE WITNESS: I think I did. I'm trying to remember what that deadline was, but I think I did. I know it was that day, I needed it that day.

MR PEARCE: Mr KLAASSEN has told us that he was directed to produce the ministerial submission within the hour. What do you say to that?

THE WITNESS: If that, if that's Mr KLAASSEN's recollection, I have no basis to refute that.

20

MR PEARCE: Was that a reasonable requirement of him in the circumstances?

THE WITNESS: In the circumstances that I believed we had been given clear instructions of what the minister wanted and the timeframe, I believe we had to do what we could in that sense. And it was not unusual to get requests for briefing notes, submissions, information with very short turn around times, not only from that ministerial office but from our other ministerial office as well.

30

MR PEARCE: This was a matter that potentially was going to cost the taxpayers \$4.2 million. Was it a reasonable request, do you think, to require the preparation of the ministerial submission recommending a grant of \$4.2 million inside an hour?

MR DEVLIN: Perhaps that admits two understandings. The request, I think the evidence is, came from Mr MATHESON. Does the questioner mean was it reasonable -- did Mr MATHESON think it was reasonable for him to request it?

THE PRESIDING OFFICER: He's the one who made the request so it has to be that way.

MR PEARCE: Yes.

40

MR DEVLIN: There is no suggestion of anyone else?

MR PEARCE: Not at this point. No, that's what I've been asking. Was it reasonable of you to make that request of your subordinates?

THE WITNESS: I had previously requested information in short turn around times.

MR PEARCE: You weren't requesting information here, were you? You were

identifying a task that had to be performed?

THE WITNESS: Had to be done, that's correct.

MR PEARCE: Namely, the preparation of a ministerial submission recommending that the minister approve a grant of taxpayer dollars, \$4.2 million of them, to the Queensland Rugby Union in circumstances where you have said yourself there was very little by way of supporting material?

10 THE PRESIDING OFFICER: You are confusing two issues there now, aren't you? It's the reasonableness of doing the submission with very little material and, secondly, the reasonableness of the time.

MR PEARCE: The time. I'm concerned for the moment about the timing.

MR CARMODY: Can I just interrupt. This is probably difficult -- I'm not being too critical, I hope. But the witness has said, in effect, "Look, I was just telling the minister what I thought she wanted to hear." How long does that take? He is being asked: was an hour reasonable to do that, and the answer would be yes, of course, it  
20 would only take about three minutes.

THE PRESIDING OFFICER: I think there is a certain validity in that.

MR PEARCE: Except that there are various issues that the CMC has to consider.

THE PRESIDING OFFICER: I'm more concerned with the issue of the reasonableness of requiring a person to make a submission recommending approval of a \$4.2 million grant on the material that you had.

30 MR CARMODY: Within policy, probably, would be better, I think, Mr Chairman, might be a fairer question.

MR PEARCE: Do you understand the issue?

THE WITNESS: I understand the question you are raising, Mr PEARCE.

MR PEARCE: Would you care to offer an opinion about the reasonableness or otherwise of your direction to your subordinates?

40 THE WITNESS: The timeframe may not have been reasonable. But it -- I think it's true to say that many timeframes we are given are not reasonable --

MR PEARCE: Timeframe --

THE WITNESS: -- for a variety of reasons and purposes.

MR PEARCE: Timeframe aside. Do you think it was reasonable to demand of your staff that they produce a ministerial submission recommending that the minister

approve the payment of \$4.2 million to the Queensland Rugby Union based on the material you had?

THE WITNESS: Can I clarify your question now relates to the content?

MR PEARCE: Yes.

THE WITNESS: Okay.

10 MR PEARCE: You had tasked them to do something?

THE WITNESS: So we're not talking about the timeframe, we're talking about the content.

MR PEARCE: Divorce the timeframe for the moment. Assume they had all week to do it, do you think it was reasonable to demand of your subordinates the production of a ministerial submission recommending that the minister approve the payment of \$4.2 million?

20 THE WITNESS: Within the context of my understanding that this is what the minister -- but my understanding, based on the advice and instructions I had received and the reasons I -- sorry, and have every reason to believe that this was what the minister wanted to do, yes.

THE PRESIDING OFFICER: Is it the situation that, as you understand it within the department, that if you receive an instruction from the ministerial office that you are to provide particular advice, say, in this case an advice recommending approval of something, then you must provide that advice even if you don't think it's the right advice?

30

THE WITNESS: That's -- that's largely, yes, largely the case.

THE PRESIDING OFFICER: In this case did you have sufficient material to be able to assess the matter properly and advise the minister to -- sorry, and recommend to the minister to approve the grant of \$4.2 million?

THE WITNESS: There was not sufficient material to assess the request as it would ordinarily -- as would ordinarily be the case.

40 THE PRESIDING OFFICER: But even in those circumstances you still felt that you were constrained to give the advice to the minister that you understood the minister wanted?

THE WITNESS: That's correct. Because it was -- it was my understanding this was something the minister wanted to do.

THE PRESIDING OFFICER: You took Mr TUTT's instruction that you told us about --

THE WITNESS: That's correct.

THE PRESIDING OFFICER: -- as being in effect an instruction from the minister.

THE WITNESS: That's correct.

10 MR PEARCE: Can I just get your comment on this proposition, that the role of the bureaucracy is to provide independent, impartial expert advice on departmental issues. Would you accept that proposition?

THE WITNESS: Yes, I believe I read that earlier this week in your opening remarks.

MR PEARCE: Well, you know where it comes from, then, you know what I'm citing. Do you consider that the ministerial submission that ultimately made its way to Minister SPENCE in this matter was based upon independent advice?

20 MR HUNTER: I wonder if now is a convenient time to raise the issue of privilege. I have given my client some advice about this and it may be that --

THE PRESIDING OFFICER: If you desire me to, Mr Hunter, I will.

MR HUNTER: I would ask you to do that.

THE PRESIDING OFFICER: Mr MATHESON, you are aware of your right to claim privilege against answering any question where you feel the answer might tend to incriminate you of an offence?

30 THE WITNESS: Yes.

THE PRESIDING OFFICER: I have spoken with you at the closed hearing about that. I advised you then and it is the same situation here today that you have the right to claim that privilege. If at any stage you want to claim it just so indicate to me. Noting will then be made of your claim. I will direct you to answer the question and you will thereafter answer the questions as asked of you by counsel. However, the answers you give will not be able to be used against you in any subsequent criminal or disciplinary process, except of course as to the falsity of any answer that you may give. You understand that?

40

THE WITNESS: Yes, I do.

THE PRESIDING OFFICER: Both from what I've said to you and from what your legal advisers have advised you?

THE WITNESS: Yes, I do.

THE PRESIDING OFFICER: If at any stage you want to claim that privilege, just

indicate.

THE WITNESS: Thank you.

THE PRESIDING OFFICER: And again if at any stage you want to seek the opportunity of conferring with your legal representatives, just indicate and we will adjourn for that purpose.

THE WITNESS: Mr PEARCE, could I ask you to ask that question again, please.

10

MR PEARCE: Certainly. Do you consider that the advice that made its way to the minister in the form of a ministerial submission in respect of this matter was independently given?

THE WITNESS: It is my view that the advice was independently given in the sense that the briefing note endeavoured to highlight some of the risks attached to the project within the context of what I understood to be the desires, requirements -- whatever you want to call it -- of the minister.

20 MR PEARCE: Was it impartial advice?

THE WITNESS: Well, in the context of highlighting some of the risks associated with the project, yes. I believe so, yes.

MR PEARCE: I will take you to the documents if you want to see them, but is it anywhere told to the minister that the material that was provided by the QRU, upon which the ministerial submission was based, was insufficient to allow the department to form an informed view of the merits of the application?

30 THE WITNESS: Those specific words do not appear in the briefing note. However, the briefing note refers to attachment 1. Attachment 1 to the briefing note is the letter of request that had been received from Mr FREER on 8 July 2008. The summary costs -- the one-page summary costing which we talked about earlier, and the drawings. I believe when I did work -- when I put further work into -- my recollection is when I put further work into that briefing note I incorporated the inclusion of that as an attachment.

40 There's probably two points that I would make in response to what you said. It is clear from that attachment that there was not a lot of information available from the Queensland Rugby Union. And secondly, is one of I guess timing in the sense that that letter was received on 8 July and the briefing note -- sorry, ministerial submission, sorry -- was signed by us on 9 July, the following day. And the minister approved it, I believe, on 10 July. So, the comment that I would make that it would and should be clear that not a lot of time had elapsed from receiving the formal request for funding and the formulation of the submission.

MR PEARCE: Are you saying it was incumbent upon the minister to look behind the written word and to appreciate that this must have been done as a rushed

exercise; is that what you're saying?

MR CARMODY : Sorry, I have to object to that. Just logically, he is saying that that he thought that he was giving back to the minister what she really wanted. So he has already said she's made that decision and I'm just -- so it's not in his mind that he's giving her any advice.

10 MR PEARCE: With respect, the issue concerns whether or not the document contains any statement to the effect that the department does not consider that there's sufficient material here to perform a proper assessment.

THE WITNESS: In response to that comment, Mr PEARCE, as I have said a few moments ago, there is no explicit statement in that regard in the ministerial submission.

MR PEARCE: Certainly at the time you were going through the process of preparing the ministerial submission you were just assuming that what Mr TUTT had told you was the request of the minister.

20 THE WITNESS: I had no reason to believe any otherwise.

MR PEARCE: May the witness be shown Exhibit 22. Is that an email from Mr KLAASSEN to you conveying his draft version of the ministerial submission in respect of this matter?

THE WITNESS: Yes, it is.

MR PEARCE: What did you do when you received that document?

30 THE WITNESS: Later that day, Tuesday, 8 July, I read the briefing note. I considered that it wasn't sufficient in the sense that I did not believe that it pointed out certain matters, in particular, as I've previously said, some of the risks attached to the project and how those risks would be managed. I then did further work on the briefing note. In general, my recollection is that the matters that I added into the briefing note included identifying the opportunity to announce the funding at the QR Reds Ball, given that the advice that I had received from Mr TUTT was this is what the minister was planning to do or wanted to do. I added some further information on the broader benefits of the project and the context, some of the broader context as we -- as I understood it to be. I included all of section -- sorry,  
40 this is not on this document.

MR PEARCE: I will show you yours.

THE WITNESS: Yes.

MR PEARCE: Do you want in your document now?

THE WITNESS: Please, if I may.

MR PEARCE: Exhibit 11, please.

THE WITNESS: I just want to make sure I'm referring to the correct sections.

THE PRESIDING OFFICER: I think it might be Exhibit 2.

MR PEARCE: I'm sorry, yes, Exhibit 2.

10 THE WITNESS: Sorry, to continue: I included all of section 14 in the briefing note, if I recall correctly, which pointed out some of the risks attached to the proposal and how we proposed to manage those. Pardon me -- I also included the recommendation (ii) which was to seek the minister's approval for the source of the funding, for the commitment. I think I -- sorry, this is referring to the final version of the briefing note which I -- okay, I expanded what is the recommendation (iii) so that it referred to getting the minister's approval to develop an appropriate funding agreement as the vehicle in which to manage those risks.

20 MR PEARCE: They were, if you like, machinery recommendations, weren't they, recommendations as to the machinery?

THE WITNESS: Associated with managing the grant going forward.

MR PEARCE: That's right. They weren't addressing questions of risk? You are simply saying to the minister this money should come out of a particular fund and it's going to be -- there has to be an agreement prepared.

30 THE WITNESS: Yes, we have to identify a source of funding. That's the normal case with any funding.

MR PEARCE: The issue I have is that your evidence essentially is to this effect: Having considered Mr KLAASSEN's draft document, you thought it did not go far enough by way of identifying risks.

THE WITNESS: That's correct.

MR PEARCE: So you set about making some amendments to the document so the minister could at least be aware of the risks that you thought were associated --

40 THE WITNESS: Some of the risks, yes.

MR PEARCE: Some of the risks.

THE WITNESS: Yes.

MR PEARCE: You then started by telling us you changed paragraph (ii) to identify that the Reds Gala Ball might be an appropriate opportunity to announce the funding.

THE WITNESS: Yes.

MR PEARCE: How was that a risk?

THE WITNESS: No, I didn't say that was a risk. I said paragraph 14 outlined the risks. And the revised recommendation (iii) proposes the development of an appropriate funding agreement as a vehicle to manage some of those risks.

10 THE PRESIDING OFFICER: Can you just elaborate on that, what sorts of things would be in the funding agreement that would manage the risks?

THE WITNESS: Certainly. In the context of our funding agreements ordinarily, there are a number of clauses, mechanisms or levers, whatever word you would prefer to use, that are available to help protect the department's investment in a project. Ordinarily, projects are funded on a reimbursement or acquittal-type basis. That's one of the mechanisms. Also, the funding agreements ordinarily include a suite of milestones that need to be achieved by the grant recipient as a means by which funds are paid. There are various other clauses within funding agreements and so forth that we utilise -- that are there in terms of protecting the department's investment, including -- that can be used, including, and I think there is a reference in the briefing note -- a clause about cost overruns having to be met by the recipient. There are clauses that relate -- and there are clauses that relate to matters such as if the funds are used for some other purpose than what they were approved for, and the opportunity for the department to seek recoupment, reimbursement, I'm not sure of the precise word, of those funds. There is a range, there is a range of conditions in those funding agreements.

20  
30 THE PRESIDING OFFICER: And the minister agreed to that recommendation, for the funding agreement to be used to accommodate those risks?

THE WITNESS: That was a specific recommendation in the cover sheet to the ministerial submission and the ministerial submission was approved by the minister.

MR PEARCE: Do you know whether that was -- let me put it this way: did you play any part in the development and execution of an appropriate funding agreement?

40 THE WITNESS: No.

MR PEARCE: Do you have any knowledge of what was done by way of the development and execution of an appropriate funding agreement?

THE WITNESS: My only -- my knowledge in relation to the development and execution of the funding agreement for this project is second-hand, i.e., it's what I've been told by other people after the event.



MR PEARCE: It's the case that you went on leave at some point at this time?

THE WITNESS: I departed on nine weeks' leave on 25 July and I returned to the department on 25 September. I think I mentioned those dates earlier on.

10 MR PEARCE: I very quickly want to get you to identify for me what additions you made to the ministerial submission by way of identifying items of risk. Before I do that, I mentioned previously paragraph (ii) which identifies the opportunity that you thought the minister had to make the public announcement. Can I ask you why you changed or amended what appeared in paragraph (ii) of Mr KLAASSEN's draft to that which appears in your final document.

THE WITNESS: My recollection is that -- in terms of the format for these ministerial submissions, urgency generally relates to something like -- generally relates to things like a critical date and so forth. I had been advised or instructed by Mr TUTT that the minister wanted to, was going to announce this at the QR Reds Ball. And so to the best of my knowledge I put that in there because that was my understanding of what she wanted to do.

20 MR PEARCE: You thought that was, if you like, a more accurate description of the urgency as opposed to --

THE WITNESS: In the context of timing.

MR PEARCE: As opposed to the minister's office requested advice on the matter as a priority which was what was in Mr KLAASSEN's draft.

30 THE WITNESS: My recollection is, I think, that the wording that I put there related to the circumstances as I was aware, which I considered to be relevant to the question of urgency.

MR PEARCE: Very well. Now, if we just -- I just want to do this as quickly as we can. If we just step through the document.

THE WITNESS: Sorry, the ministerial submission.

40 MR PEARCE: The ministerial submission that you've prepared, it's Exhibit 2. If you look at paragraph 13 on page 2, bottom dot point, or the bottom subparagraph, it commences with the words, "There is a risk..."; is that something that you've added to the document?

THE WITNESS: I believe it is.

MR PEARCE: You considered it a risk, did you, that the property might be lost if the QRU surrendered the deed of grant in trust?

THE WITNESS: That's correct.

MR PEARCE: To whom would it be lost?

THE WITNESS: Sorry, can I just ask -- can I refer to the closed hearing?

MR PEARCE: You can refer to anything you want to while you are here, including your previous evidence, yes.

10 THE WITNESS: Sorry, okay. Mr Chairman, I think you posed a similar question to me in the closed hearing in relation to -- if the deed of -- if, if Ballymore didn't continue to exist as a sport and recreational facility and circumstances were such that the Queensland Rugby Union had to surrender the deed of grant in trust back to the Crown, it's not -- it's my view that it's not necessarily the case that that site would be picked up and retained in its current form. If you -- and the reason I, I hold that view is, I guess, more probably a real estate context. If you look at where it is, its proximity to the CBD, the work that's occurring in relation to the Bowen Hills precinct under the auspices of the Urban Land Development Authority, the emphasis around higher density development and so forth, a decision could be made -- I'm not saying that it would be -- a decision could be made for that site to be relinquished for highest and best purpose.

20

THE PRESIDING OFFICER: It wouldn't be.

THE WITNESS: I'm not the person who would be making that decision.

THE PRESIDING OFFICER: It wouldn't be relinquished. It would be sold by the state.

THE WITNESS: That's what I'm saying, yes. The risk is --

30 THE PRESIDING OFFICER: The risk is the state might not keep it but --

THE WITNESS: That's right. The state might not keep it and therefore as a sport and recreation facility as such it could potentially be lost to the community. And you would no doubt be aware that, I guess, with population growth, expansion of development and so forth in south-east Queensland, sites for sport and recreation facilities have been for some years and are being lost to the community.

MR PEARCE: You've indicated that you inserted paragraph 14 where you identified a series of risks as you saw them.

40

THE WITNESS: Yes.

MR PEARCE: Including, again, the last subparagraph in paragraph 14.

THE WITNESS: The dash point on page 4?

MR PEARCE: That this matter may attract some criticism from other organisations.

THE WITNESS: Yes.

MR PEARCE: This was jumping the queue, wasn't it?

THE WITNESS: The major facilities program had not been released for applications at that time, no.

10 MR PEARCE: Hadn't even been released. Did you propose in any way some cure or some step that might meet that risk, or did you simply leave it hanging?

THE WITNESS: I, I don't believe the paragraph actually proposes a cure.

MR PEARCE: No, it doesn't.

20 THE WITNESS: But what it does is point to the fact that there have been other out of round grants, and the fact that if an organisation is seeking funding for a project, they can, and that's the basis for other out of round requests, they can make a request to the department at any time.

MR PEARCE: We might clear away those exhibits now.

THE WITNESS: But I'm not saying that that poses a solution to the risk.

MR PEARCE: Very well. One of the points you flagged as a risk in the ministerial submission you prepared was the lack of a contingency or the apparent lack of a contingency consideration in the figures that had been given to you by the Queensland Rugby Union.

30 THE WITNESS: That's correct. There did not appear to be a contingency.

MR PEARCE: You appear in your document to attribute to the \$200,000 increase a contingency factor, that is, you appear to use that figure to offset the risk of a contingency. Why did you do that?

40 THE WITNESS: As I've said previously, I had been instructed by Mr TUTT -- I think it was on 4 July -- that the figure was to be \$4.2 million. At the time I had thought the additional funds could be attributable as a contingency because there did not appear to be, based on the information we had, a contingency budget or a contingency allocation based on the information we were provided with. And furthermore, based on our experiences in funding facilities, in particular swimming pools, I felt that the, the cost estimate that had been provided by the Queensland Rugby Union for the swimming pool was very low.

THE PRESIDING OFFICER: Mr MATHESON, do I take it that the department normally writes submissions based upon what I might call such airy-fairy, sort of, assumptions with respect to justifying funding of million dollar amounts? Or do you normally look for, as you've said earlier, quantity surveyor reports which

indicate much more clearly what the cost would be?

THE WITNESS: Ordinarily we, we look for and seek, and seek and receive with normal applications during a funding round that type, the type of documentation that I had outlined to Mr FREER in the meeting of 2 July which --

THE PRESIDING OFFICER: And he admitted that he sent in to you, addressed to the minister, he said that a summary of the key elements of the redevelopment with estimated total costs as prepared by quantity surveyors.

10

THE WITNESS: Sorry, can I have a look at the briefing note?

THE PRESIDING OFFICER: Yes, that's Exhibit 1, the letter from the minister. He didn't give you the quantity surveyors' figures, he only gave you the total costs as estimated by quantity surveyors.

THE WITNESS: Yes, and in the meeting of 2 July when I had outlined that this is the type of information that we would need, if I recall correctly, Mr FREER had indicated: We have got that information. We did not have that information.

20

THE PRESIDING OFFICER: Normally, a quantity surveyor's costings include an element for a contingency sum.

THE WITNESS: Ordinarily, yes, they do. And there are, as I recall, some industry bench marks in relation to contingency funds.

THE PRESIDING OFFICER: So you didn't know whether the figures as supplied to you, supposed to be from a quantity surveyor, included a contingency sum or not?

30

THE WITNESS: Yes, as I said, Mr Chairman, it did not appear to me from the information we had that it included a contingency.

THE PRESIDING OFFICER: Well, it did appear they had been prepared by quantity surveyors so you might have expected that it would but you didn't know?

THE WITNESS: I, I, I didn't know for certain but, as I said, the figure for the swimming pool appeared to be very low based on a comparison with other projects.

40

THE PRESIDING OFFICER: Is it fair to put it that you structured your submission to the minister so as to support the figure that you were told to support, namely \$4.2 million?

THE WITNESS: We had been instructed -- as I said earlier, we had been instructed that the figure was to be \$4.2 million.

THE PRESIDING OFFICER: And you worded your submission so that it supported that figure?

THE WITNESS: That's a fair assessment.

MR PEARCE: I won't take that matter any further. I think we have covered it, Mr Chairman.

10 I just want to show you document 14. This appears to be an email that you sent to Mr TUTT on Friday the 11th at about 11 am. By this email you convey to Mr TUTT, do you not, a copy of the ministerial submission, that is, the five-page document created by you, together with a copy of the cover sheet to that ministerial submission, and in addition a draft letter for the minister's signature addressed to Mr FREER?

THE WITNESS: That's correct.

MR PEARCE: Why did you convey those documents to Mr TUTT?

20 THE WITNESS: I'd had a telephone call from Mr TUTT that morning. If I recall correctly he'd asked where the submission was at. I advised him that it had been sent over to the ministerial office a couple of days beforehand. He asked if I could send him through a copy and could I draft a letter to Mr FREER advising him that the matter had been approved.

MR PEARCE: If you see in the body of your email you refer to a request having been made --

THE WITNESS: That's correct.

30 MR PEARCE: I tender, Mr Chairman, the email from Mr MATHESON to Mr TUTT dated 11 July 2008.

THE PRESIDING OFFICER: And the copies of the attachments?

MR PEARCE: Together with the attachments.

THE PRESIDING OFFICER: Exhibit 29.

ADMITTED AND MARKED EXHIBIT 29

40 MR PEARCE: Did you at any time inform your Director-General of what had been done by way of producing the ministerial submission?

THE WITNESS: Yes. The Director-General, Mr KINNANE, had been away ill all of that week of -- he was away on Friday the 4th. And he was away all -- he was away ill all of that week of the 7th to the 11th of July -- 7th to the 11th of July. He, he was -- as I said, he had been away ill. He was at home. I had been signing off briefing notes and submissions to both ministers for him in his absence. We had a delegation in place, if I remember correctly, that in his absence I sign for him and

that submission was signed for Mr KINNANE. We were sending documents home to him. He was concentrating, in terms of the work he was doing at home, if I recall correctly, he was concentrating on the department's estimates briefs because our estimates hearings were the following week. And on Friday, 11 July, myself and two other officers from the department visited him at home, where we -- he -- for a couple of purposes. He wanted to give us feedback based on his review of the estimates briefs. And it was also for us to update him on matters that had occurred throughout the week. It was during that visit to his home that I -- that I spoke to him in relation to this matter. I believe a copy of the -- the ministerial submission that I had signed for him had gone out to him throughout the course of the week because as I said, we were sending signed -- approved documents out to him. I'm just not 100 per cent as to whether it went out to him through that week or whether I took it out to him at the visit at his home on that Friday afternoon, 11 July. I spoke to him about it. I informed him that the minister wanted to do it, she wanted to announce it at the Reds Ball, which was that evening. My recollection is that I indicated to him that we didn't -- weren't able to get a lot of information from the Queensland Rugby Union. We were given a tight deadline, we had to go with what we had, there were risks for the department and that we'd have to manage those risks.

That's my recollection, as I recall it. I specifically remember Mr KINNANE saying that he'd read the brief which makes me think I had sent it out him earlier in the week and he made the comment that he thought it was a balanced brief. I specifically remember those words "balanced brief".

MR PEARCE: The funding for the \$4.2 million to the Queensland Rugby Union came out of the major facilities program for 2009; is that correct?

THE WITNESS: Not entirely, no. Sorry, the funding would come out of the major facilities program. It was to be paid over three years. So, it would be paid out of -- in three financial years.

MR PEARCE: \$1.4 --

THE WITNESS: Out of the budget for the major facilities program.

MR PEARCE: You know now that \$1.4 million was paid as an up front payment?

THE WITNESS: Yes, I'm aware of that.

MR PEARCE: And that money came out of the major facilities program for 2009?

THE WITNESS: Yes, that's my understanding.

MR PEARCE: Did you in your role as acting Deputy Director-General and later Deputy Director-General, have a role in recommending to the minister the projects that ought to be supported out of the major facilities program for 2009?

THE WITNESS: Yes.

MR PEARCE: Are you --

THE WITNESS: Sorry, yes, yes, sorry, can you just ask the question again, sorry?

MR PEARCE: Were you involved in either of your capacities, either the acting capacity or the substantive one, in recommending to the minister what approvals she should make for projects out of the major facilities program for 2009?

10

THE WITNESS: Yes, yes, sorry, we're not talking about the Ballymore grant now?

MR PEARCE: We have moved on.

THE PRESIDING OFFICER: If you are moving on, can I just deal with one matter before you do. I should have asked you before. In the submission with respect to the QRU application, was the ability of the organisation to deliver the project for which they were receiving the funding a relevant factor for consideration?

20

THE WITNESS: I, I don't know that it was considered in any length because of the timeframe within which we had to operate other than in the sense of the risk that was pointed out in relation to the potential for cost overruns and the utilisation in the funding agreement of the clause that we utilised, that the recipient is responsible for cost overruns.

THE PRESIDING OFFICER: I understand, then, that in the circumstances of this particular case that wasn't taken into account. Normally, would it be taken into account?

30

THE WITNESS: Yes.

THE PRESIDING OFFICER: The ability of the organisation to deliver the project for which they are getting funding?

THE WITNESS: Yes, yes, that's one of the -- under the major facilities program that's one of the assessment criteria, ability to deliver.

40

THE PRESIDING OFFICER: The fact that the bottom line of the QRU had for the previous five years shown over a million dollars loss each year would be a relevant factor?

THE WITNESS: In the ordinary course of events, yes, it would have been. But as I've -- as I've outlined earlier, I was of the view this was something that the minister wanted to happen and it was going to happen.

THE PRESIDING OFFICER: Yes, thank you.

MR PEARCE: I just want to show you two documents now. One is headed

“Minister for Sport”. It appears to be a ministerial -- sorry, it’s a cover sheet for a ministerial submission in respect of the approval of expressions of interest under the major facilities program, it’s clearly for 2009, and the other document is a large spreadsheet headed “Ministerial Schedule, Major Facilities Program. EOI”. Are you familiar with those documents?

THE WITNESS: Yes, I am.

THE PRESIDING OFFICER: Are these the ones that are already in evidence?

10

MR PEARCE: No, these are not already in evidence.

THE PRESIDING OFFICER: Yes, okay. Could I have a copy of that?

MR PEARCE: I gave you one this morning.

THE PRESIDING OFFICER: I have the submission.

MR PEARCE: But you don’t have the spreadsheet.

20

THE PRESIDING OFFICER: Thank you.

MR PEARCE: As I understand it, the process for the awarding of funds out of this program followed this procedure: Expressions of interest were invited from the community or people and organisations who thought they might qualify for a grant under the major facilities program. Having received the expressions of interest there was then an assessment or a moderating exercise conducted, from which advice was then given to the minister as to which of the people or which of the expressions of interest should be then formally invited to make formal application for a grant; is that correct?

30

THE WITNESS: In a summary form, yes.

MR PEARCE: In a summary form. What we are looking at now, are we not, are documents evidencing the stage where you are giving advice to the minister as to which of the expressions of interest ought to progress further, that is, by way of the issue of a formal invitation to submit a formal application; is that correct?

THE WITNESS: Yes, that’s correct.

40

MR PEARCE: We are at the end of the moderation exercise in respect of the expressions of interest, we are about to go or we are going to the minister to say, “These projects should be invited to proceed further”.

THE WITNESS: To stage 2.

MR PEARCE: To stage 2. All right. The cover sheet for the ministerial submission I have produced to you bears your signature, does it?



THE WITNESS: Yes, it does.

MR PEARCE: As, it seems, Deputy Director-General?

THE WITNESS: That's correct.

MR PEARCE: And it recommends the minister approve the schedule provided in attachment 1 recommending 44 expressions of interest proceed to the second stage.

10

THE WITNESS: Yes.

MR PEARCE: Amongst other things.

THE WITNESS: Yes.

MR PEARCE: But I've only provided you with what I understand to be attachment 1. Do you recognise the large schedule as attachment 1?

20

THE WITNESS: Yes.

MR PEARCE: Was the recommendation to the minister contained in this cover sheet and in the ministerial submission advice that was independent and impartial?

THE WITNESS: In what sense, please, Mr PEARCE?

MR PEARCE: I'm just asking you to comment. The advice to the minister is that she approve the schedule at attachment 1 which is the large document recommending 44 expressions of interest proceed to the application stage. That's the advice that's gone to the minister; do you agree with that?

30

THE WITNESS: Yes.

MR PEARCE: Was the advice recommending that she approve the recommending of the 44 expressions of interest in the schedule advice that was independent and impartial?

THE WITNESS: Do you mean independent of the minister or her office?

40

MR PEARCE: We will start with that. Was it independent and impartial of the minister's office?

THE WITNESS: No, it reflected the input and directions from the minister and Mr TUTT.

MR PEARCE: Perhaps you can expand upon that.

THE WITNESS: The -- Mr TUTT had raised with me -- and sorry, I was asked

about this on Friday by Ms HARRIS. Mr TUTT had raised with me about an expression of interest from the Warrigal Road State School, and had indicated to me that it was to be recommended by the department to proceed to stage 2.

I, I, I -- he may have raised another one or two -- another one, but I can't definitively recall. However, going on from there, I met with the minister -- sorry, Minister SPENCE -- and Mr TUTT on Friday, 23 January in the minister's office to take them through the -- not this version of the schedule.

10 MR PEARCE: An earlier version?

THE WITNESS: An earlier version of the schedule, which included -- which reflected I guess, the recommended projects, not recommended projects and ineligible projects. In that meeting I outlined how it had been constructed, how the documents had been constructed. I pointed out certain things that I thought the minister needed to be aware of around a couple of the projects. There are a couple that I remember specifics around. The minister thanked me, she said they'd look at it and get back to me. I was then -- I then -- my recollection is that I then met with -- sorry, that was Friday, 23 January 2009. My recollection is that I then met  
20 with Mr TUTT and my recollection is the minister was present on, I believe it was -- I believe it was 28 July. So it was the following week after the Australia Day --

THE PRESIDING OFFICER: July?

MR PEARCE: January.

THE WITNESS: Sorry, 28 January. I have July on the mind from the Ballymore matter. 28 January, sorry, 2009, which was after the Australia Day long weekend,  
30 where I was advised of which expressions of interest were to go forward to stage 2.

MR PEARCE: Who gave you that advice?

THE WITNESS: That advice was conveyed to me in that meeting.

MR PEARCE: By whom?

THE WITNESS: By the minister and Mr TUTT.

40 MR PEARCE: By the minister and Mr TUTT?

THE WITNESS: Yes, that's my recollection.

MR PEARCE: Was it done item by item in the schedule? How was it conveyed?

THE WITNESS: Well, as I said, on 23 July.

MR PEARCE: January.

THE WITNESS: Sorry, 23 January I had left with them a copy of the earlier versions of the schedules. I think I had -- I think, if I recall correctly, I also had kept a copy myself and the advice was conveyed to me in terms of going through which ones were to be -- were to go forward and which ones were not.

MR PEARCE: And it was a case of either the minister or Mr TUTT or both of them? How was this conveyed to you?

10 THE WITNESS: My recollection was both, because I, I, I remember -- I'm pretty sure I remember some advice being -- some comments being made about there would -- about two projects in particular.

MR PEARCE: Being?

THE WITNESS: The Gold Coast Table Tennis Association. That's why my, my recollection is the minister was there and gave advice, because I, I can recall her saying that the larger sports like cricket and rugby league and AFL and so forth always generally do well because they are large sports in terms of funding. Table  
20 tennis was a small sport and should have the opportunity to at least apply. And I remember a comment about the Tingira Boat Club which was on one of the Bay islands, on the basis that there was very little in the way of facilities on the islands so, again, they should at least get the opportunity to apply. I think, if I recall correctly, I flagged that I didn't think we'd funded a boat club -- for a boat ramp, because the project, if I recall correctly, was a boat ramp -- previously, but I was told that one was to go forward.

MR PEARCE: Did you make notes of these instructions?

30 THE WITNESS: I think, if I recall correctly, I think I just did ticks and crosses down my copy of the documents.

MR PEARCE: Do you still have your copy of the documents?

THE WITNESS: No, I can't locate it. I don't know where it is.

MR PEARCE: What, then, did you do armed with those instructions?

THE WITNESS: I came back to the department and I provided that advice back to  
40 Mr KLAASSEN and, I think Ms O'BRYAN was present at the time as well. I can't be 100 per cent sure whether she was present or not, but I did come back to the department and provided that advice back to Mr KLAASSEN.

MR PEARCE: You are calling it "advice"?

THE WITNESS: My advice based on what I had been told in the meeting with the minister and Mr TUTT.

MR PEARCE: How did you convey your advice to your subordinates? Was it in terms of advice or was it, again, in terms of an instruction or direction?

THE WITNESS: If I recall correctly, it was on the basis that the minister had been through the schedules. These are the ones that she wants to go forward. We now need to finalise the briefing note and the schedule. I think generally that's the gist of the words that I said.

10 MR PEARCE: You weren't leaving your subordinates with the discretion as to whether or not these matters should be changed to reflect the minister's wishes; you were telling them to do it?

THE WITNESS: Well, in that sense, yes, that we had to prepare -- we had to prepare the briefing note and the schedule based on what the minister indicated she wanted to proceed.

MR PEARCE: In every sense. There was no further discretion?

20 THE WITNESS: No, I don't believe so. But I think as I've said earlier on, that's also on the basis that the minister has the prerogative to determine how funds are allocated.

MR PEARCE: With respect that's really not the issue, Mr MATHESON. What we're concerned about is whether the advice that the department ultimately gave back to the minister was independent and impartial. That's the issue.

30 THE PRESIDING OFFICER: Did you with those two instances which of course the minister could approve if she wanted to, but were they previously not recommended by the department to go forward to stage 2?

THE WITNESS: The two instances that I just referred to?

THE PRESIDING OFFICER: Yes.

THE WITNESS: It's my recollection they were categorised as "not recommended".

40 THE PRESIDING OFFICER: And that was changed to "recommended" as the advice of the department after the minister indicated, or Mr TUTT indicated in some cases, that that was to occur?

THE WITNESS: That's correct.

THE PRESIDING OFFICER: All right. Could the witness be shown Exhibit 23. Do you recognise that document as the departmental issued major facilities program 2009 guidelines?

THE WITNESS: Yes, yes.

THE PRESIDING OFFICER: And that sets out in paragraph 4 about how the expressions of interest will be assessed.

THE WITNESS: Yes.

THE PRESIDING OFFICER: That they'll be assessed against the three matters, A, B and C, the need for the project, compliance with program priorities and your organisation's ability to deliver.

10 THE WITNESS: Yes, that's correct.

THE PRESIDING OFFICER: Am I correct in assuming that the department had done that assessment and formulated the schedule that you then discussed with the minister?

THE WITNESS: That's correct.

THE PRESIDING OFFICER: So the department had formed its assessment?

20 THE WITNESS: The assessment process had been done.

THE PRESIDING OFFICER: Made its recommends of yes, recommend progress to the next stage or recommend not progress to the next stage.

THE WITNESS: Or ineligible.

THE PRESIDING OFFICER: Or ineligible. And the department changed its advice to the minister based on what was indicated to you in the minister's office?

30 THE WITNESS: Yes, the schedule that was recommended -- that went up with the briefing note dated 3 February reflected the instructions we received from the minister and Mr TUTT.

THE PRESIDING OFFICER: I think that's Mr PEARCE's point, that the final advice that goes to the minister in the submission is not really the department's advice, it's the department's advice as altered by what you were told, how you were told to alter it by the minister's office.

THE WITNESS: That's a fair assessment.

40

THE PRESIDING OFFICER: So it wasn't the department's independent advice?

THE WITNESS: Not entirely.

THE PRESIDING OFFICER: Yes, thank you. Mr PEARCE.

MR PEARCE: I would like to show the witness this document. It's an audit report recently provided to the CMC. While the witness is looking at this document may I

tender, Mr Chairman, the cover sheet and ministerial submission concerning the major facilities program for 2009 together with the schedule.

THE PRESIDING OFFICER: Those documents will be Exhibit 30.

ADMITTED AND MARKED EXHIBIT 30

MR PEARCE: Have you seen that document before, Mr MATHESON?

10 THE WITNESS: I saw it for the first time last night.

MR PEARCE: Do you understand what it is?

THE WITNESS: Yes, I do.

MR PEARCE: It's a report of an internal audit conducted in respect of the major facilities program for 2009 as a result of a request made by the CMC of your Director-General; is that the case?

20 THE WITNESS: That's my understanding.

MR PEARCE: Did you participate in the internal audit?

THE WITNESS: I had a telephone interview with the auditor who conducted the audit.

MR PEARCE: I want to take you to in particular the passages that appear at pages 15 and 16 of the internal audit report. Do you see there is mention there of the application by the Tingira Boat Club.

30 THE WITNESS: Yes.

MR PEARCE: And there's reference to the fact that the former minister had made a request in respect of that project.

THE WITNESS: Yes.

MR PEARCE: Is the information contained in the audit report consistent with your knowledge of the matter?

40 THE WITNESS: Yes, generally consistent. As I said, my recollection from the discussion with the minister and Mr TUTT on 28 January in relation to that project was that there were very few facilities on the Bay islands and so they should get the opportunity to apply.

MR PEARCE: Perhaps I can approach it in this sense. The information that is conveyed in paragraph 2.7.1, which appears at pages 15 and 16, is that information that you gave to the internal auditor?

THE WITNESS: The information I gave to the internal auditor -- sorry, can I just read through this?

MR PEARCE: Yes, certainly, rather than go through item by item.

THE WITNESS: The information I gave to the internal auditor, those three projects, Tingira Boat Club, Gold Coast Table Tennis Association and Warrigal Road State School, yes, that's information that I gave to the internal auditor.

10

MR PEARCE: And over the page.

THE WITNESS: I don't -- I don't believe I discussed -- sorry, are we talking about those five dot points?

MR PEARCE: Yes.

THE WITNESS: I don't believe I discussed those individual projects with the internal auditor.

20

MR PEARCE: All right. Let's go through them. The Rockhampton Regional Council matter, was that a matter in respect of which you gave instructions to your staff, do you recall?

THE WITNESS: In the sense of the advice that had been conveyed back to me by the minister and Mr TUTT?

MR PEARCE: Yes.

30

THE WITNESS: I think so.

MR PEARCE: These specific matters don't really worry us. Let's move on to the next one. Is your evidence that you don't recall?

THE WITNESS: I can't recall all of the projects that were added. But if I saw a copy of the schedule and so forth that would --

MR PEARCE: I don't think we need to go to that, given your evidence. I don't think we need to go to that detail. What about the Cooee Bay Progress and Sports Association; does that one ring a bell?

40

THE WITNESS: Again, same with the Rockhampton Regional Council. I don't -- I -- that may have been one that was in the advice back from the minister as one that was to go forward. As I said, if I --

MR PEARCE: Which schedule do you want to look at?

THE WITNESS: A copy of the schedules that I had provided to the minister and

Mr TUTT. And I think there is a document that has some ticks and crosses on it.

THE PRESIDING OFFICER: I think that might be Exhibit 7.

MR PEARCE: Yes, if the witness could be shown Exhibit 7.

THE WITNESS: I'm sorry there were a large number of projects. That will just help. Okay.

10 THE PRESIDING OFFICER: Cooe Bay appears at page 7 of 15 in the "not recommended" schedule.

MR PEARCE: Towards the back.

THE WITNESS: I'm sorry, I just want to familiarise myself with this for a moment, if that's okay.

MR PEARCE: It's now after 1 o'clock, Mr Chairman.

20 THE PRESIDING OFFICER: Yes. We could adjourn now and you could perhaps have a look through that over the lunch break. We might try to resume at 2 o'clock.

THE HEARING ADJOURNED AT 1.10 PM

THE HEARING RESUMED AT 2.00 PM

MR PEARCE: Mr MATHESON, you've had an opportunity during the luncheon break to have a look at both the audit report in the area that I directed you to, and also Exhibit 7; is that the case?

30 THE WITNESS: That's correct.

MR PEARCE: I don't want to descend into too much detail but I would just like your comments on these matters. Did you find an entry in Exhibit 7 for the Cooe Bay Sports and Progress Association matter?

THE WITNESS: In Exhibit 7?

MR PEARCE: Yes?

40 THE WITNESS: Yes.

MR PEARCE: The audit report indicates that it was at request of the former minister for reasons unknown that that matter proceeded to stage 2. Are you able to comment upon that?

THE WITNESS: Yes. That's on the "not recommended" list but there was a tick against it so that was one of the projects that we were advised was to proceed to



stage 2.

MR PEARCE: You conveyed that advice from the minister's office to your board subordinates?

THE WITNESS: Yes.

MR PEARCE: And that gave effect to that direction or --

10 THE WITNESS: Yes.

MR PEARCE: -- however we want to term it?

THE WITNESS: Yes.

THE PRESIDING OFFICER: So what, it was then made one of the recommended ones in the final?

20 THE WITNESS: Yes, in the final one that was signed off on 3 February.

MR PEARCE: The Macgregor State High School matter, which was about page 6, I think?

30 THE WITNESS: Yes. On this one I, I can't, I can't recall definitively. It's on the recommended list but clearly is not recommended based on the comment in the moderated rationale. It is a project, however, that is situated in the former minister's electorate. It may be that it was raised with me at the same time or around the same time as the Warrigal Road State School project but I'm sorry, I can't recall definitively about that project.

MR PEARCE: The audit report indicates that it was at the request of the former minister for reasons unknown that that application proceeded to the next stage. I take it that the information as contained in the audit report did not come from you?

THE WITNESS: On and that particular one?

MR PEARCE: Yes.

40 THE WITNESS: I don't recall commenting to the auditor on that particular project. I think I said earlier on that my recollection was to the auditor on the three projects on page 15.

MR PEARCE: If Mr KLAASSEN were to give evidence that you did give a direction in respect of the Macgregor State School application, you are not in a position to quibble with what he said about that?

THE WITNESS: No, I'm -- I've got no reason to believe that's not the case. But, by the same token, if it was not recommended I would not have directed it to be

recommended of my own volition.

MR PEARCE: No, I understand. While you are on that page, the same page contains the entry for the Warrigal Road State School.

THE WITNESS: Yes.

MR PEARCE: Do you see it on that page?

10 THE WITNESS: Yes.

MR PEARCE: Can I just clarify with you now what was in the audit report suggests that the Deputy Director-General advised the inclusion of the school in this round was at the request by phone of Mr Simon TUTT. That's information you've given to the internal auditor.

THE WITNESS: That's correct.

20 MR PEARCE: That's correct information?

THE WITNESS: That's correct.

MR PEARCE: Can you just remind me now when you got that instruction or when you got that request.

30 THE WITNESS: Ms HARRIS asked me this question on Friday. I don't know whether I'm going to be any clearer today than what I was on Friday. It, it was either, it was either in early December 2008 or in early January 2009. It wasn't during the period 15 December 2008 to 5 January 2009 because I was on leave for those three weeks.

THE PRESIDING OFFICER: You did say January 2008 to January 2009.

THE WITNESS: I'm sorry, Mr Chairman.

THE PRESIDING OFFICER: You are meaning --

40 THE WITNESS: 15 December 2008 to 5 January 2009, because I was on leave for that three-week period. I have thought about this some more since Ms HARRIS asked me about that on Friday. My recollection is -- sorry, as I recall it was raised with me. I think I got some information -- if I recall correctly, I think I got some information about the project. I then remember having another conversation with Mr TUTT, I indicated to him that it wasn't a good project because it -- it wasn't being recommended at that time. The reason why, I use the term, "wasn't a good project" was because of the nature of the facilities that were to be constructed at the site. They were very low priority and I was advised that it still needed to be recommended.

MR PEARCE: You conveyed that advice, again, back to your staff?

THE WITNESS: Yes, that's correct.

MR PEARCE: The Morningside AFL matter, on page 1 of the "not recommended" list, I think.

THE WITNESS: Yes, that's ticked here. So that was one we were advised had to be, was to proceed to stage 2.

10

MR PEARCE: Do you have any specific recollection of that matter?

THE WITNESS: No. At that point in time?

MR PEARCE: What I'm concerned --

THE WITNESS: From that point in time?

20

MR PEARCE: Yes. Do you have any specific recollection of being told by either the minister or Mr TUTT that it had to be treated in a particular way?

THE WITNESS: Other than it was one of the ones that was ticked as to proceed to stage 2.

MR PEARCE: That again - - -

THE WITNESS: I don't recall anything further about that particular one.

30

MR PEARCE: It would have been on the basis of advice given to you either by the Minister or Mr TUTT, is that right?

THE WITNESS: Yes, that's my recollection.

MR PEARCE: And similarly the Mount Gravatt AFL matter?

THE WITNESS: Yes, that was the -- yes, that's another one that's ticked.

40

MR PEARCE: Very well. Mr Chairman, can I formally tender the document headed "Audit report on the review of the administration of the major facilities program" from the department of communities?

THE WITNESS: Yes. That audit report will be Exhibit 31.

MR PEARCE: If I can just for the record put this into some context. This report has been produced to us by the Director-General as a result of a request made by the CMC to facilitate our assessment of another complaint that was received regarding this program. So, the report is not strictly relevant to this investigation although upon its receipt, reading it, its relevance became apparent.

THE PRESIDING OFFICER: When it's called an audit report, it's by the department's internal audit branch, it's not by the Queensland Audit Office.

MR PEARCE: No. And the document indicates that it's prepared by Internal Audit Services.

THE PRESIDING OFFICER: Yes, that's Exhibit 31.

10 ADMITTED AND MARKED EXHIBIT 31

MR PEARCE: That's all I have for Mr MATHESON. Thank you.

THE PRESIDING OFFICER: Mr HUNTER, do you want to ask some questions now? You can have a go again after anyone else, but if you would like to ask some questions now please feel free to do so.

20 MR HUNTER: I'm content to ask some questions at the conclusion of the cross-examination.

THE PRESIDING OFFICER: Mr CARMODY is not there? Is anyone else seeking to ask questions? Mr FARR.

MR FARR: Just a couple of questions. Mr MATHESON you spoke of visiting Mr KINNANE, the Director-General, on 11 July 2008; do you recall that evidence?

THE WITNESS: Yes.

30 MR FARR: That was at a time when he been on sick leave.

THE WITNESS: That's correct.

MR FARR: I think he had been hospitalised and was recuperating at the time of your visit.

THE WITNESS: That's correct.

40 MR FARR: Your recollection is of him during that visit telling you that in relation to the brief, regarding the matter that we are interested in, that it was in his words a balanced brief; would you agree with that?

THE WITNESS: That's correct. I remember those specific words. I think I said that earlier.

MR FARR: Did that accord with your view of that brief?

THE WITNESS: Yes, in the sense as I've said earlier on that the brief was constructed on the basis of complying with the advice and instructions that I had

received, but as I said, we had endeavoured to highlight some of the risks associated with the project.

MR FARR: Given that Mr KINNANE was just out of hospital, recuperating, focusing on the estimates figures for the following week, I take it from the answer you've just given that you didn't, for instance, say to him, "Look, there is a bit of disbalance in this or there are some problems", you didn't correct him when he said he thought it was a balanced brief?

10 THE WITNESS: No, I don't believe I did.

MR FARR: When you left that day you would have left with him still of that view?

THE WITNESS: Yes, that's correct.

MR FARR: And that was the very same day that the Queensland Reds dinner was to take place when the announcement was anticipated?

20 THE WITNESS: That's correct. As I have said, it was that -- the ball was that night.

MR FARR: As I understand your evidence on a different topic, you have said that in the performance of your duties you have attempted at all times -- paraphrasing your evidence -- to follow appropriate guidelines, policies and requirements; is that correct?

THE WITNESS: Yes, I've indicated that we've generally endeavoured to operate in accordance with what we were expected to do.

30 MR FARR: Do I understand your evidence to be that you have never been told, for instance, to take short cuts or to short cut proper procedures just because a ministerial staffer is asking you to do so?

THE WITNESS: I'm sorry, can you repeat the question? Or rephrase?

MR FARR: You have never been instructed, advised, it's never been recommended to you?

40 THE WITNESS: I'm sorry, I'm having difficulties hearing you.

MR FARR: It's very hard to hear in this room but you've never been instructed, advised or it's never been suggested to you that you should take short cuts or in some way short cut proper procedures just because you are asked to do something by a ministerial staffer; is that right?

THE WITNESS: I may have been advised to proceed with other matters from time to time with a truncated process because that's what a particular minister or minister's office wanted --

MR FARR: So that advice --

THE WITNESS: -- and manage the risks through on that process. I'm sorry, I'm trying to recall specific incidents to give you an example.

MR FARR: I see.

10 THE PRESIDING OFFICER: Mr Farr, there is in front of your instructing solicitor a microphone which perhaps should be in front of you.

MR FARR: See if that helps, if that's any better.

THE WITNESS: Thank you. It does.

MR FARR: On that example, was it an instruction or a recommendation from the minister's office or from the staffer or do you not recall?

20 THE WITNESS: Sorry, the minister's office or the staffer? The staffer in the minister's office?

MR FARR: Yes.

THE WITNESS: Right, sorry. Yes, that could well have been, because the -- I think it's fair to say that the ministerial staff in particular, I guess, the policy staff in a minister's office are often the principal channel or conduit of advice and instructions around what a minister wants to do or wants to see achieved or wants to have happen and so forth.

30 MR FARR: And you were as at July of 2008 in a quite senior position in the public service?

THE WITNESS: Yes.

MR FARR: And you have achieved that position over many years.

THE WITNESS: Yes.

40 MR FARR: So you are an experienced public servant; you'd agree with that?

THE WITNESS: Um, I don't, I don't for one moment think that we all don't have more to learn.

MR FARR: I'm not suggesting that. But you're an experienced public servant?

THE WITNESS: I have a number of years experience working in the public sector.

MR FARR: You would categorise yourself as being experienced.

THE WITNESS: As I said I've a number of years experience working in the public sector.

MR FARR: Would you agree that it would be reasonable to expect that you would understand appropriate procedures as at mid-2008?

THE WITNESS: Yes, I-- yes, it's reasonable to assume that I understand procedures at the time.

10

MR FARR: Given your level of seniority and experience, it would be reasonable to expect that you would be able to withstand a dominant personality, for instance, from a ministerial staffer; that you would be able to stand up to yourself if necessary?

THE WITNESS: Well, yes, in that sense, yes, I believe I can stand up for myself. But --

20

MR FARR: As I understand your evidence, if you had any battles with people you fought them yourself?

THE WITNESS: Generally, or I would go to my Director-General.

MR FARR: Yes, but on the occasions that you did go to the Director-General and you did on some occasions raise with the Director-General your frustrations, if you like, with Mr TUTT; is that right?

THE WITNESS: Yes.

30

MR FARR: And on those occasions was it fair to say that the Director-General listened to what you had to say and spoke about the goal, if you like, for want of a better word, of having as smooth running between the department and the minister's office as reasonably can be achieved?

THE WITNESS: Yes.

MR FARR: But he was also firm, I'd suggest to you in his instructions to you that your primary duty is to the department and that you work for him and that if you have problems you can speak to him.

40

THE WITNESS: I, I believe Mr KINNANE has raised that, yes.

MR FARR: Thank you. That's all I have.

THE PRESIDING OFFICER: Mr CARMODY, did you want to ask any questions of Mr MATHESON?

MR CARMODY: I did, Mr Chairman. Mr MATHESON, I just want to get it

straight. The QRU grant went backwards from the ministerial office, if you like, to the department instead of forwards from the department to the minister, didn't it? That's what you believe.

THE WITNESS: I'm sorry?

MR CARMODY: I don't know how I can make this any clearer.

THE WITNESS: Where did the proposal originate?

10

MR CARMODY: No, I didn't ask you that. Can you hear me?

THE WITNESS: Yes, I can hear you.

MR CARMODY: Excellent. I will talk a little slower. The QRU grant --

THE WITNESS: Yes.

20

MR CARMODY: -- according to your evidence went backwards from the minister's office to the department rather than forwards with a recommendation from the department to the minister as usually happens, didn't it?

THE WITNESS: On an unsolicited basis from the department; is that the essence of the question?

MR CARMODY: No. You are telling the Commission that you were told by Mr TUTT that the minister wanted to announce the approval, her approval, of a grant to the QRU at the Reds Ball?

30

THE WITNESS: That's correct.

MR CARMODY: He told you that as early as 25 June.

THE WITNESS: No. That's not correct.

MR CARMODY: Well.

THE WITNESS: He advised me of that on 2 July.

40

THE PRESIDING OFFICER: I think there are two parts in what you've put.

MR CARMODY: Yes, there are. Do you remember the document that you got from him, I think it's 25 June, that was headed "Possible grant approvals/announcements".

THE WITNESS: No, that's a document -- sorry, the document that I received on 25 June was the document that was emailed to me from Naomi ENCHONG, which was the papers that had been prepared for the meeting between Mr FREER and



Mr TUTT on --

MR CARMODY: I might have the wrong one. Exhibits 26 through to 28, possible future projects.

THE WITNESS: I'm with you now.

MR CARMODY: They start as early as 19 June.

10 THE WITNESS: Yes.

MR CARMODY: That's Exhibit 26. Number 1 under the heading "Possible future commitments/announcement" is \$4 million over three years to progress the redevelopment of Ballymore".

THE WITNESS: Yes.

20 MR CARMODY: So you knew as early as 19 June 2008 from what you say Mr TUTT told you that the minister wanted to give the QRU \$4 million over three years if possible.

30 THE WITNESS: No, as I've -- if I could just refer back to my evidence. That document was prepared on -- and provided to Mr TUTT on 19 June -- that document was prepared at his request to the Director-General and I to provide, I guess a list or summary, whatever you'd like to call it, of possible announcements or commitments that could be considered by the minister. He had given some instructions as to some of the things to be included in that document and the first thing he had identified was the funding for the QRU. There was no mention at that time of the QR Reds Ball or announcing a commitment at the ball.

MR CARMODY: All right. That's the second part to my question. Thank you, Mr Chairman. So, as early as 19 June you were aware that the minister's office -- just to use a neutral term -- was hoping to be able to announce a \$4 million grant to the QRU over three years for its redevelopment, right?

THE WITNESS: It was one project that we were asked to include on the list.

40 MR CARMODY: Yes. And progressively through Exhibits 26 to 28 you got more detail about that?

THE WITNESS: That's correct.

MR CARMODY: Is that usual in the minister's office, that list? Is that often the case that the minister comes to you and says through the Chief of Staff, "Look, these are the possible grants that I might want to announce in the coming year for political glory"?

THE WITNESS: It's -- it's, it's not unusual, I guess, in the sense of ministerial

offices either asking the department to identify forthcoming opportunities, media-type opportunities or announcement-type opportunities or for a ministerial office to indicate that, that there are projects that they might have an interest in.

MR CARMODY: It's more for the minister's office, the politics of it all, to make announcements about grants and it's more for the department to recommend or not recommend grants, right?

THE WITNESS: Generally, yes.

10

MR CARMODY: So you knew that this was, as early as 19 June, this was on the agenda at least?

THE WITNESS: It's fair to say that because we are asked to include it on the list I -- I'm aware that it was something that they were interested in.

MR CARMODY: And it was emanating from the minister's office to the department and not the other way around.

20

THE WITNESS: Yes, yes, sorry.

MR CARMODY: Is this fair, do you think, to yourself? In Exhibit 2 -- that's your ministerial submission -- even though at the time you created that document you believed that the minister was going to announce this grant in the next two or three days, that's the background on which you created Exhibit 2?

THE WITNESS: That's correct.

30

MR CARMODY: But if you read Exhibit 2 you would think that it was a recommendation supported by you and other departmental officers to the minister, wouldn't you?

THE WITNESS: I guess -- yes, you could read it like that.

MR CARMODY: Because you designed it that way, didn't you?

THE WITNESS: Well, to be honest, there has to be a formal approval of the grant and so the ministerial submission was to achieve that formal approval of the grant.

40

MR CARMODY: But you weren't approving it, you were doing a submission.

THE WITNESS: No, the minister approves all grants.

MR CARMODY: That's right. But you knew this submission, or at least you believed this submission was just a sham, because the minister had already decided to award it and announce it; that's what you believed, isn't it?

THE WITNESS: It was my understanding -- it was my understanding at the time

that the minister wanted to make the commitment and that she was going to announce it at the QR Reds Ball. The submission had to be done to get the formal approval of the grant.

MR CARMODY: A submission had to be done. But the submission you did was Exhibit 2. Right?

THE WITNESS: Yes.

10 MR CARMODY: What I want to suggest to you is this for you to mull over, that Exhibit 2 is a document that you dressed up to make it look like it's a submission and recommendation to a minister when in fact it never was.

THE WITNESS: No, I'm sorry, I don't accept that.

MR CARMODY: What part of it don't you accept?

20 THE WITNESS: The fact that we put -- as I said, we put -- as I've said earlier on, we had limited information on which to work. We also had a limited timeframe in which to do it. There were a number of risks associated with the project. We endeavoured in the briefing note to highlight some of those risks and how that would be, how that would be managed. As I said a few moments ago, there is also, there is also a need to get a formal sign-off of the grant and that was in my view the purpose of the document.

MR CARMODY: All right. But, see, you've used words like recommend, risk, support, in that document, haven't you?

THE WITNESS: Yes.

30 MR CARMODY: And they are words you've used when a submission is going forwards to the minister's office. We think this is a worthy application, we see some risks but in the end we recommend it to you. That's not really what was happening here with the QRU, was it, on your evidence?

THE WITNESS: As I've said, we were instructed this was --

40 MR CARMODY: Why didn't you just tell the truth? Why didn't you just type up a document and say, "This is the assistant deputy director or the acting deputy director speaking. I understand, minister, that you want to approve and announce \$4.2 million grant to the QRU at the forthcoming ball. That's your prerogative. Fair enough but you should be aware that we don't recommend this because we don't have enough information and the risk is on you and these are some of the risk involved in doing what you propose to do." Why didn't you just do that? Full and frank advice to your minister.

THE WITNESS: I appreciate the question you are raising. The point that I am making is that, we, as I've said previously, we endeavoured to point out some of

those risks. It was my understanding based on the instructions I have received that this was going to be approved. We needed to have a formal approval of the briefing note. If a briefing note went ahead and, and -- as you have outlined and said, you know, "We don't support this, these are all the problems with it, "and therefore -- that doesn't achieve the approval, the formal approval of the grant --

MR CARMODY: Yes, it does.

10 MR HUNTER: I object to that. The witness was still answering the question. He should be allowed to finish.

THE PRESIDING OFFICER: Let the witness finish.

20 THE WITNESS: We need to have a document signed by the minister which approves the grant. As I have said, we also pointed out some of the risks associated with the project. We needed her approval as such that the funding agreement be used as the vehicle to manage those risks although there would be a funding agreement anyway. And that's why that recommendation is worded the way it is. And thirdly, we needed her approval for the source of the funds.

THE PRESIDING OFFICER: Mr MATHESON, I think the point is: Are you saying that if you had recommended that the minister not approve it because there wasn't sufficient material upon which it could be properly assessed that the minister then would not be able to go ahead and approve it; is that your understanding?

THE WITNESS: No. If she had come back and said -- and had written across, no, it's approved and on this basis, well, that would constitute the approval.

30 THE PRESIDING OFFICER: That's exactly Mr CARMODY's point; that you could have done that but you chose not to.

THE WITNESS: (Witness nods).

MR CARMODY: In fact you robbed her of the opportunity of doing that by dressing up this document, Exhibit 2, into the form that you produced it to her as, didn't you?

40 MR HUNTER: With respect --

THE PRESIDING OFFICER: No, that can't be right because the minister, just as she --.

THE WITNESS: I don't accept that.

THE PRESIDING OFFICER: -- can accept the advice of the department she can reject it.

MR CARMODY: I withdraw that. But in a circumstance you wouldn't expect her to reject what you had already thought she had approved?

THE WITNESS: I beg your pardon?

MR CARMODY: It doesn't matter.

10 THE PRESIDING OFFICER: What you did in this case was you put forward a recommendation that enabled the minister to do what you understood she wanted to do?

THE WITNESS: That's correct.

MR CARMODY: How long have you been a public servant?

THE WITNESS: Just over 20 years.

MR CARMODY : And how long were you the acting deputy director?

20 THE WITNESS: I commenced acting in that role in April 2007.

MR CARMODY: Tell me if I'm wrong here, I'm a bit of a novice, but this minister, according to your belief, anyway, from your conversations with Mr TUTT, has taken it upon herself to grant \$4 million to the QRU on insufficient information, right? That's what you thought, isn't it?

THE WITNESS: No, as I said --

30 MR CARMODY: That's how you saw it.

MR HUNTER: Again. I'm sorry, the question assumes that this witness knew the reasons why the minister wanted to approve the grant.

MR CARMODY: I'm not asking about the reasons. He has told us plenty of times.

40 THE PRESIDING OFFICER: Hang on. Don't both argue at once. I think the situation is a little bit complicated because you are putting it as if the minister wanted to do something that the minister has said she knew nothing about. That's one of the things --

MR CARMODY: He doesn't know that aspect of it. I'm asking him about his belief as opposed to knowledge which is precisely why I'm doing it that way. I'm asking him from his point of view at the time he's doing Exhibit 2 --

THE PRESIDING OFFICER: It's the minister would be doing it when -- she wouldn't have known because he never told her that they didn't have sufficient information upon which to base it, except this very cryptic way in which the witness referred to the fact that he attached a letter which if one read into it very

carefully one might deduce the fact that they didn't have sufficient information. It was a very cryptic way which quite frankly one might expect the minister wouldn't pick up.

MR CARMODY: Which makes it difficult when questioning this guy, because he doesn't really think she cares about his opinion because he thinks she has already made up her mind to approve it.

10 THE PRESIDING OFFICER: The point I'm a little bit interested in is the need for your cross-examination along these lines. The document very much speaks for itself. This witness has told us what he did and why he did it.

MR CARMODY: That's what I want to attack him on, why he did it, why he says he did it.

THE PRESIDING OFFICER: What's the relevance of that cross-examination to your client?

20 MR CARMODY: Well, part of the CMC theory is going to be that he did it because he wanted to help my client or someone acting on behalf of the QRU to get something they weren't entitled to ahead of everybody else.

THE PRESIDING OFFICER: I think that --

MR CARMODY: Can I ask him this question and its relevance hopefully will be patent.

30 THE PRESIDING OFFICER: I think you are assuming a lot about the thoughts of the CMC in that statement. He tells us he did it because he was instructed by Mr TUTT to do it.

MR CARMODY: This is what is wrong with the superior orders defence in this case. Everyone says we acted on superior orders from people who have no authority over us. It's ridiculous.

THE PRESIDING OFFICER: That indeed is a relevant point. Ask your next question and we will see how you go.

40 MR CARMODY: What you did -- and just try to address the question -- is you gave this minister a shield, a back cover in that document, Exhibit 2 so she could say if it all blew up in her face, well, the department recommended it. You were arming her with that sort of defence, weren't you?

MR HUNTER: I object to the question. That's not what the witness has said at all.

MR CARMODY : That's not what he said --

THE PRESIDING OFFICER: That doesn't stop it being able to be put to him.

MR HUNTER: The proposition that is being put to him is argumentative and unlikely to inform the debate.

THE PRESIDING OFFICER: I agree somewhat with that.

MR CARMODY: He should be able to address that because that's effectively what he did.

10 THE PRESIDING OFFICER: I will allow the question. Are you able to answer it?

THE WITNESS: It is my view that what we put to the minister was the documentation to obtain the formal approval of the grant.

MR CARMODY: That's not responsive to my question.

THE WITNESS: Well, you asked me did I provide her with a shield.

20 MR CARMODY: Look, be real. You gave her Exhibit 2 which says, this is what they want, we think they should get more actually. This is why we think they should get more. And we think they should get -- this is why they should get more. There are some risks but they can be managed. We support it. Tick, tick. You gave her a document, Mr MATHESON that she could go out in the political arena and say, "I recommended that or I approved that on the recommendation of my department. There is Mr MATHESON twice recommending it."

MR HUNTER: Is this a question, can I inquire?

30 MR CARMODY : If he's got a problem he can inquire. Go on, Mr MATHESON, isn't that true?

THE WITNESS: I think I have responded to the question and that is that we provided --

MR CARMODY: I give up.

THE WITNESS: -- a document to obtain the formal approval of the grant.

THE PRESIDING OFFICER: Yes, Mr DEVLIN.

40

MR DEVLIN: Mr MATHESON, if you could take in hand Exhibit 26, which is the first of the possible future commitments documents. Can you confirm for us that this particular document, though it had other iterations -- I have never used that word before myself; it's a beautiful word -- it had other iterations but this was the first iteration; would that be a fair comment?

THE WITNESS: I think so. I think it was the first iteration that was provided to Mr TUTT, as I recall.

THE PRESIDING OFFICER: Stop looking so smug, Mr DEVLIN.

MR DEVLIN: Most of the time I reiterate by repeating myself but “iterate” is lovely to use. Go to the item about the AFL.

THE WITNESS: Yes.

10 MR DEVLIN: Take this in hand, if you would. Is somebody here to carry it? Just take a moment with it to see if it refreshes your memory. Did you write to Mr TUTT, “As I mentioned last week Richard Griffiths emailed me wanting to have coffee”?

THE WITNESS: Yes.

MR DEVLIN: “ I met with him briefly this morning where he outlined the AFL Queensland’s plans to establish new headquarters and a centre of Leyshon Park, Yeronga.”

20 THE WITNESS: Yes, that’s correct.

MR DEVLIN: Then down into the fourth paragraph, second line, “He is seeking to see if there can be any state government funding either through the major facilities program or some other source within the department. I gave no undertaking or commitment relating to funding”, correct?

THE WITNESS: That’s correct, yes.

30 MR DEVLIN: Then you wrote, “He asked whether he should make an approach to you and the minister to outline the proposed development. I indicated that I thought that would be a good idea and I believe he may seek to contact you in the next day or so and seek a time to come and present their proposal to the minister.”

THE WITNESS: Yes.

MR DEVLIN: So that one of the ordinary things of government seems to be that ministers will be lobbied from time to time by interest groups to try and get on the sort of list that we see in Exhibit 26; fair comment?

40 THE WITNESS: Its’ a fair comment to make that organisations will lobby the minister and ministerial office from time to time for various matters..

MR DEVLIN: Thank you. And therefore the matter which I think Mr CARMODY quite -- no, I don’t say clumsily but the matter that Mr CARMODY took some time or some pains to introduce to you is.

MR CARMODY: I’m glad he didn’t say clumsily.



MR DEVLIN: I withdraw that completely. But there will be the times as no surprise to you something comes down from the minister that you may not have even seen up to that point?

THE WITNESS: Yes, that's correct.

MR DEVLIN: Because somebody has managed to get access to the minister; is that right?

10 THE WITNESS: That's correct.

MR DEVLIN: And it could even be, in a most unlikely way tea and scones at Yeronga Bowls Club for all you know.

THE WITNESS: That's correct. People can access ministers through a variety of means, and a variety of circumstances.

MR DEVLIN: Let's just dwell for a moment on this email and the speed with which Mr Griffiths obtained a foot in the door. Firstly, you'd mentioned it to  
20 Mr TUTT last week and this is only Monday, 16 June. We can draw that from it?

THE WITNESS: Yes.

MR DEVLIN: He had coffee with you that morning, which is Monday, 16 June.

THE WITNESS: Yes.

MR DEVLIN: And the first iteration is dated Thursday, 19 June.

30 THE WITNESS: Yes.

MR DEVLIN: So by means of an approach by Mr Richard Griffiths to you and perhaps a meeting with Mr TUTT and the minister, bingo he's on the first list of possible projects.

THE WITNESS: Can I provide some further information in that regard?

MR DEVLIN: By all means.

40 THE WITNESS: Part of the -- and I think I've already mentioned this earlier today. Part of the instructions that we were given in relation to the preparation of this document, which -- in relation to possible future commitments and announcements --

MR DEVLIN: By the way, I'm not having a go at you.

THE WITNESS: I know, but I would like to provide some -- I would like to respond to the point that you were making.

MR DEVLIN: By all means, go on.

10 THE WITNESS: Part of the instructions, as I've said, were to include some specific  
matters which Mr TUTT had asked for, which I've already outlined. We were to  
include, as I recall and I think I've outlined this this morning, other matters that we  
knew organisations had an interest on in the environment, other proposals that they  
were working on, and so forth. And also other ideas that we might have had. Okay?  
They were concept proposals. This one was included on that list because it had  
come to our attention as something that AFL Queensland was interested in. The  
instructions that I had from Mr TUTT in relation -- and I think the Director-General  
as well in relation to putting this together, was that we were to look to include  
proposals across a number of sports, and as I said he had mentioned Queensland  
Rugby Union. He had asked Queensland Cricket to be something similar. I believe  
he mentioned there should be something for AFL. He wasn't specific. He didn't  
nominate anything specific for AFL. I think I mentioned earlier as well that in  
relation to Queensland Rugby League I think at some point we had put up a  
proposal, I think, around a museum. I also said he didn't like that ,but -- I'm sorry  
to go on but this one was included on the list because it was one of those ideas or  
20 projects that we were aware of in the environment.

MR DEVLIN: And it would appear only just aware of?

THE WITNESS: Yes.

MR DEVLIN: I will tender that to preserve the record.

THE PRESIDING OFFICER: Can you describe it, please.

30 MR DEVLIN: It's an email dated 16 June 2008.

THE PRESIDING OFFICER: From?

MR DEVLIN: From MATHESON to TUTT.

THE PRESIDING OFFICER: Mr MATHESON to Mr TUTT. Okay. That will be  
Exhibit 32.

40 ADMITTED AND MARKED EXHIBIT 32

MR DEVLIN: Thank you. Now, let's just go back to a couple of things that you  
mentioned earlier in your evidence and I will be as quick as I can,  
Mr MATHESON. You mentioned difficulties with Mr TUTT and you mentioned  
the meeting between Premiers and Treasury and Stadiums Queensland about the  
proposed Gold Coast AFL team and some irritation apparently that my client  
showed. Can you assist us with this? Was it made clear to you during a display of  
irritation that the minister, your minister, had been asked by the Premier what her  
view was about this initiative on the Gold Coast? Do you remember that?

THE WITNESS: I don't recall that, that specifically.

MR DEVLIN: Could that have been outlined to you?

THE WITNESS: It may have been but I don't recall that specifically.

10 MR DEVLIN: And that the issue was that the minister was being called upon to give a view to the Premier but wasn't at that point sure what view if any had been put by her officers at a meeting involving Premiers, Treasury and Stadiums Queensland. Could that have been the sticking point; that there had been a meeting at which you had participated?

20 THE WITNESS: No, as I said earlier on, Mr TUTT's anger conveyed in that telephone conversation, as I recall correctly, was directed at the fact that Mr KINNANE and I hadn't informed him prior to attending the meeting that we'd been invited to the meeting, sought his approval -- sought his agreement to attend the meeting and sought instructions on what we were to say or do. If I recall correctly, the only thing that Mr KINNANE and I agreed to do at that meeting -- and I conveyed this to Mr TUTT during that telephone conversation -- was to take the lead in the preparation of a submission for the cabinet budget review committee which would have to have input from all the relevant agencies. My recollection is that's the only thing that Mr KINNANE and I agreed to do.

MR DEVLIN: Had the meeting already taken place between Premiers, Treasury and Stadiums Queensland and yourselves?

THE WITNESS: Yes.

30 MR DEVLIN: So you don't recall whether there was some concern that you actually during the meeting had expressed views to Premier and Treasury that your minister wasn't yet aware of; do you follow me?

THE WITNESS: My recollection is I don't believe we expressed very much at all in that meeting about our views. The only thing that we committed to do was to lead the preparation of a cabinet budget review committee submission.

40 MR DEVLIN: Understood. That might have been your explanation that you actually didn't express a view, but the concern was that the minister, having been asked her view by the Premier, didn't know whether you had expressed a view or not about the stadium.

THE WITNESS: I don't recall that being raised in the conversation..

MR DEVLIN: Could it have been raised?

THE WITNESS: I don't know. I guess that's hypothetical. I can't recall whether that was actually raised in that conversation.

MR DEVLIN: All right. This one about draft cabinet submission, questioning aspects of the submission -- with a minister with multiple responsibilities, departmental responsibilities, in this case Corrective Services, Police, Sport, if two subdepartments or two subsets of the responsibilities have a difference of opinion it would be important to resolve those difficulties between the two departments before a cabinet submission went forward, wouldn't it?

10 THE WITNESS: Yes, but in the same way as that it's important to resolve difficulties between -- sorry, I'm not expressing this very well. If there's a draft submission that agencies are commenting on, if there are issues or difficulties that any agency has with the submission it's important to try to achieve a resolution with any agency on those issues before the submission goes forward to cabinet.

MR DEVLIN: And that was part of the issue with the difficulty that you second described in your evidence?

20 THE WITNESS: No, I think as I said earlier this morning, the issue that was raised is why would we raise -- sorry, why would our department -- the full department -- as such -- sorry, the issue that was raised was, he was upset and annoyed that our department for which the minister was partly responsible, we were one department with two ministers, and the matter that was raised was of a local government matter. So it was still our department but the other minister's portfolio responsibilities. But why would our department when she was the -- one of the minister as for our department, raise an issue with the submission?

MR DEVLIN: Right. So there was at least some issue of potential conflict happening at the cabinet submission stage that might have been avoided by other --

30 THE WITNESS: The draft submission or discussion paper stage whatever --

MR DEVLIN: That might have been avoided by other communications having been had, perhaps, is that the way it went?

THE WITNESS: It could have been perhaps.

40 MR DEVLIN: Turning now to the matters that really concern us here, the 12 February meeting at Parliament House with the QRU representatives, the minister, Mr TUTT and yourself, the meeting just wasn't entirely concerned with having another crack at the federal government for a reconsideration of funding, was it? Surely it explored the likelihood for future funding by the Queensland Government of the QRU? Surely it left open that possibility to take the place of the federal --

THE WITNESS: For the facilities?

MR DEVLIN: Yes.

THE WITNESS: I think I said there was, there was -- there was discussion around

that. The focus was around, as I said, the disappointment with the federal government's decision, was there an opportunity for the minister to assist in getting them another hearing with the federal government.

MR DEVLIN: You mentioned that and I suppose I focused on that but I do note my note is: they wanted to see if the state government could assist. So I do beg your pardon, you did mention the possibility of state government funding; is that right?

10 THE WITNESS: That's right. I'm pretty sure I said that and there wasn't a commitment given by the minister at that meeting as far as I can recall other than the commitment to see what they could do about trying to organise a meeting with the federal minister.

MR DEVLIN: But it would be true to say that the minister, your minister, was sympathetic and generally supportive of the QRU in its difficulties.

THE WITNESS: Yes, I think so.

20 MR DEVLIN: And sympathetic and generally supportive as to whether the state government could in the future give some assistance to the QRU? She wasn't dismissive of them.

THE WITNESS: No, but I don't recall her providing any commitment at that time to --

MR DEVLIN: No, I didn't say commitment, I said sympathetic and general support to the QRU in its current difficulties.

30 THE WITNESS: Yes, I think that's -- I think that's a fair recollection.

MR DEVLIN: Then we go to that 19 June first iteration of the list of projects. You said that Mr TUTT indicated some of what he would like included. Do I take it that where Mr TUTT mentioned those particular matters that you would have taken it that that reflected the minister's view of what should be included or that it most likely reflected the minister's view?

40 THE WITNESS: Look, I can't be 100 per cent sure whether it was clear to me whether he had discussed it with the minister at that time or not. It just simply said on the list to include that and as I said something comparable for Queensland Cricket. As I said, general instructions around include some things for some of the other major sports. I think I've covered those things earlier today.

MR DEVLIN: But I take it that you would assume he was acting professionally and you would take it that those were matters of interest to the minister?

THE WITNESS: I had no reason to doubt that he wasn't -- sorry, I had no reason to doubt at that time that he wasn't.

MR DEVLIN: You would have every expectation that once that particular list was created that groups within the list might well be spoken to and encouraged to put in their documents to begin the work-up of a proper application; that would be your expectation, that officers of the department or ministerial advisers might contact these people to say, "Go and get your submission in for funding".

10 THE WITNESS: If I recall correctly, our expectation was that if the minister endorsed at that time, at 19 June, is that if the minister endorsed any or all of these concepts, then work would have to commence with those organisations to develop up those proposals.

MR DEVLIN: And therefore the request by Mr TUTT that you accompany him to a meeting with Mr FREER shortly after that was perfectly routine?

THE WITNESS: Yes, I'd -- at the time I didn't see anything out of the ordinary as such with that request to attend that meeting.

20 MR DEVLIN: At that meeting then that you did have, the subject of developing the asset called Ballymore was always the matter on the agenda?

THE WITNESS: No -- as I think I've said earlier today, it had been my understanding prior to that meeting that all of the matters that were outlined in the paper that was emailed to me by Ms ENCHONG on 25 June were the matters for discussion at that meeting.

MR DEVLIN: Now, you mentioned that, by reference to the second iteration, Exhibit 27, that the --

30 MR CARMODY: I don't think you --

MR DEVLIN: Am I overdoing it a bit now?

MR CARMODY: No, that would be a reiteration.

MR DEVLIN: No, no, it's a second reiteration. That's the point of my question.

MR CARMODY: How many iterations are you allowed to have?

40 MR DEVLIN: In relation to the second iteration, the rugby league matter came onto the document, Exhibit 27.

THE WITNESS: That's correct.

MR DEVLIN: So it's reasonable to assume that there must have been some interface between the two documents between the department and the QRL to find out what they were after; is that right?

THE WITNESS: No, I'm not aware that there was any -- that there was any

interface or discussion with the QRL. I don't recall there being any interface or discussion with the QRL.

MR DEVLIN: Can you assist us with how the QRL got on to the next version of the document, then.

10 THE WITNESS: I think as I said earlier this morning, in terms of the advice and instructions we had had from Mr TUTT about the preparation of this list -- was -- sorry, if I'm repeating myself over and over again, was the Rugby Union matter, the cricket matter, include some matters for other major sports.

MR DEVLIN: Yes.

20 THE WITNESS: We didn't have any ideas initially if I -- I'm sorry, I'm just trying to recall. I think initially we didn't have any specific ideas for rugby league. We had come up with an idea, I think if I recall correctly around a museum subsequently and I think Mr TUTT had conveyed some advice back, I think through the Director-General but it may have been to me -- I can't be 100 per cent certain on that -- that he didn't really want the rugby league proposal to be of a facility nature. So we developed up, as I think I said this morning, another concept which was a program for rugby league that was comparable with the Aus Kick program that is run by AFL.

MR DEVLIN: Yes. But somebody must have spoken to the Queensland Rugby League to see if they could deliver such a program; it wasn't a figment of the public service Department of Sport's imagination, was it?

30 THE WITNESS: I can't be entirely certain whether it was a concept that we developed alone or whether we had some information from the QRL, I'm sorry.

MR DEVLIN: I notice that there's a bit of time --

THE WITNESS: Sorry, the QRL. The Queensland Rugby League.

MR DEVLIN: I notice there's a bit of information there with the possible timing of an announcement, too, 18 July 2008 at Dairy Farmer stadium.

THE WITNESS: Yes.

40 MR DEVLIN: So, the date for an announcement is not unusual to be built into the initial concept?

THE WITNESS: Well, I think it was -- look, I'm trying to recall the specifics around that.

MR DEVLIN: Anyway, you can see it in black and white.

THE WITNESS: I know, I'm just trying to recall.

MR DEVLIN: A possible announcement date factored into the concept.

THE WITNESS: Because I think that was an event we knew was coming up.

MR DEVLIN: A bit like the Reds Ball on 11 July?

THE WITNESS: As I said earlier on in relation to the Reds Ball, that was the advice and instruction that I received from Mr TUTT about that on 2 July.

10

MR DEVLIN: About the --

THE WITNESS: There had been no discussion with me prior to 2 July about something being announced at the Reds Ball.

MR DEVLIN: But here is another example of some initiative running down to a possible announcement date that seemed suitable; do you agree that much?

20

THE WITNESS: Yes, I think it's fair to say that's an event where, where something for that sport could be announced.

MR DEVLIN: In a particular specific region as well, namely Townsville.

THE WITNESS: Um,, I'm -- I don't know that that was a consideration I'm sorry.

30

MR DEVLIN: Don't worry about it. I just want to come then to the email of 4 July. You said this, "Following the previous email there was a phone call from Mr TUTT in response. He wanted the minister to be able to say that they provided more than \$4 million and that it be \$4.2 million so the document was amended." Are you with me so far?

THE WITNESS: Yes.

40

MR DEVLIN: I just want to read this back to you from your evidence to the prior inquiry, and see if this encapsulates the full gist of the exchange. It's at page 201 of the transcript. At line 19: "It was in a telephone conversation I believe it was. I don't know if it was the same conversation in which I appraised him of us having inadequate or not sufficient information from the Queensland Rugby Union or not, but I was asked by Mr TUTT to make it more than 4, \$4 million, could we make it \$4.2. I said, I think at the time, look I'm not 100 -- no doubt you were going to say 100 per cent sure -- I don't believe I asked why. He did indicate that it was to avoid claims that we'd only given them \$4 million so could we give them a bit more, a bit more, could we give them \$4.2. And I remember, my recollection at the time was indicating well, there would need to be a proper contingency for the project anyway and the funds would support that contingency." {"doc trans }

So that's, that's a more contextual explanation for your exchange that day? Are you happy with it? That's what you said last time. You put the two together.



THE WITNESS: Yes, he said it was to be 4.2. He wanted the minister to be able to say -- wanted to be able to say that they'd given more than \$4 million and I, I, I think in the conversation I had indicated well, that could be part of the contingency, and I think I may have also said at that time, you know, that the cost -- the pool will probably cost more than that.

MR DEVLIN: Very well.

10 THE WITNESS: I think that's consistent with what I said there and what I said this morning.

MR DEVLIN: And a 5 per cent contingency would be a standard contingency allowance?

THE WITNESS: Look, off the top of my head I'm not 100 per cent sure what the industry standard is for the contingency but I know there is an industry standard for contingencies.

20 MR DEVLIN: Finally, in relation to Warrigal Road, was the discussion between you and Mr TUTT a bit more general than that? Something along these lines: We want you to look at this one, these people need a hand. Rather than just a blunt instruction this needs to be recommended? Something more general?

THE PRESIDING OFFICER: Sorry, I didn't understand what you were putting then?

MR DEVLIN: Well, the witness said that Mr TUTT gave an instruction that it still needed to be recommended. Was it more --

30 THE WITNESS: That was the second conversation, I think, if you remember from what I said this morning. He may have said the words that you have indicated in the first conversation about the matter. I -- I can't recall specifically every exact word that was said. But I recall going back -- that's why I remember this particular matter. Because I recall going back to him saying -- and advising him that it was not a good project to go forward with and it was in that second conversation that he indicated to me that it had to be recommended for funding.

MR DEVLIN: It had to be recommended.

40 THE WITNESS: Had to be recommended, recommended by the department.

MR DEVLIN: You are prepared to swear that they are the words he used.

THE WITNESS: That's my recollection, that it had to be included in the recommendations.

MR DEVLIN: Or is that just the way that you received the message? Do you say

that they are the words he used or is it just the way you received the message that you felt it had to be recommended?

THE WITNESS: It -- he --

MR DEVLIN: Do you see the difference?

10 THE WITNESS: I understand what you are saying. It might be the way that I received the message. But I was in no doubt that it was to be included in the recommendations.

MR DEVLIN: But you could receive such a message at your level by being told look, these people need a hand and it needs to be looked at, we would like you to look at that.

THE WITNESS: No, I this -- I think it was more than that in the second conversation.

20 MR DEVLIN: But you --

THE WITNESS: Because as I said, I went back with advice that we didn't consider it to be a good project.

MR DEVLIN: You did concede a moment ago, I thought, that it could have been the way you received the message rather than the actual words used, the effect of the message, that is, this one should be recommended.

THE WITNESS: It may be.

30 MR DEVLIN: All right. Thank you. Thank you, Chairman.

MR SHIELDS: I have no questions.

THE PRESIDING OFFICER: Yes, Mr HUNTER.

MR HUNTER: Mr MATHESON, when did you find out about what had happened?

40 THE PRESIDING OFFICER: Mr HUNTER, is there a microphone near you?

MR HUNTER: Right in front of me.

THE PRESIDING OFFICER: Perhaps a bit closer.

MR HUNTER: My question is when did you find out what had happened to some or all of the money advanced to the QRU pursuant to the project that we've been speaking about today.

THE WITNESS: At the meeting on the 30 April 2009 when Mr FREER came to see me.

MR HUNTER: Where was that?

THE WITNESS: That was in my office at Mineral House.

MR HUNTER: Can you tell us what happened.

10 THE WITNESS: Mr FREER had sought an appointment with me. It was my understanding that he wanted to talk about the Ballymore redevelopment generally, where they were going with it, et cetera. There is, there is a detailed filenote of the meeting which I think I've previously provided to the CMC. In the course -- early on in the meeting Mr FREER made the comment to me that they had paid the \$200,000 to the University of Queensland Rugby Club, which I was absolutely astounded about. And I guess -- sorry.

MR HUNTER: Just tell us what happened.

20 THE WITNESS: My attention was immediately raised because we had had an inquiry from the CMC in February of 2009 in relation to an allegation -- in relation to an allegation relating to a grant to that club. We had provided information back to the CMC based on a review of our grants database which showed that no grants had been provided to that club over the previous five years. I indicated to Mr FREER that -- sorry, if I recall correctly, it will be in the filenote because I was very particular about drafting the filenote.

MR HUNTER: Just tell us what happened.

30 THE WITNESS: That I was unaware of any instructions or -- from Mr TUTT or anything like that to provide funding for the University of Queensland Rugby Club. And he then went on to talk about the fact that the -- he went on to talk about the cost of maintaining the Ballymore asset and that they were wanting to use the funding that was -- they were wanting to use the funding that was provided or were using the funding that was provided to them for recurrent purposes for the Queensland Rugby -- for the Queensland Rugby Union in line with discussions that he indicated he'd had previously with Mr TUTT and the former minister. Again, I was astounded by this advice. I said that I was unaware of any such discussions, that the funds had been provided specifically for the development of a playing field  
40 and a swimming pool, and Mr FREER, if I recall correctly made the comment "I think I've just got Simon in trouble". He said to me -- he asked me would I need to inform the minister. I said yes, I would need to inform the minister. The meeting concluded soon after, soon after that. Immediately after the meeting, I spoke with three departmental officers and outlined -- one of whom was actually present at the meeting, and outlined to them what had been discussed in that meeting. One of those officers was involved in the discussion by telephone, that was the department's legal officer. I indicated that I thought this was a matter that needed to be brought to the attention of the Director-General and referred to the CMC --

everyone in the meeting agreed. I completed my filenote. I made an appointment to see the Director-General that morning. I met with her that morning. I gave her a copy of the filenote. I advised her of what had been discussed during that meeting and I advised her that the matter should be referred to the CMC. She agreed with that advice on the matter and I was asked to draft a letter to refer the matter to the CMC.

10 MR HUNTER: Can I ask you about another topic. It's been assumed, correctly for present purposes, that the minister had the power to make a grant regardless of any advice from the department; do you accept that?

THE WITNESS: Yes, the minister has the prerogative, as I think I have said previously, the minister has the prerogative to accept, reject or disregard the department's advice.

MR HUNTER: Where the minister as far as you were concerned was exercising that prerogative independently of the department's advice, was there any system in place whereby that fact would be documented?

20 THE WITNESS: No, not really other than the fact that we needed to, we needed to get the signed approval of the decision to award the grant. And so, as I said previously, the ministerial submission served the purpose of obtaining that signed approval -- served the purpose of obtaining that formal approval. The matter then had to go onto the Governor in Council because it exceeded the minister's financial delegation.

30 MR HUNTER: Can I ask you about this protocol. Would you regard a protocol that required a minister who was exercising independent judgment, when I say independent, I mean independent of the department, was required to -- whereby the minister was required to himself or herself document that fact, would that be a workable system in your view?

THE WITNESS: It's something that in my view should occur. I think -- I think the practical realities are that that probably wouldn't occur.

MR HUNTER: Why not?

THE WITNESS: I, I don't think a minister would do that.

40 MR HUNTER: You don't think a minister would put their name to a document in circumstances where they were formally documenting the fact that they were exercising their own judgement independently of the departmental advice?

MR CARMODY: I know this isn't a trial but it's a pretty broad question. A minister, which minister?

THE PRESIDING OFFICER: I overrule your objection.

MR HUNTER: I'm asking you whether in your experience it's likely that a system that required the minister to document the exercise of independent judgment -- or the ministerial prerogative -- would be a workable one?

THE WITNESS: And of this nature, I don't think that would be -- I don't think that would -- I don't think that would be acceptable to ministers. That's -- I should say that's my view.

10 MR HUNTER: What would you have anticipated might have occurred in this case if, rather than putting forward a proposal in the form that you did, rather you had simply set out the reasons why the QRU funding proposal did not comply with the guidelines and recommended against it? What did you expect or what would you expect would have happened if that occurred?

THE WITNESS: What do I expect would have happened?

MR HUNTER: Yes.

20 THE WITNESS: I expect if that had occurred we would have been contacted and asked to change the brief.

THE PRESIDING OFFICER: Contacted by whom?

THE WITNESS: Contacted by the minister's office.

MR HUNTER: Thank you.

30 THE PRESIDING OFFICER: This issue of the way things should be done is irrelevant in this case because our role is not limited to just investigating as to whether official misconduct has occurred in this case but is also looking at possible recommendations we might make as to the way things should be conducted in the future. So it is relevant that way, Mr CARMODY.

MR CARMODY: I wasn't objecting to that --

THE PRESIDING OFFICER: It can be about a minister.

40 MR CARMODY: Sure, but no-one asked the minister who was here whether it was workable.

THE PRESIDING OFFICER: Well, the minister might have to come back. In reality, if it always applied within your department the way you've told us about in this case for the two submissions we have looked at, it would never be necessary for a minister to record his or her disagreement with a ministerial submission because the submission has always ensured that it accorded with what the minister wanted.

THE WITNESS: When we were given directions on a particular matter?

THE PRESIDING OFFICER: You took the schedule of possible matters that should proceed --

THE WITNESS: I'm sorry, I thought you were referring ...

THE PRESIDING OFFICER: -- you took that to the minister and discussed it with her and altered it according to her request so that what finally went to her was what was agreeable to her and that she could just sign off on?

10

THE WITNESS: Yes, that's correct.

THE PRESIDING OFFICER: If that occurred in every case there would never be any need for her to record any disagreement with a departmental recommendation.

THE WITNESS: If that occurred in every case, yes.

THE PRESIDING OFFICER: Did it occur in every case?

20

THE WITNESS: Not, not that I believe.

MR CARMODY: Mr Chairman, I accept perfectly that you've a much broader brief than just looking at misconduct on somebody's part but it just seems to me if that's what you propose to do, what we haven't done, which is what we should be investigating is the elephant in the corner and that's the lilly-liveredness of the departmental officers who just went and did what they did because, presumably, they were worried about their jobs or something or other. No-one has challenged them on that. They have some away scot-free.

30

THE PRESIDING OFFICER: You are making assumptions about the conclusion of the process, Mr CARMODY.

MR CARMODY: Perhaps, I will have to withdraw that.

THE PRESIDING OFFICER: Do you have any further questions, Mr PEARCE?

MR PEARCE: Yes, I do. One matter was something that I didn't raise in the initial examination and the other arises from what has just been asked. The new matter is this.

40

THE PRESIDING OFFICER: Can we deal with the new matter first so that if anyone wants to ask a question on the new matter they can do so.

MR PEARCE: That's what I propose, Mr Chairman. I take it from something you said earlier Mr MATHESON, that you may have been following proceedings on the internet. Is that the situation? You made reference to something I said --

THE WITNESS: The hearing? Yes.

MR PEARCE: No criticism of you about that. Have you read what Ms FARMER had to say to us yesterday?

THE WITNESS: Yes, I have read Ms FARMER's transcript.

MR PEARCE: You would then know that Ms FARMER gave evidence that on occasions she approached you about concerns she had about Mr TUTT. Do you recall reading what she said about that?

10

THE WITNESS: Yes, I do recall that, yes.

MR PEARCE: What do you say about Ms FARMER's claim in that regard?

THE WITNESS: No, that's true. She did raise with myself and she raised with the Director-General and I think -- and I recall one particular instance where we were both present where she raised concerns about things that they had been requested to do or there were frustrations with the interchange or -- sorry, and also concerns about the way in which she'd been spoken to.

20

MR PEARCE: Frustrating and upsetting, I think were two of the descriptions she used. That fits with your recollection of her complaints to you?

THE WITNESS: Yes.

MR PEARCE: What did you do about her complaints?

THE WITNESS: Well, we, we talked them through -- we would generally talk them through, talk them through about what are some strategies to deal with that. On one occasion, it's the occasion -- if I recall correctly -- where she spoke to the Director-General and I, we were both present. And -- if I recall correctly, the Director-General offered to take it up, take the matter up, and Ms FARMER said no, she didn't want to do that, she would deal with it in her own way.

30

MR PEARCE: The other matter concerns Exhibit 2, which is the five-page ministerial submission that you prepared. Did that document -- that document bears Tracy O'BRYAN's signature, does it not?

THE WITNESS: That's correct.

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MR PEARCE: As the acting Executive Director.

THE WITNESS: That's correct.

MR PEARCE: On its face, therefore, that document is Tracy O'BRYAN's document; would you agree with that?

THE WITNESS: Yes, on the face of it, yes. Based on -- she's signed so she

supports what's been put there.

MR PEARCE: What do you say to the proposition that when you had prepared that document you took it to Tracy O'BRYAN and told her to sign it straightaway.

THE WITNESS: It was, it was sent back to her, if I recall correctly, I asked her to let me know whether there were any problems with it and sign, and if she could sign the brief because I'd done further work on the brief -- the submission, sorry.

10 MR PEARCE: Ms O'BRYAN has told us in the other proceedings that she was asked to sign it straight away. What do you say to that proposition?

THE PRESIDING OFFICER: To be fair, I thought she said that she read it.

MR PEARCE: Yes. She was asked to read it and sign it straight away. What do you say to that proposition?

20 THE WITNESS: I don't recall saying those words. I, I think, I think I had made it clear that it needed to be turned around quickly because of the, the timing. But if I recall correctly, I think, I think I said to her could she read through it, make sure it's okay and if she was happy with it, sign it.

MR PEARCE: I will put this passage to you. I took the witness to the five-page document, which is Exhibit 10 in those proceedings, that's the ministerial submission, and I asked her to explain to me what input you had into that being do. Ms O'BRYAN said, "I recall reading it and signing it. I remember that I didn't have much time to do that. I remember Mr MATHESON asking me to do it straight away." Do you accept Ms O'BRYAN's description of what occurred?

30 THE WITNESS: As I said, I don't recall -- I don't recall using the words "straight away", but she wouldn't have had a lot of time to, to return it to me.

MR PEARCE: The document just above her signature contains this passage: "Content of submission approved by Ben KLAASSEN, Director Program and Industry Development on 8 July 2008".

THE WITNESS: Mhmm.

40 MR PEARCE: When did you take this document back to Mr KLAASSEN to allow him to read it and approve it?

THE WITNESS: I don't know that it went back to Mr KLAASSEN, I think -- if I recall correctly, it went back through Ms O'BRYAN as the executive director. That's a standard sentence that was in the format for the briefing notes.

MR PEARCE: Given what we now know occurred, it's a misleading sentence, is it not?



THE WITNESS: It could be, because I don't know that Ben KLAASSEN actually had the opportunity to review the briefing note, the submission after it had been written.

MR PEARCE: Thank you. That's all I have, Mr Chairman.

THE PRESIDING OFFICER: Before we go back to other people, there is a matter that I had intended to ask as well. In the ministerial submission and the approval of it, you took us earlier to the third approval.

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THE WITNESS: Yes.

THE PRESIDING OFFICER: I'm trying to find the document: Do you know the Exhibit No.?

MR PEARCE: It's Exhibit 2.

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THE PRESIDING OFFICER: Yes. Just let me get the wording of it. Yes, "Agree for the Executive Director Sport and Recreation to develop and execute an appropriate funding agreement with the Queensland Rugby Union to support the grant of commitment and to accommodate the risks and requirements outlined in this brief." You told me before one of the aspects of it and one of them in particular was the schedule of payments.

THE WITNESS: Yes.

THE PRESIDING OFFICER: That it would be on a reimbursement basis.

30

THE WITNESS: Yes.

THE PRESIDING OFFICER: That they would outlay the money or at least incur the debt by having the works built and then recoup the money.

THE WITNESS: Yes, or have to achieve certain milestones along the way.

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THE PRESIDING OFFICER: Yes. And you advised that you had been appraised subsequently of what occurred, that that in fact was changed in the funding agreement to make an up front payment of \$1.4 million to be paid on the execution of the funding agreement.

THE WITNESS: Yes.

THE PRESIDING OFFICER: Have you any comment to make about that change as to any effect it had upon that particular recommendation or that approval given by the minister?

THE WITNESS: Sorry, do I have any comment to make in relation to that particular change to the funding agreement?

THE PRESIDING OFFICER: Yes, whether it took away the accommodation of the risk that was able to be achieved by the terms of the funding agreement.

THE WITNESS: Sorry, yes, I understand the question. No, I don't agree that -- that change should not have been made, because it in my view significantly lessens the ability to manage those risks that I talked about earlier.

10 THE PRESIDING OFFICER: Is that a matter that you would normally get instructions from the ministerial office as to change that sort of term within a funding agreement?

THE WITNESS: No. No, not ordinarily, no. I don't believe so.

THE PRESIDING OFFICER: All right. Now, does anyone have any questions arising out of Mr PEARCE's or my questions? Thank you, Mr MATHESON. May Mr MATHESON be excused?

20 MR PEARCE: Thank you.

THE PRESIDING OFFICER: Thank you for your evidence and your attendance here. Thank you, Mr HUNTER.

#### EXHIBITS

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