



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 2 - TUESDAY 24 NOVEMBER 2009
(DURATION: 54 MINS)**

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with any order made by the presiding officer concerning publication of
these proceedings.**

LEGEND

Presiding Officer – Robert NEEDHAM, Chairperson, CMC

Counsel Assisting – Russell PEARCE, Director, Misconduct Investigations

30 **Hearing Room Orderly – Alicia VIEIRA**

Witness – Dianne FARMER

Legal Representatives – Brad FARR; Adam GUEST (Guests Lawyers)

MR PEARCE: I call Dianne Elizabeth FARMER.

DIANNE ELIZABETH FARMER ON AFFIRMATION, EXAMINED:

MR PEARCE: Ms FARMER, you are now the state member for Bulimba?

THE WITNESS: Yes.

10 MR PEARCE: And you were elected to that position at the general election on 21
March this year?

THE WITNESS: Yes.

MR PEARCE: Prior to your election you were an officer in the Department of
Local Government, Sport and Recreation?

THE WITNESS: Yes.

20 MR PEARCE: Can I ask when you, if you like, stood down from your duties,
having announced your candidature?

THE WITNESS: When I was actually formally endorsed as the Labor Party's
candidate which was --

MR PEARCE: Do you recall when that was?

THE WITNESS: It would have been around the end of September, beginning of
October.

30 MR PEARCE: Of 2008?

THE WITNESS: 2008. Yes.

MR PEARCE: From that point on did you perform any functions at all within the
department?

THE WITNESS: I worked off line reporting directly to the Deputy
Director-General doing special projects.

40 MR PEARCE: Did you have any part in the major facilities program of 2009?

THE WITNESS: At that time?

MR PEARCE: From that time on?

THE WITNESS: No.

MR PEARCE: In July of last year you were, as I understand it, job sharing as the

acting Executive Director of Sport and Recreation, is that right?

THE WITNESS: Yes.

MR PEARCE: Is that your title? And you were job sharing with Ms Tracy O'BRYAN.

THE WITNESS: Yes.

10 MR PEARCE: You had worked for the Department of Local Government, Sport and Recreation for over five years?

THE WITNESS: Yes.

MR PEARCE: And you hold a bachelors degree in speech therapy and a postgraduate diploma in administrative studies, is that correct?

THE WITNESS: Yes.

20 MR PEARCE: You also in your former life worked for a period as a senior policy advisor yourself?

THE WITNESS: Yes.

MR PEARCE: And that was to the Premier and Minister for Education; is that correct?

THE WITNESS: Separately, yes, to the Premier and prior to that to the Minister for Education.

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MR PEARCE: That's the current Premier.

THE WITNESS: No, it was Wayne Goss.

MR PEARCE: And which Minister for Education are we speaking of?

THE WITNESS: Pat COMBEN.

40 MR PEARCE: Can you briefly describe the arrangements that applied between yourself and Tracy as regards the role that you both performed?

THE WITNESS: We each worked three days a week. She worked the first three and I worked the second three. We had a common day on a Wednesday, and we, we had a fairly formal handover mechanism where we had a written handover just to update each other on any of the major events that occurred or anything that would require the next person to follow up in their time. And we usually spoke on the phone several times before the handover day occurred.

MR PEARCE: You are obviously aware that the CMC is investigating the circumstances in which \$4.2 million was granted to the Queensland Rugby Union.

THE WITNESS: Yes.

MR PEARCE: Do you recall what involvement you had in that matter?

10 THE WITNESS: Yes. I, I recall -- the first thing I recall clearly is probably a meeting when Ken FREER and Simon TAYLOR from the QRU came to see me as Executive Director to discuss a proposal that they wanted to see funded for a redevelopment.

MR PEARCE: Do you recall approximately when that was?

THE WITNESS: No, I wouldn't be able to say clearly, I'm sorry.

MR PEARCE: The grant was announced in mid-July. How long prior to mid-July was it, are you able to say that you had this meeting?

20 THE WITNESS: I'm sorry, I'm not, no.

MR PEARCE: The process that we are looking at is in fact two stages. We are looking at the circumstances in which the ministerial submission went to the minister and then the circumstances in which the funding agreement was formulated and executed.

THE WITNESS: Yes.

30 MR PEARCE: Were you involved in both of those stages?

THE WITNESS: I was involved -- I suppose I was involved in, in bits of each because they occurred over, I think it was a matter of a few months. So, on the days I was on I don't think I had a lot to do with the QRU after their initial meeting, because, usually, after that happened then it would be down to officers at a different level to actually do the negotiating and to bed down the details of the contract negotiations. And then, later on, when the contract was being put together I had some involvement.

40 MR PEARCE: Do you recall the circumstances in which you came to speak to the QRU?

THE WITNESS: I, I don't remember whether I was, I was asked to see the QRU by the minister's office or whether they came to see me asking for a submission to go up to the minister.

MR PEARCE: Is it the case that Simon TUTT asked you to speak to the QRU?

THE WITNESS: He may have, but I can't tell you --

MR FARR: Mr Chairman, my client is aware of the provisions of privilege. It perhaps might be appropriate to formally give her those details on the record so that she can turn her mind to the issue of whether she needs to at any stage claim that. She appreciates that she will continue to answer questions. We have done so generally outside but witnesses frequently forget that when they come into the witness box.

10 THE PRESIDING OFFICER: Ms FARMER, I have spoken to you on a previous occasion about your right to claim privilege with respect to any question where you feel your answer may tend to incriminate you of an offence; you understand that right?

THE WITNESS: Yes.

THE PRESIDING OFFICER: Both from what I have said previously and from the advice your legal representatives have given you?

20 THE WITNESS: Yes.

THE PRESIDING OFFICER: You understand that if you do claim the privilege I will direct you to answer?

THE WITNESS: Yes.

THE PRESIDING OFFICER: But any answer you subsequently give cannot be used against you.

30 THE WITNESS: Yes.

THE PRESIDING OFFICER: Except on a charge of perjury with relation to the answers that you give.

THE WITNESS: Yes.

THE PRESIDING OFFICER: If you feel you want to claim that privilege at any stage just indicate to me.

40 THE WITNESS: Thank you.

MR PEARCE: Can you recall you gave evidence here a few weeks ago in late October?

THE WITNESS: Yes.

MR PEARCE: Do you recall telling us on that occasion that Mr TUTT had asked you to speak to the people at QRY regarding a possible submission for a grant?

THE WITNESS: Yes, I think, I think at the time I, I probably was a little unclear in what I was saying. I did say that I couldn't actually recall how it came about that I actually had that first meeting. So --

MR PEARCE: Do you agree you told us on that occasion your recollection was that he, that is Simon TUTT, asked us to see the Queensland Rugby Union to talk to them -- to talk about them putting up a submission for a grant for their development.

10 THE WITNESS: Yes, and I also recall that I, I said in the same -- at the same time that I couldn't quite recall how the meeting came about. So perhaps that's a reflection on the fact that my memory was a little hazy, I apologise.

MR PEARCE: So you are saying today it's possible Simon TUTT asked you to meet with them?

THE WITNESS: It's possible, yes.

MR PEARCE: In any event, you've had a meeting with Mr FREER, you said?
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THE WITNESS: Yes.

MR PEARCE: Who is the CEO of the QRU?

THE WITNESS: Yes.

MR PEARCE: And Mr TAYLOR?

THE WITNESS: Yes.
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MR PEARCE: Whereabouts was that meeting?

THE WITNESS: In my office.

MR PEARCE: What was discussed? What was said and done, can you recall?

THE WITNESS: They talked about a redevelopment they wanted to conduct at Ballymore. They had some documents, I think some plans, and drawings. And they talked about various issues around that redevelopment and that they would like to
40 get state government funding for that development. They talked about a Commonwealth grant which had been promised and revoked and a number of other issues around that.

MR PEARCE: Do you know anything of the circumstances in which the ministerial submission in this matter was prepared for the then minister?

THE WITNESS: Only what I --

MR PEARCE: Only what you've been told, is that right?

THE WITNESS: The last time that I appeared here, yes.

MR PEARCE: You have no direct, personal knowledge of what took place when that document was being created?

THE WITNESS: No, I don't recall having any, no.

10 MR PEARCE: Do you recall the minister announcing the \$4.2 million grant to the QRU?

THE WITNESS: I don't recall her actually announcing it, but I recall the day -- I think there was going to be some event on the QRU calendar and I think it might have been that day or close to that day when the announcement was going to be made.

MR PEARCE: Were you subsequently involved in the preparation of a funding agreement?

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THE WITNESS: The initial discussions about it, yes.

MR PEARCE: Can you just talk us through what occurred there?

THE WITNESS: Look, and this is just going on recollection only, I think I would have been working with Ben KLAASSEN, who was the director dealing with the contract negotiations, and I think I either had a phone call from Simon TUTT or I was talking to him about the negotiations, and we discussed the staging of payments which normally occurs in a contract -- for a major facility.

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MR PEARCE: What was the issue with the staging of payments?

THE WITNESS: Normally, normally contracts for large sums of money -- well, in fact, for smaller sums as well -- are staged so that the recipient must perform a certain number of obligations before they reach their -- often there are three or four different payments. They have to have fulfilled certain things before they actually get to each stage. And in this instance Simon TUTT asked me to have the contract with an up front payment for the first stage.

40 MR PEARCE: Can you tell us how the conversation went, how it progressed?

THE WITNESS: I told Mr TUTT that that wasn't the normal way of doing things, that we normally would stage contractual payments. But he wanted to have the payment made up front.

MR PEARCE: Are you able to put in the first person what was said?

THE WITNESS: He -- I recall discussing in a couple of different ways why the,

why the contract should be made in a staged way but he made it very clear to me that he wanted the payment made up front and it was, yeah, just do it. He just wanted me to do it and he wasn't going to brook any further discussion about it.

MR PEARCE: What I want to know today is something of the background to that conversation, that is what you were doing at the time, who called whom and why it was an issue. What were you doing at the time you had this conversation?

THE WITNESS: I don't recall anything in particular that I was doing.

10

MR PEARCE: What stage had you reached in terms of the preparation of the funding agreement?

THE WITNESS: I think the -- I think the announcement had been made, and I seem to recall, but I can't guarantee, that, that Mr TUTT wanted the contract to be progressed reasonably quickly. And I, I, I may have been talking to Ben KLAASSEN about the contract. I may have, I may have rung Simon or he may have rung me. And I'm sorry to be unclear about it, just to talk to him about the way it was going to progress.

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MR PEARCE: Mr KLAASSEN has given evidence that he was in fact present in your office when you took the call from Mr TUTT. Would you accept Mr KLAASSEN's recollection?

THE WITNESS: Yes, if he says that then I'm sure it's true.

MR PEARCE: Did Mr TUTT say why he was talking to you about this issue?

THE WITNESS: About the up front payment or about the contractual together?

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MR PEARCE: About the up front payment.

THE WITNESS: I don't recall that he -- I don't recall -- I don't recall whether he said why he wanted it or if they needed a bit of a hand. I don't recall any of the context around it because I suppose the main impact on me was the strength with which he was expressing his request.

MR PEARCE: I will come back to that in a moment. Had you already made known to representatives from the QRU that the contract would be in a particular form?

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THE WITNESS: I don't believe so. And I wasn't really having those discussions with the QRU. It was really being undertaken by Ben KLAASSEN because -- that was the standard way that contracts were negotiated, just to nut out the details.

MR PEARCE: In terms of the conversation you had with Mr TUTT, to what level would you ascribe perhaps the demand or the instruction or the request of you? How would you describe it?

THE WITNESS: Very strong.

MR PEARCE: Was it a request?

THE WITNESS: No.

MR PEARCE: How would you describe?

THE WITNESS: It was an instruction.

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MR PEARCE: You endeavoured to put your point of view?

THE WITNESS: Yes.

MR PEARCE: How was that met?

THE WITNESS: It was not -- my, my opinion was not accepted and I was told to just do it, or words to that effect.

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MR PEARCE: Words to that effect.

THE WITNESS: Yes.

MR PEARCE: What did you do?

THE WITNESS: I then asked Ben KLAASSEN to stage the contract accordingly.

MR PEARCE: Were you comfortable about doing that?

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THE WITNESS: No.

MR PEARCE: Why not?

THE WITNESS: I guess the, the policy or the concept behind staging a contract is that you ensure that the money being paid to a recipient is being used to achieve the end result. And I think I had come to learn that over a number of years of funding, particularly major facilities, that organisations often got themselves into trouble and the department may have paid them money and then they wouldn't have had enough left necessarily to actually develop the facility for which the department had funded them. It was really just considered good policy to make sure that they were actually following the chain of events to achieve the outcome.

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MR PEARCE: Did Mr TUTT indicate to you at any time why it might be necessary to provide an up front payment for the QRU?

THE WITNESS: I don't recall that he did.

MR PEARCE: Was it apparent to you from what you knew of the matter that an up

front payment might be required?

THE WITNESS: No, though I do remember -- and I actually don't know whether it was before or after this particular discussion, I do remember Ben KLAASSEN telling me that QRU wanted us to fund the development application process, which is obviously quite a costly exercise. So, I'm -- so I don't know whether -- if that occurred, if that conversation occurred beforehand, I don't know whether I assumed that that might have something -- we wouldn't normally have funded --

10 MR PEARCE: The point of my question is this: But for Mr TUTT's instruction to you?

THE WITNESS: Yes.

MR PEARCE: Were you aware at the time of any reason to vary the standard agreement to provide for an up front payment?

THE WITNESS: No.

20 MR PEARCE: How long have you known Mr TUTT?

THE WITNESS: I think I may have met him a number of years ago through Labor Party connections. But I really -- I may have met him literally and said hello, but I didn't really know him until I -- probably when, when Judy SPENCE became the Minister for Sport, yes.

MR PEARCE: Can you describe for us your working relationship with Mr TUTT?

30 THE WITNESS: Generally speaking it was a good working relationship. He has a very strong and forceful personality which could be quite overwhelming at times. And I certainly was distressed a number of times with, with his manner of dealing with me, but, but then on other occasions he was, he was fine and we had a very productive working relationship.

MR PEARCE: What did you do on the occasions that you had difficulty in your dealings with him?

40 THE WITNESS: Sometimes, but not always, it was possible to -- if he -- well, I guess there were two, probably two levels. One of them was the way in which he might deal with me and, two, might have been the sort of things that he was asking me to do. I guess in terms of the way he spoke to me, sometimes it was possible to say to him afterwards that I found that interaction very upsetting and unnecessary and that it had, you know, it had an impact on me personally. And he always apologised if I made that point. Sometimes it wasn't possible to make that point with him. And I guess on the other level if he asked me to do things and I, sort of, just class this as outside of this issue of the contract at the moment, sometimes I could say to him that I really didn't -- were things of the ilk of a contract that I didn't really agree with what he was saying and I would give my reasons. It wasn't

always possible to say that, but I tried to do that as often as possible. I think that was my job to do that.

MR PEARCE: Apart from this occasion, were there others where he endeavoured to instruct you to do certain work?

10 THE WITNESS: It was more about, from recollection, it was more about his, his involvement in the minutia of my job where he had particularly strong views about a range of things, and I probably wouldn't have expected to be taking instruction on really detailed things that were going on in my job.

MR PEARCE: Why is that? Because of his role as a ministerial advisor or simply because he was someone not within the office?

20 THE WITNESS: Yes, both I think, as a ministerial advisor, I suppose I didn't expect someone to be getting involved in day-to-day issues or -- I suppose from two points of view, that you wouldn't really have time to do that and that that's the executive director's job to actually do that as a public servant. But, yes, there might be things that a minister's office wouldn't necessarily be taking an interest in.

MR PEARCE: One of the reasons the CMC is taking such a close interest in this matter is because of the issue of ministerial advisors or the risk that ministerial advisors will interfere in the work of public servants.

MR FARR: Russell, can you keep your voice up.

30 MR PEARCE: One of the reasons the CMC is taking an interest in this matter is that this hearing provides us, if you like, the opportunity to explore that issue of ministerial advisors imposing themselves or interfering with the work of public servants; do you have a view on that matter at all, particularly in the light of your dealings with Mr TUTT?

THE WITNESS: Yes, I think -- I certainly think it's fair enough for a ministerial advisor to express their views a range of opinions -- about a range of issues. But to seek the advice of the bureaucracy on whether those things are appropriate or to be -- to -- you know, whether there are things that they need to know about that before they could proceed with a decision.

40 MR PEARCE: Is there a boundary somewhere? What occurred here is, according to your evidence, Mr TUTT instructed you to do something that you would not otherwise have done.

THE WITNESS: That's right. That's certainly a boundary and I suppose I pause there because there's -- it's how long is a piece of string in a lot of ways. But that certainly was an instance where I would expect that if there was a particular reason that the department didn't know about where the payment should have been paid up front, then there would be a discussion about that, yes. So that is certainly an example.

MR PEARCE: You didn't consider that instruction to be proper?

THE WITNESS: No.

MR PEARCE: Is that correct?

THE WITNESS: No.

10 MR PEARCE: Did you complain to anybody or alert anybody to the fact that you were doing something you felt uncomfortable about?

THE WITNESS: I normally, if -- most of my interactions with --

MR PEARCE: I'm concerned about this matter now.

20 THE WITNESS: Yes. I don't recall, aside from Mr KLAASSEN, I don't recall who I had a conversation with about that. If I can just state, though, I would quite consistently after a conversation with the minister's office, particularly on something out of the ordinary, I would make sure that the Deputy Director-General or the Director-General was aware of that conversation, but I can't tell you that I physically recall having that conversation with either of them about that particular issue.

MR PEARCE: In respect of your associations or interactions with Mr TUTT, were there occasions where you raised concerns with either the Deputy Director-General or the Director-General?

30 THE WITNESS: About?

MR PEARCE: About Mr TUTT.

THE WITNESS: Yes.

MR PEARCE: On how many occasions do you think you raised your concerns in that way?

THE WITNESS: Is that generally about Mr TUTT?

40 MR PEARCE: Yes?

THE WITNESS: A number. I couldn't even tell you a number. Frequently.

THE PRESIDING OFFICER: Is that with both or with one or the other?

THE WITNESS: One and/or both.

MR PEARCE: Was anything done about your complaints, to your knowledge?

THE WITNESS: No, and -- I guess if I can just be clear about the wording, they weren't -- I wasn't making formal complaints. I would let them know if something had occurred which I thought was out of the ordinary, but mostly it was an expression of frustration or if I was particularly distressed about something. I had a good working relationship with both of those gentlemen. As my immediate superiors, they were very supportive of the job I was in. It was more really discussions about my frustrations.

10 MR PEARCE: Did either the acting Deputy Director-General or the Director-General, to your knowledge ever speak to the staff generally about what was expected of their dealings with the minister's office?

THE WITNESS: The staff reporting to me?

MR PEARCE: Well, what you know. Do you know whether anything of that sort was ever said to staff? That is staff generally, not just to you.

20 THE WITNESS: No, I -- I think, I think the Director-General -- possibly and I'm sorry, this is recollection only -- I think he may have actually spoken to staff and maybe even sent out some memos encouraging everybody to provide their advice in a timely fashion and to be professional at all times. And probably it was about -- if there was any contact from the minister's office, to funnel that upwards, basically.

MR PEARCE: Within the department?

THE WITNESS: Yes, yes.

30 MR PEARCE: That's all I have of Ms FARMER, thank you, Mr Chairman.

THE PRESIDING OFFICER: Mr Farr, do you want to ask questions?

MR FARR: Could I go last, if I do? Thank you.

THE PRESIDING OFFICER: I'm in your hands. If you prefer to go that way, I'll do that. You can go now and later if you like.

MR FARR: I have nothing at the moment.

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THE PRESIDING OFFICER: Yes. Mr CARMODY.

MR CARMODY: Ms FARMER, just so I understand what you are saying to the Commission, you instructed a junior, your junior, Mr KLAASSEN, to give practical effect to what you regarded as an improper instruction from somebody who had absolutely no legal authority over you; is that right?

THE WITNESS: You could phrase it that way.

MR CARMODY: Do you want to have a chop at phrasing it a better way?

THE WITNESS: Yes. I was given a very clear and intimidating instruction by the Chief of Staff of the minister's office to, to put together a contract in a particular way. It was not an illegal way, it was just not considered good practice by the department. And, yes, I did ask the officer then to carry that out.

10 MR CARMODY: You passed on to Mr TUTT that in your view what he was asking you to do was unusual?

THE WITNESS: Yes.

MR CARMODY: Contrary to policy?

THE WITNESS: Yes.

20 MR CARMODY: And that's what you mean by the term "improper"; you don't mean illegal, you mean inadvisable.

THE WITNESS: Yes.

MR CARMODY: But having given him the benefit of your opinion about that, he insisted that it be done his way, right?

THE WITNESS: That's right.

MR CARMODY: And again, nothing wrong with that?

30 THE PRESIDING OFFICER: That might not be a question finally for this witness.

MR CARMODY: All right. I will withdraw the question. So you felt intimidated by Mr TUTT?

THE WITNESS: I did -- on that occasion.

MR CARMODY: On that occasion?

40 THE WITNESS: Yes.

MR CARMODY: Is that why you asked Mr KLAASSEN to put in the up front payment clause?

THE WITNESS: I didn't feel there was any other option, no.

MR CARMODY: At the end of the day it's for the minister to decide what grants to give and on what conditions, isn't it? You just advise her.

THE WITNESS: That's right.

MR CARMODY: And so does he?

THE WITNESS: Mr TUTT?

MR CARMODY: Yes.

THE WITNESS: Yes.

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MR CARMODY: That's his role?

THE WITNESS: Yes.

MR CARMODY: And you implement departmental policy.

THE WITNESS: That's right.

MR CARMODY: And you've been a policy advisor yourself to ministers?

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THE WITNESS: That's right.

MR CARMODY: And you have an overlapping but sometimes different policy role? There are other considerations that minister's advisors have that public servants don't have?

THE WITNESS: I'm sorry, could you say that again?

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MR CARMODY: There are political considerations to be taken into account in a minister's office that public servants have nothing to do with?

THE WITNESS: That's right.

MR CARMODY: At the end of the day, to be perfectly frank, your function was to give the best advice you can to the minister, make sure that things are done in a way that won't put egg on anybody's face, but she's the one who has to take the risks and bear the consequences if she goes against your advice?

THE WITNESS: That's right.

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MR CARMODY: And there would be nothing improper with her going against your advice, would there?

THE WITNESS: No.

MR CARMODY: Could the witness see Exhibit 17, please, Mr Chairman. That's the funding agreement.

THE WITNESS: Would you like me to read that?

MR CARMODY: No, I'm going to direct you to parts of it. Page 16, schedule A in particular. Do you see the project is described as Ballymore Redevelopment?

THE WITNESS: Yes.

MR CARMODY: Incorporating the construction of a pool and field; do you see that there?

10

THE WITNESS: Yes.

MR CARMODY: So it was apparent to anyone in the department that the funding was for the Ballymore redevelopment and that part of that redevelopment included a pool and a field?

THE WITNESS: Yes.

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MR CARMODY: The commencement date of the project is 31 July 2008, two weeks before the execution of the document. Do you know why that date was put in there?

THE WITNESS: Why that what, I'm sorry?

MR CARMODY: Why that date was put in there, 31 July?

THE WITNESS: I don't recall. I don't know that I ever knew but I certainly don't recall now.

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MR CARMODY: It was after the approval. Maybe it was the Executive Council, was it?

MR PEARCE: Yes.

MR CARMODY: All right. Thank you. Can you go down under item 3, the fourth heading there: Submission of claims for funding, the recipient create a Tax Office, agreement had to be submitted in support; do you see that?

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THE WITNESS: Yes.

MR CARMODY: That obviously couldn't apply to the first payment, payment 1, on the execution of the funding agreement, could it?

THE WITNESS: I don't recall and I'm sorry, I wasn't involved with the administration of the actual contracts, either. So I --

MR CARMODY: But you were the one who told Mr KLAASSEN at least to make sure that payment 1 was up front?

THE WITNESS: Yes, that's correct.

MR CARMODY: And the way he chose to do it up front was on execution?

THE WITNESS: Yes.

MR CARMODY: And no other condition had to be satisfied, according to the agreement, other than the execution of the funding agreement --

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THE WITNESS: Yes.

MR CARMODY: -- for payment 1 to be payable?

THE WITNESS: Yes.

MR CARMODY: And you knew from, I'm not sure what source, but you knew at least or believed that the QRU needed up front funding to pay for development related DA costs, didn't you?

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THE WITNESS: I didn't know that. As I said before, I recall having a conversation at some stage about a development application. I don't recall whether I did or didn't link it. I, I was never fully aware -- I have never been told specifically by anyone why that up front payment was required. I think I may have surmised that there was some relationship to the development application, but I think that was a conjecture from my own knowledge.

MR CARMODY: I think the evidence establishes that the DA hadn't even been applied for at the time that the grant was approved, right? Did you know that?

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THE WITNESS: I don't recall, I'm sorry.

MR CARMODY: Do you know whether Mr TUTT gave you by way of explanation for the need for the up front payment that it was related to the development costs?

THE WITNESS: I don't recall that he told me the reason.

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MR CARMODY: Let's go back to the policy for requiring payment in arrears, if you like, after expenditure and on acquittal. That's just a safety net for the department, isn't it, really? It's to make sure there is a real expenditure and that the expenditure is related to the approved funding?

THE WITNESS: That's right. And I suppose in a way also it shows the capacity of the organisation to actually undertake the project, too.

MR CARMODY: In this case what we know from the material that we have seen -- who was your acting DG at this time?

MR PEARCE: MATHESON.

MR CARMODY: Mr MATHESON and Mr KLAASSEN had doubts about the capacity for the QRU to build the pool for the amount that they estimated of 1.6. Did you know that?

THE WITNESS: I remember -- I don't remember a particular conversation about the pool.

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MR CARMODY: One of the explanations in the ministerial briefing note was, well, effectively, they have applied for 4 million on the basis of doing three things. Mr KLAASSEN said that one of the other things was unusual anyway and would normally not get funding. But in any event that was excluded, that was \$0.9 million and then there was a top-up of \$200,000. So \$4 million became \$4.2 for targeting of two bits of development. And that gave them then on the figures at least, so far as we can tell, a leeway of \$1.1 million over and above their estimated costings; do you see that? So it seems then that reading between the lines, Mr MATHESON seems to have directed his mind to, in his submission to the minister, the ability of the QRU to meet the estimated costs within the terms of the funding sought, okay?

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MR FARR: With respect, Mr Chairman, I don't know that this witness can possibly speak on what Mr MATHESON was directing his mind to.

THE PRESIDING OFFICER: I think there is a lot of force in what you say, Mr FARR.

MR CARMODY: We draw inferences all the time. What's wrong with --

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THE PRESIDING OFFICER: What's the point of this witness drawing this inference? You can draw it and make a submission on it at an appropriate stage if you think it's warranted.

MR CARMODY: All right. I will leave it till later. But in any event, the purpose of that policy is to ensure that the grantee can meet the commitments for which the grant was given, right?

THE WITNESS: Yes.

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MR CARMODY: And so one of the things the department needs to be satisfied about is that they can do that?

THE WITNESS: Yes.

MR CARMODY: And here, whether they can do that or not -- and you may not be aware of this -- but tell me if you're not, but on the papers whether they can do their field and their pool depends on what happens between now and 31 June 2011 and what they do with the other instalments of the grant yet to come in 2009 and

2010, right? So that's what happens, isn't it? They sought \$4 million, \$4.2 million and then it's a staged payment --

THE WITNESS: Yes.

MR CARMODY: -- over three years. And they've got three years to do the development. Within the total of \$4 million or \$4.2 million that was granted?

THE WITNESS: Yes.

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MR CARMODY: And that's a matter for them to work out how they do it as long as they do it within time and within budget.

THE WITNESS: Normally -- and look, I don't -- I would need to look at this funding agreement. Normally, what the deliverables are within each stage for payment are agreed upon between the department and the recipient.

MR CARMODY: But it's not here, is it?

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THE PRESIDING OFFICER: Perhaps she should look at schedule C, a specific deliverable set out with time lines, a lot of which on my understanding appear not to have been met.

MR CARMODY: Which one exactly, Mr Chairman?

THE PRESIDING OFFICER: Have they achieved the approval by 31 March 2009, number 14? Go out to tender by June of 2009.

MR CARMODY: Is there evidence of any of this?

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THE PRESIDING OFFICER: I don't know. It's your client. You are saying that they can do these things by 2011, and I'm suggesting that --

MR CARMODY: You said that these things haven't been met.

THE PRESIDING OFFICER: Your submission you were putting to this witness is they can do whatever they like as long as they complete the building by 2011.

MR CARMODY: You are saying that's wrong?

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THE PRESIDING OFFICER: I'm suggesting that rather than put something that on the face of the document appears wrong, rather than put that to this witness, perhaps she should look at the document, and formulate your question so that they coincide with the terms of the document.

MR CARMODY: Do you know anything about the terms of the document, schedule C?

THE WITNESS: I don't recall seeing this, but I, I may have, but I don't recall.

MR CARMODY: Well, maybe you can't help me. That's all I have, thank you.

THE PRESIDING OFFICER: Yes, Mr Devlin.

MR DEVLIN: Ms FARMER, turning to that conversation on the telephone with Mr KLAASSEN present, is this the position that Mr TUTT was conveying to you FREER's or the QRU's request for an up front payment instead of the staged payment; is that as you understood it?
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THE WITNESS: I'm sorry, do you mean that did Mr TUTT say to me that's what the QRU have asked for; is that what you are asking?

MR DEVLIN: FREER or the QRU, yes; is that how it was put to you?

THE WITNESS: I don't recall that he mentioned the QRU requesting that.

MR DEVLIN: Is it possible that that's the way the conversation opened up, that FREER had expressed to his knowledge this preference for the up front payment instead of the staged process.
20

THE WITNESS: I don't recall that.

MR DEVLIN: You don't recall one way or the other?

THE WITNESS: No, I don't. I don't.

MR DEVLIN: Is it possible that you responded along the lines that it was not normal practice to do that.
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THE WITNESS: Yes.

MR DEVLIN: Is it possible that the tone of Mr TUTT was along the lines of, "Well, just sort it out with FREER", or "Sort it out"? So it was dismissive in that way?

THE PRESIDING OFFICER: Well, which of those two, "Sort it out with FREER" or "Sort it out"?
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MR DEVLIN: "Sort it out".

THE WITNESS: It wasn't really "Sort it out", it was "Just do it".

MR DEVLIN: I just want to remind you of the words you chose when you were examined on oath last time, just to see if you can help us with this. It's at page 265 of the transcript, line 12. You said at about line 8, "He asked me to pay it up front and I said that wasn't the normal way that we did it, so he instructed me to." When

asked what language he used et cetera, you said: "Oh, it was, it was, it was of the ilk of 'just do it'. I, I don't think they were the exact words."

So I'm putting to you, do you accept they were the words you used when you were last examined?

THE WITNESS: That's right.

10 MR DEVLIN: I'm just putting to you the possibility that what he said was, "Just sort it out".

THE WITNESS: I see a difference between "Just sort it out" and "just do it. "Just do it" -- and the manner in which -- and as I said, I don't recall if they were the exact words. The very, very clear intent behind what Mr TUTT said was that he wanted it to happen the way he had requested -- instructed me to do it.

MR DEVLIN: You said today you found that intimidating; is that right?

20 THE WITNESS: The manner in which it was said, yes.

MR DEVLIN: The manner of the delivery, intimidating. I want to remind you of something else you said when you were examined last time. You say this at page 259 -- I had better give you the context. You were asked at line 10: "Can I just get you to tell me what your relationship was with Mr Simon TUTT at about this time, that is, about mid 2008." You said: "He -- as the Chief of Staff to the Minister for Sport, he was the person to whom I guess I reported directly. I had day-to-day contact with him on any range of issues that were occurring. So, he I guess was my first point of contact in dealing with the minister's office."

30 Fair enough with that? That's what you said last time.

THE WITNESS: Yes.

MR DEVLIN: You were asked: " Was that a routine thing or was the routine that you would report through your Deputy Director-General to him? What was the standard method of communication?" Your answer: "It really depended on the issue. He would, he would more often than not go through the Deputy Director-General. But on, on a range of issues, perhaps more operational, he would -- particularly on day-to-day-type issues I suppose for want of a better term,
40 he would speak directly to Tracy O'BRYAN."

Are you happy with that?

THE WITNESS: I'm sorry. I missed that error in the transcription. He would speak directly to me or Tracy O'BRYAN. Yes, yes.

MR DEVLIN: That's fine.

Question: "I am concerned to ascertain whether or not there was any rule or rules in place regarding departmental officers communicating with the minister's office." Your answer: "I'm not aware that there were any written protocols about it. I always operated on the fact that, if the minister's office contacted me and I dealt with them on any issue, that I would always make sure that the Deputy Director-General or the Director-General, whoever was most appropriate, knew about it."

Do you accept that you made that answer?

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THE WITNESS: Yes.

MR DEVLIN: Well, then I'm just putting to you this: If the communication was, as you perceived it or as you received it, a direction, and if it was delivered in an intimidating way, that not only did you apparently not report the direct contact as a matter of normal process but nor did you report the manner of that contact or the mood or tone of that contact either on this occasion.

THE WITNESS: Would you like me to respond to that?

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MR DEVLIN: Yes, please.

THE WITNESS: I make a couple of points about that. What I just said before in my evidence was that I don't recall the specific conversation that I had with the Director-General or the Deputy Director-General about that conversation. I did say that I -- it would be unusual for me not to have. However, in order to be absolutely truthful, because I can't see in my mind's eye that actual conversation, I am being absolutely truthful in telling you that I can't say how or when it happened.

30 On the other matter, of the intimidating behaviour, there were really so many instances of that that I wouldn't necessarily have reported intimidatory behaviour on every single occasion.

MR DEVLIN: But you did report it on other occasions? You said earlier.

THE WITNESS: Yes.

40 MR DEVLIN: Now, just one other thing to clear up the role that you were fulfilling as at the time of this conversation. You quite properly reported to the Director-General your intention to seek preselection --

THE WITNESS: Yes.

MR DEVLIN: -- for parliament? And as a consequence of that the Director-General determined by 27 June 2008 that you wouldn't be involved with any funding round assessments effective immediately?

THE WITNESS: Yes, yes.

MR DEVLIN: So that was the -- you were playing not a funding round assessment role as at the time you got that phone call; is that right?

THE WITNESS: Yes. I think the funding had already been endorsed by the minister at that point.

MR DEVLIN: Very well. The way you received what Mr TUTT said to you, you received it as a direction emanating from the minister's office; is that the way you received it, putting aside for a moment the manner of its delivery?

THE WITNESS: The issue about the up front payment?

MR DEVLIN: Yes.

THE WITNESS: Yes.

MR DEVLIN: Very well. Thank you.

20 THE PRESIDING OFFICER: Mr FARR.

MR FARR: I have no questions, thank you.

THE PRESIDING OFFICER: Mr PEARCE.

MR PEARCE: Just to pick up on the one point regarding what you said here on the previous occasion. Just re-read the passage Mr Devlin read to you. You said, to this effect, you said these words, "Oh, it was, it was, it was of the ilk of 'just do it'. I don't think they were the exact words."

30 If you remember the next question and answer. I put this proposition to you: "Whatever words he used, it left you with the clear impression that you were being instructed to do it and you had no alternative; is that the case?" Do you recall answering "yes"?

THE WITNESS: Yes.

MR PEARCE: And that is the case, is it?

40 THE WITNESS: Yes.

MR PEARCE: That's all I have.

THE PRESIDING OFFICER: Yes, thank you, Ms FARMER. Thank for your attendance. You are excused. Thank you, Mr FARR.

There no other witnesses listed for today?

MR PEARCE: Not today, Mr Chairman. Tomorrow morning we will have Mr MATHESON as our first witness.

THE PRESIDING OFFICER: All right. We will adjourn until 10 am tomorrow morning.

MR CARMODY: Mr Chairman, did you give my consideration to my request before lunch for the provision of a chronology of events?

10 MR PEARCE: I will arrange for that to be done. I have had a quick look at the document. I don't think there is anything that needs to be taken out of the document, subject to what Ms HARRIS might have to say about it. That will be prepared and delivered to the parties as soon as possible.

In addition, I asked questions this morning concerning the audit report prepared by the department. I have arranged for copies to be made and they will be distributed as well. This document only came to our attention recently. It came to the Commission a couple of weeks ago. It wasn't in the bundle of documents we've distributed and I propose to tender it through Mr MATHESON. That will be done
20 tomorrow. But the copy of the document will be distributed this afternoon.

THE PRESIDING OFFICER: All right. No other housekeeping matters? Then we will adjourn until 10 o'clock tomorrow. Thank you.

THE HEARING ADJOURNED AT 3.21 PM
