

29/84

No. of 198

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL
FROM THE SUPREME COURT OF NEW SOUTH WALES
COURT OF APPEAL

IN PROCEEDINGS CA 113 OF 1982

BETWEEN:

TATMAR PASTORAL CO. PTY. LIMITED
and
PENRITH PASTORAL CO. PTY. LIMITED
Appellants (Plaintiffs)

AND:

HOUSING COMMISSION OF NEW SOUTH WALES
Respondent (Defendant)

TRANSCRIPT RECORD OF PROCEEDINGS

PART I

Volume II

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KENNETH JOHN PARKINSON
(Sworn, examined as under)

HEMMINGS: Your Honour Mr. Parkinson has prepared his report dated 23rd of September 1981 which is exhibit J. On page 13 there is a typographical error and might I hand up a retyped copy of pages 13 and 14. Your Honour will see that on page 13 of the original report it's got 649, it should be 694. 10

HIS HONOUR: Is that the only change?

HEMMINGS: There's a subsequent change in the total. It's 694,800 in the first line and the total value then becomes \$7,717,420 and then that is say \$7,717 less \$100,000, \$7,617,000.

HIS HONOUR: Yes.

HEMMINGS: Q. Your name is Kenneth John Parkinson? 20
A. Yes.

Q. I think you reside at 116 Hemphill Avenue, Mount Pritchard? A. Yes.

Q. You are a director of Kenneth J. Parkinson and Associates, Real Estate Valuers? A. Director of Oscars(?) which is the owner company of Kenneth J. Parkinson.

Q. And you carry on practice at 173 Bigge Street, Liverpool? A. Yes.

Q. And also at 20 Bond Street Sydney? A. Correct yes. 30

Q. Prior to 1961 you were a cadet valuer and salesman in the employ of M.J. Davis and Company? A. That is correct.

Q. And you qualified as a valuer under examination of the Real Estate Institute in 1961? A. Yes.

Q. And what type of company was M.J. Davis and Company? A. It was a real estate development, selling, auctioneering, valuation company.

Q. And what were your activities at that time? 40
A. Before 1961 I was a cadet valuer, cadet salesman, cadet auctioneer and in 1961 I became one of the company's valuers and in 1962 I became the company's auctioneer and also was involved in sales.

Q. And between 1961 and 1966 what was the general nature of your activities? A. In those I just mentioned, auctioneer, predominantly valuation but I was also the company's auctioneer and did some selling as well.

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Q. And as auctioneer what type of work were you involved with? A. One of our clients for instance was Custom Credit Corporation Limited and we used to do all of their mortgagee auction sales together with Mutual Acceptance and a few other finance companies in those days. We used to also auction commercial, industrial and residential properties for other parties as well as properties owned by the Davis Group themselves. 10

Q. And what was the extent of your involvement in acquisition sale or valuation of land in the western sector, in particular around Penrith? A. I practised in that area in fact in the early days in the early 1960's the majority of valuations would have been in that Kingswood, Penrith, Blue Mountains down to Liverpool area because that was - and Blacktown, and Blacktown was only poultry farms in 1958, that was the main area of growth in Sydney back in those early days. 20

Q. In 1966 you resigned from M.J. Davis and Company?
A. That is correct.

Q. And you took up employment with the Department of Main Roads? A. That is correct.

Q. In what capacity were you employed with the Department of Main Roads? A. As a valuer.

Q. And in what particular fields of valuation were you engaged? A. I was engaged in valuation and negotiation for acquisition of property in particular the Western Distributor through the city, the William Street underpass and also south to the Victorian border at Eden, although I did go as far west as Wilcannia and Broken Hill on another occasion. 30

Q. Predominantly in the valuation of claims for compensation for the resumption of land for freeways?
A. Well no, for the acquisition of land. It was always in those days - I think it may have changed slightly now but in those days it was the ideal of the Department to be able to negotiate a settlement without the need to resort to resumption. 40

HEMMINGS: Q. As far as the DMR was concerned did they negotiate and resume only after a failure to be able to negotiate a price? A. Yes, unless there was a deal of pressure brought on politically which caused resumption to come first, but normally yes, all attempts were made to negotiate before resumption action was instituted.

Q. And was it part of your function to negotiate the acquisition of land? A. Yes. 50

Q. During the time that you were with the Department

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of Main Roads did you undertake any particular study?

A. Yes I undertook research into the valuation of petrol service stations and their future in Australia and was awarded the Hawkins Memorial Prize for my thesis on that subject.

10

Q. And in 1970 were you asked by M.J. Davis and Company to rejoin their company? A. Yes to open their city office.

Q. And you did so? A. Yes.

Q. And between 1970 and 1974 were you engaged by that company? A. Yes I was.

Q. And what was the nature and extent of your activities for the company during that period? A. Apart from the overall management situation in their city office I was primarily involved in valuations and auctioning of properties, a large percentage of which were in the western region of Sydney, and also those which we auctioned were in the same general area although we did cover the whole of the State.

20

Q. And in particular did you have a deal of activity in the western area, in particular the Penrith area?

A. Yes, Penrith, Blacktown in that period as distinct from the early 1960's the early 1970's the growth areas were from Liverpool and from Penrith because Blacktown had largely been developed by that stage so yes there was, a fair concentration of our work was in this area but as I say we did also cover the rest of the State.

30

Q. And from 1974 on have you been in private practice?

A. Since the beginning of 1975 yes.

Q. And what's been the nature of your experience in that period? A. Real estate valuation and advisory work associated with that.

Q. Have you been involved in properties seeking rezoning? A. Yes I have.

Q. In the western sector? A. Yes.

40

Q. In the Penrith area? A. Yes.

Q. We go to exhibit J which is your report and can I take you first to page 4. On page 4 under the heading Topography you deal with the gently undulating nature of the land and the views. A. That's correct.

Q. Why do you specifically refer to those two items?

A. Well South Penrith north of the expressway in the area bounded by Bringelly Road and Mulgoa Road, the

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Interim Development Order No. 28 area I think it's been referred to, is generally a large flat plain whereas the subject land from sections of it and the better sections, overlooks that flat area and in fact this subject resumed land obtained up to 360-degree views in sections on the knolls and that, which make it superior land to my mind than the South Penrith area and generally the Penrith area. 10

Q. And any of those views towards the river and the mountains? A. Yes you can see from - particularly from the south-eastern section there's a couple of high knolls where you can see as far as Kurrajong and up to the mountains up that way.

Q. And where is in your opinion the most attractive area of land for urban development within the resumed - A. In the south-eastern corner there's two beautiful high areas there where you obtain these 360-degree views and they would have to be if not the prime, amongst the prime land for residential purposes in my opinion in Penrith. 20

Q. You note the distance from Penrith urban area and the outlook over the golf course? A. Yes.

Q. Is the proximity of the golf course of any relevance? A. Well it's always pleasant to look over a golf course from a residential area. 30

Q. From the map on the easel the golf course is the black area, the dark hatched area in the north-eastern corner of the subject land, is that --- A. That is correct yes.

Q. On page 5 you deal with the Prelude to a Plan. What was the relevance of that plan in 1967? A. It was a lead-up to the future orderly development of the Sydney area.

Q. And then the Sydney Region Outline Plan itself in 1968? A. Yes. 40

Q. And how do you say the marketplace regarded the Sydney Region Outline Plan? A. Well I think it certainly viewed it as what it said, an outline plan.

HIS HONOUR: He talks about this on page 9.

HEMMINGS: Yes your Honour.

Q. Do you want to say anything more than you say in the second-last paragraph on page 9 in this regard? A. No that's what I was leading on to in my question.

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Q. You say on page 5 the freeway was opened, first section in 1971 and the second section in 1973? A. Yes.

Q. And then you refer to the acquisition of a school site in Garswood Road. A. Yes.

Q. That's towards the top of the hill in Garswood Road is it not? A. Yes towards the western end and up in the high section on the southern alignment of Garswood Road. 10

Q. Why do you refer to that? A. I think it is part of the overall field, if I can express it that way, of this area including the subject resumed land and the Garswood Road land in particular.

HIS HONOUR: Q. Where is the school, I'm sorry?

A. It's on the southern alignment of Garswood Road your Honour just towards the western end of Garswood Road up near Luttrell Street. It adds to the general feel of the area where from the subject resumed land and the Garswood Road resumption transactions you look to the urban area, and it is not normal unless it is an agricultural high school or some such thing, to see a school stuck in an area where there's not going to be any further urban development. It is a very small factor, but it just adds to the general feel of this area. 20

HEMMINGS: Q. Yes, and then you refer to the water treatment plant? A. Yes, well that is quite visible from many sections of the subject resumed land. 30

Q. In page 6 of your report: During the early 1970s rapid urban development was occurring at South Penrith, and developers were purchasing large tracts of rural land at this site for future development purposes.
A. Yes.

Q. And what was the nature of the activity of developers, in your view, in the western sector, in this locality, in 1972, 1973? A. I'm sorry, I don't quite -- 40

Q. What was the nature of the activity of developers in 1972 and 1973 in Mulgoa? A. They were indifferent, stocks of land were quickly running out, and zoned land was quickly running out, and to secure their future it was necessary that they bought in advance of requirements, and advance of zoning, to enable their activities to continue at a future date.

Q. Were those activities evident in non-urban zoned land in close proximity to urban zoned land? A. Yes, that was the - it depended on proximity to services or ability to service. It depended on its closeness to 50

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transport facilities, so yes, certainly they were worth more than the more remotely situated parcels.

Q. Was there something you could observe about prices being paid for non-urban land related to the distance the land was from either zoned urban, or potentially zoned urban land? A. I think yes, certainly, anybody with experience in real estate would be - I think have to agree that land that is within view of urban development, or urban zoned land, certainly realises a far higher price, because the potential becomes more obvious to everyone, not just to the few that if they realise that if they secure enough land they can achieve a rezoning. 10

Q. And does that apply whether the land is in fact marked with some urban potential? A. No, for instance the land that I had rezoned at Emu Plains was never marked for urban in either the Sydney Region Outline Plan or the Penrith Planning Scheme map. 20

Q. You deal with the owners retained a firm of consultants, and you looked at those proposals? A. Yes.

Q. Page 7 of your report: The Market Situation. How would you describe in general terms the market conditions that existed in 1973, so far as it relates to the subject land? A. It would have been very sought after, because the problem was getting available large holdings, and in this area that I've talked about earlier, the Liverpool-Penrith development into the urban areas, you have a great fragmentation of non-urban lands into 5-acre, 10-acre parcels, and it is not economical or possible to apply generally for release of those lands. 30

Q. And in 1973, I'm speaking generally, and I'll take you to schedule A in a moment, but in 1973 in your view was there an escalation month to month in land costs? A. Yes, our sales - we were selling properties to people who specialised in making their living from simply buying property and putting it back on the market about 2 months later and making a profit. That was quite a common form of real estate transaction in 1973. 40

Q. Did that create problems in the marketplace for purchasers as to the time within which they could negotiate an acquisition of a parcel of land? A. Yes, if you didn't enter into a contract or an option, you usually contract because people weren't keen on options with the rapidly rising market position, unless you could enter into a contract, the property would be gone before you could secure it. 50

Q. Would that apply particularly in 1973 as compared to 1972? A. It was evident in 1972, but in 1972

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people involved in the buying and reselling type of activity, as distinct from the developer purchaser, but they would have had to hold their property longer than say the 2 months in 1973, they would probably have had to have held it 4 or 5 months to have resold and made a profit. 10

Q. But you draw a distinction between 1973 in that situation? A. Yes, I think that is evident by the sales on sales schedule B.

Q. Yes, well then if we can go to the - first of all you want to go to schedule A do you not? A. Yes.

Q. I'm sorry, is it schedule A or schedule B to illustrate this point? A. No, schedule B I think demonstrates the difference between 1972 and 1973, the point we were just talking about. 20

HEMMINGS: If your Honour would go to schedule B, to the back, your Honour.

HIS HONOUR: Yes.

PARKINSON: A. And I think sale A is a sale of property at Casula near Liverpool of some 84 acres, which was shown as being special uses under the Sydney Region Outline Plan, I act for the vendor to Stocks and Holdings there, and I act for Kawacka(?) the purchaser from Stocks and Holdings, and from my enquiries I haven't been able to ascertain if there's anything wrong with these sales, they were open market transactions as far as those two parties were concerned, but Kawacka bought it, and zoned non-urban under the Liverpool Planning Scheme, but proposed special uses under the SRQP, and there is an increase there between the first purchase and the second purchase of 34.4 per cent in 1.5 months, in 1973. Then the next 3 sales shown on that page are sales and resales of the one property, which is the property at the north-eastern corner of the map up there, the Lanham's Laundry-ASL sale, and you'll see that the percentage increase during 1972 is less than what it was in 1973, but it was still very evidence. 30 40

HEMMINGS: Q. And the first one, sale A - the last sale was towards the end of July was it not? A. I'm sorry?

Q. The last sale? Under A? A. Yes. Yes, I felt that was useful if one looks at the Kulnamock sale, a private sale as distinct from the resumption transaction.

Q. Yes, well then there would be a difference would there not, between the quality of these various parcels of land as compared to the subject land, would there not? A. Yes, if I had to compare either of those two to 50

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the subject resumed land, I would be comparing sale A, because it has views, it has undulating country, it has some watercourses, the subject resumed land has a transmission line easement, that has co-axial cable transmission - co-axial cable easement, the co-axial cable to Canberra, but Liverpool was selling for possibly about 20 per cent above the South Penrith area, but topographically then I feel there is a comparison there we can make that adjustment. 10

Q. Yes, and the ASL land - would you regard that as being inferior to the subject land? A. There is no similarity topographically between the ASL land and the subject resumed land. The only similarity between the ASL land and the subject resumed land in my opinion is that the ASL land was a large parcel of non-urban land, not only outside the - well outside the SROP. 20

Q. Now going back to your report. In your primary approach to valuation, you haven't actually tried to assess the percentage escalation, is that so? A. No, I examine sales outside the resumption area not only of the resumed land, the resumption area which was Kulnammock, Gaza Road area, and around the subject resumed land, but I also examined a number of sales in the Orchard Hills area and the St. Clair area, and the ASL sale, and the sale at Casula, and I felt that in view of the number of resumption sales - transactions in the area, and their uniformity, they didn't necessitate adjustment for creep, because they were transacted either at or after the date of resumption of the subject land, and I felt that I could rely on those resumption transactions as they were supported by to a large degree the sales outside the area. 30

Q. And some of the resumptions that you've looked to - the settlements, are in 1974 are they not, in fact in July 1974? A. Yes. 40

Q. By July 1974 what had happened to the market?
A. It had certainly slowed down, I wouldn't agree that it had gone backwards at all, but it had certainly slowed down.

Q. Well then if you were using settlements in July and September, and comparing them with sales outside the area, what does it indicate to you as to the evidence available to you on escalation at least up until the date of resumption of the subject land? A. You mean the escalation in the resumption prices? 50

Q. Yes. A. Well there is no evidence in the resumption transactions of an escalation after August 1973, because you get similar rates per acre, from the 1973 resumptions to the 1974 resumptions; in sale 1 on

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schedule A there was an increase in the resumption price transaction compared to the prior private sale that is shown there, at 18.16 per cent. I would have expected that escalation to have been slightly higher than that.

Q. Thank you. Now it was put to another witness, now you may or may not have been present, that whether or not there was a cash inflow or outflow to the nation was reflected in the escalation of land prices, do you agree with that ... (inaudible) ... A. Yes. 10

Q. What do you say about such a proposition?
A. Well it may affect or it may not affect, property is different to most commodities, it is different to script or to various other things, inasmuch as you can't manufacture it, there is a limited supply and if there is a demand that determines value. Certainly the availability of finance can have a slowing down effect on the inflation in property, so in an indirect way it could have some effect, but it need not necessarily do so, it depends on - for instance, if there hasn't been any release of land for urban purposes for 10 years, and those outside situations occur, I feel the real estate market would continue to rise, it gets back to supply and demand, there's a limited supply of real estate. 20

Q. And what was the situation so far as the market was concerned in 1973? A. There was a very limited supply, mainly due to servicing availability. 30

Q. And was there any evidence of cash inflow or outflow had an influence on land prices in 1973? A. Well not from the sales that I've collected, I think if you look at the Kawacka sale, sale A on schedule B, it wouldn't indicate that, at that point in time anyway.

Q. When in your view is there any sign of some influence upon the land market? A. Some time in the latter part of 1973, certain measures were announced by Mr. Crean in July, these apparently didn't work as hoped, because in the budget in August there were further measures introduced, and the property market, unlike the stock market which goes up to a peak and comes down, doesn't react so violently to measures, and you have a slowing down period if you like, before it levels. It is not in a sharp graph like the stock market sometimes goes. 40

Q. The market takes a bit longer to react to ---
A. Yes, I think the evidence is there, when you've got the announcement by Mr. Crean in July, and then the government having to reinforce that in August, in its budget. 50

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Q. Page 8 you've referred to Schedule B, and then in the second paragraph you talk about the state of the market in 1973. And in the middle of page 8 you say on your main basis of assessment there's no need to prove the actual monthly escalation, and you've given your reasons for that. And then in the second-last paragraph: If an analysis of sale 1, that is the transaction between private parties, was progressed to the date of resumption the price paid on resumption of that property would appear slightly conservative. A. Yes. 10

Q. Is that the Kulnamock purchase about which you're speaking? A. The Kulnamock to Federal Valuation and Agency yes.

Q. And we'll come back to that later but you say - or what are you saying there in that paragraph? 20
A. Well I'm saying that as I said earlier that I would have expected that 18.16 per cent increase shown between the private sale and the resumption price to have been higher. But each area is localised in its percentage increases to a degree, and whilst I would have expected it to be higher in fact the evidence indicates if you go down to sale 8 for instance, which is a sale and a resale, you've got a sale in August 1972 of \$42,250 then you've got a second sale in August 1973, 12 months later, of \$97,000. That's another private sale. Your increase there is 10 per cent per month. That includes 1972 which if you go to B is at a lower rate per month increase than 1973, but even at 10 per cent per month it would tend to indicate that that 18.16 is slightly conservative. 30

Q. And have you checked your valuation based upon the settlements by sales evidence and in particular the Kulnamock purchase? A. Yes, in particular the Kulnamock purchase coupled with the increases shown by the other private transactions yes. 40

Q. We'll come back to that. Well then in your opinion, I'm talking about the last paragraph of page 8, do settlements after compulsory acquisition form any part of market evidence to which a valuer should direct his attention? A. In my opinion yes, if I was - and I've done it many times - if I was either valuing property in the same area with similar features or selling a property in the same area with similar features, vendors would be aware of what the resuming authority had paid and I'd certainly look at it too because it is a guideline for the market in the area. 50

Q. Does that apply to situations outside these type of proceedings and just normal valuation exercises?
A. Certainly yes.

OFFICER: All these questions your Honour ----

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HIS HONOUR: Oh certainly.

HEMMINGS: Well your Honour the question ---

HIS HONOUR: Well he's objected to them earlier saying that they're irrelevant. Is that what you're talking about Mr. Officer? 10

OFFICER: Yes your Honour. All the evidence I take it is less - subject to my objection. I don't want to go on objecting to every question that's ---

HIS HONOUR: What's wrong with that Mr. ---

HEMMINGS: This is in a slightly different category your Honour. I will be tendering the actual details of settlements. I'm asking this witness in the normal course of his performing his function as a valuer, does he take that type of information into account. That can't be objected to your Honour. 20

HIS HONOUR: No it can't but it's only relevant therefore if presumably it's going to be followed by the settlement figures. There's not much point in me knowing that unless I ---

HEMMINGS: But your Honour Mr. Officer is saying that he's making objection to this evidence, this part of the evidence. I've not yet clarified whether ---

HIS HONOUR: I think all he's saying is that this would be irrelevant - let me assume I ruled that, as Mr. Officer is inviting me to do later, that I simply cannot take into account settlement figures, therefore this evidence would be irrelevant. What's the point of knowing that Mr. Parkinson does it if I can't do it? 30

HEMMINGS: I thought that's all he was saying.

HIS HONOUR: He doesn't want in other words I suppose you to get a long way up the track and say, oh well, you haven't objected to this much of it or - I think he's just covering himself that's all.

HEMMINGS: Yes your Honour, and I don't canvass what your Honour says, but the objection couldn't go to what the witness says he does take into account and did take into account as to whether the particular material is admitted is another issue. 40

HIS HONOUR: Yes. I suppose in one view of the matter if Mr. Officer is right it's probably a way of disqualifying the opinion expressed by this witness. So perhaps he'd want it in for that purpose. However, all I know is - I am only regarding this as Mr. Officer

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just making it clear that when we do get to the question of the settlement figures, he is objecting to it and he doesn't want to rise all the time.

HEMMINGS: Q. Now when you have evidence available as to settlements on resumptions in that locality, how do you treat that evidence? A. With some care because usually the vendor has been forced to sell under - he's got an alternative to litigate the matter which is not cheap ---

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HIS HONOUR: Q. Sorry I didn't --- A. He has an alternative which is to litigate the matter if he doesn't agree with the compensation offered, and from my general experience I would say that - and I negotiate a lot of settlements on resumption matters - I would say that possibly 90 per cent would be somewhat conservative and 10 per cent might be too high and for some reason or other such as a mistake or there's some reason for expedition to get the property in quickly.

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HEMMINGS: Q. And what do you do with evidence on settlements, do you check it in any way? A. Yes well that's why I did the cross-check on private transactions in this valuation to satisfy myself that at least it was reconcilable to some degree with the outside market and that it wasn't grossly out of line with market evidence.

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Q. And did you find anything with regard to the settlement evidence available to you? In relation to sales by private parties. A. I'm sorry I don't ---

Q. Did you find something about the settlements in this that were available to you when comparing those prices or rates per acre with rates negotiated by private individuals? A. Yes they were supportable by the private sales.

Q. And with the sales themselves - well with the settlements themselves you found a relative consistency in those? A. Yes, with one or two minor exceptions but overall a great consistency yes.

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Q. And you cross-checked those with sales? A. Yes.

Q. And you say that the figure that you derived was conservative? A. Well it would appear to be for the reasons that I've earlier stated, yes.

Q. Well then you come to your basis of valuation, page 9 and you had to make a decision for yourself as to whether or not the property should be valued on the basis that it had a potential for urban zoning?

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A. Yes.

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Q. Is there a difference between whether the land actually has an urban potential or whether the market thinks the land has an urban potential? A. As I said earlier it was the marketplace that I consider is creating the potential, or realising the potential is probably a better way of putting it. 10

Q. And in the next paragraph you say sales of property with no potential show a different value level per unit compared to sales of non-urban lands which those in the marketplace regard as having potential?
A. Yes.

Q. In the fourth paragraph you say, quite apart from sales evidence the effect of the Sydney Region Outline Plan was demonstrated by some personal experience in the late 1970's. A. Mid to late, yes. 20

Q. And what was that? A. That is a property of 118 acres at North Emu Plains which was zoned non-urban just near the prison farm. It was outside the SROP and I negotiated the rezoning on that property for residential and open space purposes. It was also interesting that property in relation to the subject resumed land I felt because the land which I had obtained the rezoning for was also subject to a transmission line easement and that formed no barrier to the urban zoning.

HIS HONOUR: Q. What was the date of this? A. I made enquiries your Honour in 1973 when I was with M.J. Davis about the potential of the land with Penrith Council and they advised if a reasonable application was lodged council would seriously consider it, but it wasn't until 1975 that - when I was on my own behalf, because I was re-approached at that stage and firm representations were made and the rezoning was gazetted in either 1978 or 1979. 30

HEMMINGS: Q. How long did the actual rezoning process take when a concerted effort was made to achieve it?
A. About two to three years. 40

Q. You were aware of the announcement in the Press by the Deputy Premier in December 1972? A. Yes.

Q. What did you understand to be the effect of the announcement?

OFFICER: I object your Honour.

HEMMINGS: I press it your Honour.

HIS HONOUR: Well I suppose Mr. Officer that your objection is it doesn't matter what he personally understood, but he would probably - is that the basis of it? 50

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OFFICER: Yes your Honour.

HIS HONOUR: Why can't he give the evidence of what he understood from his experience people in the market-place to understand the meaning as?

OFFICER: Well that wasn't the question that was put. 10

HIS HONOUR: Well will you settle for that question?

OFFICER: Yes your Honour.

HEMMINGS: Q. What did you understand people dealing in land in the western sector understood to be the effect of the December 1972 announcement?

OFFICER: I object to that as a question on its own your Honour.

HIS HONOUR: Yes.

OFFICER: Are these people people who read the Press statement? 20

HIS HONOUR: Yes, I think - yes.

OFFICER: If so I object.

HIS HONOUR: Why?

OFFICER: Because the evidence then is, this document meant so-and-so, and no witness can give evidence of that.

HEMMINGS: I'll try again.

HIS HONOUR: Yes try again, because I thought there was already evidence here at the moment that everyone that had more than 10 acres to sell was sweating on the - but however, yes go on try it again. 30

HEMMINGS: Q. In your view and experience, did the announcement in December 1972 have any effect upon the market for land? A. For large areas of land which they regarded as having potential it gave it an impetus I believe, and I believe it was part of the cause of the accelerating values during early 1973 compared with late 1972.

Q. And could you from your dealings with the land market from 1972 late 1972 onwards interpret what the market thought the announcement - the effect that the announcement had upon the potential for land development? 40

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OFFICER: Your Honour I object. If that means that prices paid show up, that's a different matter but if he means, I spoke to a lot of people and they told me what they thought the Press statement means, then I would object.

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HIS HONOUR: Yes.

HEMMINGS: We're in the Land and Environment Court, we're not in the Land and Valuation Court, and this witness is entitled, unless your Honour rules otherwise, to say what he's told by people.

HIS HONOUR: Yes but the relevant issue is, I suppose is what people in the marketplace believed, and he's got - he can give - I suppose they can say they believe. What Mr. Officer says though ---

HEMMINGS: He wants us to take a great step backwards to 1972 --

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HIS HONOUR: I don't think he does. I mean it may very well be that people can give evidence as to what other people in the market place but the most persuasive area of this is the price that they - has to deal with the price they paid for land.

HEMMINGS: This man is an expert, a valuer. The very stuff of valuation is to assess factors that influence the market and to measure and identify those factors. This witness surely as a valuer and a valuer operating in this area with his wealth of experience is entitled to say what he believes is a market influence and what people - what was activating the land market at that time. Your Honour, if I give an example, you're a stockbroker, and he said: I don't care whether land at West Wyalong had oil on it, but the people in the market place believed it had oil on it, and that is why land prices were going up, and they had heard an announcement and they believed it.

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HIS HONOUR: I didn't understand there was an objection to that type of question, was there?

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HEMMINGS: Well I am asked - well if there isn't - as I understand the objection, I can't ask Mr. Parkinson what he believed was the interpretation of that statement, if it included saying what people told him.

HIS HONOUR: He has already said the statement was regarded - was treated in the industry as having the effect of accelerating and increasing ---

HEMMINGS: That's one side.

HIS HONOUR: What else can he say about that?

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HEMMINGS: He can say whether the public, well, the persons in the land market saw it as an invitation to do certain things with certain types of land. It forms the important part of his valuation your Honour. It deals with - that's why my friend is objecting your Honour - it deals with large areas of land over 350 acres. 10

HIS HONOUR: Yes, but - would you ask the question again?

HEMMINGS: I am not sure that I can remember the question, your Honour.

HIS HONOUR: There seems to be such a fine distinction drawn here that I am not sure I understand it either but I ---

HEMMINGS: Q. Mr. Parkinson, in your opinion, how was the announcement in December 1972 interpreted by those dealing with parcels of land seen to have some potential for urban development? 20

OFFICER: I object. The very question which is: Do people who have this press statement before them, how did they interpret it? If they understand English then, in our submission ---

HIS HONOUR: No, if that is the basis ---

OFFICER: I'm sorry, that's one basis but a more fundamental basis is that no witness can be allowed to say: I read the document. I took it to mean X, which is different from the words. 30

HIS HONOUR: No, but say - take this - leaving this land aside because one doesn't want to be suggesting answers - but take the illustration Mr. Hemmings used about the share market and BHP announces that it has found oil in Bass Strait and at the same time says there is another 30 companies in Bass Strait, they don't know whether they've got oil, but people should be wary of them. Nonetheless, all those companies start going mad following BHP's price rise. That would be relevant if you had to value those shares at that time, wouldn't it, not that people read it properly but the way people actually reacted to it. 40

OFFICER: But that is, your Honour, people have paid prices indicative of a view.

HIS HONOUR: Yes I understand that.

OFFICER: I have never objected to the witness saying: Prices paid, and I can point to them, show that ---

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HIS HONOUR: Following upon that announcement, prices were paid.

OFFICER: Prices were paid which are indicative, in his view, of people having taken a certain view of the press announcement. But that's not the question that was put and to which I objected your Honour.

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HIS HONOUR: I think he is just being asked why in his opinion people were paying those prices.

HEMMINGS: I am asking why there was an acceleration.

HIS HONOUR: Well why they were paying those prices, yes.

HEMMINGS: Your Honour, it is in line with the evidence given already by Mr. Moore without objection, as to be in a position of advising and dealing with people buying land, as to the criteria that people were looking to to buy land after that announcement.

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HIS HONOUR: Yes, I will allow it.

Q. The question you are asked is: How in your experience did people in the market place interpret the announcement in so - bearing in mind I suppose you are asked - because he said it, Mr. Parkinson - but he's referring to land over 350 acres?

HEMMINGS: Yes.

PARKINSON: A. There was very little land - I'm sorry, I didn't catch the last part.

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HIS HONOUR: Q. That the area of land referred to is over 350 acres, if that's the way they interpret the announcement - how did they interpret the announcement?

A. From my experience at that time, your Honour, they interpreted it as giving a feeling of security in respect of advanced purchases of large holdings. There was probably a greater air of speculation in what you bought in advance before because you didn't have any degree of certainty as to whether you might be the lucky one or you might not, whereas if you could secure a large parcel upwards of 350 acres and you could prove servicing costs, it gave you a degree of security that at some time in the future that land would in all possibility be released and that had the effect of accelerating the market for the larger parcels.

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Q. Are you saying that in fact the prices did accelerate after - shortly after that announcement? A. Yes it did in 1972, I think it appears to some degree in the percentage increase on the sales schedules.

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Q. Were there any other factors operating at that time that might in your opinion have accounted for this acceleration? A. Yes certainly in part your Honour, the general inflation that was rife at that time, but I am judging it probably more by the number of enquiries that would come into your office looking for this type of parcel. 10

Q. When you got these enquiries in your office, you are now talking about 1973, are you? A. Yes your Honour.

Q. Were those enquiries also directed towards your interpretation or did you advise people on what that announcement meant? A. No, it was just generally accepted because most of the people who made enquiries were members of the developers' institute, I think it was the Urban Development Institute at the time. 20

Q. So they never asked you what you believed ---
A. What my interpretation was.

Q. Or what your advice was? A. It was just accepted before they walked ---

Q. What was accepted? A. That if they could secure a sufficiently large parcel and could prove servicing costs that there would be a great possibility they could secure a release of that area of land.

Q. And by release, what --- A. I mean rezoning, release for urban development. 30

HEMMINGS: Q. At the bottom of page 9 you deal with transmission line easement. When you were asked to carry out this valuation, were any limitations placed upon you or were you asked to make any assumptions?
A. No. I was asked to undertake an independent assessment of the value of the property that has been resumed.

Q. Have you had some familiarity with the release and development of land with transmission lines through it? A. Yes.

Q. When you made your assessment of the subject land, was there anything about the land or the circumstances surrounding it which caused you to restrict the area of potential urban development within the land? A. No not at all. As I said earlier, the best land in my opinion for release is in the south-eastern corner. I looked at the prospect because I was aware that there was an argument, north and south of the transmission line easement, but after looking at the land and then looking at various other factors in the area such - if you look at the north-eastern section 40
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of the plan on the easel, you can see via the Mount
Druitt area where an equally large transmission line
easement sweeps through the whole development. It has
been treated in a similar manner to what appears in
part in this proposed - in respect of the subject re- 10
sumed land. I have had the experience of obtaining re-
zoning on the Emu Plains land which was subject to a
transmission line easement and not at one stage had
that been mentioned as a barrier to the urban develop-
ment. The limiting features there were the physical
features which was the flood line on the land and I
think from memory a large parcel at Wetherell Park we
had rezoned in the early 1970s was subject to a trans-
mission line. They just are the barrier unless they
follow - if you look at that map up there again on the 20
easel, if you look at the South Creek area, there are
three transmission line easements following the course
of the creek but obviously they are a limiting factor
there. But it is not the transmission line easement
that is the limiting factor, it is the creek and the
flood prone lands around it, but wherever the trans-
mission lines don't either go on the wrong side of the
ridge for servicing or unless they follow a flood prone
area, they are not a deterrent to urban development in
my experience and have not been so in any case. 30

Q. How have you seen the area under the transmis-
sion lines, that use, in conjunction with urban
development? A. Well in fact similar to what they
have been at Mount Druitt. I took a photograph of
that easement and I think it demonstrates quite well
how a transmission line easement is treated in a
development of this nature. It is very similar to
Heath and Partners.

HEMMINGS: I think this photograph may even have been
already tendered your Honour. 40

HIS HONOUR: One has been tendered.

HEMMINGS: No it is not quite the same one. It is a
similar one I think your Honour.

OFFICER: No objection your Honour.

TENDERED, ADMITTED AND MARKED PART EXHIBIT J -
PHOTOGRAPH

HIS HONOUR: Q. This transmission line is where?
A. That is the one your Honour that you see on the
north-eastern section of the plan on the easel. It's
the Mount Druitt area, the transmission line easement 50
going north-east - from south-west to north-east through
the residential area there.

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HEMMINGS: I think this land is in a similar location to AD.

Q. Can you indicate on the easement the precise location of that land? A. Yes I can.

HEMMINGS: Could Mr. Parkinson approach?

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HIS HONOUR: Yes.

PARKINSON: A. That photograph was taken while I was flying north just to the west of the creek, looking north-east along the easement which ---

HEMMINGS: Q. Is that the easement, the white line that goes -- A. That's the easement that centres in the photograph there. And that's the other playing fields I think you see in the photograph there.

Q. The playing field square adjoining another of the easement itself? A. Yes because of the topographical nature of the land.

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Q. Page 10 second paragraph, I think you have dealt with this point, but you say: From the sales shown on the sales schedules, a simple analysis of sales of non urban lands within sight of urban development reflects a very high value level to sales of non urban lands more remotely situated? A. Correct, yes.

Q. Then your enquiries from Mr. McDonald, they are fairly recent enquiries are they not? A. Yes, I made those enquiries ---

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Q. Well you needn't give the precise date. What were your conclusions from that---- A. 2nd September, I'd say.

Q. 2nd September, what were your conclusions from making those enquiries? A. Mr. McDonald merely confirmed the features which I had indicated earlier in my report that the market place considered as being relevant.

HIS HONOUR: Q. When you say it's - in 1980 - the last, No. 4? Page 10? A. Yes your Honour, that last half of that page is the result of the points Mr. McDonald made. He cited that as being an illustration, even although it is remote in time from 1973 my enquiry was addressed to the 1973 period. But Mr. McDonald cited that as being an illustration of what he was saying as at 1973. Here was a parcel which was outside the SROP, which the Premier has announced will be released.

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HIS HONOUR: Q. In 1980? A. Yes, but he was citing

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it as an example of an area outside the SROP. I don't necessarily consider that as being relevant, but I recited what Mr. McDonald advised me.

HEMMINGS: Q. He gratuitously referred you to a 1980 release? A. A paragraph in an announcement in 1980, yes. 10

HIS HONOUR: It's what accounted for that frantic activity that preceded the hearing of this case about top secret plans or something, and are currently under investigation by the Planning Authority, is that what ---

HEMMINGS: It may have been, your Honour.

Q. Page 11 ---

OFFICER: That announcement was June, 1981.

HEMMINGS: Q. You say an investigation of sales located in nearby areas proposed for urban release under the Sydney Region Outline Plan indicate a relative higher rate per unit of area than sales of land near the subject resumed land. A. Yes. 20

Q. What do you mean by that? A. The Orchard Hills area which is shown as proposed for release in the 1980/1990 period, showed when I looked at them about \$14,000, \$15,000 per acre; whereas the sales in this area showed a lower level of value.

Q. If the subject land had a clearly identified time for release for urban purposes, would you have assigned a different value than the one that you deduced from the exercise that you carried out and applied in this case? A. Yes, I would have been inclined to disregard the resumption of rises and look more closely at the Orchard Hills prices. 30

HIS HONOUR: Q. Where is Orchard Hills? A. It's generally on the eastern side of Bringelly Road, your Honour, north and south of the expressway. It's virtually adjoining the north-east of the golf course.

Q. Is that the part they mean - the Orchard Hills, the part just north of the golf course? A. Only to the east of Bringelly Road, your Honour. 40

HEMMINGS: We've got South Orchard Hills and North Orchard Hills, the dividing line being the freeway.

HIS HONOUR: Q. And when was that due for release? A. 1980 to 1990 period from memory.

HEMMINGS: Q. And what sort of range of values would you have been looking to if the subject land was shown

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to have a similar potential for release as say the Orchard Hills area? A. On that assumption, and on the assumption it wasn't so shown at the time of the Kulnamock first sale, I would have been looking directly probably at the Orchard Hills unit area rates of about \$14,000, \$15,000 per acre. 10

Q. I think the Orchard Hills area also was mainly subdivided into fairly small parcels, is that right?

A. Yes, you can see from the map there that the Orchard Hills area is not dissimilar to the Garswood Road area as far as size of allotments; it's very fragmented in 10 to 11 acre parcels.

Q. And is that an advantage or disadvantage if one is seeking to acquire land to develop it as a housing estate? A. There are a number of disadvantages because if you're buying non-urban land with a future potential as Orchard Hills or this area is, if you can secure a large enough parcel you can claim exemption for - or you could at 1973 anyway, claim exemption for land tax purposes, because you could justify it as a grazing property. And if you're looking at 2.4 cents in the dollar on a fairly large unimproved value, that's quite a considerable saving. So obviously the large site just from that angle alone has got to have a tremendous plus. You couldn't justify 11 acres very easily as a grazing property, but for a few hundred acres, certainly. 20 30

Q. The second paragraph you say: the present valuation exercises is simplified to some degree by the availability of sales located in the immediate area, which are mostly in an identical zoning situation to the resumed lands. Now that's apart from the actual acquisitions themselves, is it not, by the Housing Commission? A. Yes, there were some private sales which are shown on sale schedule A. 40

Q. Do you want to go to your sale schedule at this stage, or would you rather complete your explanation of the basis of valuation? A. I don't mind.

Q. We'll stay with the explanation first. You say: accordingly, as market evidence is available in the immediate locality, and as such evidence can be supported by sales in other areas, the likely time for urban release in respect of the subject resumed land need not be defined with any precision. A. That is correct.

Q. Is this related to the availability of an analysis of lands worth a similar or the same type of potential? A. Yes, you have sales in this area that are all treated similarly under the SRDP, under the Penrith Planning Scheme. They're from the west to the 50

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east; in other words a broad spread of an area. And when you get sales, it can be conjectural or arguable as to the likely timing of a release, whether a property is within the SROP or outside; whereas the sales' evidence shows you what those in the market place believe that land is worth at that point in time without going into when they think it might actually have to be - or be likely to be released. 10

HEMMINGS: Q. People spending money, you've worked out what it's worth? A. Yes, that's right, they know what they can justify.

Q. Is the alternative to that carrying out some hypothetical calculation - some sort of formula? A. Yes, as I say in the foot of page 11, that that's another approach to valuation, and it's in fact an approach one often has to adopt when there is an absence of sales' evidence in the same zoning situation. But there are a lot of adjustments to be made. You have to analyse a compound interest rate. You have to consider the risk factor, and I felt it wasn't - whilst I certainly did it as a broad brush attempt to look at the overall situation, in this I didn't feel it was justified as being put in as a basis for valuation in my report, in view of the evidence in the immediate locality. 20

Q. And you were satisfied with the evidence that was available to you? A. It appears at the time then, yes, very well. 30

Q. Page 12 - I think this is your explanation, and we really need to go to the schedule A at this stage, do we not? A. Yes.

Q. Would you tell his Honour how you used the sales on schedule A, and how you've analysed each particular sale? A. Looking at all the sales on sale schedule A, I felt that sale number 1 was a sale of the most comparable property. It was a sale of a larger property, but in many respects was inferior; it had more bad land to my view than the subject resumed land did. It didn't have the aspect and the topographical advantages that the majority in its entirety that our land seems to have. So if we go to sales 4 and 5 --- 40

Q. Before you leave that point, the Kulnamock purchase is located in close proximity to Regentville? A. Yes.

Q. How do you describe Regentville and its effect upon land values at or about this time? A. Regentville was poor land which attracts poor development. 50

Q. That's the little township itself? A. Yes, the

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original village of Regentville. It's poor land. I've been looking at land out there since 1958, and it is fairly level land, second class land; and it attracts generally a second class type of dwelling.

Q. If one is establishing a new and relatively larger type of housing development, would the older - and as you say poorer quality development in Regentville have an effect upon that new proposed development? A. Yes; as an example of that we're just in the process of negotiating a rezoning on the Kawacka land, the sale A on Schedule B, which is at Casula. Casula hasn't got the best name in its entirety, because of the type of development in parts. And we've gone to the extent of buying other land to lead into another area. 10

Q. You're starting away from Casula? A. Yes, that's right, because we've got to lift the land in the Kawacka sale. 20

Q. You've got to lift --- A. Lift the recognition or appreciation of the land from Casula to be something else, and the same thing at Regentville. I don't think you would want to introduce your subdivision by the existing Regentville village area. The new section of Regentville, which is the higher section ---

Q. That's round Jeanette Street? A. Yes. Whilst that's a brick veneer home, it's not an expensive home; it's not bad development, but it's in an elevated section. But the Regentville area is fairly flat and uninteresting, and it has attracted a poorer quality development. 30

Q. Would a developer of the Kulnamock property in your view want to be identified with Regentville, or be identified with a newer, more attractive area? A. I think he'd definitely want to bring his road way in from the Jeanette Street frontage, but he'd have to acquire - or possibly have to acquire additional land to do that, because there is a very narrow access way in, if you look at the map through from the Jeanette Street frontage, it would be desirable to acquire some additional properties fronting Luttrell Street. 40

Q. Going back to the Kulnamock, in what way do you say that that land is inferior to the subject land?
A. It's very severely affected by a creek and a large dam, and scouring along the creek. Secondly I've described it as land which doesn't have the same outlook to the Penrith urban area. It gets back to the question you asked me before, you asked me whether land looking over an urban area is generally regarded as being more valuable, and I said yes. And the subject resumed land does overlook the urban area, whereas the Kulnamock land generally going down - it forms a basin 50

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going down to the creek, and you have local views, and views to the mountains. The small area up over the ridge near Jeanette Street certainly has a similar situation and is good land - has a similar situation to the subject resumed land, but generally it is deficient in those regards. 10

Q. And access? A. Access I'd consider inferior, because you would either have to come off Mulgoa Road, which is a main road and it's just near a curve. And I think there would be difficulties as Mr. Moore said - there would be difficulties with the DMR approvals there. And if you come in from Jeanette Street as I mentioned, you have difficulty in getting sufficient width in the small access corridor.

Q. And yield? A. I took that into account by using Mr. Moore's calculations, both in respect of the subject resumed land when comparing the Kulnamock sale, and in the analysis of the Kulnamock sale. 20

Q. And is that reflected in your analysis column?
A. Yes it is.

Q. And would you explain to his Honour how that applies, and where you get your areas, and how you assigned the values to the different parts of the land itself? A. Yes. I'll have to combine a number of sales in the explanation if I can. 30

Q. Would you do that. A. If one looks at sales 4 and 5 - resumption prices 4 and 5, they are both by inspection and by Mr. Moore's analysis, both good land; in other words they would have 100 per cent yield if released for urban development. So those two sales establish - and there is another one which came in later which is on the next page, and it also confirms those; but primarily those two sales are a good elevated land with urban potential, which would have 100 per cent yield. 40

There is no low lying open space land or transmission line and affected land, anything of that nature, in either of those properties. So they establish in round terms about \$7,500 per acre for good urban potential land. Then if you go down the page, you start on sales 6, 7, 8 and 9, we have sales with land of mixed quality. In other words certain parts of those sales, 6, 7, 8 and 9, are only suitable for open space or drainage. So Mr. Moore calculated the areas which he considered would only be suitable for open space and drainage and I was able to work out the value of good land from sales 4 and 5 in sales 6, 7, 8 and 9, to arrive at a bad land value. If you look at the final figure on the analysis of sales 6, 7, 8 and 9 it ranges 50

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between \$4,321 in sale 6, up to \$5,618 in sale 7. On investigating the files of the Housing Commission, it appeared that the vendor in sale 6 didn't negotiate, he accepted the first offer, whereas the others negotiated, so I was inclined to disregard sale 6 and to establish an open space value of - between \$5,000 and \$6,000 per acre, depending upon its nature and quality. 10

Q. In fact you have assessed very close to a figure assigned for a value of similar land by the Valuer-General, is it not, in his valuation? In his assessment of it? A. In respect of the subject resumed land, do you mean, or ---

Q. So far as it affects Kulnamock? A. Yes, his analysis of that, yes.

Q. Very well. Would you proceed? Then were you able to deduce the value of land from sales of land badly affected by creeks and drains and having little potential, and a value for land most of which is capable of being developed for urban purposes? A. Yes that's right because it is necessary that I do that before I analyse the Kulnamock sale because of the possibility that your rate per acre might be higher or lower for good land in a large parcel than in the 11 acre - well, the smaller parcel shown down below. So having arrived at the value of bad land, I made that deduction in analysis of sale 1 of 30 acres as only being suitable for open space - that should read, suitable for open space or drainage, and I took off the value of the improvements of \$15,000 as well, and Mr. Moore's costs of remedial works to that property were \$120,000 which I averaged over the good land area because it has to be a plus, as he said, before it can be compared with the subject resumed land. That gave me \$9,018 as the analysed rate per acre of the good land in the Kulnamock sale which is higher than the good land rate disclosed by sales 4 and 5, confirming what I have been saying about the increase for the size. It is about what I would have expected. 20 30 40

Q. Then sale 2? A. Sales 2 and 3 are also larger parcels. In my opinion they were inferior particularly accesswise to either the Kulnamock and more particularly to the subject resumed lands but I analysed them on a similar basis and the rate derived reflected, in my opinion, a rate per acre for isolated land, land with very difficult access that would be dependent upon others to subdivide first, and I felt that a developer looking at those two sales, would have deferred or allowed a loss of interest for 3 years to allow the time it would have taken adjoining properties to develop before they could get road access to develop their properties. 50

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Q. Emu Plains had difficult access, had they not?

A. Yes.

Q. What about Burnley? A. Yes and Burnley also had the escarpment and the low lying flat areas over the western side of the escarpment.

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Q. Burnley was more severely affected by steep country and severed land, was it not? A. Yes, as well as the escarpments and the low area along the creek, it also had spurs as Mr. Moore refers to them in his report which, if they could be developed, they would be very expensive to develop because they wouldn't give a yield either side of a roadway running along the spur, so I've made allowance for that in the analysis.

Q. Would the potential in Emu Plains or Burnley depend upon the need to amalgamate the other lands and redevelop them? A. I think that it would have had an effect because if you were going to put in a sewerage treatment works or service an area for subdivision, you've got certain fixed costs. It's the carrier mains to the property and various other items that are common, whether it is 10 acres, 50 acres, or 1,000 acres. Now obviously if you've got 100 acres compared to 300 acres, you may be able to justify the servicing of 300 acres whereas it may not be economic on the 100 acres.

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Q. How does that apply to these areas? Do you say that applies to these areas? A. It could do, yes.

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Q. Then you do an analysis of Emu Plains and Burnley?
A. Yes.

Q. Do you want to say anything further to the analysis that you show so far as those sales are concerned?
A. No. I feel that sales 2 and 3 confirm the \$9,018 per acre on sale 1 analysed, all factors taken into account.

Q. You've dealt with 4 and 5. How do you use the balance of the sales on the schedule? A. As I said before, sales 6, 7, 8 and 9 are used to derive a bad land value, for want of a better term, in other words land only suitable for open space or drainage purposes, and there - the sales on the first page I had the benefit of Mr. Moore's detailed dissection when I did my valuation. The sale 10 on the second page, I've received Mr. Moore's detailed advice since and that once again confirms 6, 7, 8 and 9. Then the others, I haven't got Mr. Moore's analysis but by inspection, in broad terms, they confirm the previous sales. If I can just mention one thing, when this schedule was prepared, I didn't have the benefit of the Housing Commission files and the Valuer-General's files, and the analysed overall

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rate per acre in sale 2 on that schedule should read 7,183 not 7,201.

Q. Just a moment, which sale? A. Sale 1 - sorry, sale 2 in the overall rate per acre. Sale 1, sale price 2.

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Q. Yes, should read what? A. I've got 7,201 there. It should read 7,183. The 7,201 included some disturbance that was paid by way of valuation fees. And also, down on - for similar reasons, the schedule was retyped and most of these changes were picked up and the correct information - but some slipped through. Sale 4 under the analysis of the sale where I've got 7,465 should read 7,491, and the overall rate per acre in sale 2 on sale No. 5, instead of 7,493 should be 7,465. They are minor.

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HIS HONOUR: I don't think I will alter those. It makes it - there can't be much.

HEMMINGS: Q. You said initially in your report that you could identify a consistency in the values paid on resumption? A. Yes, leaving apart sale 16 which is of the land locked parcel.

HIS HONOUR: Q. 16 which is what? A. A sale of two land locked parcels, parcels without access. You have a broad range of values which one would expect for lands of varying nature between \$6,000 to \$8,000 per acre overall with the good land tossed in with the bad land which leads you to the conclusion that's a fairly consistent pattern, \$2,000 per acre over widely varying classes of land.

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HEMMINGS: Q. Can I put to you that you identify consistency and when you examine each property, that's been settled, you can see a - you can identify a reason why the settlement is up or down \$1,000 per acre? A. Yes and then you've got to press your analysis further again as I did in sales 1, 2 and 3, in particular, and see how much of each one is poor land and how much is of good land, depending upon the quantum of each, and this is where your sale price lies.

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Q. When taking into account the features of the subject land, does it indicate to you that - without doing the actual calculations you have done for your analysis - that it would be a figure in excess of \$7,000 an acre in the order of the variations which you have identified with other settlements? A. Yes it would have to be more in line with the analysed \$9,018 because it hasn't got problems even as the sales - it is superior to those three sales, the three large parcels sales, and that is why if it wasn't superior,

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if it was about half, you would simply adopt the overall rate per acre disclosed by those sales but you must progress that because it is obvious from looking at the Kulnamock sale, for instance, that there is more poor quality land, percentagewise, than what there is on the subject resumed land. But one wouldn't expect --- 10

Q. If you merely adopted that figure, you'd be saying that the properties were - have equal problems?

A. Yes.

Q. And equal potential? A. Yes.

Q. You then - on page 12 give your reason for adopting \$9,100 per acre? A. Yes.

Q. On page 13 you say 768.2 acres at that rate and you assign a different value to the area under the easement of \$6,000 per acre? A. No, sorry, that is the area under the easement and plus the area that Mr. Moore considers suitable only for open space or drainage --- 20

HIS HONOUR: Yes the whole lot, the \$6,000 is the - yes.

PARKINSON: A. I felt that the rate per acre for the open space and transmission line easement on all of those larger parcels should be higher than that disclosed by the smaller sales because it too attracts a land tax benefit over and above the smaller ---

HEMMINGS: Q. Then, and you add your value of \$32,000 for your improvements? A. Yes. 30

HIS HONOUR: The transmission is 53.7 acres, isn't it?

HEMMINGS: Just on 54 acres.

HIS HONOUR: I'll say 54, yes, near enough. Yes.

HEMMINGS: Q. So that's \$7.7 million. Now you say less penalty costs. What do you mean by that? A. I asked Mr. Moore were there any deficiencies which the subject resumed land had which the Kulnamock land didn't have or the other properties didn't have and he advised the additional costs which should be taken up on the subject resumed land would be the desilting of a number of dams, draining and desilting, and the scour protection work in one section of the property. 40

Q. And that's the \$100,000? A. Yes.

Q. That's the figure then that you assign of \$7.6 million which in your report you say: On that approach, using that basis of valuation, it is likely to be conservative? A. Yes.

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Q. You told us at page 8 that you make that statement on the basis of what that valuation shows compared to a progression from sales? A. Yes.

Q. Did you in fact check that calculation based upon an analysis of the settlements with the sales evidence? A. Yes I did.

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Q. What did you do? A. Once again I felt by virtue of its location the Kulnamock property had to be the most comparable. It is in the same area, the same zoning, not far away, and if you look on the sales schedule A, sale 1, under the heading Price Sale 1, that is a private transaction between Kulnamock Pastoral and the Federal Valuation and Agency Company Pty. Limited at \$649,087 for 106.5 acres. The reason that I didn't rely on that one in the first place as I've said earlier was, relying on the resumption transactions, I did not need to assess a creep factor or market increment factor.

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But if you look at that sale, it was transacted in May, 1973 and then if you look at sale A on sale schedule B, which is the sale Kennett(?) to Stocks and Holdings, and then to Kawacka, you see a sale which was transacted just on a month after the Kulnamock Pastoral sale, and was resold a month again after that, at a 34.4 per cent increase, 1.5 months; it becomes obvious that you must upgrade the Kulnamock sale to the date of resumption, by virtue of that sale alone, which shows 34.4 per cent. If you look at sale 8 on the sale schedule, the two private transactions, sale of lot 130 Garswood Road. There was a sale in August, 1972 for \$42,250, and a private resale in August, 1973, which is the date of resumption, at \$97,000; that shows 10 per cent per month increase. And that is about where I felt the actual monthly appreciation lied. In the time period between the Kulnamock sale and the date of resumption of the subject land, that I should add at least 30 per cent on the evidence available to me. And I also had to add on to that private Kulnamock sale Mr. Moore's costs of rectification which were not applicable to the subject land. So I took the purchase price of \$649,087, I added \$120,000 assessed by Mr. Moore to that price for rectification works - I might add that I did not include the additional \$80,000 allowed by Mr. Moore for the bridge of the creek through the Kulnamock, because I felt that it may have been possible to have overcome that difficulty by a redesign of section of the plan in that area, rather than the bridge at that point.

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Q. Would that mean a loss of yield? A. I think it was too earlier days to get to the precise yield, but the creek approximately could have gone there, or it could have gone through Emu Plains, or somewhere else;

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so I preferred to leave it out, and I left it out in the earlier analysis of the resumption price too. That gave me a total at that point of \$769,087; that's the purchase price plus \$120,000 rectification works, plus a time factor of 30 per cent, gave me \$999,813, which is \$9,388 per acre overall. As I said in my earlier approach, I felt that one has to upgrade the topographical and outlook features to compare that with the subject resumed land, so I upgraded the \$9,388 per acre to \$9,500 per acre. And I said then, having upgraded it, the subject resumed land has the problem with the transmission line easement, which the Kulnamock land doesn't have. Under the transmission line easement there is 53.84 acres, therefore the area outside the easement is 830.16 acres. Now in this analysis of the Kulnamock, I haven't taken out the open space areas, nor have I taken them out in the resumed land. It's a check method on what I did with the resumption sales' prices, except that it doesn't go into that detail. So I had 830.16 acres of the subject resumed land and not subject to the transmission line easement at \$9,500 per acre, gave me \$7,886,520; and I had 53.84 acres under the transmission line easement which I considered I should discount the good land rate by a third, to give me \$6,333 for the land under the easement, which caused an additional value of \$340,969 for the area under the easement; giving a total value for the property of \$8,227,489 - I took off the \$100,000 for the dams and scour protection on the subject resumed land, which left me with an end figure of \$8,127,000 on that basis. That's above the other basis, but it does take into account the fact that you are calculating an escalation factor, which my first basis didn't.

Q. Is that a check valuation carried out by yourself completely independent of any of the material in the settlements? A. Yes. That was the initial approach, when you do a valuation you get guidelines of value; you look at Orchard Hills, which is in the SROP; you get parameters of value, and then you start fining it in until you get what you consider to be the best evidence, either by the amount of evidence available, or the nature of the evidence, till you come to your final valuation. And certainly I looked at Orchard Hills and then at this basis, and then I looked at the wealth of resumption transactions in this immediate area in the same zoning, and I felt that it ruled out the creek factor situation, or any other consideration like that.

Q. Do you believe you've carried out three independent approaches to the valuation, looking at the general levels of valuation, the analysis of the sales itself, mainly relying upon the Kulnamock, and independently the evidence available to you from settlements. A. Yes,

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and a fourth one, and that's looking in general terms at sale A once again on sale schedule B; that as I said earlier was non-urban land, proposed to be zoned special uses under the Sydney Region Outline Plan, but bought in very close to the date of resumption, and as I said earlier that Liverpool generally at that time was realising about 20 per cent greater than this general South Penrith area; and that gives about \$9,600 per acre for good land in the South Penrith area, if you discount by 20 per cent. And that's a further check that the figure is in this \$7.5 to \$8 million bracket, but I prefer because of the wealth of evidence on the resumption transactions to place the figure where I have placed it. 10

Q. You would say that is the face value that you could arrive at on that evidence? A. It would appear to be, but we're in line with the private transactions - they're relatively in line with the private transactions. 20

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OFFICER: Q. Mr. Parkinson you referred to the rezoning of certain land at Emu Plains, with which you were concerned? A. Yes.

Q. And you said it was non-urban under the SROP?
A. That's correct, yes.

Q. And was it non-urban under the Penrith local scheme? A. Yes it was. 30

Q. Whereabouts was it, can you see the site of it on the map there? May the witness approach?

HIS HONOUR: Yes.

PARKINSON: A. Yes, it is this area of land bounded on the south by Old Bathurst Road, on the west by Wedmore Road, and on the east by Russell Street; all of that area in there.

OFFICER: Q. It follows that V part down as far as this --- A. Yes, that V came in on the change of the non-urban zoning from 1(b) to 1(c); that shows the 1(c) zoning. 40

Q. And does it follow - what is the name of that street? A. Yes, that street is not there actually. It's a closed road now - it has been closed. It forms part of the property that I had rezoned, and which comes across to Russell Street. That is the boundary there and that piece of the closed road was owned by my clients, yes.

Q. And the acreage there was? A. 118 acres. 50

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Q. Was any land adjoining it zoned under the Penrith scheme for urban --- A. Not adjoining, no, it was separated by streets from any zoned land.

Q. Where was the nearest land zoned urban under the Penrith scheme? A. Urban or residential? 10

Q. Residential. A. Yes, residential on the western alignment of Wedmore Road.

Q. And was any other land in close proximity zoned urban? A. For industrial; there was some industrial zoning in this area, and in this area. Then you had a low lying area here, and then the Emu Plains prison farm there.

Q. The industrial - zoned industrial was to the - you pointed to the south-east and the north-west. A. To the south and the north generally, yes. 20

Q. And I think you referred to that bit of land rezoned, when you were being asked as to whether you thought the transmission line through the subject land might be treated as a boundary to a zoning? A. I felt it was one of the considerations, yes. They're just part of my experience.

Q. I think you said there was a coaxial - an easement for coaxial cable through the land at Emu Plains that you had rezoned? A. No, at Casula. The land at Casula and the coaxial cable - that was a high tension easement through the Emu Plains land. 30

Q. Is that a continuation of the present - the one that runs through the subject land? A. I think they feed from the same point somewhere, but I don't think it's exactly the same easement, no.

Q. And the high tension easement in this land you had rezoned, runs whereabouts, through the middle of it or? A. Approximately two-thirds of the way to the northern boundary of the property; it runs roughly in an east/west direction through the land. 40

Q. Of course with regard to that bit of land and the easement, if the rezoning had stopped at the easement, you would have then had, so far as the Penrith's local scheme is concerned, going from the north to the south, industrial, on the bit of land you were concerned with some urban and some non-urban, or some residential and some non-urban, and then industrial at the south again. A. I'm sorry I don't follow you.

Q. I thought you referred to this bit of land at Emu Plains as one where the presence of a transmission line 50

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was not treated as suggesting that the rezoning should extend only as far as the transmission line? A. It's one of the illustrations that I used, yes.

Q. Now this bit of land had, so far as the Penrith scheme is concerned, industrial to the north of it? 10
A. A little to the north of it, yes.

Q. It's the next area with a sharp point extending to the north and by reason of the V we mentioned to the south, is it not? A. Yes it is, to the north is extractive industrial, around the river.

Q. So you would have had industrial under the Penrith scheme to the north, then if you were making the transmission line across the land you were concerned with either going from north south, industrial residential non-urban and then industrial at the bottom or a switch-over of the two in the middle? A. I'm sorry, I don't see where you get that first lot of residential. 20

Q. If the land you were concerned with was re-zoned for urban or residential --- A. Yes.

Q. --- but the limit of the re-zoning had been drawn to the transmission line that ran across it? A. The limit coming from the south to the transmission line easement or ---

Q. I don't mind whichever way it goes whether - if the transmission line were treated as a boundary to the re-zoning that you were speaking of, then part of the land you were seeking to have re-zoned would have been left urban and part would have become residential? 30
A. Part urban and part residential?

Q. I'm sorry, part non-urban and part residential?
A. No, no I don't agree with that because it would have been part open space and part residential because the extractive industrial area to the north, there is as I understand - or understood it at that time, an agreement in existence between the quarry people and the Penrith City Council that upon cessation of the quarrying activities that land will be given as open space and will at that time be zoned as such. And in fact the northern section of the subject - of the land that I negotiated the re-zoning on was in fact zoned open space because it was flood-prone so to my mind it would have more likely have all been zoned urban because it can't be open space if it had of gone - if the zoning had extended from Old Bathurst Road to the transmission line as residential and if there was going to be anything else the other side, it's unlikely they would have left it as - when they were including the whole property; once you start re-zoning the property it 40 50

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tends to - they tend to include the whole property.

Q. Certainly it's a separation where you had, according to the Penrith scheme, some designated use, in this case open space to the north. I'm sorry. Industrial but to be open space to the north of the land you were concerned with? A. Yes. 10

Q. And to the north east - I beg your pardon north west one had an area already zoned under the Penrith scheme as residential? A. Yes.

Q. Was it in fact built on? A. Yes, over the area to the west.

Q. And then to the south you had a further industrial area? A. Yes.

Q. With regard to the land at Casula in - whatever the lane is there - Leacocks Lane? A. Yes it is. 20

Q. Do you know what was the nature of the proposed special uses, was anything indicated in the SRQP?
A. No but some adjoining land was actually resumed by the SPA in 1974 and that matter had the compensation determined before the Land and Valuation Court in 1975 and it was stated at that hearing by a senior officer of the SPA that it had no intentions of altering the special use area and that it was likely - he was very vague about the type of uses that would be put in there but he suggested institutions and schools and this type of thing, most unsuitable land for it. 30

Q. It hasn't been - has it been developed now?
A. No, but the Minister has given an undertaking that upon satisfaction of a requirement to provide sewer to the property he will cause it to be re-zoned and released and a bank guarantee has now been given to the Water Board for \$2.875m to obtain the re-zoning of that 84 acres and some adjoining land to bring the total area of 250 acres in the release. It wasn't possible to justify on the 84 acres on its own. 40

Q. There was some problem wasn't there because of the height of this bit of land in getting services to it? A. Yes this is the Casula land we're referring to.

Q. To the Casula - the 84 acres? A. Yes, there'll have to be a small pumping station, I wouldn't call it great, insurmountable difficulties as evidenced by the fact that we're now proceeding with it but it's had to have a pumping station installed which is not abnormal.

Q. Now would you look at your schedule A please. Schedule A to exhibit J. In the first place in the 50

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column headed "analysis" the remedial costs that you've taken there as \$15,168 per acre? A. Yes.

Q. That is per good acre in Kulnamock? A. Yes.

Q. That is a figure - or a combination of two of Mr. Moore's figures? A. Yes.

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Q. And in sale 2, the Emu Plains lands you have taken the remedial - apart from the remedial cost you have then added for access problems some \$2,152 per acre again over the good land, is that right? A. No as I ---

HIS HONOUR: Say that again Mr. Officer would you?

OFFICER: Q. You have proceeded to add to your \$6,504, \$2,152 have you not thereby getting to your \$8,656?

A. That's the effect of it, but it wasn't added to the good land as I said in chief, I took into account the access problems and increased the \$6,504 by the interest and loss of interest in holding charges for say three years because it's dependent on development of adjoining properties.

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Q. And your \$8,656 is however per good acre? A. Yes.

Q. So by taking that loss of interest - the loss of interest, correct me if I'm wrong, is in the order of how much, what total figure or what rate as loss of interest did you take, what rate of interest? A. Yes I adopted 10 per cent per annum for 2 years.

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Q. 2 years? A. Sorry 3 years.

Q. On what amount of principle \$1.2m? A. No I took -

Q. Or on the \$6,504 per good acre? A. The latter.

Q. So that interest in total is how much? A. It would be in the order of ---

Q. 650 times 3 times 159 acres, is that right?

A. I'm sorry I don't ---

Q. Well 10 per cent on 6,500; is that right?

A. Yes.

Q. Times 3 because it's 3 years, times 159 of the good acres? A. No I did it at compound interest because I assumed that the interest would be mounting up in the holding charges each year, so I took the amount of \$6,504 over 3 years at 10 per cent.

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Q. And that total figure then is how much over your - the withholding charge? A. Yes. The difference between \$8,656 and \$6,504.

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Q. Is \$2,152 isn't it? A. Yes.

Q. I think that's where I started talking a few minutes ago. But anyway \$2,152 times 159 being the number of good acres? A. Yes it would be, 159.15, yes.

Q. Well unless my calculator is out, that comes to about \$142,000? A. Yes. 10

Q. Mr. Moore thought that Emu Plains could solve its access problems for \$90,000 didn't he? A. I think he suggested it may be possible to do it for that but from my experience and looking at it I feel that one would take into account the risks, so Mr. Moore's figures certainly didn't take into account the risks that they may not be able to do it in that manner and I feel the developer would certainly seek to allow loss of interest for the period that he may have to wait for development. 20

Q. But why - you're in this exercise assuming that re-zoning to permit development would take place when, how far off? A. Well it wasn't necessary in my main basis to make this assumption.

Q. But in this exercise it is isn't it? A. No I'm saying that after re-zoning of all this area that certainly Burnley and Emu Plains after re-zoning couldn't have the option open to them, say the subject resumed land could have, which is immediate access. They couldn't put in their development plan: and proceed with development immediately because they just would not be able to get sufficient access to existing roadways and that would hold them up for a period of say 3 years. 30

Q. That is 3 years while what Kulnamock and Burnley are developed, or just one of them? A. No, it doesn't require that assumption to be made. It could be either or both, or it could be some other properties that were developed, depending on the eventual road pattern. The fact is it would not be possible to bring a residential standard road into either of those properties, without coming through other lands. Now where that road comes from would be a final planning and design detail. 40

Q. And wherever it comes from, the owner of Emu Plains will be 3 years behind his adjoining owners?
A. Well to the adjoining owners with road access.

Q. Now in relation to sale 3, you have no - apart from access adjustments, you've got no what you earlier called remedial work, or remedial costs in relation to sale 3? A. No, because Mr. Moore envisaged, and I 50

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would agree there that you would have to dedicate or give away the poorer land.

Q. The spurs or --- A. You would possibly keep some of them but not all of the spurs.

Q. Now what are the access problems here, what is your access problem on Burnley, Penrith? A. Getting access through other properties from the direction that would be rezoned. 10

Q. Which direction would be --- A. The north and the east.

Q. You mean you think that Burnley Penrith will be delayed in its rezoning, do you? A. No, I'm saying delayed in its development, after the rezoning.

Q. And here again your figure is about \$2,200 and something in the differential? A. Yes. 20

Q. Is it calculated the same way? A. Yes.

Q. 10 per cent compound for 3 years on \$6,680(??)?
A. Yes.

Q. Is this the same 3-year period as Emu Plains is going to suffer? Or would it --- A. Yes.

Q. Would it be a longer one than Emu Plains? A. No, it is the same 3-year period, so to my mind you'd have - There's a number of ways the roads come into the area, and the roads would probably be available to both round about the same time, although maybe Emu Plains - may Burnley would be later, but it is not a precise thing, it might be 2 years, it might be 4 years, but you have to make some allowances in my mind, in analysing this sale, to make allowance for that. 30

Q. Well even though it might be 2 or it might be 1, I suppose, or 4 as you say? A. No, it wouldn't be as low as 1, in my opinion it would be in that period of 2 to 4.

Q. And you have taken it as being not only 3 years, but the same 3 years as Emu Plains? I'm sorry, once you take it as 3 years you necessarily - once you take each of them as a 3-year period, you are saying it is the same 3 years? A. Well it is in that same 3-year period, as I said it might be 2, it might be 4, but I think you've got to make some definite allowance, and from dealing with developers, in buying land-locked land, virtually land-locked land, 3 years would have been a reasonable allowance for these two properties. 40

Q. Do you assume that the development of this area

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will move from Bringelly Road at the east - that development of land south of the freeway will move from Bringelly Road at its eastern extremity, move in a wave in a westerly direction? A. Yes, I think that would have been the most likely situation for a number of reasons, yes. 10

Q. And it was on the assumption that that is how the movement took place that you fixed your 3-year period? A. No, not necessarily, if you look at the Heath plan, the development came down from the north, from up the Regentville area, or whether it came across - it couldn't come from the west back to the east from Burnley, because of the escarpment, so it either had to come down from the north or in from the east, and whichever way it came you had to wait on others to get access. 20

OFFICER: May I stop there?

HIS HONOUR: Yes.

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-v-

THE HOUSING COMMISSION OF NEW SOUTH WALES

HIS HONOUR: Yes.

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OFFICER: Your Honour, it was put to me by both my juniors that I put a wrong figure to the witness yesterday, and I would like to - lest they be right, they were unanimous in it, to correct it.

KENNETH JOHN PARKINSON

CROSS-EXAMINATION (CONTINUED)

OFFICER: Q. Mr. Parkinson, I was asking you yesterday about the total by which you escalate sale 2 on schedule A, or do you escalate it for its access problems?

A. Yes.

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Q. And I think we were agreed that you go up from \$6,504 to \$8,656, a difference of \$2,152? A. Yes.

Q. And it was then put to me that I had said a total, and had given you a figure of \$100 and something thousand? A. I'm sorry, I understood you to say the \$8,656 per acre.

Q. I'm sorry, I had intended to put to you yesterday that the difference of \$2,152 per good acre shows a total of \$342,168? A. I'll just do the calculation, it was \$2,000 ----

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Q. \$2,152 times 159. A. Yes, \$342,168, yes.

Q. Fine, thank you. Well that is the remedial task for the morning.

HIS HONOUR: Yes, I think that you might have said \$100,000, but I didn't pay much attention to it because I knew what was involved in it anyway.

OFFICER: Q. Now, Mr. Parkinson, I want to explore this allowance for access problems which you make to sale 2 and to sale 3. You would agree would you not, it is almost certain that if the land were available for urban potential, there would be a locality map such as Heath and Partners produced, showing an outline of the roads over the subject land and Emu Plains and Burnley and probably Kulnamock as well? A. Not necessarily so at this stage, frequently one does find that, but not necessarily so.

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Q. But it is only of course by having such a map
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that an owner of large, broad acres in the district, for example the subject lands, would know where they could run the roads on site to their boundaries? A. No, there is usually a structure plan prior to rezoning, such as the Heath plan, but the road patterns on those plans are usually subject to considerable amendment upon actual rezoning when engineering design is undertaken after rezoning. 10

Q. Now your assumption with regard to the subject land is I think that any development of it after rezoning, would commence in the south-east corner? A. I think that would be the logical way to open up the area, because it is a nice announcement to the area.

Q. And the best - or certainly a proportion of the subject land which has the views for example? A. Yes. 20

Q. You're aware I think, are you not, that to sewer the subject land would involve bringing sewerage services in to the north-west corner of the subject land? A. I'm not certain whether that is the precise situation, Mr. Moore provided advice that sewer could be made available to the subject land, and I think at the stage that this land was at in 1973, as at the date of resumption, the hypothetical purchaser would have made that type of enquiry of an engineer, as to whether or not it could be sewered, and serviced, and if so, whether the cost was going to be within reasonable boundaries. 30

Q. Certainly if you are going to sell off the south-eastern portion first, develop and sell it off, that will involve you bringing the sewer to the furthestmost point from the treatment works of the subject land? A. Well I suppose it would depend on the final design of the sewer whether you went up Surveyor's Creek or whether you went up Schoolhouse Creek, really that is an engineering matter, but the cost has been indicated to me as being reasonable over the whole property, but there is a benefit even if you run your services a long distance, in a large property, because you fix your development costs for that part of the development, whilst your land prices continue to escalate, so if inflation is running at say 10 per cent on costs, and your costs of development might be \$12,000 per block, you are losing \$1,200 a year in interest, whereas if the land prices are \$22,000, land prices are going up by a modest 10 per cent, you're picking up \$2,200 per year, so contrary to what is thought in a smaller estate, in a larger estate, on the long-term, it can have very considerable benefits, if you can put a fair amount of your works in to start with. 40 50

Q. And that is on the assumption that inflation will continue at the rate at which it was at the time of the

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developer acquired - or the person purchases the subject land? A. Yes, I think you look at the long-term situation, and one must expect some form of inflation, yes.

Q. Now you have to cater for the - what you regard as the access problem on Burnley and Emu Plains, you took as you described yesterday, that they would have to wait, and you assessed it at 3 years, in order to be able to connect up with roads coming either from the north or from the east? A. Yes, the likelihood of difficulties of gaining access from those sources, yes. 10

Q. You mean difficulty of gaining access from those sources? A. The likely difficulty associated with - difficulty from those sources, yes. Sorry, gaining access. 20

Q. What do you mean, take Emu Plains which apart from Luttrell Street is beside the subject lands?
A. Yes.

Q. Are you saying for example that Emu Plains would have to wait until development reached the eastern boundary of the subject land before Emu Plains would have adequate access? A. Not necessarily so, because even on the Heath plan which I don't think would have been the final plan, there are roads shown coming down from the north, through Kulnamock, so it may have come through the subject land, the subject resumed land, or it may have come down through the north, or there may have been other roads coming in from Luttrell Street, in through Kulnamock. 30

Q. And to assess that, you say, well here's a man who has bought Emu Plains. Whenever redevelopment does in fact occur, he will have to wait about 3 years for roads to come to him, whether it be from the east or from the north? A. I think he would make an allowance for that problem, and that is the allowance that I consider appropriate, yes. 40

Q. And you have applied that allowance by way of - I'm sorry, you have treated him as being out of pocket by the interest at 10 per cent for 3 years, and therefore you've added that to an estimate of the value of the good land in for example Emu Plains? A. Yes.

Q. Since the purchaser has bought both in Burnley, for example - has bought both the good land - I'm sorry, let me stay with Emu Plains for a moment, since the man has bought the good land and usable building land in Emu Plains, and has bought the open space land under TLE in Emu Plains, he will be out of pocket for the 3 years by his interest on that outlay as well, won't he? 50

A. Yes, unless there was some form of prior dedication he would be, yes.

Q. Well why do you apply your loss of interest factor only to the usable building land in Emu Plains? A. Well it wasn't necessary to apply it to the open space I don't feel, I was trying to arrive at the good land value, it should give a - possibly could give a similar result. All I've endeavoured to do is to make an allowance for the loss of access. This can be done in one of a number of ways, and I thought this was an appropriate way. 10

Q. Yes, but I'm just exploring what you regard as the appropriate way. Why tack on for loss of interest, on the purchase money for the usable building land, isn't it more logical to - if you are adopting this approach, to tack on to both the open space land at Emu Plains, and the good usable land? A. That would be another way of doing it, yes. 20

Q. It would be more logical wouldn't it? The purchaser has bought the open space land? A. Yes.

Q. And he can't use the open space land for development for the 3 years, on your assumption? A. No, he can't.

Q. Then wouldn't it be more logical to apply it to both? A. Well whether it would be more logical I would like to give further consideration to, I can see your point, but I would need time to think about it and to consider the situation, I agree it is a possible alternate approach. 30

HIS HONOUR: Q. I think actually what is being put to you is that your approach is wrong? A. Yes, I can see where it is being put to me, your Honour, but I wouldn't - my decision - I wouldn't like to answer that off the top of my head, because I would need time to think about it. From my experience I find that developers are primarily concerned with what - the land, what they are going to get out of it, but I can accept what Mr. Officer is putting to me. 40

OFFICER: Q. But of course they can't use the good land without owning and being able to dedicate open space, can they? They need the open space to the northern extent, just as much as they need the land on which they can build? A. Yes, I can accept what you are putting to me.

Q. Of course, if you were going to spread the loss of interest over the open space, as well as the usable land, then there wouldn't be as large an increase in the value of the usable land would there? A. No. 50

HIS HONOUR: Well obviously not, but how big?

HEMMINGS: It would be overall.

PARKINSON: A. But there would be overall, this is the point that I was going to say, you get to a situation if you adopted this calculation, on the basis you were putting to me, that the overall rate per acre of \$6,504, would probably be increased to just about the same as the good land value which I've arrived at, and you can't in an analysis depart from the overall situation. 10

OFFICER: Q. But it would, on the process that I'm suggesting to you, it would mean that your \$8,656, your final figure for the good land of Emu Plains would be somewhat lower? A. Not necessarily. So if you were to do it on your approach - and I think I can answer your question now - if you were to do it on your approach, which is to allow interest over the whole lot, you would take the figure of \$1,190,000 and you would add interest on to that and you would then subtract your open space land as disclosed by your sales because I wouldn't want to depart from the sales analysis as to the value of the open space, and I don't see that that would greatly alter the answer. In fact it would make it higher --- 20

HIS HONOUR: Q. Just so I follow, the difference between \$6,504 and \$8,656, what, that's access? A. Yes your Honour and what I am saying is that if you take the \$1,190,000 which, if we do at simple interest for the purpose of the exercise, that's \$119,000 a year times 3 is \$357,000. 30

Q. So you add that on to the \$1.19 million?

A. That's right, and then you would subtract from that the \$234,000 - I will do the calculation now ---

Q. Then you've get the good land would go up? A. Yes.

Q. Yes I follow that, I can see how it goes, but I'm just wondering --- A. Why I didn't want to answer Mr. Officer's question directly before was that I - the \$6,000 per acre is derived from an analysis of sales and I think to vary that artificially by interest in the calculation would be wrong. If you are going to adopt the overall interest, you would have to add it on and then take off your open space and then you are left with the good land value which would give you a higher -- 40

Q. What I am not sure is how you've taken interest into account in your analysis. A. Yes your Honour. I arrived at a rate per acre of \$6,504 and then I said, well, it would be somewhere between 2 and 4 years before these people could develop after a rezoning so I took --- 50

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Q. And that's where you got the \$2,152. A. Yes I took a period of 3 years and I said interest would go on interest because they are not going to be able to pay any of it off, so I took the amount of \$6,504 for 3 years at 10 per cent, being the rate I considered appropriate at that date. 10

OFFICER: Q. Mr. Parkinson, and don't answer the first part of this question. It is purely explanatory. What is so magical about \$6,000 for open space? You have said that Emu Plains, apart from the access problem, throws up a figure of \$6,504 for the good land? A. Yes.

Q. You have other good land sales, for example 4 and 5, which show roughly \$7,500 an acre? A. Yes.

Q. You say that because of the access problem in Emu Plains, the good land is \$8,656? A. Yes. 20

Q. If the good land in Emu Plains would be \$5,604 except for the access problem --- A. \$6,504.

Q. Sorry, \$6,504 except for the access problem?
A. Yes.

Q. Why, if the access problem affects the time at which Emu Plains could be developed? A. Yes.

Q. The access problem affects the time when the price paid for the whole of Emu Plains can be put to profitable use by development? A. Yes.

HIS HONOUR: Or rather, to begin to be put to profitable use by --- 30

OFFICER: Q. Begin to be put to profitable use. Aren't you distorting the situation if you say, well, there is the access problem in relation - which will have an effect on the good land - I'm sorry, on the amount that the purchaser of Emu Plains pays for his good land, but although the open space he has also had to buy and it can't be used, it is subject to the same delay for the profitable user, nevertheless as to Emu Plains, I stick with a \$6,000 for open space which I derived from some other sales? A. Yes, well you could analyse that sale in a number of ways. I feel you are putting two different analyses to me there, two different bases, but you certainly could reflect in lowering the value of the open space as well. In other words, as I understand you --- 40

Q. Lowering or increasing? A. It depends whether you look at the end answer which is adding the interest on there. If you added the interest on, as I said, you would get a greater figure if you then took the \$6,000 per acre off. 50

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Q. Yes, if you leave your open space at \$6,000 of course you get a larger figure. A. Yes, you possibly - what I am saying is the end calculation wouldn't be all that much different because even if you increased the \$6,000 for interest, I'm a bit loth to make that adjustment, but if you did increase it, well, probably it is going to give you a similar end answer in the good land as what I've got here. Maybe not exactly the same but it would be in the same bracket, and those two sales, as I said yesterday, I am using to cross-check Kulnamock. 10

Q. The extent to which, if you threw part of your interest on to the open space, the extent to which you affected your final figure of \$8,656 might be small, depending on how - would be small because you've only got 39 acres of open space in Emu Plains? A. I'm sorry, could you repeat the question? 20

Q. If you threw some part of your interest loss on to the open space land as well as the good land in Emu Plains any reduction that you effected in your \$8,656 would be relatively small because your proportion of open space in Emu Plains is small in relation to the good land? A. That could be. I would have to do the calculations for you.

HIS HONOUR: Q. And this interest you put or attributed to this access, your delayed beginning, of \$2,152 per acre, that was what, 10 per cent? A. Yes compound your Honour. 30

Q. 10 per cent compound? A. On the basis that a developer ---

Q. I've just done a very quick calculation. If you do it your way, Mr. Officer, simple interest, you get up to about \$8,200.

OFFICER: I haven't done the actual figure your Honour.

HIS HONOUR: I just did it quickly and that wasn't compound. I may be wrong, but that wasn't compound. Anyway we will check that. 40

OFFICER: We can do it. That can all be done later but I was seeking to test - Mr. Parkinson won't mind my saying, the illogicality of the way in which he has done it.

Q. If one moves to sale 3, there of course we have a relatively large proportion of land other than good building land? A. Yes.

Q. In fact, in area the good land is very close to 50

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only one half of the total site of 203 acres? A. Yes, 89.5 compared to 102.5, yes.

Q. No, not only 89.5. 89.5 plus 11.5. A. Yes but the 11.5 is not open space, as you can see. They're difficult developments, some of which would be able to be developed but there would be difficulties with development of them. 10

Q. Certainly such difficulty that you brought in the spurs at the same figure as open space? \$6,000. A. Yes on the basis that some of the open space you'll see in that particular calculation, I dropped the open space value down to \$5,000 per acre because of the poor nature of it and the edges of those spurs and so on would be at \$5,000 and some of the obtainable residential might be as high as \$7,000. 20

Q. But it is your view that the very poor passive open space, you would only bring in at \$5,000? A. Yes.

Q. And the difficult spur land at \$6,000. In your assessment of Burnley, where does the active open space come? You take that off the good land, do you? A. I think that is included from Mr. Moore's report and that one in the 89.5 acres, that was an overall situation.

Q. But the 89 is passive and poor passive at that? A. Well a part of it. I think that - sorry, I think that was another reason for reducing the spurs because I think Mr. Moore made reference to the fact that they were possibly suitable for some of the passive open space as well as residential. 30

Q. Certainly you would agree with this, would you not, that in relation to Burnley, if one made the - I'm sorry, if one changed the process to that which I have been suggesting would be more logical, the effect would be to a greater extent than in Emu Plains to reduce the final value which you assigned to the good land? A. Yes actually it could make that sale look more realistic because I was rather surprised that it came in as high as it did there because, if you look at the property, it has access problems and the escarpment. 40

Q. Between the - I'm sorry, your assessment for lack of access to these two properties is because you think to get adequate access, they will have to wait for roads to come down from the north or from the east? A. Yes.

Q. So far as the east is concerned, Emu Plains of course has a long frontage to Luttrell Street, unmade and so on as it is? A. Yes. Well it has a frontage, yes. 50

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Q. Of a considerable length, hasn't it? A. About a third of the property, yes.

Q. And so far as roads coming from the north are concerned, are you looking only to the access problem of Emu Plains, in your treatment of sale 2? A. I don't understand? 10

Q. I'm sorry, are you saying the purchaser of Emu Plains would see that he had an access problem?
A. Yes.

Q. That he wouldn't be able to develop his land in isolation, he wouldn't be able to go ahead and develop his land irrespective of what other people are doing, he will have to wait until roads are brought to him?
A. That's right.

Q. And then, having done that, with regard to Emu Plains, you switch over and look at Burnley, and say the same thing to yourself with regard to Burnley? 20
A. Yes.

Q. You would of course expect, would you, that there would be some degree of co-operation between a buyer of - or an owner of Burnley, and of Emu Plains, with regard to development? They would be both interested in getting road access to the property? A. That doesn't necessarily follow, no. They would both be interested in getting road access, but whether they were interested in doing it together is not necessarily so. 30

Q. But development of both of them are dependent on roads coming either from the east or from the north?
A. Yes.

Q. And with regard to Kulnamock, it too would be - the owner would be interested in you would expect, development of his land? A. Yes.

Q. So that we would have three adjoining owners of fairly large parcels, who would be each interested in access to the block of properties being gained either from the east or from the north? A. Yes, Kulnamock wouldn't - it is possible for Kulnamock to gain access, but it wouldn't be as economic as if it could buy adjacent properties in Luttrell Street. 40

Q. Of course if the three had a right to use Burnley's green land on the little map that was prepared with all the different colours? A. The Heath plan you mean?

Q. I'm sorry, may I have the exhibit, your Honour, it was made part of Mr. Alcorn's exhibit K. The one that has green and blue and pink and yellow and so on. 50

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HIS HONOUR: Yes. Kl.

OFFICER: Q. The green land on that plan was owned by Burnley Penrith? A. Yes.

Q. And Burnley Penrith also owned the blocks which are coloured a sort of pink and light yellow, separated from the green by the blue land? A. Yes. 10

Q. Certainly if the owner of Emu Plains, and of Burnley, co-operated, Emu Plains via the striped pink land, could acquire access to the green land owned by Burnley, and leading up to Mulgoa Road? A. Yes, but not a practical subdivision access.

Q. Difficult? A. Not only difficult, but I doubt that it would gain approval.

Q. The strip of land coloured pink, I think it is lot 4 or - lot 4, that abuts onto Emu Plains? A. Yes. 20

Q. In the south? A. Yes.

Q. And via the bright yellow strip, lot 5 - no I'm sorry, I withdraw that. Now is it because of the configuration of that area in the district, the configuration of the allotments, and what rights - respected rights there are, that you say Burnley Penrith would have to wait for development and roads to come from the north? A. No.

Q. You do say Burnley Penrith had an access problem? A. Yes. 30

Q. I thought you had indicated that you thought the access problem was that Burnley Penrith would have to wait for other land to be developed? A. Yes.

Q. Meaning thereby Kulnamock, or what land?

A. Kulnamock or the estate of Edwards, some other lands to the north. That is to the west of Kulnamock and to the north of Burnley. If you look at the ---

Q. I'm sorry, to the west of Kulnamock? A. Yes.

Q. And north of Burnley? On the western side of the right-of-way that is shown on the coloured plan in front of you? A. Yes, that's correct. 40

Q. And you say do you then that access from the time of the rezoning occurred, and development in this district, or urban use was permissible, you would assess it as being 3 years before lands such as those you've described, adjoining Burnley, were developed?

A. No, I'm saying that I consider that a developer

would - or a hypothetical purchaser would make some allowance in his purchase, and that that would be one way that he could possibly consider it.

Q. The land you've just mentioned, to the north of Burnley, is land between - I'm sorry, may I approach the witness, your Honour, and see what is on - you mentioned someone called Owens was it? A. No, the estate of Edwards. 10

Q. And was it the owner of this 32 acre parcel lot 2? A. Yes, I think Regentville Road is not made there, and I think it was either that one to the north of what is shown as Regentville Road, or to the south, but it certainly is round about the 32 acres, and actually you would also have to go through the one to the north of that again, some 60 odd acres, which is a fair sized-parcel. 20

Q. Well you see on this, which is Mr. Moore's - an annexure to Mr. Moore's report, the lots north of Regentville Road, leading to Mulgoa, are I would suggest 5 or perhaps 6 acres or thereabouts, are they not? A. Well there could be 5 to 10 acres in that bracket, yes. I'd say possibly round about the 8, because I think they are 11s.

Q. Thank you. With regard to Kulnamock, I note that you haven't treated it in your analysis column as having an access problem? A. No. 30

Q. You regard it as being able at least to solve its own access problem by the frontages that it does have? A. If necessary, but not in the most economic fashion. In other words, it would be more desirable to amalgamate it with other properties along Luttrell Street.

Q. And you have treated - I'm sorry, and you have treated a purchase or Emu Plains as expecting to have this, due to access, loss of some \$342,000 odd? A. No, that is not access cost, that is loss --- 40

Q. I'm sorry, to have a loss due to his access problem? A. Yes.

Q. Of \$342,000. A. Well whatever it might be, depending on which way you analyse it, the way you - or in my way yes.

Q. Yes, and likewise that the purchaser of Burnley Penrith will contemplate that he will have a loss of some \$225,000 odd? A. Yes, I think that is illustrated in the analysis, before you make those adjustments in relation to the good land, there is obviously some reason on the good land area why a lesser amount has 50

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been paid. And I would suggest that that has got to be the most logical reason. You see there is probably not a need to make adjustment, you could look at that sale in two ways ---

Q. I'm sorry, which way? A. 2 and 3, you could look at them in two ways, you could make some adjustment, as I've done, or as you've suggested. Or you could leave it at the overall rate per acre and say that is a cross check. If you look at Kulnamock, sale No. 1, the overall rate per acre is \$7,183, but when you make the physical adjustments you get up to \$9,018. It is in an effort to compare it to the analysed rate of Kulnamock you make these adjustments, but the \$6,500, without any adjustments, to my mind, would support the \$9,018 of Kulnamock, because of these problems, no matter how you adjust it. 10 20

Q. So let's take your adjusted figure for Kulnamock, \$9,018. A. Yes.

Q. You are saying the - what you call sale 2 really when the acquisition is analysed it shows that the purchaser was prepared to subject himself to \$9,018 per acre partly in purchase price and partly in remedial costs? A. If he wished to bring the Kulnamock property to the standard of the subject resumed land yes. Or as close as he could to that standard. 30

Q. And likewise in sale 2 you say the purchaser has subjected himself to an expense of \$8,656 partly in land purchase, partly in remedial costs which he'll have to incur, and partly in the loss which he'll suffer by reason of the access problem? A. Yes, to bring it to the - to some form of comparison with the subject land you have to make those adjustments.

Q. If I asked you to take, for any of these sales 1, 2, and 3, take the price paid per acre that the - say \$7,183 for the first --- A. Yes. 40

Q. And the figures under that for the second and third sales, and then look at the subject lands and say how much better are the subject lands than the lands bought for \$7,183 in the case of Kulnamock. What adjustment would you make? A. One could do it in a number of ways. One could say that Kulnamock is X per cent inferior land than the subject resumed land or one could adopt the approach which I've adopted, which is to utilise Mr. Moore's areas and costing. There'd certainly have to be a considerable upwards adjustment just by looking at the properties. 50

Q. Now looking at Kulnamock, you used the \$9,018 by way of saying, well the subject land is a bit better

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than \$9,100 --- A. That's the end result, because the process was that parts of the subject land are very similar to Kulnamock but parts of it are far far superior. And overall I felt that was an appropriate adjustment on the overall - the good land rate.

10

Q. I see, that's because of course you have extracted out of Kulnamock what you say is the purchaser's total likely - I'm sorry, what is the purchaser's assessed cost of purchase and expected remedial cost?

A. No, I've added to the sale price the costs of - as nearly as possible putting the Kulnamock land into a similar condition to the subject resumed land.

Q. Well there's a lot of space in the subject land which you've taken as \$6,000 per acre? A. Yes, some 115 acres of it.

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Q. Approximately 54 acres is land under the TLE?

A. Yes.

Q. And the remaining 61.8 acres is whereabouts?

A. It's areas which Mr. Moore described as being suitable for open space.

Q. Now if we look at Mr. Moore's map - did Mr. Moore show you a map? A. No. I'm sorry, unless you mean one attached to his original report.

Q. May I ask you, the land which Mr. Moore says would be open space or would be what makes up 61 acres - may I have AF, exhibit AF please your Honour? That's Mr. Moore's variation of the Heath plan. May I approach the witness your Honour?

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HIS HONOUR: Yes.

OFFICER: Q. Is it your understanding Mr. Parkinson that the 61 acres comprises all the bits of land outside the transmission line which are coloured green on that land? A. I couldn't answer that because the question that Mr. Moore was answering for me was what parts of this property are usable and what parts are only suitable for either open space or drainage. A lot of this would certainly be included because that roughly is that tributary of Surveyor's Creek, that is the Schoolhouse Creek, and that's your transmission line easement, so I imagine that it would include these additions to the transmission line easement and these major watercourses, creeks through the property. Whether it would include - these are probably links in the road pattern for selling purposes, I couldn't answer whether he's put additional strip in, that wouldn't affect the good land value though because one would expect that situation.

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Q. His - anyway your understanding is that his 61

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acres was land outside the transmission line which could only be used for open space or was most suitable for open space use. When we come to the most suitable for - presumably this bit of land, all these green bits of land are regarded as most suitable for --- A. I think that that piece would certainly be included because there is a gully there. 10

Q. And take this bit down in the south-east corner, that's not a gully is it? A. No I would doubt that that would be included in the area he's given.

Q. Well may I just ask again, do you understand his 61 acres is made up on land which by reason of drainage problems should be used only for open space? A. No not only drainage problems, I'd imagine it would include certain areas adjacent to the transmission line easement such as shown on this plan or in the Heath plan. 20

Q. Then - and I'm looking at page 13 of your report, you treat, apart from the 115.8, the balance of the land as having your \$9,100 value? A. Yes.

Q. And that is, is it not, your \$9,018 which you derived from Kulnamock, plus some addition for higher quality on the subject land? A. Overall yes.

Q. You said in relation to the 3 years for roads to come to the site from east or north, that it might of course be 2, it might be 4, 3 was your assessment? A. Yes. 30

Q. Now so far as roads coming from the east are concerned if that were the solution to the access, happened later to be the solution to the access problem --- A. Yes.

Q. You have said you would expect the first development to take place on the eastern portion of the subject land, or south-eastern? A. Yes.

Q. And progress westward, in a westerly direction. A. No I think it would, sorry I don't think I said entirely that. I said I think it would start in the south-eastern corner and it would possibly progress in a north-westerly direction and westerly. 40

Q. North and west. Now if that's what should eventuate you would expect it to be more than 4 years before development reached the western boundary of the subject land? A. If I was to make that assumption, that would be so, but I don't agree that that is the practical way it would be done.

Q. You mean you don't think the subject land would 50

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be developed from east to west or south-east to north-west? A. I'm sorry, I assumed you were asking me to make the assumption that there would be no overall plan providing access down from the north.

Q. Well is your assessment of 3 years, that there will be access coming from the north? A. It could come from a number of --- 10

Q. Yes I know, I just wanted to know, do you say it will come from the north, or it will come from the north or the east? A. Yes, or from the north-east.

Q. Now if it comes from the east, then you would agree, wouldn't you, that it would be more than 3 years before development reached the Emu Plains area? A. If I am to make an assumption that that is the only way that the roads can come in, yes, you would have to develop the subject land first, if you are making that assumption. 20

Q. And that certainly would be more than 4 years?
A. Oh yes.

Q. What, in the vicinity of 7, 8? A. Really I haven't considered that, it could be 10, or it could be 8 to 10, but I haven't really given that consideration because this is not an actual subdivision, it is non-urban land with potential.

Q. Now if the access came from the north-east then that is development of the Garswood Road area? A. Yes. 30

Q. You would expect again, would you, that that land would be in all probability, developed from east to west? A. No, that could be very fragmented, because Garswood Road varies tremendously, you have some high land at the eastern end, just to the west of the golf course, then up round the school you also have some very good land, and I think that that is the land the developers would try and consolidate, and it would depend how your services are run with - we're really talking a long way down the track to get into the finer details, which section will develop first. 40

Q. Yes, but I'm just testing your estimate of 3 years. Now if it should come from the north, and this is 3 years after the land has been rezoned? A. Yes.

Q. Rezoning occurs, then Burnley and Emu Plains you say, will have to wait in your estimate, 3 years, for roads to reach them? A. 2 to 4 years, yes.

Q. 2 to 4? A. Yes.

Q. You pick the centre line? A. The median, yes. 50

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- Q. And in your assessment of 2 to 4, particularly I gather, has relation to the land immediately to the north of Burnley, and to the west of Burnley's narrow access strip? A. I'm sorry, could you - I didn't follow your directions. 10
- Q. When you consider access coming from the north to the Burnley - Emu Plains area, you have particularly in contemplation, development of the land which is north of Burnley, and west of Burnley's access strip to Mulgoa? A. That is one possible way, yes.
- Q. When one looks at your sales 4 and 5, those are good lands, good building lands? A. Very good, yes.
- Q. At least as good as anything on Kulnamock you would say? A. Yes.
- Q. Doesn't that suggest to you that perhaps the figure of \$7,183 overall for Kulnamock was excessive? A. No. 20
- Q. Would you - you do I take it, by reason of your analysis, say that the good land in Kulnamock was worth \$9,018? A. Yes.
- Q. So none of it was any better than the land in sales 4 and 5? A. No.
- Q. By your no, you mean that is correct, is it? A. Yes, that is correct.
- Q. So you are saying are you that the \$9,018 is the value of the good land in Kulnamock, because there is more of it than is contained in sales 4 and 5? A. That is correct, yes. 30
- Q. So that is a difference of approximately \$1,500 per acre? A. Yes.
- Q. For the fact that Kulnamock is 76 acres of good, as compared with 11 acres in 4 and 5? A. Yes.
- Q. Now have you any sales other than your sales adjusted as you do in the analysis for sales 1, 2 and 3, which for large areas, zoned similarly to 4 and 5, show this difference for size? A. Yes, there's the private treaty sale of Kulnamock, which when you adjust it shows the same increase, and as the sale A on sale schedule B. 40
- Q. That is the Casula --- A. That is correct, and the same situation applied at Casula, I didn't include the smaller sales here, because I didn't - you've got to stop somewhere, and they showed the same trend.

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Q. Of course the Casula one though the zoning was proposed special purposes? A. It was shown as proposed special uses on the SROP.

Q. But it was considered as being suitable for some special use? A. By the Planning and Environment. 10

Q. By the SPA? A. Not by the marketplace, no.

Q. It certainly - though that was its description in the SROP, quite clearly had some use in the minds of SROP - SPA, had some use other than its existing use? A. Well they proposed it under the SROP as special uses, and as I said yesterday, in the matter before the Land and Valuation Court in 1975, they indicated they intended to use it for that purpose. As a school, institutions, hospitals, etcetera.

Q. Was the Casula land zoned at all in a local scheme? 20
A. Yes.

Q. I think you told me yesterday, remind me, what was the zoning? A. Non-urban 1(b).

Q. That was 5 acre was it? A. Yes.

Q. Now I want you to just assume for the purpose of this next series of questions, that you are not entitled to look at any resumption settlement? A. Yes.

Q. Now you would on that basis value the subject lands by going principally to the May 1973 sale of Kulnamock? A. That plus the Casula sale, yes. Sorry, 30
and also the other - as I pointed out yesterday, I think you've got to look at the other private sales such as sale 8, the private sale and resale for percentage increases and so on.

Q. Yes, but before we get to - well you would - you mean percentage increase, are you talking about for size or --- A. No, for market escalation.

Q. For creep, or whatever one is going to call it?
A. Yes.

HIS HONOUR: Q. Which sale do you go to for that do you say? A. Well sale 8, which is a private purchase and resale, shown as 10 per cent per month, your Honour. 40

Q. Sale 8 is what? A. It is old - it is G.L.F. Martin Services to Bell and then to the Housing Commission, it sold initially in August 1972 for \$42,250, it then resold to Bell for \$97,000, the contract never being completed because of the proposed resumption.

Q. I see.

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OFFICER: Q. Well now, apart from Creep however, you would start off with your Kulnamock May 1973 sale?

A. Yes.

Q. And what would you analyse that out in the way you have over on your right hand column? A. What I did, as it was a cross check on the resumption prices, the method that I adopted there was that as I said yesterday, that I looked at the Kulnamock sale at \$649,087, I looked at the remedial works of \$120,000, the total of those two factors gave me \$769,087, and then I looked at the question of the creep factor, from the date of the Kulnamock sale, and I looked particularly at Casula, because the increase in that of 34.4 per cent occurred actually between the Kulnamock sale and the date of resumption, and I also looked at sale 8, and also at sales BA and BB on sale schedule B, and I felt that the minimum creep factor I could allow was 30 per cent, which gave me a total price for the private Kulnamock transaction of \$999,813, which is \$9,388 per acre, which I felt indicated \$9,500 per acre for the subject resumed land. 10 20

Q. But the figure you - the second-last figure you mentioned, the \$9,388, that is overall for Kulnamock?

A. Yes overall.

Q. That's just dividing the figure you reached after creep, by the acreage? A. Yes, as I say I didn't go into this analysis in the same degree of detail as that shown on the schedule, because this was a cross-check valuation. 30

Q. So that would be for both good and bad land in Kulnamock? A. Yes.

HIS HONOUR: Q. Sorry Mr. Officer, you say you started off with what? A. \$649,087, and to that I added the remedial costs excluding the bridging of the creek which as I said yesterday I wasn't certain would be necessary, that's \$120,000, which gave me a figure of \$769,087, and then looking at the creek factor I felt the absolute - 40

Q. Yes, it was the 30 per cent. A. Yes 30 per cent which gave me \$999,000.

Q. And you divided that by? A. By the 106.5 acres.

Q. And that gave? A. \$9,388 which I - I felt it was more bad land at Kulnamock than the subject even with the - even after the expenditure of \$120,000, as Mr. Moore points out you can't use the creek through that property whereas a lot of the creeks on the subject you can. So I felt for the overall rate per acre on the subject resumed land one would have to adopt \$9,500 50

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which should be reduced under the transmission line easement which Kulnamock wasn't subject to.

Q. And reduced by how much? A. I reduced it by 33 1/3 per cent your Honour.

Q. For that area, that land? A. Yes. Which gave me \$6,333. 10

Q. And what do those figures come up to? A. Yes the total figures came to \$8,227,000 less the repair costs of desilting and draining the dams of \$100,000, gave me a cross-check figure of \$8,127,000.

SHORT ADJOURNMENT

ON RESUMPTION

OFFICER: Your Honour my learned friend wants to interpose a witness but they are agreeable that I just ask Mr. Parkinson a couple more questions before I break off. 20

HIS HONOUR: Yes certainly.

OFFICER: Q. Mr. Parkinson your alternative approach, starting with the Kulnamock sale of May 1973 ---
A. Yes.

Q. You take that sale at \$649,000? A. Yes.

Q. You add the remedial costs of \$120,000? A. Yes.

Q. Giving you \$769,000? A. Yes.

Q. You then escalate by 30 per cent? A. Yes.

Q. That's a figure of in the order of \$230,000? 30
A. I did 1.3 times, yes.

Q. So up to that point you've got a total of \$999,813?
A. Yes.

Q. Now - and if you did a straight division of the acreage of Kulnamock, \$9,388 or thereabouts? A. Yes.

Q. If you followed in relation to this alternative the analysis you have made of the Kulnamock resumption, you would deduct 30 acres at \$6,000? A. Not necessarily in this calculation because I'm relying on a totally different set of evidence. If I was to do that - and what I endeavoured to do in this assessment --- 40

HIS HONOUR: Q. No but I think you're asked, if you did it. A. I'm sorry, your Honour, yes.

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HIS HONOUR: Weren't you asking if he did this?

OFFICER: Yes.

Q. You have in your schedule A treated the resumption settlement as if it were a sale and analysed it?

A. Yes.

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Q. Now if instead of the resumption sale you take the actual sale adjusted in the way we've just mentioned ---

HIS HONOUR: With still \$120,000? What's the \$120,000 for?

OFFICER: That is remedial work.

HIS HONOUR: He still adds \$120,000 or a higher figure because it's a year later?

PARKINSON: No it's in the same year your Honour.

OFFICER: From May 1973 to August 1973.

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HIS HONOUR: Yes.

OFFICER: On this approach disregarding the resumption sale or settlement.

HIS HONOUR: Plus 30 per cent. Is this what you want, to go through the exercise?

OFFICER: Q. I'm asking, having reached the total of \$999,813 if one divides it by the straight acreage you get the \$9,388. A. Yes.

Q. But if you were to do the same exercise with regard to this actual sale adjusted, as you have done for your assumed sale, the resumption settlement, then you would deduct 30 acres at \$6,000, assuming that ---

A. Yes, that would be correct on that assumption, yes.

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Q. Well you would then deduct, your \$999,000 would then come down to \$819,000 would it not? A. Yes.

Q. You would then take the value of improvements at \$15,000? A. Yes.

Q. And deducting that you come down to \$804,800? A. Yes.

Q. If you then divided that by your 76.5, you get a good land value per acre of approximately \$10,590?

A. Yes.

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Q. And of course whether the purchaser be a purchaser

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under the resumption or under the actual sale of May, he still has the access problem you've described of waiting for development? A. Not in Kulnamock.

Q. However, doing your - precisely the exercise you have but substituting with adjustments the May 1973 sale figure, you reach a value for - would reach a value for good land on Kulnamock of \$10,590? A. Yes, the reason for that is as I state in my report that the resumption transactions appear conservative. Now that would apply not only to the good land value but also to the open space, and that's why when you first asked this question I was a little hesitant to agree that there could be open space in at \$6,000 on a market transaction.

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HIS HONOUR: Q. And you got the \$6,000 what, from the resumption --- A. From the resumption transaction your Honour yes.

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OFFICER: Q. The \$6,000 for open space comes wholly from resumption transactions? A. Yes.

Q. If you didn't have the resumption transactions, and that's the basis on which we're proceeding at the moment, but you wanted to analyse the adjusted May 1973 sale, and wished to analyse it in the same way as you have done in your right-hand column, to find the value in August 1973 of the good land in Kulnamock, at which price would you take the open space? A. There's insufficient evidence of private sales of land only suitable for open space or drainage purposes around the relevant date, for me to establish that value and that's why I adopted the alternate approach on this basis of valuation.

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OFFICER: Q. Of using the resumption? A. No, of using an overall rate per acre instead of dissecting it with the same degree of analysis as I did in the resumption transaction.

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Q. I see, so that if you don't have the resumption, any of the resumption sales, then you can't go in your alternative approach of the May 1973 sale, you can't go beyond the overall assessment of \$9,388 or thereabouts for the whole of the Kulnamock land good and bad?

A. That's right, one could make arbitrary adjustments but I felt that - where do you stop making adjustments and I felt the overall rate as a check was quite reliable.

Q. And then to your \$9,388 which includes good and bad, what adjustments - do you make any adjustment when transferring that to the subject land? A. Yes.

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Q. And what is the adjustment? A. I took the \$9,388 to \$9,500 overall.

OFFICER: Thank you.

KENNETH JOHN PARKINSON

(Under former oath)

CROSS-EXAMINATION (CONTINUED)

OFFICER: Q. Mr. Parkinson, I want to ask you some questions about Casula, I think you referred yesterday to that being a dealing or series of dealings to which you would refer partly for creep. A. Yes. 10

Q. And partly for differential in prices paid for small lots and larger lots? A. I made comment that in the Casula area there were also smaller lots sold in that same proposed special uses zoning.

Q. And there were no - being critical at the moment of the - none of the small sales are itemised in your report? A. No, I didn't think it was necessary in view of the amount of resumption information that was available in the immediate area, you have to rely on somewhere as to how far you go and what you include in your report. 20

Q. Well now if ultimately his Honour rules that you are not allowed to look at the resumption settlements, then these small lot sales in Casula would become more important in measuring differential for size? A. I would have chosen to have included some had I been aware that the resumptions weren't there, but still I'd need to consider also the small lot private sales in this area compared to a larger one such as Kulnamock. 30

Q. Yes, I want to come to that in a moment, but your Honour, lest your Honour's determination be, and we will be putting one can't look at the resumptions at all, then I would submit that we should be given particulars of the small sales at Casula, to which the witness would pay some regard, if the resumptions are excluded.

HIS HONOUR: Yes. Well do you ---

HEMMINGS: Well your Honour, if the witness has said he'd looked at something, my friend is certainly entitled --- 40

HIS HONOUR: Q. Yes, I think so. What are they?
A. Yes, I can produce them, your Honour, they're in another file I have.

Q. You haven't got them here? A. Not here, your Honour, no.

Q. Could you produce them again - well first of all, Mr. Officer, is this the only part of the cross-examination left, or is there more? Can you go onto another topic and come back? 50

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OFFICER: No, further material, your Honour, about another three quarters of an hour or so.

HIS HONOUR: Well maybe when you've finished the topic we'll see how things stand. Mr. Parkinson may bring this other material back.

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OFFICER: Yes, thank you, your Honour.

Q. Well now, still on Casula, but a different aspect of it, and you may have given evidence in the last few days on this, I can't recall yes or no, so lest you haven't, may I ask you again, did the Casula land in Leacocks Lane have any permissible subdivision potential, already permissible subdivision potential?

HIS HONOUR: Which land is this?

OFFICER: This is the land he refers to being sale 1 - sale A on schedule B.

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HIS HONOUR: Q. Yes, thank you, the Stocks and Holdings land, or well Kennett's land. A. Yes, it was zoned --

Q. Zoned what? A. Non-urban 1(b) which permitted a subdivision into 5 acre allotments, which of course has never occurred.

OFFICER: Q. Has that zoning at some time been changed? A. Yes, it was changed subsequently to become non-urban 1(c), which is a 40 hectare, 100 acre minimum.

HIS HONOUR: Q. It was 5 acres was it? A. Yes, your Honour.

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Q. It has now become 40 acres? A. 100 acres minimum.

HIS HONOUR: Q. When was that? A. About 1977, when the holding zoning was brought in in that area.

OFFICER: Q. That was at a time was it not, when vast areas over New South Wales were lifted from 5 or 25 acre minimums to 100 acre? A. No. It was considerably later than that, that general situation throughout the State was 1973 and 1974, and this happened in the Liverpool area, it was either 1977 or 1978.

Q. I see.

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HIS HONOUR: Q. And did it have hectares, or acres? A. 40 hectares, 100 acres.

OFFICER: Q. And has this particular parcel of land in fact been subdivided and sold, or is it in the process of being subdivided and sold? A. No, as I said the

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other day, at the moment we're in the process of - the Minister has agreed to the rezoning, subject to satisfactory arrangements being made with the MWS & DB, the water and sewer, and a bank guarantee has now been made available for 2.875 million, and the rezoning is now in. 10

HIS HONOUR: Q. For? A. For residential, your Honour.

Q. For urban? A. Yes.

OFFICER: Q. And may we - would the witness approach the ---

HIS HONOUR: Could you approach the map for a moment. Mr. Officer if you can instruct me, when did the word "creep" - when was that used, that appears to be a singularly inappropriate expression for the sort of --

OFFICER: Well creep, escalation, or an excess ---

HIS HONOUR: I know what it is, but when property doubles inside a year, it is hardly my definition of creeping process, leaping. I just wondered where the word came from. It probably came from years ago when prices did creep. Is that where it came from a long time ago? 20

OFFICER: I have no idea.

HEMMINGS: A creep factor was talked about in the Albury-Wodonga areas where you had to adjust prices after a certain date.

HIS HONOUR: I knew we'd referred to it, but I just wondered why the word "creep". Well you may say it really is a creep. 30

OFFICER: Creep, well we will not be agreeing with the size.

HIS HONOUR: No, I appreciate that.

OFFICER: Q. Have you been asked to mark on this map the area of Leacocks Lane? A. No.

Q. I don't think you have, could you do that please, point out to us whereabouts it is? A. Yes, it is in this area which could be described as - yes, in this area to the east of the Hume Highway, and to the west of the railway line. 40

Q. And above --- A. And above the dotted line going east-west at that location. This special use area had been varied by 1974 to proposed urban.

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HIS HONOUR: Q. What was that special use area, was that Holdsworthy was it? A. No, the special uses proposed is the correct designation, with the white cross-hatching, your Honour.

OFFICER: Q. Well then apart from the description you've given of Leacocks Lane area, you pointed to an area west of the freeway -- A. Of the highway, the freeway is not there, it comes to the crossroads. I'm sorry, I meant that area to the west of the highway. 10

Q. Yes, indeed, but you then pointed to an area west of the freeway which is - and south-west of the area you pointed out for Leacocks Lane? A. Yes, no I was in error in that, I think, it was the small scale of the map, I meant the area to the west of the highway, and to the east of the proposed freeway at that location. 20

Q. I see, which was the area that was rezoned for urban? A. It was proposed, yes, and ---

Q. Proposed? A. As I understand it, yes, in 1974 it was stated as being proposed.

Q. I see, did it take place? A. I couldn't answer that without checking it.

Q. When you say proposed, you don't merely mean proposed by some owner or developer? A. No, where I got the information from was an officer of the State Planning Authority in the Land and Valuation Court in 1974 - 1975. 30

Q. And would the Leacocks Lane be - I withdraw that for the moment. This dotted line is running more or less east-west from the general area - I'm sorry, running towards the east of the general area you've described, is I see "railway proposed"? A. Yes.

Q. Now is Leacocks Lane north of a fictional prolongation of that railway line? A. No. It would appear to me that Leacock's Lane would - if I can just put a slight dot on the map - is about there and the rezoning occurred to there. The area --- 40

Q. I'm sorry, what rezoning? A. The proposed rezoning is from the dot south to the actual black dotted line east-west on the map.

Q. That is the rezoning which is just - this year or last year, proposed? A. As soon as the bank guarantee is handed to the Water Board, yes.

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Q. The particular sale that you refer to in Leacock's Lane is 86 acres? A. 84.

Q. In the 80s, and is it the land within that sale and other land that are now proposed to be rezoned once the bank guarantees the --- A. Yes the people who bought that property, that 84 acres, have now proceeded - 10

Q. That's --- A. Kawacka, yes, have now proceeded to purchase by optional contract an additional 120 acres and the total area of the rezoning in the Special Use area will be 250 acres.

Q. That is all land, I think you indicated, that was fairly close to the old highway, Hume Highway? A. Yes.

Q. Just a short distance south of land which is shown here on this plan as urban existing? A. That's correct, yes. 20

Q. Is the dot that you have marked here as being the approximate position of sale B --- A. Leacock's Lane.

Q. Sale A. A. Yes of Leacock's Lane off which sale A is.

Q. Does that land extend - land itself extend both north and south of the dot? A. No, the planning - the SPA as it then was resumed the area on the north side of Leacock's Lane in 1974.

Q. For what? A. Special uses. It is now going to be used for - and zoned for I believe, open space. 30

Q. So that having resumed some land to the north of the boundaries within which you've marked the dot as open space - for open space --- A. You know, they resumed into more - special uses, I think the resumption notice states.

Q. But you understand the special use they had in mind was open space? A. Yes I believe they have now changed their mind about the special use area. They had in fact acquired or resumed certain parcels, smaller parcels, adjoining the Kawacka land which they have now put back under contract, I think, to Kawacka for residential. 40

Q. So it looks as though quite a large proportion of this, the area bounded on the north by urban existing, on the east by the railway line and on the west by the Hume Highway is to be either residential - now is to be residential or open space? A. Yes.

Q. Is there a railway station - what is the nearest

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railway station to this? A. There is Casula railway station but from that land it will be difficult to get access to it because you have to come out on to the highway and back up to another road and back around down to Casula and it would be just as quick when you've got the car to do that as to go to Liverpool which is a major station and all the trains stop there. 10

Q. The distance of the subject land, the land where you placed the dot, from what was in 1968 urban existing, would be, what, a mile, a mile and a half? A. It is 3 miles to Liverpool in a straight line so it would be possibly about a mile I suppose or a little less.

Q. When you say Liverpool, you mean the --- A. The railway station.

Q. --- railway station, being where? A. Right. The bridge over the Georges River, the road bridge which goes - it is just near the railway station. 20

Q. If from the land you are describing to Liverpool railway station is about 3 miles -- A. In a straight line, yes.

Q. --- in a straight line, then your dot is about - perhaps is certainly less than a mile? A. Yes but as I was going to say, the land doesn't start at that dot. That is where Leacock's Lane leaves the highway and it winds in a south-easterly direction and the actual Kawacka land is off the end of Leacock's Lane. 30

Q. I see. The dot should be further to --- A. No, the dot was meant to represent where Leacock's Lane left the highway. Leacock's Lane then proceeds in a roughly south-easterly direction so the Kawacka land is that land.

Q. Could you make a circle being the approximate ---
A. Very approximate, on such a small scale map.

Q. The circle is the approximate size of the 80 odd acre purchase by Kawacka? A. Yes I think that would be reasonable because as I say there's 250 acres in that special use area and very roughly without a scale it would be about that size. 40

Q. Oh, the 250 acres is in the whole of the special use area which would run down to about there? A. No, to that dotted line, I'm referring to the 250 acres to that dotted line.

Q. And on both sides of the Hume Highway? A. No, I excluded the north-western side of the highway because that was already proposed for rezoning. 50

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Q. Was proposed in 1973 for rezoning? A. I heard of it in 1974.

Q. Rezoning for? A. Urban residential.

Q. You would agree, would you not, that it was - the purchase by Kawacka would have been influenced to some extent by the thought that some at least of this special uses area was likely to be rezoned for urban? A. No, as I said the other day, as late as 1975 an officer of the State Planning Authority gave evidence to the effect that it would never be rezoned from special uses under the Sydney Region Outline Plan, but Kawacka felt it had a potential and they bought it on that basis and have succeeded. 10

Q. You mean the officer who gave evidence in 1975 said that none of the land zoned special uses would be rezoned? A. He agreed that there had been an agreement to rezone the area from the north-west of the highway which was approximately 30 per cent of that particular special uses area but that the area to the south-east of the highway would never, in his opinion, be rezoned from special uses. 20

Q. Can you recall the name of the --- A. Yes, Sacco and Spinati, the New South Wales Planning and Environment Commission.

Q. Yes, can you remember the name of the officer? A. No I really couldn't. 30

Q. At the time that Kawacka bought the 86 acres --- A. 84, yes.

Q. I'm sorry, 84 acres, and I think you acted for them or had some - advised them? A. Not at that time. I've known the directors of Kawacka for approximately 20 years and I've certainly had discussions with them, I act for Kennett and I act for Kawacka at the moment. I didn't specifically advise them when they purchased that land, no. 40

Q. At the time they purchased the 84 acres, had they made, do you know, enquiries of SPA as to the possibility of it being rezoned? A. No not as to the possibility of it being rezoned. They bought it in the belief that it was non urban as zoned under the Liverpool planning scheme ordinance which their enquiry showed.

Q. At the time they bought it, the 84 acres, were they aware of moves for the rezoning of the special uses area to the west of the Hume Highway? A. Not to my knowledge. 50

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Q. You don't know one way or the other? A. I don't know one way or the other, no.

Q. Would you look at your schedule A please? I think you said a moment ago that if you didn't have - couldn't have recourse to the resumptions to show a differential for size, you could derive it partly from Casula sales you're going to give us of which you will give us particulars and from sales in the south - south of the freeway at Penrith? A. I'm sorry, could you repeat that? 10

HIS HONOUR: You mean Garswood Road?

OFFICER: Well somewhere there.

Q. I think you said, if you can't look at the resumptions, I can still see a differential for size at Casula between the small sales you are going to give us and the sale A on schedule B, and I think you said: And I can also see it in private sales shown on my schedule A? A. No I said I'd also look to the sales on my sales schedule A. The problem with the sales on sales schedule A, the private ones if I might add this here, is that you have to make a lot of adjustments to them because they are at differing times - you had this period of rapid escalation of values, and really I don't think my valuation depends to any great degree on differentiation for size, because I'm comparing it with larger parcels of land in the main. In other words, the Kulnamock sale and the Kawacka sale. 20 30

Q. But you did tell the court, whether to me or to my learned friend, the other day, that as compared on schedule A with sales 4 and 5, sale 1 adjusted as you have in your analysis, shows a higher price for good land per acre? A. Yes.

HIS HONOUR: For a bigger parcel?

PARKINSON: Yes.

OFFICER: Q. And that was for size? A. I said if I remember rightly, that that was what I would have expected for sales, because of the --- 40

Q. In other words, you are saying that the differential between sales 4 and 5 per acre, and your adjusted per acre good land value in Kulnamock, is because Kulnamock is 76 acres of good land, and 4 and 5 are 11 acres? A. Yes.

Q. Now if one excludes recourse to the resumption in schedule A, you cannot in the private sales see a differential for size, except in one case, would you agree? 50

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HIS HONOUR: Well what's that?

OFFICER: Q. The one case would be sale 8, the \$3,044 as compared with sale 1, the \$6,094? A. No, I wouldn't agree with that, because if you were to look at those sales, it would be necessary, and you wanted to do that exercise, it would be necessary to do the same analysis on the private sales that I've done in relation to resumption sales, and also to apply a creep factor, that \$3,044 you referred to is a sale in August 1972, well I ---

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Q. 1972? 1973. A. 1972, no the 1973 sale was \$6,988.

Q. I beg your pardon.

HIS HONOUR: \$3,044 to \$6,988.

PARKINSON: Yes.

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OFFICER: Q. I'm sorry, I should have put it at the - well I'm sorry. I think you told me yesterday, that except by recourse to the resumptions, you were unable to fix a value for open space and drainage areas?

A. Yes.

Q. Now if you were looking at the private sales only, but of course adjusting any private sales for creep or leap, whatever we were going to call it from here on, can you see a differential for size? A. I couldn't answer that without doing the analysis. That factor to my mind is not important. If I was to disregard the resumption sales and to the valuation that I've put forward on that basis, due to the type of evidence available I would ---

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HIS HONOUR: Q. Due to what? A. Due to the amount and type of evidence over a vast period of time, which was why there were so many adjustments, your best evidence would have to be the Kulnamock sale, the private sale with Kulnamock, in my opinion, because the only adjustment, apart from physical differences that has to be made is the time factor between that and the date of the resumption, so I don't think that if I ignore the resumption transactions, the difference between the smaller and larger parcels is important.

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OFFICER: Q. Well then if one took the Kulnamock sale, and increased it for the time factor - I withdraw that. What you would do if you were looking to private sales to see whether there was a differential between large and small --- A. If I did that exercise?

Q. If you did that. Because what you do with regard

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to the private sale of Kulnamock is to escalate it to resumption date --- A. Yes.

Q. And to add something for the quality of the subject land as compared with Kulnamock? A. Yes.

Q. And by that you reach \$9,500, or maybe --- 10

HIS HONOUR: Q. \$9,018 didn't --- A. \$9,388 I think it was, which I adjusted to \$9,500.

HEMMINGS: The \$9,018 was on the resumption basis, your Honour.

HIS HONOUR: The resumption basis?

HEMMINGS: Yes.

HIS HONOUR: Right, sorry, and \$9,300 on the non-resumption basis.

OFFICER: Q. Now that of course is for good and bad land, or usable for building and non-usable for building, within Kulnamock? A. Yes. 20

Q. Now if you look at any of the other small sales, if you look at say the private sale of No. 7. A. Yes.

Q. Or if you look at the sale No. 4, which is wholly good land? A. Yes.

Q. The date of that private sale was the 17th of January 1973? A. Yes.

Q. Now if you escalated it to the date of resumption of the subject land, you would get a good land value as at August 1973, of something in the order of \$7,000 odd, wouldn't you? A. \$8,158. 30

HIS HONOUR: Q. \$8,000, that is \$4,799 - that is \$4,800 almost as is, and 70 per cent - would it go up 70 per cent? A. That was my opinion, your Honour, based on sale 8, the two private sales, the sale 8.

OFFICER: Q. And that gives you how much? A. \$8,158 per acre.

Q. Well now that would be for 11 acres which was wholly good. A. That's correct, yes.

HIS HONOUR: Q. \$8,000 - what was the figure? 40
A. \$8,158, your Honour.

OFFICER: Q. Your escalation, and adjustment for quality of the subject land as compared with Kulnamock

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private sale, gives you the \$9,388 or thereabouts?

A. Yes.

Q. So that on your treatment of the private sale of Kulnamock, for the purpose of reaching a value of the subject lands, the good building land within the subject land would be over something more than \$9,300 --- 10

A. I'm sorry, could you repeat ---

Q. Your \$9,388, which you deduce from the private sale of Kulnamock for the subject lands --- A. \$9,500.

Q. \$9,500, that includes some good and some usable for building and some not usable for building?

A. That's right.

Q. 115 acres of it not usable for building? A. No, I made a further adjustment then applying it to the subject resumed land, I valued outside the transmission line easement at \$9,500, and then I took 30 per cent off - under 33 per cent or whatever it was off for under the transmission line easement, which Kulnamock was not subject to. 20

Q. But you would - though not putting a value on the non-buildable land of the subject land, unless you had recourse to the resumptions - A. Yes, I put an overall figure on it in the analysis of the private Kulnamock sale, I analysed a value for usable and unusable land in the sense to build on and not to build on. I analysed an overall rate out of that sale, good and bad, at \$9,388, and then I applied - I said ours generally is superior because of the high sections which Kulnamock doesn't have, or it doesn't have in the same quantity, and I applied \$9,500 to everything outside the transmission line easement. In other words, the usable and unusable sections outside the transmission line easement. 30

Q. Well now there is in fact some land outside the transmission line that is not usable for building? 40

A. Yes.

Q. So that if you apply \$9,500 to all the land outside the transmission line, then some parts of it, those parts that are buildable would clearly be of a higher value than \$9,500, and some parts of it would be of a lower value than \$9,500? A. Well I would need before I could answer that I would need to re-analyse the Kulnamock sale to exclude the parts which are non-usable, before I was to apply that analysis to the subject resumed land. 50

Q. Well now if you're doing - but if one looks at your escalated private sale No. 4, to \$8,158 per acre for good land? A. Yes.

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Q. Using the private sale of Kulnamock to fix a price for good - I'm sorry, for all land in the subject sale outside the easement? A. Yes.

Q. You have for good land, buildable land on the subject land, a value getting close to \$1,500 per acre above your escalated sale 4? A. Yes, and that is almost precisely the amount that the resumption analysis shows me between 4 and 1. So I would --- 10

Q. Maybe, but again, you would explain that difference as being for size? A. Yes.

HIS HONOUR: Q. For size? A. Yes, your Honour.

Q. I thought you said but I wasn't sure, that when you were dealing with the resumption differences being \$9,018 and \$7,491 I think, that was due to - was that due to size too or was that due to conservatism with the resuming authority. A. No. 20

Q. I thought you said it was conservative --- A. No your Honour it was due in my opinion to a number of factors, it was due - which arise from size, one being that when you have a larger parcel you can secure Land Tax relief until rezoning, which you can't do with ease on an 11-acre parcel. The other thing is that there's a saving in acquisition costs in a larger site than what there is in a smaller site. And included in those acquisition costs is the time and cost to the person securing a number of smaller sites. 30

OFFICER: Q. Do you say those are the factors that represent the difference between \$7,450 and \$9,018?

A. Yes, together with many others.

Q. So it would be quite wrong would it to take that lift from \$7,450 to \$9,018 as being because there were remedial costs on Kulnamock? A. I'm sorry I don't understand the question.

Q. You have answered me a moment ago and I'm looking at your analysis of sale 1. You answered I think, or suggested to his Honour and then answered me specifically that it was the factors you had mentioned of less expensive acquisition and the other two factors you mentioned, that explained the difference between \$7,450 and \$9,018. A. Yes. 40

Q. Well if you look at your analysis, that difference is attributed to the remedial costs on Kulnamock. A. No.

Q. Is it not? A. No.

Q. As typed it is isn't it? You add remedial costs of \$1,568 per good acre, being \$119,900 in total which

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you got from Mr. Moore. A. Yes, because the Kulnamock property is inferior to sales 4 and 5.

Q. But you were attempting in your analysis to find the value of a good acre in Kulnamock, assuming the remedial work Mr. Moore said was necessary to be done principally to the Schoolhouse Creek, was done. A. No. That it was necessary to be done, yes. 10

Q. Necessary yes. A. Yes.

Q. And it was because of the remedial costs that you lifted the \$7,450 to \$9,018. A. No, if the remedial costs had not been available to me I would have made an arbitrary percentage adjustment but I felt this was a more accurate way of analysing the sale.

Q. What, you would have made a percentage adjustment for the fact that it was a parcel of 76 acres of good? A. No I would have made an adjustment for the fact that it had certain physical deficiencies compared to the better parts of the subject land or to sales 4 and 5. 20

Q. Of course once you've spent the \$1,568 per acre on Kulnamock you then have 76 acres of good land, buildable land? A. Yes after you take out the scour area and the area required for open space, yes.

Q. Well you've already taken that out in reaching your 76 haven't you? A. Yes. 30

Q. 76.5. So once we spend the money in doing the remedial work, you've got 76½ acres of good buildable land? A. Yes.

Q. And you've fixed up whatever problems might exist with regard to the entire property say from a drainage point of view, by the remedial costs you've spent? A. No not necessarily.

Q. As to the 76 acres, it will then be unaffected by any possibility of flooding and so on? A. I couldn't say that, there may be further remedial works when you get down to final design. The \$120,000 represents the amount that is required to be spent to bring the Kulnamock property into a comparison with the subject resumed land. 40

Q. I thought you told me some 5 or 10 minutes ago that the difference between the \$7,450 and the \$9,018 was because of things such as, this was one of them, the less outgoing in acquisition cost, expenses of acquisition for a property such as Kulnamock as compared with a smaller property? 50

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HIS HONOUR: Q. One of three, there was tax, less outgoings, what was the third? A. Acquisition costs, and the time necessary for somebody to secure a larger holding.

OFFICER: Q. Well what is the explanation, is it remedial work or is it a combination of the other three factors you've just mentioned? A. No it's - remedial work is simply a means of increasing the Kulnamock quality to a level equivalent with the subject resumed land.

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HIS HONOUR: Q. Well you've got me confused now. Could I just ask this question, where you've got value of good 76.5 acres, do you mean value of good land but not as good as the subject land? A. That's right your Honour that's why I took those figures.

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Q. O.K., therefore you then used the good - to get to the quality of the subject land you spend \$120,000 and divide that by 76, is that right? A. Yes that's right.

Q. And you get \$1,568 per acre and that gets you up to \$9,018? A. Yes your Honour.

Q. Right, well then what factor, and where is it reflected, is there for size - or not, or it just doesn't come into this one I suppose. A. Well it doesn't need to, the factor is reflected between the \$7,491 in sale 4 and the \$9,018.

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Q. Well can I ask you this question then. If you then get it up to \$9,018 so that you've now got land comparable to the land on the subject site, then you look at the land No. 4, and on that similar - well I don't know whether it's a similar basis but at least you get \$7,500. A. Yes.

Q. What's the difference between those two? They're both resumptions - \$7,491 isn't it? A. Yes.

Q. Which took place in July and this is \$9,018 as at August I suppose? A. Yes your Honour.

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Q. So there's only a month. So if you increase it by 10 per cent what's the difference? A. No they're different years. The \$7,491 is July 1974 ----

Q. Oh yes but still that one --- A. Yes I believe it was stable.

Q. Yes well what's the difference there due to?
A. Between the \$9.018 and the \$7,491, I believe purely because of size.

Q. Size. A. Yes your Honour.

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Q. And that reflects those three factors that you've previously mentioned? A. Yes your Honour, it's in accordance with my experience between large and small farms.

Q. Yes.

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HEMMINGS: And your Honour it might assist if I just point out to my friend, when we're dealing with those costs, remedial costs of \$1,658 in sale 1, that's been taken from Mr. Moore's Y2 and most of those figures are works not on the so-called good land but most of those works have been carried out to the creeks, so if one is comparing the ---

OFFICER: Only Schoolhouse Creek.

HEMMINGS: Yes. So if one is comparing the buildable lands -

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OFFICER: I beg your pardon, Schoolhouse Creek and up on the Jeanette Street frontage, not the little dam, that's an extra \$3,000 or whatever.

HEMMINGS: Yes.

OFFICER: Q. So you would say, where does this differential for size start and finish. You say as compared with Kulnamock there is a differential of virtually \$1,500 per acre. I'm looking at your \$9,018 and \$7,491, approximately \$1,500 per acre. A. Yes.

Q. If you don't look at resumption figures you agree that your alternative method of valuation puts more than - necessarily puts more than \$9,500 on the buildable acres of the subject land. A. No, if you take the sale you asked me to before, sale 4 and regress that to 815 acres, you took the increase as about \$1,500 you're still supporting about the \$9,500 that I arrived at on that basis.

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Q. But, I'm sorry, you said a moment ago that - looking at sale 4 your \$8,158 was escalating the \$4,799 up to August 1973? A. Yes.

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Q. But you have said that excluding resumptions you put - for each for land outside the TLE \$9,500? A. Yes.

Q. For each and - as it were overall? A. Yes.

Q. Now since some land outside the TLE can't be used for building, necessarily that land whatever the precise figure be, must be worth less than \$9,500 and the land on which you can build must be worth a bit more than \$9,500, wouldn't you agree with that? A. No, not necessarily for the reasons I gave earlier.

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Q. That's your 30 per cent. A. No. I said that the \$9,500 was a derived overall rate from the Kulnamock sale including good and bad. If you wanted me to differentiate between the good and bad on the subject land ---

HIS HONOUR: Q. You'd have to go to Kulnamock and do the same? A. Yes your Honour. So I don't know whether it would be more or less than \$9,500. 10

OFFICER: Q. However we do have this, that \$8,158 is the escalated cost of sale 4, which is wholly good, and by escalating the private sale of Kulnamock you come to \$9,388 or thereabouts. A. \$9,388, by escalating the sale, sorry, after allowing the remedial costs it was \$999,813.

Q. Now that's the escalation of \$6,094 is it? A. No I just took the purchase price of \$649,087, added the \$120,000 remedial costs considered applicable, and then escalated that figure by 30 per cent for time. 20

Q. And divided by your acres? A. Yes by 106.5.

Q. And you would say that - I'm sorry, that is your \$9,990 is after remedial work plus overall? A. Overall, yes.

HIS HONOUR: Q. So you took the \$649, is that right? A. \$649,087.

Q. To that you added \$120? A. \$120,000 remedial costs considered appropriate. 30

Q. Yes, and the total was then? A. \$769,087. And an additional 30 per cent which I considered the minimum escalation due to time.

Q. Yes, which is \$99 --- A. \$999,813, which gives me the \$9,388.

Q. Divided by 76? A. No by 106.5, the overall.

HIS HONOUR: Yes I follow.

OFFICER: Q. 106 or 108? A. No, 106.5.

Q. Your \$649,000 was for 108 acres wasn't it?

HIS HONOUR: No 106, 2 roods 1 perch according to --- 40

OFFICER: Well no but we know your Honour from other witness - or let me put it this way. Between the sale and the resumption of Kulnamock a couple of acres were taken off being the creation of a curve in the north-eastern corner of Kulnamock. Jeanette Street was changed from a right-angle.

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PARKINSON: No that was between the first sale at Kulnamock which I haven't got on the schedule, and the sale that I've got on the schedule.

OFFICER: I beg your pardon, I was quite wrong.

Q. As at what date were Moore's costs of \$120,000? 10
A. They would have related to the resumption date.

Q. Well then your process of course includes escalating them by 30 per cent doesn't it, because you take your May 1973 \$649,000, you add his resumption date costs and then you escalate those? A. Yes. It does include it yes, and it should include it.

Q. Although they are resumption date costs, you should escalate them by 3 months. A. Yes because that \$120,000 represents the deficiency value or cost or whatever you like to call it of the Kulnamock land. Now if 20
Kulnamock had been land comparable to the subject resumed land, in my opinion it would not have sold for the \$649,087, it would have sold for the \$769,087 which should be escalated to the date of resumption.

HIS HONOUR: Q. Just a minute, say that again? A. Well what I'm saying your Honour is that the \$649,087 on the marketplace at the date of sale leaving inflation aside at the moment for the costs, for a good property of that area would have represented \$769,087 would have 30
been the sale price ---

Q. But that's by taking Mr. Moore's figure. A. Yes but what I'm saying is ----

Q. Mr. Moore's figure is the figure as at 3 months later isn't it? A. Yes but I'm saying leave that aside for the moment, that the Kulnamock property would have in fact sold, had it been good land, would have in fact sold for \$769,087. There may have been some creep in the \$120,000 for inflation such as a part of 10 per cent per annum being construction ----

Q. No it wouldn't would it? Could I just - if you're 40
going backwards as it were and taking the \$120,000 as at August back, it would be something less than \$120,000 to bring it up to what should be comparable land.
A. Yes I agree on that basis your Honour that the \$120,000 should be diminished slightly ---

Q. But you say that only by inflation not by creep?
A. Yes, it's the prospect of it I understand. I'm saying that if you're going to progress a sale from a prior date and you're going to produce a good land value --- 50

Q. Yes.

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OFFICER: Q. Wouldn't a more accurate way be, I come to you and say, well Kulnamock was sold some months ago for \$649,000 and I consult you on resumption date, I say has there been an increase in prices, creep in prices, and you say yes. And I say how much and you say 10 per cent per month. And I say well now there's also some work remedial work that has to be - will have to be done to the floodrace or watercourse. Wouldn't you say well just escalating that, that we will add 10 per cent per month. Now you'd better bear in mind what the costs are, and you and I are talking at the end of August. You'd better go and see Mr. Moore and see what the costs are, because what you will really be paying for that land will be the \$649 escalated to today's price, and you will have the outlay that Mr. Moore will tell you about. A. Yes, that's in respect of the Kulnamock property. 10 20

Q. Now on that basis you would take your \$649 and escalate it and then when I come back from seeing Mr. Moore you will have done your calculation of escalating and underneath that we write \$120,000. Is that right? A. Yes ---

Q. Isn't that a more accurate system? A. No, not in order to arrive at a good land value or an overall land value equivalent to the subject resumed land; I believe it should be done --- 30

Q. Let's leave the resumed land out of it for the moment, we're just trying to do the best we can with the figures available relating to Kulnamock. A. Yes.

Q. If I'm buying Kulnamock you would do the exercise the way I've just described it.

HIS HONOUR: And that is, sorry just so I get it clear in my head, that is you ---

OFFICER: You escalate the price earlier paid for Kulnamock the base price, and then you add Mr. Moore's resumption date cost of doing the remedial work. You don't escalate his \$12,000. 40

HIS HONOUR: No.

OFFICER: Now you have by your looking at the resumption ---

HIS HONOUR: It still comes to \$9,100 an acre.

OFFICER: Q. But we have your difference between your figures for the small sites of good land and your adjusted good land value in Kulnamock. That's to say if we're looking at the resumptions we have your 50

difference between \$7,491, say \$7,500 for a small block and your \$9,018 for Kulnamock. A. Yes.

Q. And that difference is because of size? A. I believe so yes.

Q. Now if we're moving from an 11-acre block to a 76-acre block there is an addition of \$1,500 per acre for size? A. Yes, in this area. 10

Q. What happens above 76 acres? A. Well from the analysis we did a little while ago on private sale 4 and progressing it compared to the Kulnamock analysis, the overall analysis it would appear that it's - that's over 106.5 acres, it would appear that it's much the same increase per acre.

Q. No that's a distortion isn't it because your private sale of Kulnamock is of good and bad? A. Yes. 20

Q. Whereas we're not comparing like to like. I'm trying to eliminate differences other than the size. Now you have - using the best of the material that's available to you, you have eliminated considerations other than size in saying, well sales 4 and 5 \$7,500, the good land of Kulnamock \$9,018. A. Yes.

Q. Now we can't therefore look at sales 4 and 5, even the private sales of them, and see a differential for size if we look at the overall price paid under the private sale of Kulnamock. A. Yes. 30

Q. And we were not comparing like with like, and we're not throwing up the only differential as size so far as we can? A. Yes. Without the evidence I can't directly answer your question except to say that ---

DISCUSSION

OFFICER: Q. If we have \$1,500 difference between sale 4 and 5 and the 76 good acres of Kulnamock, and look at resumption or anything you like, what's the situation when your blockage becomes larger than 76 acres?

A. I feel that any increase tapers off over about 50 to 60 acres. 40

Q. I see. A. I'm not saying it doesn't increase at all but ---

HIS HONOUR: Q. What, the increase goes up to about 50 or 60? A. Yes.

Q. Over what? A. Over from 5 to 10 acres. Normally the reverse applies in non-urban lands, normally you get less per acre for big sizes, but in my experience

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in non-urban land with potential the reverse applies for the factors that I've ---

Q. Because it's got potential for subdivision?

A. Yes your Honour.

OFFICER: Q. Did you say it tapers off above 50?

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A. Yes, in other words ---

Q. The climb is less after 50 acres? A. Yes. I can't give you a precise amount but it would continue to climb after that because the sales evidence shows me to a certain point.

HIS HONOUR: Q. And what, does it decline then or level out? A. No to my experience it doesn't decline. In the Casula sale to secure up to 200 acres, subsequently they haven't paid any less as they've got up in area.

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OFFICER: Q. But of course those sales are much later than the first sale at Casula? That's in point of time.

A. Yes but I was referring to the point where they got to say 100 acres, and when they approached 200 acres, those are all recent transactions and they haven't tapered off as they've got to a certain size because of size.

SHORT ADJOURNMENT

ON RESUMPTION

OFFICER: Q. Mr. Parkinson I just want to explore, whatever its significance may be, the process you've used on schedule A. If you would look at it from resumptions 6, 7 and 8 and 9, you derive from those transactions by your analysis a value for open space and drainage lands? A. Yes.

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Q. In each case the drainage land value - open space and drainage land value that you - is the final figure of each of your four calculations for those sales, is of drainage land where remedial works as necessary have been done? A. No, it assumes that they have to be done, not that it is done.

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Q. Well for example look at sale 6. You attribute a value of \$7,000 per acre to the usable land. A. Yes.

Q. You then add to that the remedial costs, remedial works, and that is to fix up some drainage problems ---

A. Yes.

Q. To get that yield of that good land, yes.

A. Yes.

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Q. And you deduct that total from the amount paid on resumption and reach \$7,130 as being the remaining, the unaccounted for portion of the resumption money?

A. Yes.

Q. And you say, well that on your analysis is what was paid on resumption for the open space and drainage lands. A. Yes.

10

Q. And that is a value paid, so you would say, after the (quote) purchaser (unquote) had allowed for - had worked out how much he would pay for the good land and for how much he would have to expend on the remedial works. A. Acknowledging that he would have to, yes.

Q. Yes. Now looking at your figure for 6, and I think you said you treated 6 with some reservation ---

HIS HONOUR: Mr. Officer do you mind if I just ask a question because I'm not sure I follow.

20

Q. Why did you pick \$7,000 for the value of the good land? A. Yes your Honour you'll see that I vary the value in each of those calculations for the good land. Some of it is better land than other.

Q. But why did you pick \$7,000? A. Based on sales 4 and 6 I felt that was the comparison applicable to the ---

Q. So that came from 4 and 5? A. Yes. In other words the good land wasn't as good as 4 and 5.

30

HIS HONOUR: Yes.

OFFICER: Q. And similarly I gather you thought the good land in 9 was better than sales 4 and 5. A. No.

Q. Well in sale 9 you take the good land at \$8,040 an acre. A. That's right yes.

Q. Why do you take that figure which is higher than the good land in 4 and 5? A. Because it forms part of a larger parcel of 59.3 acres, it represents the increase that I felt was appropriate for size and I felt I'd be unfairly analysing it based on my belief that larger parcels, all, be they largely open space there's still a benefit. Not only does the residential land increase with size but so too does the open space.

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Q. So you would say, looking at sale 9, because the good land is 12.3 acres as compared with the wholly good land of 11 acres 1 rood and 11 acres 2 roods in sales 4 and 5, therefore I attribute to the good land in sale 9, \$500 a acre more than sales 4 and 5? A. Yes because

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it attracts a lot more advantage, it forms part of the ability to gain a Land Tax deduction over the holding period, it forms the ability to - you've got a surplus of open space land which you can use if you acquire adjoining property, this is certainly a larger parcel. 10

Q. What was your process to reach the figure \$8,040? Where did you derive that from? A. Yes, I did a calculation on that from the sales of representative percentage increase for relative sizes.

HIS HONOUR: Q. Well did you start with the figure of 4 and 5 of \$7,500 or - like you did in 6? A. No I felt that that particular residential land as an 11-acre block was worth \$6,700 per acre and I felt there should be a 20 per cent increase because it formed part of a larger parcel and the consequent savings that would accrue. 20

Q. Just let me ask you another question if you wouldn't mind, and I'm sure you have explained it and I've missed it. And I'm sorry to interrupt you Mr. Officer. But going back to 6 again, you say you picked \$7,000, 9.91 acres at \$7,000 as being you say good land but not as good as the \$7,500 per acre land referred to in 4 and 5, and the sites being otherwise fairly comparable in size. A. Yes your Honour.

Q. An appropriate adjustment. So you pick that figure. And now the remedial works that you say have to be expended on the land --- A. No I'm not saying that they have to be expended at this point but a purchaser would acknowledge that --- 30

Q. Yes, to bring it up to what? A. To bring it up to ---

Q. The land 4 and 5? A. Yes to develop the residential section.

Q. To the level of 4 and 5? A. Well it couldn't be - could not be to the level of 4 and 5 because they're more elevated sites, but simply to be able to derive that much residential from those sales, the purchaser would have to acknowledge that he would spend that much money some time. 40

HIS HONOUR: Yes.

OFFICER: Q. What comparison would you make between the good land in sale 8 and the good land comprising 4 and 5? The good land in lot 8 as good? A. No.

Q. Why not? A. Well 8 is a lower site.

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Q. Even the good part of it? A. Yes. It lacks the same degree of undulation and elevation as 4 and 5.

Q. And did you attribute the \$6,750 to the good land in sale 8 by making a judgment reduction from sales 4 and 5, or how else --- A. Yes I used them as the base yes. 10

Q. Could I go back to sale 9 for a moment. In your assessment of \$8,040 for the value of the 12 acres, is that increase above lots 4 and 5 wholly because of the influence of lot 9 being overall a larger parcel or is there also a factor of quality of the good land?
A. Yes, between 4 and 5 and 9.

Q. Between 4 and 5 on the one hand and the good land in 9 on the other? A. Yes.

Q. And you tell me, and I'm going back now to the value of the open space and drainage shown on - by your analysis of the resumptions in 5, 6, 7 and 8. I think you said 6 was a somewhat special case and I think you explained it by saying that the resumer accepted the first figure put to him? A. If I remember rightly what I said was that it was out of line to my mind and that I treated it with caution and upon investigating the files of the Housing Commission it appeared that the first offer made had been accepted. 20

Q. In what respect was the price - overall price paid for 6, \$7,266 out of line with sale 7? In each case the parcel was 11 acres 2 roods and the good land in one case was 9.91 acres and in the other 10.3. Why was sale 6 the overall figure, out of line with sale 7?
A. No, I don't know whether you've noted the - if I could just put something first. I don't know whether you noted a change that I said the other day was applicable to that sale in the overall rate. That rate of \$7,266 --- 30

Q. I'm sorry, which sale? A. Sale No. 7. That rate of \$7,266 is a typographical error where the typist has carried it down from the previous column, it should be \$7,501 as I mentioned the other day. 40

HIS HONOUR: Q. Even so, why is that out of line? Bearing in mind what Mr. Officer said there's only - I mean - about the same size same amount of good land ---

OFFICER: Q. It's only .4 of an acre more good land in sale 7 than sale 6. A. Well sale 7 is a site that is a little lower than sale 6, subject to the same water-course, but it is a lower site and for those sales to be in line and sale 6 was at \$7,266 I would have expected sale 7 to have been about \$7,000 but it wasn't it was \$7,500. 50

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Q. Well which is out of line?

HIS HONOUR: Q. Yes which is out of line? A. No I'm saying sale 7 is then backed up by sales 8 and 9.

Q. You mean sale 7 is the one that's out of line?
A. No I'm saying sale 6 is out of line because sale 7, the analysis of sale 7 to my mind is backed up by sales 8 and 9, so therefore that would indicate that sale 6 is out of line. Because sale 7 should have - if sale 6 was correct sale 7 should have been at a lower overall rate per acre. 10

HIS HONOUR: Q. What do you say the difference between 6 and 7 is? A. I'm saying 7 is a lower site than 6.

Q. How much lower? A. Only slightly but it is a noticeable difference. And one would expect the overall rate per acre for that sale to have been lower than sale 6, but it wasn't. 20

Q. Might it have been too high? A. No I'm saying sale 7 is then backed up upon detailed analysis, it is then supported by sales 8, 9 and also sale 10.

Q. But 9 is 53 acres. A. Yes.

OFFICER: Sale 9 did your Honour say 53 acres?

HIS HONOUR: Yes. Isn't it?

OFFICER: 59 acres.

HIS HONOUR: Q. 59 acres, sorry. But the point I'm making is it's a much larger block. A. Yes. Well if for nothing else, if the area was to be left out of the calculation, sale 7 is supported by sale 8. 30

OFFICER: Q. But isn't sale 6 supported by sale 8?
A. No, not upon analysis. You can't do that broad overall comparison because you're not taking into account the different sections of each sale.

Q. Then you regard sale 6 as out of line in its - the per acre overall payment? Or is it sale 7 that's out of line? A. No I think sale 6 is out of line.

Q. It should be what, a higher price? A. Yes, than 7 yes. 40

HIS HONOUR: Q. Wait a minute, it should be higher ---
A. Than sale 7. Per acre.

Q. But it is isn't it, it's \$7,500? A. No sale 7 is higher than 6 your Honour.

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OFFICER: 6 is \$7,266, the overall.

HIS HONOUR: Oh I thought you said you just changed that. Which one did I change to \$7,501?

OFFICER: Sale 7.

HIS HONOUR: Oh I see. Yes.

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OFFICER: Q. So it's sale 6 that's out of line? A. I believe so yes.

HIS HONOUR: Q. And you think it should have what, come up at least to \$7,500? A. I'd say \$7,600 or thereabouts your Honour or else sale 7, if I didn't consider it out of line I think it should have been about \$7,000. But sale 6 to be in line to my mind should have been about \$7,600.

HIS HONOUR: Q. Is that outside the difference you'd ordinarily expect when people were - forgetting resump-
tions, how they were selling land here, and you learned
that one block, that sale 6 sold for \$84,000 and sale 7
for \$86,000 would it surprise you, make you think that
there was something, if they were sold about the same
time to separate buyers? A. Yes the market - it's
amazing when you do get these non-urban properties next
to each other, you always strike an odd sale that's out
of line but overall it's amazing the consistency you
get. And for \$500 per acre you normally wouldn't value
an 11-acre parcel on a per-acre basis, it would be a
non-urban homesite and that's one of the factors which
comes out of this analysis, is that you have a widely
varying range of acreages yet they've got a remarkable
consistency and that is - that situation occurs when
you have non-urban with potential.

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Q. Oh well that might be, but you're now talking about resumption figures? A. I'm just using them as a guide yes.

Q. That means the Housing Commission has adopted a consistent approach? A. Except for sale 6 yes.

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Q. Sale 6, except they got it first up instead of having to up it another \$2,000? A. Yes. That's all that means.

Q. Do you infer anything more out of it than that, that --- A. No, the only reason I mentioned it your Honour was because the derived rate per acre for the open space was lower than the others, which caused me to go back and look at it more closely to see which was out of line.

HIS HONOUR: Yes I see.

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OFFICER: Q. Now from your sales 7, 8 and 9 you derive for open space and drainage per acre assumed purchases ranging from \$5,096 to \$5,698. A. Yes.

HIS HONOUR: Say those figures again?

OFFICER: From \$5,096 derived from sale 8 up to \$5,698 derived from sale 9. 10

HIS HONOUR: Yes.

OFFICER: Q. Including, or having regard also to the analysis of sale 7, the range would if one were averaging you would be around \$5,400, \$5,500 something of that sort? A. Yes.

Q. And you have no other, even putting sale 6 on one side, you have no other evidence from which you can demonstrate by this process a value for open space and drainage lands in this locality? A. No except I then, in broad terms, cross-check the situation by an inspection of sales 10 to 18. 20

HIS HONOUR: Well they are ---

OFFICER: Sales or resumptions?

PARKINSON: Resumptions.

HIS HONOUR: Yes I think you're not allowed for this exercise to pay attention to resumptions.

OFFICER: No I'm sorry I'm looking at resumptions your Honour.

HIS HONOUR: But I thought you said that if he didn't look at the - the resumptions were the only things he looked at to get this drainage and open space. 30

OFFICER: Oh yes, but now I'm - as from the break your Honour I haven't asked him to discount any resumptions, I've been examining the process he uses, treating the resumptions as available ---

HIS HONOUR: Yes. And then I thought you had then just asked him though whether or not there was anything other than resumptions that he could have used.

OFFICER: No, I'm sorry I was - well if I did it was a mistake on my part. 40

Q. You have these three analysed resumptions particularly 7, 8 and 9 from which you derive a value for open space and drainage lands? A. Yes.

Q. Cross-checked by the general situation in sales

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and in resumption transaction sales 10 to 18. But you haven't done an analysis of those similar to the analysis you did in sales 7, 8 and 9? A. Yes. As I mentioned in examination-in-chief that when I - we had difficulties in getting the resumption transactions in time before my report was done for Mr. Moore to look at them all, but subsequent to the report being completed Mr. Moore provided me with details on sale 10 which discloses \$5,327 per acre for the open space. Drainage and open space. 10

Q. And do you have figures from which you can analyse the resumptions 11 to 18? A. No, but looking at the topography of the sites and the prices realised with the exception of sales 16 and 13 fit into the general pattern. 16 and 13 do not fit into that pattern. 20

Q. We have then - you have done an analysis of 7, 8, 9 and 10. A. Yes.

Q. And you would agree that that indicates, speaking generally, something in the order of \$5,400 or \$5,500 per acre for open space and drainage? A. Yes.

Q. Now in Kulnamock you have 30 acres only suitable for open space. Now that is 30 acres comprising the Schoolhouse Creek and the big dam that's in it? A. Yes.

Q. As I said the other day that should - there's not room there to have typed it but it should read open space and drainage. A. And drainage yes. 30

Q. Now what leads you to say, having all the material from your analysis of open space and drainage in 7, 8, 9 and 10, to say well the open space in Kulnamock is \$6,000 rather than \$5,500 which you would derive - or thereabouts, which you would derive from the sales 7, 8, 9 and 10? A. Yes, as I said a little while ago I feel that open space also increases forming part of a larger parcel for the taxation benefit situation, and I felt that to analyse that sale correctly I should increase it whereas on Burnley you'll see that I've decreased it because of the very poor quality of it. 40

HIS HONOUR: Q. Wait a minute, could you just explain it to me. What do you mean for the taxation? A. Well I'm saying that there are tax benefits not only from good land but from the fact that the open space is of a larger part of that good parcel.

Q. Why don't the tax benefits apply to smaller items? A. Because one would be hard-pressed to support a claim for Land Tax exemption on 11 acres or so compared to say 50 or 100 acres. 50

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HIS HONOUR: Yes.

OFFICER: Q. So you say because of the - I'm sorry. Let us take Kulnamock. 76 acres of good land, usable land. So if we are contemplating the tax situation of a person who buys Kulnamock, even if he were only buying 76 acres he's got enough land on which to base a tax exemption claim that he wants to use it for rural pursuits? A. Yes but the open spaces have value as well. 10

Q. True he has to buy the open space and drainage reserve in Kulnamock, but you say it has a tax advantage to him? A. Yes.

Q. That it has a greater tax advantage to him, do you say if it is - I'm sorry, if he had 106 acres of which 30 acres was not buildable, then that 30 acres would be in your assessment worth \$6,000 rather than let's say as an average assuming it's, the average of your smaller sales is \$5,500 --- A. Yes. 20

Q. Open space and drainage is \$6,000 in Kulnamock rather than \$5,500 because there is 30 acres of it in Kulnamock, and it is a larger property than these --- A. And there's one further point, that that forms part of the 100-acre situation, yes.

Q. Now if instead of 30 acres on Kulnamock there were only 5 acres suitable only for drainage and open space, how would you value per acre those 5 acres? A. I feel if they're part of the 106 I feel they would have still put \$6,000 on them. 30

Q. I see. So you say land, even if it is only suitable for open space then, waterways and the like, it increases in value dependent upon whether it is part of 100 acre block or on the other hand, a 10 acre block? A. If it is part of that 100 acres, yes. You see, you didn't increase the value - I haven't done the calculation or I haven't got it here - but if you didn't increase it and you applied that \$5,400, \$5,500, straight across to the analysis on the valuation of the subject resumed land, the figure probably wouldn't be grossly out of line. 40

Q. I am not concerned with the ultimate result. I am more concerned with the principle of it, the reasons for the way you have done it. In Emu Plains, getting close to twice the size of Kulnamock, you take the open space at the same figure? A. Yes.

Q. Is that because you say any increase from 10 or 11 acres in the value of open space and drainage reserve to 106 acres has tapered off when you get to 198? A. Yes. It is what I said this morning that I 50

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couldn't prove any escalation past about 50 to 100 acres from the evidence available. There would be an increase but just ---

Q. You can't demonstrate it? A. You can't quantify it, no.

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Q. Or you can't even demonstrate that there is an increase after that size? A. No. Well I haven't suggested that there is in my assessment over 106 acres.

Q. If we go to good land, usable land, you would say as you have this morning there is an increase with size, with increasing size, certainly as between 11 and 100 or thereabouts? A. Yes.

Q. Do you say going above 100, going to 200 or 300, that the value of good land increased based solely on size? A. It doesn't become evidence from the resumption transactions, that is so.

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Q. Have you got any evidence in any of the sales that you have referred to, any of the transactions you have referred to, that that is so? A. That beyond 100 acres it increases, no, I haven't.

Q. In your 30 acres only suitable for open space, Kulnamock, there are some parts of it that are steep banks of the creek? A. Yes.

Q. And the bed of the creek? A. Yes.

Q. And the area of this very large dam in the middle of Kulnamock? A. Yes.

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Q. But you say in Kulnamock that is \$6,000 an acre?
A. Yes.

Q. Why, when you've got - I'm sorry, the land in Burnley Penrith which you've valued at \$5,000, very poor passive open space, why is it worse than - I'm sorry, is the explanation for \$5,000 rather than \$6,000 the quality of that very poor passive open space?
A. Quality and extremely great quantity.

Q. Mr. Parkinson, I want to ask you whether you are aware of any explanation for a matter which I think I should have put to Mr. Moore except that I didn't when Mr. Moore was in the box know he had put a remedial - I think I'm correct - a remedial work value on the subject land. Are you aware Mr. Parkinson that Mr. Moore put remedial works of \$80,000 on Emu Plains for fixing scour and something else, scour protection and landscape of water courses, 8.11? A. Yes.

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Q. I ask you to assume this because you may not have

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been informed. He told me that \$20,000 of that \$80,000 was for filling the three small dams which are shown on Emu Plains property in his map. A. You want me to assume that?

Q. You can assume it. He said it in open Court. Have you any idea as to how his \$120,000 remedial works on the subject property were made up? 10

HIS HONOUR: \$100,000.

OFFICER: Q. I'm sorry, \$120,000 - your \$120,000 on the subject land? A. On the Kulnamock land?

HIS HONOUR: No the subject land, Tatmar's.

PARKINSON: A. \$100,000.

OFFICER: Q. I beg your pardon, \$100,000. Do you know how that was made up? A. As I understand it, it was for the draining and desilting of a number of dams and some scour protection works. 20

Q. Was it - it was scour protection, desilting and filling of the small dams - of the dams that are shown on his map? A. I assume the ones that he considered necessary to drain and desilt.

Q. Would you look at the two maps that are annexures to his report? May I approach the witness your Honour - I can't locate one of mine.

HIS HONOUR: Yes. Which map is this we are looking at now? 30

OFFICER: I am looking at Mr. Moore's annexure being a map showing Emu Plains and Burnley.

Q. You may assume Mr. Parkinson that Mr. Moore identified on his outline of Emu Plains the three small dams which he said would take up \$20,000 out of his \$80,000 as being that small one in the south-east corner and the two small ones on the main line of the creek. A. Yes.

HIS HONOUR: The small one on the - where? The south-east - you mean the southern boundary or it is near the southern ---- 40

OFFICER: Right beside Luttrell Road.

Q. If you would look please to his plan of the subject land, you will observe I think eleven dams shown on it?

HIS HONOUR: On the subject land?

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OFFICER: Q. There are eleven, certainly ten, outside the south-western corner which is to be more sparsely urbanised than the main body of the property? A. Yes.

Q. Would you agree that of the ten, not including the one in the south-western portion, the majority are much larger than any of the three which for \$20,000 Mr. Moore proposes to have filled that were on Emu Plains? 10

HEMMINGS: Your Honour, that's ---

HIS HONOUR: I know. Mr. Officer, say he says yes, they look bigger?

OFFICER: I then want to ask him has he received any information from Mr. Moore ---

HEMMINGS: Well I would call Mr. Moore. If my learned friend would like to cross-examine Mr. Moore, I will have him recalled and he can say precisely what in doing that sale. 20

OFFICER: In fact that might be more satisfactory your Honour.

HIS HONOUR: That would be better I think Mr. Officer because otherwise ---

OFFICER: I think I am right in what I have expressed and I don't think whilst Mr. Moore was in the box any reference was made to ---

HIS HONOUR: Not that I recall anyway.

HEMMINGS: Your Honour unless there is any confusion, and with respect I am not suggesting there is any confusion and I've raised this once before, to say this, as I understand it, Mr. Moore's evidence is that if you are going to leave creeks in their natural state and hand them over to the Council, you have to do works in those creeks. So the distinction between desilting dams and doing landscaping etc. in creeks that are going to be handed over to the Council as distinct from works associated with the urbanisation of the area itself and the erection of houses. If that helps. 30 40

OFFICER: As I recall Mr. Moore's evidence was that his \$80,000 on Emu Plains included in relation to the three small dams, desilting and filling.

HEMMINGS: But they might still be given to the council.

OFFICER: No, desilting and filling and Mr. Moore did say with regard to the subject land that he would contemplate - certainly it was contemplated in his plan, that the dams would be desilted and filled.

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HIS HONOUR: Yes.

OFFICER: If one is going to use Mr. Moore's \$80,000 as remedial work for Kulnamock - for Emu Plains then one comes to whatever would be a proper assessment of a cost for desilting and filling all the dams on - I'll get it clarified your Honour ---- 10

HIS HONOUR: Well I was going to say, see what's wrong with what Mr. Officer is saying.

HEMMINGS: Because as I understand it councils want drains not dams.

OFFICER: Yes.

HEMMINGS: So if you have a watercourse in a rural subdivision - a rural area, you might have a watercourse with a series of dams on it. You can't put houses up and then hand over to council a drain that has a series of dams. What you have to do, as I understand it, fill and desilt the dams etc., straighten it out, pretty it up with landscaping and the like and then hand it over to council because the council won't take it as a series of dams. 20

HIS HONOUR: Yes well what was he saying about Emu Plains was that the cost of doing it all was it. It's \$20,000 for desilting and the \$80,000 for doing it up.

HEMMINGS: As I understand it of creeks and watercourses that will eventually be handed over to the council. 30

HIS HONOUR: Of which \$20,000 was for filling and desilting.

HEMMINGS: Yes, because on those creeks that are going to be handed over there are some dams and you've got to do something with your dams.

HIS HONOUR: And the balance of the money to be spent fixing the ---

HEMMINGS: Well no, that - my friend's questions were: Does that include any desilting of dams. And he said: Yes it does. The rest of it is removing scours and etcetera. 40

HIS HONOUR: Yes.

HEMMINGS: And I'll certainly clarify this, I did understand Mr. Moore to be saying that the \$20,000 etceteras is where you are going to put houses on top of where the dams were.

HIS HONOUR: No I didn't understand that.

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OFFICER: I did. I understood him to be saying, there's no question of handing anything over to the council on Emu Plains unless you're urbanising.

HIS HONOUR: Yes.

HEMMINGS: Right.

10

OFFICER: But half of my \$80,000 would be the desilting and filling of the three small dams so that you could then build on it.

HEMMINGS: Well that's not as I understand it, we'll have that clarified.

HIS HONOUR: Yes. Well I'm not sure really about this. However - but that was your understanding and you may be right. Well in any event can I just ask - thank you for sorting me out about that but - well I don't think you have actually. I don't know who is right and who isn't but I understand what you're putting. But there's no point in asking Mr. Parkinson; we'll just have to sort this out with Mr. Moore.

20

OFFICER: Q. On page 12 of your report having - page 12 of exhibit J and having indicated how you reached the \$9,018 per acre for the Kulnamock lands, for the good land of Kulnamock - usable land of Kulnamock, you say for good land in a larger parcel requires to be adjusted upwards slightly to be properly compared with the main section of the subject land? A. Yes.

30

Q. The adjustment is necessary to take into account superior topographical and aspect conditions which exist on the subject resumed lands. And then you add \$82 per acre? A. Yes.

Q. What are the factors, plusses, and if there are any counterbalance minuses that lead you to the addition of the \$82 per acre? A. Well a large proportion of the Kulnamock property has a westerly slope, a westerly aspect on the slope which generally is not as good land as that with a north and easterly aspect. The subject land has some very high sections with these northerly and north easterly and easterly aspects and the subject land has better outlook from parts, certainly not from all, but from parts, than the Kulnamock property.

40

Q. Don't limit yourself to the words you have used in the last sentence of the third last paragraph; are there any other advantages of the subject land as compared with your analysed value of the good land in Kulnamock? A. I suppose the access to the freeway from the subject resumed land would have to be a benefit.

50

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Q. Is that one of the factors that led you to increase the value as you have on page 12? A. Yes I thought there was a marginal difference between them with a plus in respect of the subject resumed land and the minus which you asked me about as well as that the subject resumed land had a transmission line easement through it which the Kulnamock property did not have. 10

Q. Of course assuming that ---

HIS HONOUR: Sorry just so I'm clear.

Q. You weren't using that minus though for the purpose of arriving at this \$91? A. No your Honour that's separate that figure.

Q. Yes.

OFFICER: Q. So all the \$82 that you add is comprised wholly of plusses for the subject land not being counter-balanced by any minuses? A. Yes, it is counterbalanced by a minus on the next page, less the penalty costs of \$100,000. 20

Q. Yes I'm sorry I want to - in your mind preparing your report you may have deducted something later, but you added \$82 on page 12? A. Yes.

Q. And that was not a figure which you reached by balancing some plusses and some minuses. The \$82 represented wholly plusses of the subject land? A. Yes, in my opinion from my experience it gets back to that, that you had to come to a slightly higher overall rate per good acre of the resumed land than the Kulnamock land. Now we take that increase too as a matter of opinion and experience and that's where I derived the \$9,100 from. 30

Q. You would agree of course would you not that many developers like to acquire a parcel of land where they can - as soon as it can be developed they can go in and do the development, sell it and they've finished with it? A. That's not the true developer. 40

Q. Not a true developer? A. He likes the continuity of, you know, if not in the one parcel, in the one area.

Q. Certainly many developers, I put to you, would be apprehensive at the prospect of buying land which had not yet been zoned for urbanisation and paying the value you attribute to it, if after re-zoning and release they would be engaged for some 7 to I think you said perhaps 10 years before it had all been sold? A. Yes. No that they wouldn't be apprehensive but yes I said 7 to 10 years. 50

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Q. Now let's come to the apprehensive, would not many developers be apprehensive at paying your price per acre for a parcel of this size the zoning of which was not assured and which even after zoning would take them 7 to 10 years to develop themselves? A. No. I'm in the process of negotiating a \$12m sale on non urban land with potential at the moment and in that period - going back to that period you had competition in the market shortly afterwards by the Lands Commission, private developers, I don't think they would have been apprehensive. You get in categories of developers, you get the small developer, who does yes, he does want to be in and out and then you get the larger one your Stocks and Holdings and Lend Lease's and this type of person who wants a continuity, as I say if not on the one property certainly very close to it; to carry their teams in the one property is ideal because they can just continually progress with development, it saves buying other stock elsewhere. 10 20

Q. Of course ---

HIS HONOUR: Are you putting to the witness that just the sheer size of \$7m is enough to make people apprehensive in circumstances where they might not be able to ----

OFFICER: \$7m - whatever it is - plus no assured change of the zone - no. 30

HIS HONOUR: I know that. Are you saying that the size of \$7m. might make someone more apprehensive than for example the payment out of \$100,000.

OFFICER: No your Honour because our hypothetical purchaser has the money.

HIS HONOUR: Yes that's what I just wondered.

OFFICER: Whether - he has the money to pay the purchase price.

HIS HONOUR: Yes. 40

OFFICER: Whatever your Honour fixes as the value but it's another thing as to whether - or it's a consideration and that's what I was asking the witness, as to whether at least there were not some who would be apprehensive of paying that price with a non assured time of re-zoning.

HIS HONOUR: You mean over and above everything being equal except the land being a lot smaller someone who wanted to pay \$100,000 for that would have?

OFFICER: Someone - well in effect your Honour what I'm 50

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putting is, someone may say, well I'll take a bit of a punt on \$100,000 etc., it's a question of how much you put on, how much you risk on a punt rather than a certainty.

HIS HONOUR: And then what do I assume, do I assume the purchaser is Aristotle Onassis or - to him \$7m would probably be like me putting \$10 on --- 10

OFFICER: You assume that he is ready, willing and able to purchase.

GILES: With cash.

OFFICER: My friend says with cash, and of course with cash naturally but whether he's borrowing or whether he's paying cash doesn't affect this consideration that if he's paying cash, he's withdrawing it from some other form of investment whatever it be and putting it into this out of which, until re-zoned and developed, he will get no income or no appreciable income. 20

HIS HONOUR: Well all I'm asking this apprehension that you think may exist in someone wanting to invest \$7m or \$8m would relate wouldn't it to the size of that person's assets. If for example that person had assets of \$10,000m he probably wouldn't be apprehensive at all. If all his assets were \$7m he might be more ---

OFFICER: If he's got \$10m - did your Honour says \$1,000m? If he's got \$10,000m he's a very shrewd operator and he's not going to put - your Honour can foresee the outcome. 30

HEMMINGS: We must assume - and I'll have to take an objection if the proposition, contrary to what I think is the law is put to the witness - we must assume that there is a buyer and there is a buyer for the amount of money which your Honour finds is the appropriate value for the land so the question is if one determines the appropriate rate per acre depending upon the time that the land is likely to be released for land of that potential you, must assume that there is a person in the market --- 40

HIS HONOUR: Yes that's what I'm asking. Can I then discount that figure down or pay no attention to it because it might make the person who is in the market nervous?

HEMMINGS: No your Honour but what you have to determine is what is the rate per acre. That's the first price you have to determine you don't discount the purchase price merely because it's a large amount of money. 50

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HIS HONOUR: Yes. Well I'll allow the question in the event there is a ---

OFFICER: I've forgotten what it is your Honour.

HIS HONOUR: I think you were asking him did he not think that someone who would be called upon to pay something in excess of \$7m for this block of land might not appear somewhat apprehensive at that sort of outlay bearing in mind no certainty of re-zoning. 10

OFFICER: Yes your Honour. I think the witness in effect said there might be some small people who might be apprehensive but there were a lot of big people who wouldn't be.

PARKINSON: A. Yes and the sales figure will be demonstrated a little in sale A where you've got one million and eight dollars for 84 acres in the period of the resumption. You also get the situation where, if it's a large property quite frequently a number of smaller companies form a joint venture company between themselves and buyers, if there were adequate buyers around at that time with this type of money. No I don't think they'd be apprehensive at all. 20

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KENNETH JOHN PARKINSON

CROSS-EXAMINATION (CONTINUED)

OFFICER: Q. Mr. Parkinson, you have used the resumptions, resumption sales, to justify creep or leap up to the end of August 1973? A. No.

10

HIS HONOUR: You didn't use them for that purpose?

OFFICER: Q. You didn't use them for that purpose?
A. The resumption prices? No, as I said yesterday, I looked at sale A on schedule B which was a sale and resale in the period between the private sale of Kulnamock and the resumption date and I also looked at private sale 8 which was \$42,250 and resold privately for \$97,000, and I also looked to sales B, BA and BB on sale schedule B.

Q. May we deal with those one at a time? Sale B, BA and BB on schedule B had some, you will agree, very unusual factors? A. In what regard?

20

Q. In the price between the first option and the - I'm sorry - between the option that preceded the first contract and the second contract? A. Yes I'm sorry, I said something incorrect in relation to your first question yesterday. I said off my notes that I had regard to BA and BB because I do regard the increase between B and BA as out of line.

HIS HONOUR: Q. B and? A. BA.

30

Q. You mean BB and BA? A. On sale schedule B, sale B and sale BA.

OFFICER: Q. So you regard the 50 per cent increase in 3 months which you note in the analysis column as being out of line? A. Yes. As I told his Honour yesterday I looked at a 7.44 per cent per month between BA and BB.

Q. 7.4 per cent per month? A. Yes that was based on the analysis of that sale, not on the 12.56. That sale was subject to terms and after adjustment for terms that was the effective increase per month that I derived.

40

Q. For creep, you looked at a sale on page 1 of schedule A? A. Yes.

Q. You mentioned it a moment ago. Which one was it?
A. Sale 8. You'll see there were two private sales there.

Q. And the \$97,000, that was a contract that was - was it exchanged? A. I believe it was exchanged but did not proceed to completion because the purchaser and vendor - it was resumed I believe and the contract didn't

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proceed to completion. You'll see the date of contract is August 1973 which is after the commencement of activity in this area.

Q. Yes. Then you would agree would you that if one's trying to find evidence of creep from May 1973 onwards in broadacres, 50 or more acres, you can see it so far as you disclose sales here, you can see some such evidence only in your sale A on schedule B? A. No, sale A and sale 8 and --- 10

Q. I'm sorry? A. Sale A and sales noted under 8 and as of about half an hour ago I think the same situation applies - can be revealed by sale 7.

Q. But I'm sorry, I was asking you if you are trying to evidence creep by looking for sales of broadacres --- A. I'm sorry. 20

Q. --- from May onwards, certainly if one excludes - one is looking for sales evidence of creep in broadacre sales after May 1973, the only sale is sale A on schedule B. A. By broadacres you mean large acreage?

Q. Yes. A. In that case yes.

Q. And you don't, is this correct, rely at all on the resumption settlements as showing creep? A. No I analyse the - they did show creep but to my mind as I said yesterday or the day before, they did not show the full extent of creep. They appear conservative. 30

Q. You mean they show a smaller creep than you can see in other sales? A. Yes if you take the Kulnamock sale.

Q. And you would agree would you not Mr. Parkinson, that developers would of course have paid close attention to the Premier's Press statement in December 1972 which has been tendered here? A. I believe so yes.

Q. And they would also have become aware of the contents of Sir Charles Cutler's letter to Mr. Vogan? A. That's the Developers Institute? 40

Q. Yes. A. Yes.

Q. Now I want to move to a different topic, the land south of the TLE on the subject land. And I want to ask you to assume that a person thinking of buying the whole of the subject land has made enquiries and he has been informed that if in the foreseeable future there is any rezoning of South Penrith south of the freeway in the area we're talking about, then it would stop at the northern boundary of the TLE. A. Yes. 50

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Q. Now he's found that out. Have you given any consideration to how, on that hypothesis you would value the land south of the TLE? A. No I have not done that exercise.

Q. I know you haven't done it in your report but I take it in the light of your answer, that you haven't given it any consideration at all? A. I gave it consideration as a valuation approach when inspecting the property. I was asked to do an independent valuation, I was advised that there was a dispute as to whether or not the transmission line easement should be the barrier, but for me to form my opinion and to do a valuation, and having inspected the land and in particular its topographical features and there was time for one valuation on one basis or the other. I did the valuation which I considered to be appropriate from my experience and having regard to the topography of the land, so no I didn't. 10 20

Q. Mr. Parkinson I'm not criticising you at all. I'm merely asking you, not only for the reason you've just given and I would accept it, you didn't include any such possibility in your valuation report, but I'm asking you having heard a lot of reference in court here in the last few days to the possibility of the TLE being the southern boundary, whether that be right or wrong, you still haven't for whatever reason given any thought to how you would value it on an assumption that the TLE would be the boundary. A. Over the last few days I've given some thought to how - as to how I would have valued it but not figurewise, because I haven't had the opportunity in the last few days of inspecting sales that would be necessary to be inspected in relation thereto. 30

OFFICER: Thank you. I have no further questions.

RE-EXAMINATION: 40

HEMMINGS: Q. If I can deal with the Casula rezoning question Mr. Parkinson, east of the old Hume Highway has in fact been indicated for rezoning purposes?

A. In writing from the Minister yes.

HIS HONOUR: Where is that land? Is that past Liverpool and --

OFFICER: The witness marked it this morning.

HIS HONOUR: Yes I know but I didn't quite - is it just before the turn-off at the, or somewhere between Liverpool and the -- 50

OFFICER: No.

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PARKINSON: As you drive southwards from Liverpool about halfway between the commercial centre of Liverpool and the crossroads on the left-hand side there is an old motel. That is Leacocks Lane runs down there, Ingham's the poultry people's homestead is on the right directly opposite -- 10

HIS HONOUR: Just past the sign that says Casula?

PARKINSON: That's right your Honour yes.

HEMMINGS: Q. Now did I hear you when you were at the easel say that there had been an indication of also some rezoning on the western side of the highway? A. Yes evidence was given in that regard in the Land and Valuation Court by an officer of the Planning and Environment Commission, or SPA I'm sorry, in the case I mentioned of Sacco and Spinati. 20

Q. Is that another area of land that is shown as not having urban potential -- A. Yes.

Q. -- which is indicated as being available for urban potential? A. Yes. The yellow colour with white cross-hatching on the map at that location is special uses proposed as at 1974, about 30 per cent of that had been changed according to the officer giving evidence in that particular matter, and now the whole of that area has been changed for urban purpose or is proposed to be changed for urban purposes, with the exception of the 34 plus, maybe 50 acres which the Commission end up resuming. 30

Q. Now a separate point. You were asked questions about your assessment of value exclusive of the use of the settlements. A. Yes.

Q. And as part of that evidence you did refer to the sale of smaller properties near the Casula property. A. Yes.

Q. Do you rely to any significant extent on those sales of smaller properties in that assessment? 40
A. No, as I said I'm quite happy to produce some small sales in the same zoning in the Casula area. I can do so from my files, without the contracts of course. But really it doesn't make any difference to my valuation at all because as became evident, I'm relying on the Kulnamock sale which is a large parcel, I'm looking then as a cross-check to the Casula sale which is a large property, and the difference between small and large shows up in my analysis and I invited attention to it as being the reason for the difference in rates per acre disclosed in the analysis. 50

Q. Now I think you were here when Mr. Contencin was

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interposed during your evidence? A. Yes.

Q. And you had given evidence as to what you regarded as being the order of development within the subject site? A. Developmental sale yes.

Q. And you heard Mr. Contencin express a view as to the way which he saw the orderly development of the site? A. Yes. 10

Q. And I think he said from the north towards the south? A. Yes he was referring solely as I understood it to a development and planning approach.

Q. How does your approach and his approach match up so far as your valuation is concerned? A. I don't disagree with him from a development point of view, certainly you've got to bring your services from the north. Nobody - and I had that in mind when I made my statement that from a marketing viewpoint, and I still am quite happy with my earlier answer, that you would bring the entrance to the estate in from the best land from the south-east. Now by bring in I mean that's the land you would market first. Certainly you'd have to develop as he said from the north back, but you would stage it, in other words the eastern side of the property. If you look at the Heath plan it's quite a simple process to stage the eastern section of the property, bring your services up the depression up the watercourse. But from a marketing viewpoint you'd certainly come in from the - still I stick to what I said. 20 30

Q. When you say marketing, is that related to getting the higher prices for the better lands to recoup your expenses? A. Yes if you brought people in from the northern section I don't believe you'd do as well in the end growth realisation.

Q. Now in your analysis, and I take you to annexure (a), you have referred to sales 4 and 5 in which you analysed within those properties good buildable land at about \$7,500 per acre. A. Yes. 40

Q. And your attention was drawn to the fact that when you analysed the Kulnamock purchase good - or that purchaser paid for good buildable land at the rate of \$9,018 per acre. A. Yes.

Q. When buying the land in sales 4 and 5 was the purchaser buying land wholly suitable for building purposes? A. Yes.

Q. When buying the 106 acres in the Kulnamock purchase what was the purchaser buying? A. Of necessity in a bigger parcel he was buying a mixture of both good and bad. 50

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Q. He had to buy buildable land and his open space land as well? A. Yes.

Q. And did he have to do something to the open space land? A. He would have had to yes.

Q. Well then what does the \$9,000 show you per acre when comparing the 11 acre purchase in numbers 4 and 5, as compared to number 1? A. That shows an increase for size. 10

Q. Increase for size, and the purchase of the open space land, and the additional expenditure? A. Yes.

Q. Now the Kulnamock purchase, you were also asked whether or not you made any adjustment for access. And you pointed out that no adjustment for access had been made - I withdraw that. You had made an adjustment for access to Emu Plains and Burnley. A. Yes. 20

Q. Are the access problems in Emu Plains and Burnley similar to the access problems in Kulnamock? A. No.

Q. So that the adjustment that you've made to Emu Plains and Burnley is for a different factor to any access problem that exists on Kulnamock? A. Yes, certainly.

Q. So far as your analysis of the Burnley sale is concerned, I think you made an observation during the cross-examination as to what figure you've deduced from the Burnley analysis, did you not? A. Yes I think I made mention that I felt that it was somewhat out of line in reply to a question Mr. Officer asked me. And even leaving the analysis aside, if you look at the column labelled sale 2 for the Burnley property, also for the Emu Plains property; the Burnley property one only has to look at the Heath plan, or any of the plans, to see the large quantity of land that is lost in escarpment; and yet the overall rate per acre before adjustment is higher than the Emu Plains sale. 30

Q. Finally, your attention was drawn to your analysis of the Kulnamock purchase - and this is on your settlement approach to valuation, whereby you assigned \$6,000 per acre for the open space creek land, if I can call it that. A. Yes. 40

Q. And it was suggested that you might have assigned a lower value. A. Yes.

Q. When assigning a figure of \$6,000 in your analysis of that sale, does that affect what you deduce as the price paid for the good buildable land? A. Very marginally, because if you apply \$5,000 per acre there instead of \$6,000, you will apply \$5,000 per acre to the 50

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poorer land on the subject resumed land, but you'll get a higher rate, probably \$10,000 per acre for the good land. And if you're consistently wrong in this approach - as long as you're consistently wrong in your analysis and your application in this type of instance, the answer probably won't vary all that much in the end result, because you're doing the same in both instances. 10

Q. And if you take the Kulnamock analysis on its own, and you only assign \$5,000 per acre for your open space land, would that show a higher value paid by the purchaser for the good buildable land? A. Yes, considerably.

Q. And would that, if then transferred to the subject land, show a higher price than the price you in fact assigned to the subject land? A. It must be, because you've got more good land on the subject resumed land than you have on the Kulnamock land. 20

HIS HONOUR: There is another matter that Mr. Officer referred to incidentally, to some sales.

OFFICER: I think that more or less ceased to have relevance, because the witness in effect said in reply that yes he could see an increase in value for size, by looking at the small ones, but he really could see it on the schedule A in any event.

HEMMINGS: Q. Mr. Parkinson during cross-examination, when dealing with escalation of land prices, you did refer to some evidence that had been given recently - or in the last half hour you said, which further justified your calculation? A. Yes. 30

Q. This is on the independent assessment of valuation excluding the settlements -- A. That's right, yes.

Q. To what were you referring when you made that statement? A. To the Ross and Titter sale, which you gained certain evidence about, which I wasn't aware of before about half an hour ago; it would show it would be a further guide to the escalation rate. 40

Q. Does that intimation confirm or vary the estimates that you've already made? A. It would tend to confirm - on a quick glance, and that's all I've had time to do, but it would tend to confirm what I said originally in examination in chief that in my opinion the absolute minimum creep factor - for want of a better word, that you could allow, would be 30 per cent.

HIS HONOUR: You may step down.

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FURTHER CROSS-EXAMINATION

KENNETH JOHN PARKINSON

(Under former oath)

FURTHER CROSS-EXAMINATION

OFFICER: Q. Mr. Parkinson, in your valuation report which is exhibit J, in the analysis column of schedule A you add in order, as you've told us, to find the value of the good land in say Kulnamock, what you describe as remedial costs which you have derived from Mr. Moore's evidence. A. Yes if I could just point out that I wasn't aware that I was being called this morning, I have none of my notes nor my report with me. I'm happy to answer anything, all I can your Honour. 10

HIS HONOUR: All right then, try and answer him. If it turns out though that you need your notes or your report to answer that - perhaps we could put a copy of his report in front of him - just let me know and we'll make arrangements for -- 20

HEMMINGS: I'll make available my copy your Honour.

HIS HONOUR: Yes.

Q. This is - I think you're asked about directing your - you'd remember this directing your mind to that amount of money that you had to apply to the Kulnamock land to bring it up to -- A. Yes I understand the question.

OFFICER: Q. Well to make it usable? A. Usable yes. 30

Q. That's I think the phrase - and they were expenses which Mr. Moore said would have to be spent on the watercourse area before it could be dedicated and taken over by the council? A. Yes as I recall it on --

HIS HONOUR: Q. Is this the \$1,568 now? A. Yes your Honour, yes. As I remember it, it was in respect of the desilting and cleaning of the dam, the prevention of further scour and rectification of scour and also works in relation to the watercourse at Jeanette Street.

OFFICER: Q. And then in your valuation of the resumed lands you deduct what you describe as penalty costs -- 40

HIS HONOUR: Page?

OFFICER: Page 13.

Q. -- of \$100,000? A. Yes.

Q. Being the expense of work which Mr. Moore said would have to be undertaken on the subject lands?
A. Yes.

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HIS HONOUR: Desilting and scouring?

OFFICER: Yes.

Q. Now you've been acquainted for many years have you not with the general requirements of the Penrith Council for development approvals? A. I'm sorry I don't quite understand what you mean by that. 10

Q. Have you been involved by way of advising or by way of, perhaps as incidental to valuation, with the general requirements of the Penrith Council when granting a development approval? A. What type of development, you mean for a subdivision.

Q. I'm sorry a subdivision? A. Yes from time to time I've had to involve myself in that field, yes.

HIS HONOUR: Q. For the subject land you mean? A. No. 20

OFFICER: No your Honour.

HIS HONOUR: What are you talking about now. Just generally?

OFFICER: He's just saying he has had some acquaintance with --

HIS HONOUR: Penrith requirements.

OFFICER: -- Penrith requirements when granting a subdivision approval.

HIS HONOUR: For any sized block?

OFFICER: Let me put it - 30

Q. Some acquaintance with the conditions that Penrith Council have from time to time imposed when granting subdivision approval with regard to large blocks of land? A. 100 acres upward yes.

Q. And that acquaintance extended back to 1973 and earlier? A. Yes.

Q. And you are aware are you not that with regard to the South Penrith release area, that's north of the freeway, there was a considerable problem there with regard to drainage? A. I believe it had problems, yes. 40

Q. And you're aware are you not that the Penrith Council obtained advice as to the cost of what drainage work was required and on the basis of that cost levied a contribution on all lands within the release area per lot? A. I can't recall whether that --

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HIS HONOUR: This is in 1973.

OFFICER: Q. Whenever Penrith was released? A. I really can't recall whether in that particular release - it varies - it is a common situation in various council areas but I can't specifically recall that that happened in Penrith at that time. 10

HIS HONOUR: Q. But you're not saying it doesn't, you just don't know? A. No your Honour I wouldn't deny that it did, nor would I say it did.

Q. Yes.

OFFICER: Q. And are you aware of what conditions with regard to a contribution was imposed by Penrith in the St. Clair area? A. Not from memory I wouldn't, no.

HEMMINGS: I'm recalling Mr. Moore in reply to this; is probably material that my friend would be best to be asking Mr. Moore. 20

OFFICER: Well I looked around this morning but I didn't see Mr. Moore here. I did think in fairness to --

HEMMINGS: He is too expensive to have here every day I'm afraid.

HIS HONOUR: Is this the contribution referred to by Mr. Smyth yesterday.

OFFICER: Yes. I had intended to - I thought in fairness to Mr. Parkinson and to Mr. Moore I should put it to them. 30

HIS HONOUR: That there was this - that an inquirer would get this information.

OFFICER: Now I'm sorry I've forgotten whether Mr. Parkinson answered my question with regard to --

HIS HONOUR: He said he doesn't know.

OFFICER: I see.

PARKINSON: A. I would have known at the time your Honour, I have forgotten.

HIS HONOUR: He said - well he doesn't know now.

PARKINSON: A. No I don't recall it. 40

HIS HONOUR: But he's not saying it's not true.

OFFICER: Q. Well now your method of - your process of valuation in your report and particularly in the

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analysis as to the Kulnamock sale or resumption and your deduction of \$100,000 from the resumed lands means that you'd treat a person acquiring Kulnamock as having to bear, per lot, an amount which is higher than the subject land would have to bear per lot? A. No. 10

Q. You would agree that your \$1,568 in the analysis column of schedule A for the Kulnamock resumption - \$1,568 per good acre is a higher figure of course than your \$1,000 for the good land in the subject land, the resumed land? A. Than the \$100,000, yes.

Q. Your process in relation to the analysis column of schedule A is to say, well, a purchaser would have to expend on Mr. Moore's estimate a certain amount of money to fix up the water course area and that that works out at \$1,568 per good acre? A. Yes. 20

Q. You are saying in your analysis column, are you not, that a person acquiring Kulnamock at the resumption figure is really subjecting himself to the purchase price and to certain expenditure in order to make the usable land or to make the 76 acres usable? A. No.

Q. Don't you - but you add the \$1,568 to your analysed value of the good land, don't you, in the analysis column? A. Yes.

Q. Don't you then say, well, that shows that for good land in Kulnamock, a purchaser was prepared to subject himself to \$9,018 per acre? 30

HIS HONOUR: Q. Dont' you - you don't say that?
A. Yes.

Q. You do? A. Yes.

HEMMINGS: The question was - the money that was expended on the good land?

OFFICER: Q. The \$1,568 is expended on the water course, right? A. Water courses and dam, yes.

Q. Water courses and dams? A. Yes.

Q. But is expended in order to make the 76 acres -- 40

HIS HONOUR: Good usable land.

OFFICER: Q. -- good usable land? A. Yes, it is an expenditure, as I said the other day, necessary to bring - sorry.

HIS HONOUR: Well, unless you want that further explanation, do you?

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OFFICER: I'm not adverse to having it, your Honour.

HIS HONOUR: Yes, go on.

PARKINSON: A. As I recall, I said the other day that -
I asked Mr. Moore what expenditure would be necessary
on the Kulnamock property to make it of a quality
similar - as nearly similar to the subject land as
could be achieved.

10

HIS HONOUR: Q. But you say the figure to bring the
subject land is not a lesser figure? A. No, sorry if
I conveyed that impression, your Honour. Certainly
\$100,000 is less than \$120,000 which I have allowed on
Kulnamock. No I'm sorry if I conveyed that impression.

Q. And therefore less per acre? A. Certainly, yes.

Q. I thought Mr. Officer asked you that? A. I mis-
understood the question then.

20

OFFICER: Q. I thought I was putting to you that your
process treats the purchaser of Kulnamock as having to
spend more on the water courses, bearing in mind the
size of Kulnamock, than the purchaser of the subject
land would have to spend on water courses bearing in
mind the area of the subject land? A. Certainly.

Q. Your process was to take the value of the good
land as you analysed it from the sale at \$7,430 or
\$7,450, I've forgotten --

HIS HONOUR: 50 I think.

30

OFFICER: Q. \$7,450 is it? And you then said, well,
the purchaser has to spend some money to make that land
usable because he will have to dedicate the water
course and it will be a condition of his dedication
that he spend Mr. Moore's amount? A. Well either a
condition of the approval or a necessity in relation
to the Jeanette Street land to get access or something
along that line.

Q. So aren't you saying, and I put this to you again,
aren't you saying that a person acquiring Kulnamock at
the resumption cost in order to make the land, the 76
acres, usable, has an expense over and above the cost
of buying the land? A. Yes.

40

HIS HONOUR: \$119,000.

PARKINSON: A. \$120,000 it was, because of divisions
and a few cents this and --

OFFICER: Q. Aren't you then saying, well now, when
that work has been done on the water course and the

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water courses are to be dedicated, aren't you saying the purchaser has really undertaken a total liability in order to be able to use the 76 acres of \$9,018?

A. That's what it is costing to derive 76.5 acres of land equivalent to the Tatmar property, yes.

10

Q. Equivalent to Tatmar after you deduct \$100,000 from Tatmar? A. Yes.

Q. Would you agree that if one - sorry, I ask you to assume a situation, then I want to ask you a question. The situation I ask you to assume is that a release of land south of the freeway would be a release which would include the subject land and Kulnamock and maybe other lands as well? A. Yes.

Q. I ask you to assume that in such a release area, the Penrith Council would work out the costs of doing all the work to all the water courses within the release area and then levy a uniform charge per lot throughout the release area. I ask you to assume that. A. Yes.

20

Q. I ask you to assume that that uniform contribution to cover the cost of doing all the work that Council thought necessary would include the cost of desilting and remedying scours on the water courses running through as yet privately owned lands? A. I'm to assume that?

30

Q. To assume it. A. Yes. I think I am - yes.

HIS HONOUR: Assume that and slide over the legal validity of it, for the moment, assuming it is valid?

PARKINSON: Yes.

OFFICER: I understand no challenge is made to its validity though there may be questions as to the reasonableness of it.

Q. However, I ask you to assume that. If that assumption be correct, then you would agree that every owner on the payment per lot of a uniform contribution would have whatever desilting and scouring was necessary on his land done at the expense of the Council? A. On that assumption, yes.

40

HIS HONOUR: But that's what you - you are also suggesting that the Council will then impose a levy on who, the person who ultimately wants to subdivide it, in respect of each lot?

OFFICER: On the developer, when he gets subdivision approval.

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HIS HONOUR: Yes.

PARKINSON: A. As I understood the question, you were asking me to assume that the whole area would be levied and that Council would include --

OFFICER: Q. I asked you to assume that in one release area would be Tatmar and Kulnamock, and maybe other lands as well and that before any subdivision approval is given, it goes through this exercise of costing all the work within the release area and down stream from it, and then that that work includes - this is part of what I am asking you to assume, that work includes fixing up scour on Tatmar and on Kulnamock and desilting on each of those properties? A. Yes, on that assumption, that's right. 10

Q. And that there is then the uniform charge per block? A. Yes. 20

Q. If those were the correct assumptions to make or making those assumptions, it would not be right, would it, to say that the purchaser of Kulnamock would have to spend \$120,000 and the purchaser of Tatmar only \$100,000? A. On those assumptions which I don't entirely agree with, yes.

HIS HONOUR: Q. No, no, but if you assume that, I think necessarily that would have to be wrong, wouldn't it? A. No, but if I assume it, certainly that would be the situation. 30

Q. It would have to - wouldn't it necessarily have to be wrong, or could it possibly be right? It would have to be wrong? A. Yes.

HEMMINGS: That's assuming it was the same contribution?

HIS HONOUR: Yes that's right.

OFFICER: Q. Now let me go back over those assumptions and explore with you which of them - such of them as don't meet with your approval or agreement? A. Certainly. 40

Q. I suggest to you and having discussed it, maybe your recollection is keener. I suggest to you that that was the sort of exercise that Penrith had done and the Council had done in the South Penrith area? A. No, not entirely.

Q. In what respect did the scheme adopted at South Penrith differ from the assumptions I have been putting to you?

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HIS HONOUR: South Penrith, you mean areas north of the freeway?

OFFICER: A. North of the freeway, yes. A. These costs are not in relation to construction of drainage as I understand it suitable for actual subdivision. They are rectification works to the property. 10

HIS HONOUR: Q. Which costs are you referring to now?
A. The \$120,000 and the \$100,000. The Council - Councils generally, to my knowledge --

OFFICER: A. No, let's stick with Penrith. A. I'm sorry.

Q. The one we are concerned with. A. To my knowledge they require, as Mr. Moore said, certain works to - the land to be given to them in reasonable condition and the down stream contribution to which you refer relates to the construction of actual canals and the concrete flooring of canals and this type of thing which is not part of that \$120,000. 20

OFFICER: Q. So the first point you make against my assumption is that the --

HIS HONOUR: Q. It doesn't refer to scouring and - is that right? A. That's what I am saying your Honour, yes.

OFFICER: Q. It doesn't refer to scouring and desilting? A. That's right, yes. 30

Q. In the release area of South Penrith, north of the freeway, do you say there was no repair of scouring done? A. I wouldn't know.

Q. Why in relation - have you any basis in relation to the Penrith Council for saying that their charge would not be based upon inter alia the expense of remedying scouring and desilting? A. Yes, I don't feel that this \$120,000 has anything to do with the Council requirement.

HIS HONOUR: Q. No I think you are being asked, is it your - well, I suppose he is answering it, isn't he. You say -- 40

HEMMINGS: It is a different exercise your Honour.

HIS HONOUR: Yes.

PARKINSON: A. Yes that is exactly what I am saying.

OFFICER: Q. Your \$120,000 is to cover scour and

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desilting? A. The items Mr. Moore mentioned, yes.

Q. Can I go to the South Penrith release area. You say, as we all know, that there were certain concrete channels put in there, correct? A. Yes earth, earth batters and concrete floor of the structure.

10

HIS HONOUR: We flew over these didn't we? You'd run it up to the road, to the freeway?

HEMMINGS: You could see them veer out like a Y.

HIS HONOUR: Yes. I remember, yes.

HEMMINGS: While I am on my feet your Honour, I am not sure whether this is an objection or a comment, but what my friend is putting to Mr. Parkinson now forms no part of any exchange material that we have. That is to say, is new engineering material and going to be tendered in evidence of which we haven't been given notice.

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OFFICER: Well your Honour evidence was given yesterday without objection to what - I think by one witness in the last couple of days anyway - but your Honour I could have put this with no objection from my learned friend to Mr. Parkinson in the box.

HEMMINGS: I'm asking is further evidence going to be called by the engineers from the council and if so could we have notice of it.

HIS HONOUR: Yes that's what's being asked. Are you - so I understand too - do you wish to put evidence do you that this is in fact what happened and this is the advice people got when they wanted to develop land in 1973?

30

OFFICER: Yes.

HIS HONOUR: Well do you have a statement to that effect that you can give me?

OFFICER: I don't your Honour. The evidence will be given by Mr. Talbot and I have no statement, I have merely some pencilled notes having taken the matter up with Mr. Talbot; after Mr. Parkinson's approach, he explained in evidence, it became apparent.

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HIS HONOUR: Did Mr. Hilton rely on this information?

HEMMINGS: No your Honour, neither does --

HIS HONOUR: Nor Mr. Hyam.

HEMMINGS: He said drainage is not a problem.

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HIS HONOUR: Can I ask you this question then, you have one more valuer do you?

OFFICER: Yes your Honour.

HIS HONOUR: And is he going to rely on this information?

10

OFFICER: I don't think so.

HIS HONOUR: Why is it then relevant?

OFFICER: Well it's relevant because if it is right - it would be relevant your Honour to found an argument that Mr. Parkinson's approach is wrong.

HIS HONOUR: I see, yes. All right yes very well. Well anyway if you could make the particulars available to Mr. Hemmings if you wouldn't mind.

HEMMINGS: Otherwise I wouldn't be able to cross-examine your Honour, but Mr. Moore's not here, I can't agree with it.

20

HIS HONOUR: It's just that I want to shorten the proceedings if I can, I don't want Mr. Hemmings stringing out a cross-examination because he's really got to wait to get some instructions that's all. Well look Mr. Hemmings I think I'll just have to wait and see what happens.

OFFICER: I'm not concerned and don't propose to call evidence as to what the contribution would be merely --

HIS HONOUR: Then it should be taken into account.

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OFFICER: No. Merely that it would be uniform over the whole of the release area. And if the release area included the subject lands and Kulnamock that that contribution uniform per lot would leave the - a purchaser would have no other expenditure in relation to desilting or fixing scour.

HIS HONOUR: I see.

OFFICER: That would be done by the council.

HIS HONOUR: All right. And now you're asking Mr. Parkinson then - he's told you that his exercise didn't take into account this drainage with cement floors and the like and he believed that whatever the council was levying it didn't include for desilting and scouring.

40

OFFICER: I just wanted to - that's the point at which we were when we passed off --

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HIS HONOUR: I'm sorry I thought he said - I thought he believed his exercise didn't coincide with what you were saying the --

OFFICER: Yes I just wanted to explore that with him.

Q. Are you aware as to whether the contribution levied in the South Penrith release area was uniform per lot? A. From memory, no I wouldn't. 10

Q. You can't remember whether it was -- A. No, not from memory, no it's eight years ago.

Q. There was undoubtedly in that release area certain open drains, grassed drainways and in places concrete beds and even concrete going up the sides to some extent? A. Yes, usually they were grassed verges and concrete beds, yes, a concrete strip bed in the bottom.

Q. And you will agree will you not that there was a lot of scour in that South Penrith release area? A. I really couldn't remember that far back and I don't think there would have been the scour in that area that we're talking about on the Kulnamock property because you're talking totally different lands. 20

Q. Anyway you can't recall whether there was scour in the South Penrith release area? A. From the topography of the land I would expect some scour but not the type of scour we're talking of here.

HIS HONOUR: Q. And when you say here, Kulnamock? A. Kulnamock, yes your Honour. 30

OFFICER: Q. And was the scour at South Penrith remedied -- A. I'm sorry can you repeat the --

OFFICER: Q. Was any scour at South Penrith remedied at the time of subdivision - by the time of subdivision? A. I really couldn't answer that.

Q. I see. Do you recall whether there was any scour at St. Clair, on the St. Clair lands? A. There would have been some scour yes.

Q. Are you aware of whether it was remedied? A. I would imagine it was, in the subdivided section it would have to be. I would imagine it was. I couldn't answer that with certainty. 40

Q. I see. Thank you Mr. Parkinson.

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KENNETH JOHN PARKINSON

(Under former oath)

RE-EXAMINATION (CONTINUED)

GILES: Q. What is your full name? A. Kenneth John Parkinson. 10

Q. Mr. Parkinson, first of all, I think you have been directed to the alternative valuation exercise done by Mr. Weir, including what he - an exercise he did - or based upon the results of the hypothetical development?
A. Yes.

Q. Now in your opinion can those two exercises - and do you say that what has been done takes parts of both those exercises? A. Yes, discounted cash flow, you don't insert a profit and risk for instance in the early stages because obviously you are not going to pay interest on money that you are taking out. In other words, you apply to the profit to your development costs or land purchase as you went through. 20

Q. Yes. If there is an amalgam of these two approaches in the way you have described, is it possible by some form of adjustment to reconcile them? A. Yes it is. I checked through the figures and on a conventional approach it can accord with a correct cash flow approach, yes.

Q. One or the other. A. I'm sorry, I may have misunderstood the question. 30

Q. I may have misunderstood the answer. Can you arrive at a - in your opinion, at a valuation based upon an amalgam of the two methods that you have described? A. No, certainly not.

Q. Secondly, there has been some evidence given both by Mr. Hilton and Mr. Alcorn as to the appropriate rate, discount rate, when looking to future releases? A. Yes.

Q. I think that you had independently given some thought to the question? A. Yes. 40

Q. And what discount rate do you say is applicable?
A. Between 4 and 5 per cent for this class of land and I would be specific for this class of land, non urban with potential.

Q. Does that - in arriving at that figure, have you taken into account sales of land in the vicinity?
A. Yes, I looked at Orchard Hills at \$14,000 to \$15,000 per acre and the South Penrith area which generally is in the vicinity of \$22,500 to \$25,000 per acre, as released. 50

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Q. Have you considered - and you have arrived at this figure? A. Yes.

Q. Does that accord with your general experience?
A. For this particular parcel of land, yes.

Q. Have you - just by way of explanation to his Honour, for that, why is it erroneous to take current commercial interest rates as a discount rate? 10

A. Current commercial investments do not appreciate, real estate appreciates, and therefore you not only have the disclosed interest rate but you have your capital appreciation on top of that which makes --

Q. Yes, which makes -- A. Yes.

Q. In addition to there being appreciation, may it often be tax free appreciation? A. If it is worked right, yes. 20

Q. Lastly, may I ask you this question? Have you considered the sales evidence produced by Mr. Hilton, Mr. Weir and Mr. Hyam with a view to detecting whether there is - whether those sales produce evidence acceptable to you of a discount or magnitude in relation to land of this type? A. No. All of the analyses in those reports are of lands of a different type. Most of them are in respect of non urban lands and I would have to be the first to agree that as you go up in area, you come down in rate per unit area. The other exercise is in respect of this - the only residential exercise is in respect of slightly similar lands. 30

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OFFICER: Q. Your 4 to 5 per cent you derived from looking at the South Penrith released area? A. Yes.

Q. And the prices that were being obtained? A. Yes.

Q. And at the Orchard Hills area? A. Yes.

Q. South Penrith being already released? A. Yes.

Q. And Orchard Hills being phased for release when? A. Between about 10 and 15 years. 40

Q. Did your comparison of what was being obtained for - I'm sorry, were you looking at small allotments or large allotments in those areas for your comparison?
A. They were acreage allotments.

Q. By which you mean what? Of an acre or -- A. No, in the - from memory, about 5 to 20 acres.

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Q. Then having looked at that, did you make any other adjustment? How did you reach your 4 to 5? Was that thrown up directly by those comparisons? A. Yes.

Q. Are they of sales which have already been given in evidence? A. Yes, except for South Penrith, the Orchard Hills ones are in Mr. Alcorn's sales list and my memory of the South Penrith area at that time is in the \$22,500 to \$25,000 which I said in chief earlier. And also there is the information in the Valuer-General's files which I believe are in evidence which indicate about \$25,000 per acre for residential zoned land at South Penrith. 10

Q. Is it, by a straight comparison of those, that you derived a figure? A. Yes.

Q. And the figure, is what, somewhere between 4 and 5 is it? A. Yes, it depends on whether you take Orchard Hills as being 10 years, 15 years, or whether you work off the \$14,000 and the \$22,500 or whether you work off the \$15,000 and the \$25,000. You can only give a bracket of 4 to 5 per cent depending on those factors. 20

Q. Then having looked at the matter in the way you have described, and reached the spread of 4 to 5, you say, well, I can form a firm view from that that 4 to 5 is an appropriate discount rate for future release? A. It appears very little for this area, yes. 30

Q. You would agree that that treats this area as if phased? A. It is on the phased land at Orchard Hills and the released land at South Penrith, yes.

Q. To say the discount for future release should be 4 to 5 does however treat - I'm sorry, if one is applying the discount for future release of 4 to 5 and saying, well, that is the appropriate discount rate, if one is looking to the subject land as having a future release -- A. I think if you were making that comparison and that statement, you have to combine the results of Orchard Hills and South Penrith with certain other sales evidence such as the Kawacka situation which was not phased land and your general experience. For instance up at Forster, non urban land with potential indicates a similar bracket. I've analysed sales up there back in about this same period. 40

Q. Is your judgment then of 4 to 5 restricted, as I thought a moment ago it was, to South Penrith as compared with Orchard Hills? A. I'm sorry, I understood you to ask me whether my analysis was on South Penrith and Orchard Hills. Yes to that, but no, my judgment, if you were to apply that analysis to the subject land, 50

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I am saying I would also couple that analysis with my overall experience and knowledge.

Q. And you reject the use of a commercial rate because of the point you made that land appreciates, commercial investment doesn't? A. In that sense I was referring to mortgage interest and that type of interest. 10

Q. That is one of the great complaints about mortgages, isn't it, that they don't appreciate at all? A. Except for finance purposes - different classes of property to this, yes.

Q. So your rejection of the application of a commercial rate is because of the view that land does appreciate? A. Over a period, yes.

Q. But there are fluctuations, are there not, in the appreciation? A. Certainly, yes. 20

Q. And there are times when one finds that land, as compared with an earlier period, has not appreciated? A. It has levelled out sometimes, yes.

Q. Not only does an upward movement sometimes level off but in fact one at times finds that it moves and then moves down a bit? A. In some classes of property, yes, you can't generalise in that situation, yes.

Q. Of course we are talking here about the application of an appropriate discount rate for a whole series of possible cut-off times, are we not, perhaps 3 years, 5 years, 7 years and so on? A. Yes. 30

Q. For example, you would agree that in, say, a couple of years after the resumption date, the prices obtained for large areas of land of the type we have been discussing in this case in many cases couldn't be obtained. One couldn't obtain the same price as they were selling for in 1973? A. I would be inclined to disagree with that because of a certain transaction at Emu Plains I commenced negotiations on a couple of years later. In respect of this class of land, no, I wouldn't necessarily agree with that. 40

Q. But that there was a period when prices fell below the 1973 prices? A. Yes. You can't provide evidence. In fact, in 1975-76 the 118 acres at Emu Plains, I negotiated a joint venture deal on that and it was certainly at no lower level than 1973 because I had valued the land in 1972 and again in 1973 and then at the time of putting together the joint venture. So on that evidence --

Q. That one held its value? A. Yes, which was non 50

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urban without potential outside a phased area, yes. So I couldn't agree on the basis of that.

Q. Of a fall? A. Yes.

Q. But that one, certainly to no appreciable extent, has risen? A. No, it maintained its level, yes. 10

HIS HONOUR: Q. But doesn't that mean, with inflation, that it really dropped? A. Yes, but - that's why earlier your Honour I said over a term because if you looked at property values from 1973 to 1978, yes, effectively you're losing money, but if you looked at it over a term of 1973 to early 1981 --

Q. I follow that but I was just answering - what Mr. Officer said. A. Yes.

OFFICER: Q. So you really can't tell in advance whether the thing you buy is going to, by any particular year, have appreciated or not? A. No, that's why you analyse the market to derive your return rate because that reflects those factors. 20

Q. Reflects what people are thinking? A. Anticipating.

Q. Guessing the future may hold? A. I suppose that would be reasonable.

HIS HONOUR: Based on what the past has done, I suppose?

OFFICER: No.

HIS HONOUR: Doesn't it? 30

OFFICER: No, because they don't say 1963 to 1973, there was an appreciation over a 3 year period, therefore from 1970 to 1973 there'd --

HIS HONOUR: But when they start working out what they think is going to happen in the future, what do they make reference to to come to that conclusion? Surely some - wouldn't they take into account something that has happened in the past?

OFFICER: No, not over a --

Q. You wouldn't do that, would you, Mr. Parkinson? A. Yes and I believe that - I know that developers take their experience as a whole, they accept the situation that I was just talking about and they acknowledge that - in 1973, for instance, they would acknowledge that prices would not continue to escalate at whatever rate they were escalating at at that alarming rate. 40

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They realised as they looked from 1973 to 1963, certain things had happened, or if they went back to 1960 they got a different answer but still on an overall situation. So in 1973 they could say by 1983, all things being equal, I should have an appreciation in that bracket. They do definitely look at the past history, yes. 10

OFFICER: Q. I accept that that is taking a span of say 10 years. A. Yes.

Q. But they wouldn't say well now over a span of 10 years it will appreciate, they wouldn't proceed to say, and I can now put down what it will be after 3 years, 5 years and 7 years, within the 10? A. They couldn't be precise, they could probably make estimates based on the history of real estate, in 1960 you had a very bad credit squeeze, and there was a lead up to that in 1959, a boom period in 1959, and 1973 was very obviously a boom period, but they knew that immediately they bought a property that they were going to get capital appreciation. 20

Q. Not immediately? A. Virtually immediately, yes.

Q. So long as the boom lasted? A. While ever it lasted.

Q. If and so long as it lasted? A. Yes.

Q. Yes, thank you.

HIS HONOUR: Any re-examination?

GILES: A couple of questions if I may, your Honour. 30

FURTHER RE-EXAMINATION

GILES: Q. The questions you've just been asked, Mr. Parkinson, do they illustrate the necessity to go to market evidence to see what people in fact are assessing the future to be? A. Yes, that is no different to profit and risk, it has got to be derived from market evidence, but in this case it is wrong.

Q. Checked against your general experience?

A. General experience can become very faded over 8 years. 40

Q. Now secondly, you were asked whether this was something going off into the future of course, and you felt that it may be that you could also extend your exercise by taking land not with the immediate potential - or not with the potential of Orchard Hills, but with the potential which the market would judge to be later? A. Yes.

Q. Just as a matter of interest on that point, if

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you have got the material there to do it, please tell me, but if you took \$24,000 for immediately available land, and you took the purchase price of land as being \$9,500, this is per acre? A. Yes.

Q. And you adopted say 4.5 per cent, or 5 per cent say for the sake of ease \$24,000, \$9,500 and 5 per cent, how many years does that indicate? A. 19 years. 10

HIS HONOUR: Q. Well does that mean \$9,000 is the present value of \$24,000 over 19 years at 5 per cent --
A. \$9,500, yes.

GILES: And your Honour appreciates that is between released land and adjusted Kulnamock.

HIS HONOUR: Yes.

GILES: Q. The other point is this, Mr. Parkinson, you've been asked about this progression, looking ahead in a 10 year term and so on, as - assume a person purchases land for the purpose of investment, released in the future, is it a fact that the value of the land increases as the date for expected release approaches? A. Yes, in other words at South Penrith as a typical example, if you are talking in the bracket of \$22,500, \$25,000 per lot, in 1973, you would have a large subdivision by the time it was finished, in say 1981, you might be talking \$30,000 per lot. 20

Q. Yes, thank you. 30

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JOHN ALISTAIR CONTENCIN

EXAMINED

- GILES: Q. You also have formal qualifications as a town planner? A. Yes.
- Q. What are they? A. Ordinance 4 examinations of New South Wales, a government certificate, and Royal Australian Planning Institute examinations. 10
- Q. You have said that you have been involved in the planning of large scale subdivisions? A. Yes.
- Q. You mentioned some in the Jabiru area, at Darwin, the planning of the - Canberra planning of suburbs, can you give us some other examples? A. Gold Coast in Queensland, a lot of these are contiguous; they're Paradise Point, Broadwaters, part of Runaway Bay. There are a number of others down there I can't remember all the names. A number in Brisbane City Council area, the Bolton area. In the Albert Shire Pine River Shire, Noosa, Hervey Bay -- 20
- Q. Tweed Heads? A. Tweed Heads.
- Q. Taylor's Lakes in Victoria? A. Yes correct.
- Q. Now with your association with this project, commissioning by Mr. Brian Orr? A. That's correct.
- Q. You had met Mr. Orr in his capacity as an officer of a Bond Corporation subsidiary company, is that correct? A. That's correct we were doing work for Bond Corporation at the time. 30
- Q. And he commissioned you to prepare a layout and plan and design a report for submission through the Council for re-zoning of the subject land? A. That's correct.
- Q. And you were given by Mr. Orr I think some data including contour plans, is that correct? A. Yes.
- Q. Aerial photographs? A. Aerial photographs.
- Q. And the resultant site investigations? A. Yes.
- Q. And did you then supervise the preparation of similar projects? A. Yes. 40
- Q. Did that take place - did the commission take place in March and did you commence work in about April? A. We were commissioned in March 1973 and we started in March 1973.
- Q. Now I think that the first - could I have exhibit

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AH your Honour? Your Honour it's the A.A. Heath Outline Plan.

HIS HONOUR: Yes.

GILES: Could I just have that for a moment?

HIS HONOUR: Yes.

10

Q. You started in March 1973 you say and finished when? A. We finished I think in - the actual last work we ever did on the job at all was about October, that was just finishing off. The report was substantially finished your Honour in September.

GILES: Q. Now Mr. Contencin if you'd look at the initial or the top plan on part of exhibit AH, you will recollect and observe that it includes land other than the subject land, can you see that? A. Yes, that's correct.

20

Q. Can you tell his Honour why that was so? A. On the initial visit to the Penrith Council with our original sketch plans, the town planner at Penrith suggested that in order to demonstrate the re-zoning case for the subject land that we would need to show how it could be integrated with the Penrith Town Planning Scheme, and therefore he suggested that we should prepare a structure plan over the whole of the general area of the subject land. And this was our initial attempt at it.

30

Q. All right. And we see later - or development of that plan in the other two exhibits I think related to part 32? A. That's right.

Q. I'll come back to those in a moment if I may. Now having prepared - incidentally were your instructions to proceed with all due diligence to prepare that material? A. Yes we never stopped the whole time.

Q. And I think you commenced the process - I'll withdraw that. As part of the process of course there was the development of the detail plan for the subject land? A. That's correct.

40

Q. And may I first of all show you a plan which is dated June 9th 1973, drawing No. 10563. Now do you recognise that as being either the first or at least an early detailed design? A. Yes apart from early sketches this is the first overall layout that was produced.

Q. Right. And does the date on the plan enable you to say that that plan was produced at least by June 9th? A. June 9th yes.

50

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Q. Now I then show you another plan dated July 1973, drawing No. 10594. Now do you recognise that plan?

A. Yes this was a - almost a complete re-design of the original layout and was brought about by changes that we had to make.

10

Q. Right. Well now I think that - Mr. Contencin you have, with the benefit of looking through your file, sought to reconstruct as it were the sequence of events which occurred in the middle of 1973, is that so?

A. Yes with some difficulty.

Q. I think that you - quite frankly your memory doesn't stretch to the detail of dates and sequences of events in that period with any degree of certainty?

A. No the sequence of the plans has been the most consistent way of establishing what we did.

20

Q. Yes. Well now between the two plans that you have just identified, as you said, there's a **reasonably** substantial re-design. Have you a note in your **file**, in your handwriting which you identify? A. Yes that's correct.

HIS HONOUR: Q. These are contemporaneous notes you made at the time are they? A. I think they are notes I made when I got back to the office in Brisbane.

GILES: Q. This note, you will observe, deals with a meeting with Brian Crockett and a Mr. Shearman of the State Planning Authority? A. That's right.

30

HIS HONOUR: What date is this?

GILES: That's the next question your Honour.

Q. You will see that there is an alteration to a date on that document. It appears to read now 25th July, 1973, do you see that? A. That's right.

Q. That appears to supersede as it were or correct a June date? A. I think the original date was 12th June, 12th of the sixth.

Q. I'll come back to the question of the correction in a moment but you have over the last day or so had the opportunity of rereading this note? A. Yes.

40

Q. Can you place the conversation which it records by reference to the plan which you have in front of you? A. Yes, this meeting was held in Mark Foy's building where the State Planning Authority was established at the time. The meeting was with both these gentlemen.

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HIS HONOUR: Q. Who are they? A. Mr. Crockett and Mr. Shearman.

Q. And they were? A. They were officers of the State Planning Authority.

GILES: Q. My question at the moment is: Can you place where the conversation that that records in the sequence of plan? A. Yes I think that this meeting took place after we'd produced this first initial layout. 10

Q. And what in relation to the second one? A. The second one was produced as a result of this meeting.

GILES: Your Honour I tender the note under 14(b).

HIS HONOUR: Yes. Are you going to tender the plans too?

GILES: And the plans your Honour, yes.

HIS HONOUR: Show the plans to Mr. Officer, would you, first? Weren't these produced on discovery, or -- 20

HEMMINGS: Yes.

OFFICER: No objection your Honour.

TENDERED, ADMITTED AND MARKED EXHIBIT AN1 - JUNE PLAN

TENDERED, ADMITTED AND MARKED EXHIBIT AN2 - JULY PLAN

HIS HONOUR: And the notes, what do you say about that Mr. Officer?

OFFICER: No objection your Honour. 30

TENDERED, ADMITTED AND MARKED EXHIBIT AO - MR. CONTENCIN'S NOTE

GILES: What I will perhaps invite the witness to do your Honour is to read that document which is in his own handwriting.

Q. Yes would you --

HIS HONOUR: He needn't do that. I can - maybe I --

GILES: I just thought maybe the witness could - to identify points on the map your Honour, on the plans your Honour, with regard to -- 40

HIS HONOUR: All right, yes.

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GILES: Q. Could you just read it out Mr. Contencin?
I may stop you during the course of it. A. Right.
Meeting with the SPA.

Q. You can omit the bit before -- A. Right. 10
Generally well received. Prospects for approval appear
good providing we can show a good case for rezoning to
SPA. Sydney Outline Plan indicative of SPA policy only
and is meant to be flexible. Suggested school be toge-
ther with shopping centre and playing fields.

Q. Just stopping you there for a moment. If you
could perhaps stand up and indicate this to his Honour.

HIS HONOUR: No you stay there. I'll probably go down
there. It might be better because of the microphones.

GILES: Q. Would you indicate to his Honour the 20
position of the school and shopping centre and playing
fields? A. You mean where they ultimately --

Q. Where they are on the first plan, that is school,
shopping centre and playing fields? A. On the original
layout they were separated.

Q. Indicate to his Honour.

HIS HONOUR: I've got them.

CONTENCIN: A. The school and the shopping centre.
This was criticised.

GILES: Q. Where is the transmission line, by the way? 30
A. The transmission line is straight down there.

Q. Take the second plan, would you, the July plan?
Could you indicate what has happened to the school,
shopping centre and playing fields on this?

HIS HONOUR: It is obvious. Together.

CONTENCIN: A. Obviously, they were brought together.
We were also criticised about the long run of the trunk
road through the subdivision.

HIS HONOUR: Q. Is this the - are you up to that yet,
or -- A. No, I'm --

Q. Well wait till you get to that. A. Right. 40

GILES: Q. Yes, go on. Asked for a planning report.
A. As far as I got, was the - about the Sydney Out-
line Plan, and the playing fields, shopping centre and
playing fields. That's as far as I got.

Q. Go on. A. Asked for a planning report to indicate

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traffic and bus flows, population densities, patterns of people's movement to work and other facilities, land ownership and uses and also look at any conflict of provision of services with other planned areas in the Penrith area. Our planning should only extend west as far as the first escarpment. 10

Q. If I could just stop you there for the moment, could I have exhibit AH again please? You will observe, I think, that the first of those outline plans extends right across to the river.

HIS HONOUR: Q. Where is the escarpment? A. The escarpment runs through there somewhere.

GILES: Q. Look at the second of those plans, the second or third. Will you indicate to his Honour that - the alteration to them in that respect? A. Yes. That doesn't show up. We only brought the extent of urban development shown on the structure plan as far as the first escarpment. 20

Q. Yes, go on, other owners -- A. Other owners in the area should be informed about the proposals and asked if they agree. He suggested possible joint government and private enterprise development.

Q. Now can I just ask you to tell his Honour what you recall about that note? A. My recollection of this was that it was Mr. Shearman that made this suggestion and we discussed the merits and otherwise of the lower land, that is, the land north of the transmission line easement, as being not as valuable and not as conducive to prestigious development as the higher land and that it might be well worth our client's while to discuss the possibility of a joint ventureship for low cost housing with the Housing Commission. 30

HIS HONOUR: Q. This is the area to the north of the transmission -- A. The north, yes.

Q. You might tell me this, I suppose there will be evidence about this, Mr. Shearman's position in the SPA would be what? 40

GILES: Planning Officer I think was his actual title your Honour.

HIS HONOUR: And Mr. Crockett?

GILES: He was the - I think No. 2 in the --

CONTENCIN: I don't know.

GILES: Q. Would you then go on please? A. Crockett

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said our plan was the first he had seen submitted to SPA in such detail for rezoning. Others talked about submitting such a plan but never did. Asked if green - open areas indicated on plan would be dedicated.

Q. Just stopping you there, can you indicate those points on the plan? A. At that stage we were looking at this part. We were looking at all the drainage reserves. Both agreed principles involved were good. Generally reception was encouraged and prospects seemed good. 10

Q. Yes thank you, now --

HIS HONOUR: Are there any more?

GILES: No.

Q. You will recollect or you just read out comments made about - the summary of the comments made about the Sydney Regional Outline Plan being indicative of policy and meant to be flexible. Can you recall anything else said along those lines? A. This arose from our first meeting with the Council and they said we would have to check with the SPA about the Sydney Region Outline Plan and this was raised with both Mr. Crockett and Mr. Shearman as to how we stood as far as that was concerned and they both went to some lengths to explain to us that the Sydney Region Outline Plan was a matter - the report and its content was setting out principles and policies and that the actual plan itself was a translation of those policies but not necessarily the only one. 20 30

Q. Had you yourself looked at the Sydney Region Outline Plan at that stage? A. Yes.

Q. Were you familiar with the concepts which it expressed or was it was something with - which you recognised as a town planner? A. We had doubts about the - to what extent the colours shown on the outline plan itself, on the graphical illustration, were being taken as firm and this is what we were concerned about. This is what we asked about. We were told quite categorically that there had been numerous cases where other rezoning had taken place outside that area and that, providing we put up a good case, there was no reason why this shouldn't get the same treatment. 40

GILES: Your Honour, just to pick up the positions of these people, according to the exchanged statement, Mr. Shearman your Honour was Divisional Planner, Urban Releases, and he reported directly, so it is said, to the Chairman and Deputy Chairman of the State Planning Authority in relation to proposed land releases. Mr. Crockett - if your Honour would just pardon me one moment -- 50

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HIS HONOUR: It's all right. You can turn them up later anyway.

GILES: I will tell your Honour that in due course. He was - so we are instructed, was the Assistant Principal Planner in the State Planning Authority. 10

Q. Perhaps I should ask you, Mr. Contencin when you went to the State Planning Authority on this occasion, who presented himself as the senior of the two officers to whom you spoke? A. In my recollection of it, it was Mr. Crockett.

HIS HONOUR: Q. Why did you see them? A. The appointment was arranged by Mr. Orr.

GILES: Q. Who went with you? A. I think on that occasion Mr. Len Satara.

HIS HONOUR: Q. Mr. Satara? 20

GILES: Q. Have you any clear recollection who was and who wasn't there on that occasion? A. No I do have a recollection that Mr. Crockett left the meeting and came back towards the end of it.

Q. Can you recall writing to the State Planning Authority on one or more than one occasion? A. Initially I thought it was only the one occasion but on reflection I'm pretty sure now it was twice, it had to be twice.

HIS HONOUR: Q. When was the other time before or after that? A. The other time was after this. 30

GILES: Q. And are you able to recollect any earlier contact yourself with the State Planning Authority before the period after the initial June plan? A. No the only contact I had with any authorities before that was with the Penrith Council.

Q. Have you seen the Penrith Council more than once? A. Twice.

Q. Could it have been more than twice? A. It could have but I do remember twice. 40

Q. Now I think you have located one note of the meeting with Penrith council officers, is that so, on the file? A. Yes.

Q. Would you look at the document I show you, do you identify that as being that note? A. That's correct.

GILES: I tender that if your Honour please.

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HIS HONOUR: Have you seen it Mr. Officer?

OFFICER: Just looking now your Honour. I think we have seen it before your Honour, I think on discovery. No objection your Honour.

TENDERED, ADMITTED AND MARKED EXHIBIT A2 - NOTE
OF MEETING

10

GILES: Q. Again I think if you perhaps read it out?

HIS HONOUR: What's that second paragraph I've seen who is present.

GILES: Q. Will you start off please reading it: Both officers -- A. Both officers fairly cagey regarding council's likely reaction to the proposals. Both tended to put the onus of approval on the SPA. Quite helpful regarding service provisions etc. and discussed scope and capacity of present sewerage facilities. External costs for extra headworks were discussed. Discussed town planning scheme with Davies who explained how policies were being implemented. It would seem that other land a bit to the east has been proposed for development, but is more remote than Satara's land to available services. On the whole they are uncommittal but agree that the project was feasible subject to the obvious constraints being resolved.

20

HIS HONOUR: And when did this - I see 3/7.

GILES: The 3rd of July.

30

Q. You've given some thought to this over the last day or so, are you confident that that's the date of the meeting or could it be the date of your note?

A. No I think this one is possibly the date of the meeting, but I'm not sure which plan it was.

HIS HONOUR: Q. You're not sure which -- A. Which plan it was.

GILES: Q. There's nothing really there to help you work that out is there? A. No.

Q. Are you a person that as a matter of routine keeps notes? A. No.

40

Q. Can I just take up with you a couple of the matters raised in the note you've just read?

SHORT ADJOURNMENT

ON RESUMPTION

GILES: Q. I was about to come to some of the matters

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recorded in your memorandum of 3rd July. You've already said that you had - previously had before the outline plan you'd received the information from council as to its attitude on some of these matters? A. Yes that's right.

10

Q. Your summaries are quite helpful regarding service provisions etc. and discussed scope and capacity of present sewerage facilities can you recollect anything further on that topic? A. Yes this was mainly with Mr. Smith, the Sydney engineer at Penrith and he discussed at some length the capacity of the sewerage treatment works at Penrith to be able to cope with all the development which was earmarked for release but the crux of it was I think that he said that if we could make a case whereby the subject land could be shown to have a higher priority for release than some of the other lands to the east of the subject land then it was quite possible that the sewerage could be coped with but that in any case there would have to be augmentation of the works if this was going to go on in any case and they felt that they would be able to cope with it.

20

Q. Now just down the page, I don't know what day it is, you comment it would seem that other land to the east has been proposed for development but is more remote than Satara's land to available services? A. Yes well this was Davies the town planner who made the remark that the land immediately east of the subject land, which I think is South Orchard Hills by name and where the existing - the present St. Clair estate is, that a lot of this land was under viable agricultural small holding development. It was more remote from the drainage and sewerage facilities than the subject land and he agreed that this - that the subject land in that regard had a good case for re-zoning and for prior release than some of this other land.

30

40

Q. I think that you've also located in your file some further handwritten notes and I show you. Can you identify those? A. Yes.

GILES: These aren't terribly distinct your Honour, I will tender the actual originals in due course. They're easier to read but your Honour had that file.

HIS HONOUR: Yes.

CONTENCIN: A. Well these are only jottings that I happened to have on the file. I'm not even completely sure which meeting it was that I got them from.

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TENDERED, ADMITTED AND MARKED EXHIBIT AQ -
MR. CONTENCIN'S NOTES

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CONTENCIN: A. I suspect it was the council.

HIS HONOUR: Q. But whereabouts in the scheme of things are those - does this meeting -- A. I can identify it your Honour off these plans.

Q. Yes. A. It's one that hasn't been tendered yet. 10

GILES: Q. Yes, well now you'll see reference in that note to trunk subdivision road, dash limited access question mark. See that? A. Yes, that's correct.

Q. Now the plan you have in front of you, the uncoloured plan, could you compare that with the plan I now show you. Is there a distinction between those two plans in relation to the access to the trunk road?

A. Yes there's not a lot of difference between the two layouts. The major difference is that the trunk spine road that winds through the centre of the subdivision has been widened and all the lots fronting onto that almost without exception have been given access from the rear of the blocks, that is internally, and not off the main through road. 20

Q. Are there changes so far as access to that trunk road is concerned between the uncoloured plans which you had previously identified and the plan you now identify? A. Yes. In regard to the access to the blocks.

Q. Yes. With that in mind do you place then the jottings that you've referred to as being after the uncoloured plan was produced and before the last plan was re-zoned? A. Yes that's correct. 30

HIS HONOUR: Q. Well what's the date of the last plan? A. It's still July 1973 your Honour but it's drawing No. 10597, the other one was 10594.

GILES: Q. Both in July neither with any particular date? A. No.

GILES: I tender that last plan your Honour.

HIS HONOUR: Show it to Mr. Officer. 40

TENDERED, ADMITTED AND MARKED EXHIBIT AN3 -
PLANS AND DRAWINGS

HIS HONOUR: So exhibit AQ the meeting there is between AN2 and 3.

OFFICER: No objection.

GILES: Q. There are a couple of other features I may get you to point to before it goes up Mr. Contencin.

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Community and sports centre, how is that dealt with on the two plans? A. I've only got a very small note there but on the previous plan --

Q. That is the uncoloured plan AN2. A. The uncoloured AN2 yes, the playing fields took up all the area between the school and the shopping centre. Subsequent meeting to this plan being done -- 10

Q. Well just compare the two please?

HIS HONOUR: Q. Part of that area to the north of the playing field is now the swimming -- A. Swimming pool, sports and community centre.

Q. Is this the same plan that's -- A. Yes. It's basically the same plan with some modifications.

GILES: Q. I think also that if you see at the foot of the last exhibit AQ there are some calculations, do you see those? A. Yes. 20

Q. Now you haven't had the facilities to be quite accurate in your assessment but you are fairly confident that those calculations related to AN2 the uncoloured plan are you not? A. Relate to which?

Q. The uncoloured plan? A. Yes.

Q. AN2. With exhibit AQ you will see the top heading was "general compliance with T.P.'s views", town planner's views? A. That's correct.

Q. What does that tell you? A. Well that tells me that it was more likely to be a meeting of the council with the town planner, if it had been at the SPA I think I would have put SPA's views. 30

Q. You have said that you have some recollection of the second meeting of the SPA? A. That's right.

Q. Are you able to - do you have any note about that? A. No I don't.

Q. And are you able to recall at what stage in the proceedings that took place? A. As near as I can recall it was at the stage where we had a draft report. 40

HIS HONOUR: Q. But when is that in relation to the plans? A. It could have been at this stage your Honour.

Q. Before or after? A. After this.

GILES: That's AN 3.

HIS HONOUR: Yes.

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GILES: Q. Perhaps if I just refer you back to those words: general compliance with T.P.'s views leaving aside whether it is Council or SPA, does that note - or what do you deduce from your note to that effect?

A. These are just jottings I wrote down which I should have -- 10

Q. Just think about it yourself and having read it, does that tell you anything as to the substance of the conversation? A. Yes, it tells me the subjects that were discussed at the meeting, that's all they are.

HIS HONOUR: You are referring now to --

GILES: General compliance.

HIS HONOUR: Q. General compliance with T.P.'s views or are you referring to matters under that? A. The general compliance with a town planner's views and then the matters under that with the other things that were raised either to be modified on the plan or to be included in the report, in the planning report. 20

Q. As a matter of interest - no I won't ask, go on. I will, because it is interesting to me, probably to nobody else.

Q. Why do people's nationalities matter? A. Where's that?

Q. Age structure, nationality, occupation? A. I think that in the planning report, the town planner probably felt we should be including some sort of socio-economic aspects of the likely structure of the place, where people are going to work, young people or whatever. 30

GILES: Q. I think I will ask you this because it is ambiguous. The heading: Were general compliance with TP's views, and if you don't recall please say so, does that to you now indicate either (a) that the plans were in compliance with the town planner's views generally or (b) that was a topic that you had to raise with them? A. No, I think these were notes just from my own memory. I would have made these notes for when I returned to Brisbane to do whatever I had to do. 40

HIS HONOUR: Q. Please say if you don't remember, does it mean that you had to go back to Brisbane and do more work in order to get compliance from the town planner or does it mean that you had to go back to Brisbane and do more work to implement what you believed to be the case? A. No, what I believe it was that the - the plan generally was complying with what he thought was right, with these exceptions. 50

HIS HONOUR: Q. The exceptions being water supply,

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sewerage? A. Yes things that we perhaps hadn't elaborated on enough.

GILES: Q. In any of the discussions that you held with the Council or the State Planning Authority, were you told that there would be no rezoning, that the land would not be released? A. No.

10

Q. Were you told that the transmission easement, electricity transmission easement, would be the barrier for residential development? A. No.

Q. Following these discussions, you ultimately prepared the Community Development Report which has been tendered in evidence? A. Right.

Q. May I take you to some parts of it for further elucidation?

HIS HONOUR: Incidentally, you might just tell me this because people refer to this - what does TLE stand for?

20

OFFICER: Transmission line easement. You will see it elsewhere referred to in reports as the HTE, high tension --

HIS HONOUR: High tension, I knew that, but I wasn't quite sure what TLE - the "line" meant, transmission line. Yes. This is exhibit T you are referring to?

GILES: Yes your Honour, thank you.

Q. I would like to take - your Honour will pardon me if I don't go right through it - can I take you straight to page 5 paragraph 3.3, you have already I think referred in the middle of these notes to the argument that this land is better situated in relation to Penrith than other parts of the land zoned for release? A. Right.

30

Q. Here you refer to the drainage pattern and the water shed, is that right? A. Right.

Q. And also to the accessible - accessibility of the land from the Penrith CBD. I think you directed my attention to exhibit D as enabling you to show this in a fairly simple form? A. Yes.

40

GILES: Has your Honour got exhibit D? That the plan that's got the contour plan on it your Honour.

HIS HONOUR: Yes I do, I've got it here.

GILES: Q. Can you just indicate if you wouldn't mind what you say about the logical physical constraints the

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development which exists and the logical cut-off point, if you like, for residential development in this general area? A. The logical cut-off point for residential development --

Q. Perhaps if you take that plan - his Honour has got one in front of him - and you can just indicate to him the features you wish to -- A. The plan does show catchment boundaries which are noted there. 10

Q. That's the black line? A. The southernmost black line. It also shows the Schoolhouse Creek alignment - sorry, that is the ridge of Schoolhouse Creek. These are all ridge lines. One catchment falls into the western side of Schoolhouse Creek ridge.

HIS HONOUR: We have been over this actually with Mr. Moore when you were perhaps not here, Mr. Giles. 20

OFFICER: You shouldn't need to ask the same questions again.

CONTENCIN: A. Anyway to answer your question, the logical - speaking as a planner, the logical cut-off point for urban development for a zoning purpose or whatever would be at that ridge line which starts down there, right down to the east, and runs right around the top of the ridge line across to Mulgoa Road.

GILES: Q. There are some what might be called title constraints to the east, is that right? A. Yes I am aware of those. 30

Q. And that's the Commonwealth land? A. Commonwealth land.

Q. That is really not linked with physical constraints? A. No.

Q. Would you just tell his Honour as a planner the significance of catchment areas in urban planning? A. Possibly the greatest single point is the fact that the drainage, stormwater drainage and sewerage, can be picked up in one water shed and carried to a central point. If for example development went over the top of that ridge to the south, there would need to be a rising main pumping it up over the hill or else carry it right around to the west somewhere and down a gully. 40

HIS HONOUR: Q. Or else carried round -- A. To the west and taken down a gully somewhere if there was fall. For neatness and ease of services, the water catchment, water shed, is the logical extension for a physical boundary. The transmission line provides no barrier 50

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whatsoever. It is just an arbitrary line like anything else. It is a constraint for sure as far as planning is concerned, it is a constraint but not a barrier.

GILES: Q. You have indicated in your designs a method by which that can be treated? A. That's right. 10

Q. No doubt there are others? A. Yes, that's not the only one.

Q. Have you in other developments had to contend with constraints of that type? A. Yes.

Q. What uses have you made of transmission line easements? A. Recreational space, a similar treatment with running roads through it, or simply extending large allotments backing into the easement but with no buildings.

Q. So it forms part of the back yard - the easement. You mention in 3.4 the easy accessibility to the central business district of Penrith. Does that plan also enable that to be seen fairly easily? A. Yes. If you take the central business district of Penrith and I expect if you were to put a compass point on that and swing it, you'd just about take in that whole catchment area. This incidentally fits in with the SROP, inasmuch in the chapter dealing with the western corridor, the SROP speaks of three nodes of development being Blacktown, Mount Druitt and Penrith, being three node development with open corridors in between. So the idea of one single 5 mile wide string of development from Sydney out to the Nepean River is not really what is expressed in the objectives and policies of the statement on the planning. 20 30

Q. So you say it is consistent because it is linked visually and physically with the Penrith development, is that -- A. That's right.

Q. On that point, the economics of development, first of all which is the most desirable land in your opinion for residential development, that north or that south of the transmission line? A. South of the transmission line. 40

Q. Why is that? A. It is more elevated, it is more conducive to a prestige type development, it is possibly some of the best land in that - in the whole district.

Q. What are the economics in general terms of sewerage and drainage and the like of that area as compared with the - I withdraw that - the whole site as compared with the unit costs of the lower lying area? A. The lower lying area would have to absorb some of the unit 50

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cost of the top because the reticulation at the bottom would have to be that much bigger to attract the run-off from the top.

Q. But my question is, assuming development of the whole area, you've got certain units of cost, if you developed only the lower lying part, what would be the cost? A. You couldn't develop the lower lying part, you couldn't develop the area, say, north of the transmission line without allowing eventually for the development of the southern area because it is going to have to go eventually whether it be now or in 10 years time and it is either going to be allowing for the engineering design at the bottom to cope with the top eventually or duplicating at some future date.

10

Q. That is because it is part of the same general area? A. Yes.

20

Q. Do you have a view as to the economics of developing only the lower lying, northern area, north of the easement? From an urban planning point of view?

A. From a unit cost point of view it's really not on, or it is going to be expensive.

Q. Yes, now page 27, you developed a case for rezoning, do you see that?

HIS HONOUR: Sorry, what page?

GILES: Page 27, your Honour, following.

30

Q. Now have you had the opportunity of looking at this again recently? A. Yes.

Q. And in the light of your extensive experience subsequently in urban planning, have you had cause to change your opinion about the - or change the opinion there expressed? A. Describes the case for rezoning did you say?

Q. Yes. A. In fact, what I know now about the SROP, I probably wouldn't have taken such a soft line about it.

HIS HONOUR: Page 20 what?

40

GILES: Page 27, your Honour.

HIS HONOUR: Yes, what's the - 27 what?

GILES: Page 27, your Honour.

HIS HONOUR: 11 what, .1 or .2?

GILES: Well your Honour, I was really asking him a

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question about the whole of that section, which is the case for rezoning, and asking him whether he had any occasion to depart from that in view of his subsequent experience, and he says no.

HIS HONOUR: How does his subsequent experience help me? 10

GILES: Your Honour, he has now had another 9 years of very extensive urban planning experience.

HIS HONOUR: You mean he is putting that back in time to --

GILES: Well this report was written in 1973, and I'm just covering the possibility - I just want to make sure that that is his current opinion.

HIS HONOUR: Yes, all right.

GILES: And he confirms it is. 20

Q. Now if - incidentally, just on that topic of the economics of urban development, have you a view as to the likely staging of release of the Satara land?

A. Yes, I think I would have to say that the - it wouldn't be the most economical way initially.

HIS HONOUR: Q. Sorry? A. It wouldn't be the most economic method of approach initially, but I think overall, if the whole area was going to be developed, it would have to start at the bottom, start at the northern end. 30

Q. Well are you talking about what his view was in 1973?

GILES: Q. Well now I'll just take you back - well perhaps both then and now. What is the most economical way of releasing the Satara land?

HIS HONOUR: You mean now?

GILES: I will take it in both stages. First of all in 1963.

OFFICER: I'm sorry, your question was, releasing?

GILES: Well development. Assuming the Satara land is to be released on its own, which parts would be developed first? 40

HIS HONOUR: And you're looking at this in 1973?

GILES: Q. Yes. A. And in toto?

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Q. Yes, in due course. A. I think you'd have to start at the bottom of the catchment and work back up, otherwise, if you're starting at the southern end, you've still got to run all the lines straight down to - through the undeveloped land. 10

HIS HONOUR: Q. Well not your reasons, just what do you say was the way it should be developed? A. Probably from the north.

Q. From the north down to the south? A. North down to the south.

GILES: Q. And you're speaking there of services are you? A. Talking of services and probably ease of construction.

Q. Well would you construct your drainage lines from north to south? A. Well they've got to be to the north eventually anyway. If you start at the south the drainage lines have still got to go to the north. 20

Q. Yes. Now the - assuming that only the subject lands were released in the immediate future, and that is that there would be some time lag between the release of those lands and the adjoining lands owned by the people, does your detailed planning for this development give sufficient exit - or egress - in and out, ingress and egress, for this development? A. Yes, in my opinion, the developer wouldn't have to wait for adjacent lands, there are three public roads which provide alternative access in or out for the people living in that 890 acres. 30

Q. Yes, and the possibility of further -- A. That is excluding the other areas owned by members of the same family.

Q. Yes. Incidentally, I think I omitted to get from you before lunch, the nature of your commission in Malaysia. I think that your company has been commissioned by the Australian Government to provide services to the Malaysian Government, is that correct? A. That is correct, it is an aid scheme, just a general aid scheme. 40

Q. And you are the project leader of a team situated in Malacca. A. That is correct.

Q. And would you explain to his Honour the responsibilities which that team has? A. The team is made up of advisors, your Honour, giving assistance to the Malacca State Government, through the Malaysian Federal Government, in fields of urban planning, regional planning, and project development. 50

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HIS HONOUR: Yes.

GILES: Q. Now I think that you have had occasion to look at the - what is known as the Kulnamock land?

A. Yes.

Q. How do you compare it from an urban planning point of view, in suitability for residential development, with the subject lands? A. Some it is - well most of it is quite good. The creek running down - Schoolhouse Creek runs through the middle of it, that section is I think from what I saw of it, is more heavily scoured than it is through the subject land. It does have one - I'm not sure, I'll have to have a look at the plan again.

10

Q. Would it assist you to look at an aerial photograph? A. Mr. Moore's plan would do.

20

Q. Y1. Now the land that we're considering, Mr. Contencin, is the land to the -- A. Marked lot 1?

Q. With the dam in the middle, that is probably the quickest way of referring to it, and which the valuers wanted to be able to choose. A. No, I would probably put it on a par with the majority of the lower slopes of the subject land.

Q. By the lower slopes you mean the area north of the transmission line do you? A. North of the transmission line.

30

Q. Now I think that you have - you identify the bill I show you as being the costs and fees charged for work done in relation to this job, is that right? A. That's right.

Q. And you say that those charges were incurred, and the fees are reasonable? A. Yes.

GILES: I tender that if your Honour pleases.

HIS HONOUR: Mr. Officer?

OFFICER: Can I just look at it for a moment, we haven't seen it.

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HIS HONOUR: Yes, certainly.

GILES: Q. I think at a stage during the job your company came into direct relationship with the owners of the land, rather than through Mr. Orr, is that so?

A. That is correct.

DISCUSSION

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CONTENCIN: A. Mr. Giles, if I could just correct something I said before, I think I told his Honour that we finished about September, October, apparently according to this we finished in August.

GILES: Q. Yes, well after - just to clarify it, you finished your work after the South Penrith Community Development Plan was prepared, is that right? A. I'm sorry, I don't follow you. 10

Q. You finished your work once the South Penrith Community Development Plan was sufficiently prepared, is that not so? A. That's right.

Q. Now did you - subject to commitments, proceed with this job, with all due diligence? A. Yes, there were times where we worked more intensively than we did other times, but the job never stopped. 20

Q. Yes, and were your instructions to proceed with all due diligence? A. Yes, right from the beginning. The only hold-ups were waiting to get appointments with the council and so on, the SPA or whatever it is.

Q. Yes, now I ask - you've made certain engineering --

HIS HONOUR: Well is this objected to?

OFFICER: No objection.

HIS HONOUR: Well I'll make it exhibit M1 I think, because it can go with the other fee memorandum.

TENDERED, ADMITTED AND MARKED EXHIBIT AML - BILL FOR WORK CHARGES 30

GILES: Q. I think in your report you have made certain - if I could put it this way, engineering assumptions, is that right, as to the capability of doing works and the like? A. Yes.

Q. Now first of all did you have engineering - did you consult within your organisation engineers? A. Yes, our own engineers worked on this job.

Q. And with a plan of this sort, is it always subject to later detailed engineering assessment? A. Yes, a preliminary design is done, but of course that is still subject to full engineering investigation, when the full design phasing comes in. 40

Q. Yes. I'm being pressured your Honour to suggest that the last exhibit should be AML.

HIS HONOUR: Oh, that might be right. Yes it should be

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too, AM1, you were right. You were wise to succumb to that pressure. Yes Mr. Officer.

OFFICER: This witness will be taken by Mr. Smart.

GILES: Your Honour there's one thing I didn't enquire - I did promise to come back to the alteration in date on that memorandum. 10

HIS HONOUR: This is exhibit A0 is it.

GILES: Q. What do you recollect as to the circumstances under which that was changed? A. My recollection of it was that I had a visit from Mr. Miller, the solicitor from Canberra, in Brisbane about 4 years ago, this was 1977, and he sat with me and took down a statement from me as to the events which took place when we were doing this job. He later sent me a copy of the statement which he'd had typed up and there seemed to be an anomaly on it because I looked at the date of that memo to the council, referring to the council which I think was dated the 3rd of July. And then I had another reference to going to see the SPA or something it was, or going to see the council as my first approach, which was a later date. And it seemed to be wrong and I think at the time I rang Mr. Satara and asked him did he have any dates of the times that either I went or he and I went to see the council. And he gave me a date of the 25th of July and I changed it on my memo. Having come down here this time and gone through this set of plans, I'm now convinced that my original date was right, which was the 12th of June. 20 30

Q. So on exhibit A0 we go back to the 12th of June.

HIS HONOUR: Yes.

CROSS-EXAMINATION

SMART: Q. Mr. Contencin so far as exhibit A0 is concerned can I take it to be the situation that this was not a note made at the time that you had the conference with the SPA officer? A. No. 40

Q. And it was a note that was made some time after that? A. Some days after that.

Q. And would this be the situation, that you'd be in Sydney and you'd have attended to a number of matters and then some days later you'd have gone back to your office in Brisbane? A. Yes that's right.

Q. And then when you went back to your office in Brisbane, perhaps the note might be made? A. That's correct.

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Q. And Mr. Contencin so far as this note is concerned, you remember do you having had two meetings with officers of the SPA? A. Yes.

Q. And you're not sure after which meeting the note was made? A. I had to be after the second meeting I think. 10

Q. You think it had to be after the second meeting with officers of the SPA? A. I think I said it was 12th June - no it could have been the first.

Q. Can I take it to be the situation, and I --
A. I'm unsure of that.

Q. You're unsure of that. So to be fair to you, you're unsure whether this note was made after the first -- A. All I can be sure of is that our initial meeting with the council came before any meeting with the SPA. I know that for sure. 20

Q. All right. And did you have a number of meetings with the council? A. Two, could have been three, I think it was two.

Q. And were they interspersed between - were some of the meetings with the council interspersed between the meetings with the SPA? A. Yes.

Q. And I think you very fairly said that you've got no recollection of dates or sequence? A. No, I had --

GILES: I object your Honour, he said -- 30

HIS HONOUR: Q. Well he can answer the question I suppose. Is that what you said or not? A. No I said that the plans helped me - it wasn't until I came back here this trip that, having gone through the plans again, this helped me to put the sequence into --

HIS HONOUR: You never want to be misled by the preface to the question that someone's being fair to you.

SMART: Q. Mr. Contencin what I'm putting to you is simply this, that this note, exhibit AO, could have been made after your second meeting with the SPA? A. It could have been. 40

Q. And it may indeed even contain matters apposite to your first meeting and matters apposite to your second meeting with the SPA officers? A. The only way I'll be able to judge that is by seeing what I wrote in there and what changes I made to the plans at the time.

Q. Yes, and that's the way you've reconstructed things.

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A. In that case in that AO there's reference there made to getting the school and the shopping centre together, so it had to be the first meeting, because it was the first plan.

Q. Mr. Contencin what I was putting to you is that your note could in fact have been made after the second meeting and contain matters that related to the first meeting, and matters that related to the second meeting. In other words it's a summary of what's taken place over several meetings. A. I don't recollect it happening that way. My recollection is that I got back to Brisbane and wrote that for my own enlightenment. 10

HIS HONOUR: Q. Do you remember whether the meeting with the SPA was over a - the two meetings were separated by any substantial period of time or were they -- 20
A. I'd say at least six weeks, maybe two months.

SMART: Q. And Mr. Contencin you notice that on that exhibit AO there's an alteration about halfway down the page, beginning with the line: He suggested it now seems to read, the he appears to be written over. Was it originally we and changed to he or what's the situation in relation to that? A. I don't think that was ever meant to be a w. I think that's just my writing.

Q. It's not an overwritten figures, is it? A. I don't think so. 30

Q. Now Mr. Contencin in relation to the two meetings that you had at the SPA, do you suggest that Mr. Shearman and Mr. Crockett were present at both meetings?
A. I can't be sure of that.

Q. And in relation to these meetings do you recollect whether Mr. Crockett was present at one and not the other? A. I think it's possible Mr. Crockett was not at one of them.

Q. Now in relation to Mr. Shearman do you recollect whether he was present at both meetings or just at one? 40
A. I think Mr. Shearman was present at both.

Q. Now in relation to the conversation that you had with the officers of the SPA that you recall, concerning the boundaries of the SROP, did they explain to you during the course of that conference that in some instances where you had a freeway or the like, the SROP boundaries were fixed? A. On freeways?

Q. Yes. A. Yes.

Q. And did they explain to you that in some other areas for example where you didn't have either a firm 50

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artificial structure like the freeway or a natural boundary, there was room for minor adjustment in the detailed boundaries at the local planning stage? A. I don't think they quite put it like that. What they did do was to refer me to the prologue and the chapter 1 of the SROP and explained what that meant. 10

HIS HONOUR: Q. You say they explained to you where freeways were? A. No they explained to me the flexibility of the actual plan.

Q. I thought you said though they explained to you where there were freeways they represented the boundaries. A. No he mentioned - you mentioned freeways to start with, in your first question.

Q. I thought you said yes.

SMART: I think that I was putting to the witness your Honour that in relation to part of the Sydney Region Outline Plan where there were freeways there were fixed boundaries to the -- 20

HIS HONOUR: Oh yes.

SMART: And I gathered that Mr. Contencin agreed with that that that was explained to him.

CONTENCIN: But they didn't suggest that the Western Freeway was one of them.

SMART: No I'm just going to come to that.

HIS HONOUR: Well that's what I asked really, I understood you were talking about - we're only talking about the Western Freeway. 30

SMART: I'm just coming to that your Honour, I'm going to deal with this in sections.

HIS HONOUR: Yes.

SMART: Q. And it was explained to you Mr. Contencin that where there were boundaries of the SROP that didn't cut across either say a feature like a freeway or a natural topographical feature, that there was room for adjustment -- A. Yes. 40

Q. Room for adjustment at the local planning stage. A. Yes.

Q. And that anomalies could be corrected and minor adjustments would be made. Now Mr. Contencin when you came to the Western Freeway you had a situation didn't you where east of Bringelly Road the boundary of the SROP did not follow the freeway? A. Right.

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Q. And indeed it followed by and large the transmission line easement? A. Which also by and large follows the ridge line of the topography.

Q. Yes. A. Just by coincidence.

HIS HONOUR: Sorry, say that again. When you got east of -- 10

SMART: Bringelly Road I said by and large the boundary of the SROP followed the high transmission easement.

HIS HONOUR: And he said and the ridge line.

SMART: Yes that's right. What you're saying is that there is a coincidence there of the high transmission easement and the ridge line.

HIS HONOUR: But you or I don't know whether they were following the transmission line or the ridge.

SMART: That's where the boundary follows. It in fact follows the - or runs beside the transmission line easement. 20

Q. And were you aware Mr. Contencin at any stage of the history of the Western Freeway in relation to the shifting of the freeway from the position where it ultimately ended up? A. No I'm not.

Q. And you were not aware for example that originally the Western Freeway was to follow the line of the - followed by the transmission line?

OFFICER: I object to the question. 30

HIS HONOUR: I'll allow it. He may know it or not know it, I don't know what it's leading to.

OFFICER: Well my friend is putting it - we don't know that --

HIS HONOUR: Well he can say he knows it or doesn't know it. I don't know if it's a fact or - it doesn't become a fact because Mr. Smart says it is. He's asking this witness whether he believes that.

Q. Was it your belief that the Western Freeway was originally to be part of the transmission line, as the transmission line now is? 40

SMART: Q. Now is, yes. A. No I wasn't aware of that.

Q. Were you aware of the fact that there was a fixed point for the freeway, fixed engineering point, where it

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had to cross the Nepean River? A. The freeway?

Q. Yes. A. No.

Q. And were you aware that the freeway was fixed between the Nepean River and Bringelly Road, fixed as to position between the river and Bringelly Road? A. No. 10

HIS HONOUR: He was or was not?

SMART: He was not aware.

Q. Now Mr. Contencin, in relation to your interview with the officers of the State Planning Authority, and your conference in relation to rezoning, what you were seeking to ascertain at the conference, amongst other things, was the most attractive way in which a case for rezoning could be put to the State Planning Authority?

HIS HONOUR: That's what you were concerned with?

SMART: Q. Yes. A. No. 20

Q. Well what you were seeking to find from the officers of the State Planning Authority, was the sort --
A. Are we talking about the council or the State Planning Authority.

Q. The State Planning Authority. Let me put it to you again. Mr. Contencin, when you had these interviews with the State Planning Authority officers, amongst other things, you were concerned to find out from them, what factors were influencing them - would influence them concerning any rezoning application? A. Yes. 30

Q. And to find out what way, so far as those officers were concerned would most appeal to them by way of a case for rezoning? A. Yes.

Q. And indeed, when you made your case for rezoning - may the witness be shown, your Honour, exhibit AT?

HIS HONOUR: That's not T, that's --

SMART: That's right.

HIS HONOUR: When you say AT you mean T?

SMART: T is it, I'm sorry.

HIS HONOUR: That's the Heath report, haven't you got it there? 40

HEMMINGS: It's been whisked away your Honour, by --

SMART: Well if I may have your copy.

HIS HONOUR: No, he's got one.

SMART: Q. And Mr. Contencin, in paragraph 11.1 of your report, in the second paragraph, you refer - it contains the statement about half way down the paragraph, that the Outline Plan must remain capable of review, and be sufficiently flexible to enable detailed local investigations and planning to highlight current needs of anomalies, where these may exist, your report contains that statement? A. Yes.

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Q. And that statement followed to some extent the views that have been expressed to you in conference by the officers of the State Planning Authority did it?

A. Not exactly, what it does reflect is what the - those officers showed me in the SROP, and what I have written there is more or less, in almost the same words, what is written in the SROP. So it is not their view, all they are doing is explaining to me what the SROP was all about.

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Q. In other words, that you have - that what was envisaged is that in areas where you didn't have a feature or a topographical feature or a structure which defined the boundary definitively, then there could be adjustments, detailed adjustments in the local area?

A. It doesn't say that at all, and that is not what I've said.

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Q. No, but that was the - didn't you understand that to be the situation? A. No, not completely.

Q. And Mr. Contencin, for example, just to take the western freeway from the Nepean River, to Bringelly Road, didn't you not understand that that was in fact a fixed and definite line in that area for the Sydney Region Outline Plan? A. No, that was never explained to me.

Q. But there were references made were there not, to fixed lines such as freeways? A. And rivers and - Sydney Harbour or whatever.

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Q. Yes this was explained to you I take it, by the officers, during the course of the conferences at the SPA? A. This was generally about the SROP, not specifically about the western freeway.

Q. I see, so there was a general - if I can put it to you this way, there were general remarks that were made at the conferences about how the SROP would operate? A. Yes.

Q. And you say it was in the context of those general remarks that the fixed limits were discussed,

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and it was discussed where the boundaries might be variable? A. Well I asked the question as to how we stood as far as the zone was concerned.

Q. Yes, and Mr. Contencin, you were told were you not, that a good case for rezoning would have to be made out, were you? A. Yes. 10

Q. And that you would have to submit an application, and you would have to in that put some pretty substantial arguments as to why there should be some form of extra zoning? A. Yes.

Q. Now Mr. Contencin, in paragraph 11.2 of page 27, in the last sentence, you say: This movement of growth has been accepted as a growth option, so presumably the F4 motorway is not regarded as a limit to development.

HIS HONOUR: Sorry, what page is that? 20

SMART: Page 27, your Honour.

HIS HONOUR: Movement of growth has been accepted as a growth option, so presumably the F4 motorway is not regarded as a limit to development, yes.

SMART: Q. So what you were trying to do there, was to point to the fact that elsewhere, in other words, east of Bringelly Road, there had been development permitted south of the freeway? A. Yes.

Q. And that therefore, you assumed that in your area with which you were concerned, the freeway was not to be treated as a fixed limit? A. Right. 30

Q. And you were concerned, in that part of your report, that the Authority should not apply the freeway from Bringelly Road to the Nepean River, as a fixed limit? A. Right.

Q. Now --

HIS HONOUR: The answer to that is yes, is it?

CONTENCIN: Yes.

SMART: Q. Now can I take you to paragraph 11.4, on page 28. And you refer there, Mr. Contencin to this, you said: Release areas indicated on the Outline Plan south of the F4 motorway, appear to stop short of the SEC electricity transmission line easement, and reference is made to this principle in the report dealing with the western sector? A. Yes. 40

Q. However, if this is the case, there seems to be

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no valid argument for deleting the area immediately south of Penrith, between the F4 and the SEC easement.

A. Yes.

Q. Now can I take this to be the situation, that the conferences that you had with the officers of the State Planning Authority, reference had been made to the fact that east of Bringelly Road, development was permitted between the freeway and the high --

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HIS HONOUR: And the easement.

SMART: Q. And the easement? A. Yes.

Q. Can I take it that that was discussed? A. Yes.

Q. Then there was discussion, can I take this to be the fact, that perhaps when one moved to the land west of Bringelly Road, the same principle might be applied of releasing only the land between the freeway and the easement? A. No, I think that was my own assumption.

20

Q. I see, so nothing was mentioned about that at the conference? A. No.

Q. Thank you, and you were concerned, were you, that somebody might - looking at this area and this development, take the view that the logical thing to do, was to - I'm sorry, I withdraw that, that the correct thing to do was to extend the area of development only so far as the transmission easement? A. I wouldn't have said that at all.

30

Q. No, I asked - I said were you concerned that that might have been the view taken? A. Yes, I expect so, yes.

Q. And you see what you've really done in paragraph 11.4, is to first make the point that there doesn't seem to be any reason, in this particular area, not to go at least to the high transmission easement? A. Yes, but I'm not saying that is what should happen.

Q. Mr. Contencin, far be it from me to suggest that you would restrict your clients in such a way, but what I am putting to you is that at that stage you were envisaging that that was one progression that you would go to the - that the development would go - could be thought to - proper only to go to the easement?

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HIS HONOUR: Well that point, if you go down to 11.7.

SMART: I'm going to come back to that, your Honour, because there's a two-stage argument.

HIS HONOUR: Yes.

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CONTENCIN: A. Well to answer your question, I've thrown 11.4 in for good measure.

SMART: Q. Yes, and then you've gone further on to suggest that the best solution would be to go to the east of the catchment? A. Right. 10

Q. Yes, thank you. Now Mr. Contencin, in relation to the conference that you had with the council, do you remember in particular your conference of the 3rd of July 1973, about which you made a note? A. Yes. As much as I can remember of it.

Q. Yes, and in relation to that conference of the 3rd of July 1973, do you recall that in the course of the discussions at that conference, there was raised the question of a separate hydraulic report, to deal with stormwater? 20

HIS HONOUR: Q. Exhibit AP. do you remember that?
A. I don't specifically, but I'm not saying it wasn't raised.

SMART: Q. And do you remember that there was raised in the course of your discussions with the council officers, a question of whether a separate sewerage unit might have to be provided? A. No, I remember talking about additions to the existing one, or having the existing one expanded.

Q. And you've got no recollection, either on that occasion, or on any of your other discussions with the council officers about the provision of a separate sewerage unit? A. I can't recall that. 30

Q. You're not suggesting it wasn't said are you?
A. No, but also one of our engineers came down and had discussions, and I don't remember him reporting back to me about it either.

Q. Yes. Mr. Contencin, do you remember there being a suggestion from Mr. Smith to you that because of the sewerage problems there should be a conference between you and Mr. Smith and the council's consulting engineers? 40
A. No, I don't remember that. He might have suggested that we send down our engineers to talk to him about it, which I did.

Q. Yes.

HIS HONOUR: Q. You sent your engineers to --
A. Penrith to talk to them, which I did.

Q. Which you did.

SMART: Q. Do you remember the suggestion that - put

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by Mr. Smith, that somebody from - if I could say, acting on behalf of the developers, and Mr. Smith, and the consulting engineers, should get together in conference, and discuss the sewerage problems? A. No, I don't remember that.

10

Q. And I'm putting it to you that that suggestion was made at the conferences that were held between you and Mr. Smith? A. I do remember Mr. Smith sitting down and suggesting where the trunk sewer should run.

HIS HONOUR: Mr. Smith being the --

SMART: Council engineer.

CONTENCIN: A. Mr. Smith sitting down and discussing the problems of the capacity of the sewerage treatment works, sure, but also talking about where the trunk sewerage main would run if it went in, if the property was developed. The sort of costs - external costs that the developers would be up for, this type of thing, yes, I can remember that sort of discussion.

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SMART: Q. And do you remember, Mr. Contencin, there being some discussion to this effect, that the Penrith Sewerage Treatment Works had been primarily designed to accommodate sewerage from those areas phased for release under the Sydney Region Outline Plan, and not in respect of those areas not phased for release under that plan? A. Yes, but he also suggested that - and Davies agreed with him, that the subject land could be shown to have a higher priority than some of the areas that had been earmarked but were more remote.

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Q. This was assuming that the subject land were ultimately rezoned? A. Yes, to be fair the officers concerned, they were quite uncommittal about whether it would be approved or not.

Q. Yes, so they said there was an argument available, and then it would be a matter for the council and its consultants? A. That's right.

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Q. Now Mr. Contencin, I also take it that in the discussions that you had with the officers of the Penrith Council, they made it clear to you that the body having responsibility for making any decision in relation to rezoning was the State Planning Authority?

A. Yes.

Q. And really it was a matter outside their province so far as rezoning was concerned? A. Yes.

Q. Thank you. Now Mr. Contencin -- A. Or that the - actually that the application would have to go through them but we would do well to talk to the SPA first.

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Q. Yes. And you understood that it was the SPA who'd make the decision?

GILES: I object to that your Honour.

HIS HONOUR: Do you mean that the SPA was the only person involved in the decision making, is that what you're putting to him? 10

SMART: No I didn't mean that, I'll put it more precisely.

HIS HONOUR: Yes.

SMART: Q. Mr. Contencin you understood that the application would be submitted to the council? A. Yes.

Q. And then transmitted to the State Planning Authority? A. Yes.

Q. And that it would then make a recommendation in favour or against rezoning? A. To the Minister? 20

Q. To the Minister. A. Right.

HIS HONOUR: Q. And when you said the council was cagey in your note, what did you mean by that, in your understanding? A. That they were non-committal on behalf of the council. They wouldn't say whether the council would approve or not.

SMART: Q. Mr. Contencin would you agree that if you were considering any question of rezoning in relation to land west of Bringelly Road, and south of the freeway, that one of the factors that arises for consideration is the quantity and quality of the open space that is desired? A. Yes. 30

Q. And although economically it may be better to develop the whole of a catchment area, if for reasons of wanting to keep certain land open space land the economic considerations may not prevail? A. Yes, dependent upon a lot of issues.

Q. Yes it's a complex balancing of a large number of factors, yes. Now Mr. Contencin were you aware after the - sorry, in the course of your report at page 18 you referred in particular, paragraph 8.6 to this, you say: It is the developer's intention to build this project as a wholly-integrated community with an appropriate allocation of land for low-cost housing as well as the more prestigious type of residential development. To this end discussions have been held with the State Housing Commission and interest has been indicated in this type of proposal. Can I take it that 40

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those were facts and statements that were related to you by Mr. Satara? A. That's correct.

Q. And is this the situation, that you understood that there was some possibility of a joint development did you? A. How this arose in the first place, I didn't know about the Housing Commission -- 10

HIS HONOUR: Q. What your understanding was, when you wrote this report what did you understand? A. I didn't understand about the resumption, I didn't know about it.

Q. Did you have some understanding about the Housing Commission and its participation in the development? A. The manner in which that statement came around from the report arose from the fact that I knew Mr. Satara had been to see the Housing Commission, because he told me so, and also the fact that when I talked to the SPA - and this is why I know that that's not we and it was he, because Mr. Shearman suggested to me that the SPA would be more interested in seeing a mixture of residential types on this development than all just one type of dwelling, and for this reason we should - our clients could think about doing a joint venture with the Housing Commission. But that's the reason for that in there. 20

Q. But that says that discussions had been held with the State Housing Commission, did you understand that had happened? A. I understood that had happened, but I didn't know about the resumption. 30

SMART: Q. So can I take this to be the situation, that when you wrote this report you had been told by Mr. Satara that he'd had discussions with the Housing Commission and that the Housing Commission was interested in doing a joint development with the Sataras? A. Could be.

Q. Could be interested in doing a joint development with the Satara and did Mr. Satara at any stage prior to August 1973 mention to you that there had been a suggestion that the Housing Commission would resume the subject land? A. No. 40

Q. When did you first learn of any proposed resumption by the Housing Commission? A. I can't say for sure, it was some time later.

Q. Some time - what? A. Could have been 6 months later.

Q. And you envisaged did you that the Housing Commission or low-cost housing development would take place on the area north of the transmission line? A. Yes. 50

Q. And was that the only area you thought it would

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take place? A. Well only - yes, only because it was perhaps land which was not quite so valuable and not so conducive to prestige houses.

Q. And did you understand this to be the position, that the Sataras would have a better chance of securing a rezoning of the land north of the transmission line was made available for low-cost Housing Commission development? A. That's a difficult question. I wouldn't say it wasn't - I don't know whether I ever discussed it with them, but I wouldn't say it wasn't out of my mind either. 10

HIS HONOUR: Q. You wouldn't say what? A. I wouldn't say that it didn't ever occur to me. That that could be a possible extra string to the bow.

SMART: Q. And it was obvious to you from your discussions with Mr. Shearman that with a substantial amount of land being made available for low-cost Housing Commission development, a rezoning could be looked on more favourably? A. Well I felt that if Mr. Shearman made that remark about a joint venture with the Housing Commission, we'd be stupid not to take it up. 20

Q. Did Mr. Satara ever mention to you that he had a meeting with some officers of the Housing Commission at the end of May 1973 and that they had told him, amongst other things, that it could be that part of the land up to the high tension easement might be redeveloped or - I'm sorry, might be rezoned? A. No. 30

Q. And did he mention to you at any stage that the land - that there was a possibility that the land up to the high tension easement could be rezoned and that the rest would have to remain open space? A. No.

Q. Didn't mention to you that he'd ever been told that by a Housing Commission officer? A. No. I didn't know the Housing Commission had jurisdiction over that.

Q. But he didn't mention anything at all to you about having been told this sort of information by the Housing Commission officers? A. No he never told me that. 40

Q. And did he tell you that certain - that Housing Commission officers had advised him that certain planners in the State Planning Authority had argued against any proposal for developing the subject lands? A. No.

GILES: Your Honour I object to this line of questioning.

HIS HONOUR: Well he can answer. When are you saying that he said this to him?

SMART: I'm asking if he did your Honour, and I'll put it after the 31st of May 1973. 50

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HIS HONOUR: You're asking if, after the 31st of May 1973 Mr. Satara told this witness that some members of the State Planning Authority were arguing against --

SMART: That's right. Perhaps your Honour I'll put the question again. 10

HIS HONOUR: Q. Do you understand what's being asked? Did Mr. Satara say to you at any time that some time, he is saying after May 1973, some members of the State Planning Authority were arguing against --

SMART: I'll put the question again your Honour.

HIS HONOUR: Yes.

SMART: Q. Mr. Contencin what I'm asking you is this. After the 31st of May 1973 did Mr. Satara --

HIS HONOUR: Which Mr. Satara incidentally?

SMART: Mr. Len Satara. 20

HIS HONOUR: Yes.

SMART: Q. -- tell you that an officer of the Housing Commission had said that certain planners in the State Planning Authority had been arguing against the Housing Commission's proposals to develop the subject lands?

A. I don't recollect anything like that ever having been said to me.

HIS HONOUR: Is that what will be said --

SMART: I deliberately haven't put it to - I asked him whether that - whether he was told anything. 30

HIS HONOUR: No I just want to get the drift of where this case is going. Is it going to be suggested that in effect the Housing Commission made it clear, or was saying that the State Planning Authority was asserting, or people in it, that this wouldn't be --

SMART: It will be alleged your Honour that a certain conversation took place --

HIS HONOUR: In which that was said?

SMART: About the 31st of May 1973 between Mr. Satara and certain officers of the Housing Commission. 40

HIS HONOUR: In which that was said?

SMART: Well there were a lot of things said your Honour and I think I've fairly put, this is part of what - part of it.

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HIS HONOUR: I just wanted to find out where it's going.
He said - you weren't told that?

CONTENCIN: No.

SMART: Q. Were you present at a conference that took
place at Penrith Council on the 13th of June 1973? Do
you remember that? A. 12th of June? 10

HIS HONOUR: 13th of June.

SMART: Q. I'm not suggesting Mr. --

HIS HONOUR: He's asking you do you remember?

SMART: Q. -- Contencin whether you were there, I'm
saying - I'm not suggesting you were there, I'm just
asking, were you there? A. To the best of my know-
ledge I attended a meeting on the 12th of June.

Q. That was with the State Planning Authority wasn't
it? A. No I can't be sure about that. 20

Q. You don't recall whether on the following day ...

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SMART: Q. (contd) ... have been subject to further investigation and detailed engineering work at a later stage? CONTENCIN: A. Of course.

Q. There is one other matter in relation to the second meeting that you had with the State Planning Authority. I was going to ask you in relation to that, do you have any recollection of anything being said at that meeting about Mr. Satara having seen the Minister? A. No. 10

HIS HONOUR: When was this second meeting you are talking about?

SMART: Your Honour as far as I am aware it appears to have been on 25th July.

Q. Mr. Contencin, might I direct your attention for one moment to the first meeting that you held with the officers of the State Planning Authority? A. Yes. 20

Q. Do you recall that, in the notes that have been tendered, there is a reference to notification of nearby owners? A. Yes.

Q. Can I take it that in the course of the conversation at the State Planning Authority offices, one of the State Planning Authority officers said that you would have to notify the nearby owners? A. I took this to be when the application for rezoning was placed.

HIS HONOUR: Q. Yes, but were you - it was put to you, a suggestion from the State Planning Authority that that is what you would have to do? A. Yes. 30

SMART: Q. Was this the situation? That it was indicated to you that the attitude of the - was it indicated to you that the attitude of the neighbouring owners would be important in relation to any question of rezoning? A. Yes, that could have been said.

HIS HONOUR: Just before you sit down, Mr. Smart, can I ask this question? Questions have been asked Mr. Contencin to the effect that he might have been told by Mr. Satara that some officers of the SPA had indicated opposition to this development. I don't recall - I just want to clear the air - I don't recall you putting to Mr. Contencin that anything that he said he was told by the SPA was in fact not told to him. I don't want this left to next year when everyone is addressing and say, well, I didn't - do you follow what I'm saying? Mr. Contencin has said that he went to the SPA, and the impression I got from his evidence, and you may say this is not the right impression, is that he got there and had a considerable amount of encouragement from the 40 50

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SPA about this development, people said it was one of the best ones that had been submitted, etcetera, etcetera. Now I didn't hear anything in the cross-examination which suggested to me that you were putting to him that he didn't get that information from the SPA?

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SMART: Your Honour, I haven't suggested to Mr. Contencin that --

HIS HONOUR: No, I'm not suggesting that you did, I just didn't know whether you were making that case.

SMART: No, what I have in fact sought to do is to put in various instances and --

HIS HONOUR: Qualifying --

SMART: Qualifications.

HIS HONOUR: I understand that. All right, well just so long as that matter is clear. Yes, Mr. Giles.

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RE-EXAMINATION

GILES: Q. You - I can't remember the precise words, but my learned friend put to you that the impression you got from the officers of the SPA was that it was - the responsibility was on you to put up a case for rezoning? A. That's right.

Q. Words to that effect? A. That's correct.

Q. And did you believe that you had done that in accordance with the conversation you had with them?
A. Yes.

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Q. Having read the reports to which reference has been made, the Soil Conservation Report, Mr. Talbot's statement I think it was. Have you had occasion to alter any of the feelings you've expressed? A. No.

Q. And the type of problem to which my learned friend, Mr. Smart, refers, about possible salinity in creek beds, is that something with which you are familiar in other places? A. Yes.

Q. And have you had occasion to see that sort of problem solved by engineers? A. Yes.

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Q. Can you think of examples, offhand?

A. Jabiru was the best example, the Northern Territory.

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HIS HONOUR: Well they are the three, right.

OFFICER: Q. Now you say on page 14 that those sales 1, 2 and 3 are considered the most useful as guides? 10
HILTON: A. Yes.

Q. The value of the prime land? A. Yes.

Q. The conclusions drawn therefrom appear confirmed by "sales" 4 and 5, they are the negotiated settlements of Burnley and Emu Plains? A. Yes.

Q. Then you say sales 6, 7, 8 and 9 --

HIS HONOUR: Wait a minute and I'll get 6, 7, 8 and 9.

OFFICER: Q. 6 is City Syndicate Nominees to Brick-anage(?). HILTON: A. Yes.

Q. At Bakers Lane, Erskine Park. 20

HIS HONOUR: Just a minute till I get that one, that is No. 6, is that the one?

OFFICER: Yes, your Honour.

HIS HONOUR: Now that is where?

HEMMINGS: That is south of the waterline - we had trouble getting into it, your Honour because of the --

HIS HONOUR: That dish?

HEMMINGS: Yes, that's so, we saw the edge of it.

HIS HONOUR: Well which way is it, is it that way?

HEMMINGS: Yes, another -- 30

HIS HONOUR: Or the one to the north?

HILTON: It is the one to the north.

HEMMINGS: Yes, the north one, it is off Bakers Lane, you can see it plainly.

OFFICER: Q. That is the one that was resold to Milan Investments in 1974? HILTON: A. That's so, yes.

Q. And are you aware of what business Milan Investments pursued? A. Yes, I believe they are a tile manufacturing firm.

Q. 7 is Riley to Goodworth to Stuart Chapman at Berkshire Park. A. Yes. 40

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Q. Is it shown on the map on the easel?

HIS HONOUR: No, I don't think so, is it or not?

HILTON: I don't know, I haven't inspected that map before.

HEMMINGS: Stuart Chapman, your Honour, is the small one almost opposite ASL. 10

HIS HONOUR: Which ASL?

HEMMINGS: There's only one - I'm sorry, the ASL at Blacktown, the 1,400 acres --

HIS HONOUR: Up here?

HEMMINGS: Yes, that's it, your Honour. Stuart Chapman is almost opposite that.

HIS HONOUR: Well that is sale 6?

OFFICER: 7. Then sale 8, Doke to Inkerman(?)?

HIS HONOUR: At Londonderry? 20

OFFICER: Londonderry.

HIS HONOUR: Q. Where is that? HILTON: A. It is shown on that map, to the northern extremity of the map.

Q. Is this it here, one of these ones here?
A. That is it there.

Q. And where is it? Down there? A. No, it is there, but in relation to - well it is north-east of Penrith.

HEMMINGS: That is the one near Crossroads, your Honour, the triangular one we swung around and looked back -- 30

HIS HONOUR: You mean that one?

HEMMINGS: Yes, and there were roads --

HIS HONOUR: Yes, that's what I thought, that one. Yes, right, well that is No. 8. And is 9 then the one further north again?

HEMMINGS: That is the one further north, we were looking at the wrong block firstly, and then we saw the dirt road beside it.

HIS HONOUR: Yes, right, that's 9.

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OFFICER: Q. Now you say of those sales, 6, 7, 8 and 9, they relate to non-urban land of little or no potential for urban release and they range between \$1,830 and \$2,500 per acre?

HIS HONOUR: Wait a minute, you said 6, 7, 8 and 9. 10

OFFICER: Yes, your Honour, that --

HIS HONOUR: Yes, I'm sorry, you're right. You're putting 6 down, that is the one down --

OFFICER: 6 was the one down south, Brickanage.

HIS HONOUR: Yes.

OFFICER: Q. By comparison with these latter sales, you say that you considered the subject land south of the TLE is worth \$3,000 because of better location, and being part of a parcel with some, even though deferred, potential? HILTON: A. Yes, I think it is worth more than those 6, 7, 8 and 9 sales there. 20

Q. Then you adopt \$5,500 for the land to have the greatest appeal, that is the land north of the easement?
A. Yes.

Q. The greatest appeal to speculators, because of more prospect of rezoning? A. The greatest appeal to the speculators in my view, because it is the northern part of the land, and as I see it, probably a better chance of rezoning.

Q. Then the subject area - when you say the subject area, you are still speaking of land north of the TLE? Or south, or what is the subject area? A. The subject area there I am speaking of is that part north of the TLE. 30

Q. You say that then the area north of the TLE could prove more attractive, but on the other hand it is an area 2½ times as large as well as being - 2½ times as large as what? A. It is 2½ times as large, or in that order, as large as the Kulnamock sale.

Q. As well as being part of a 700 acre parcel, which must be purchased? A. As well as being part of a much larger parcel, yes. 40

Q. Well my copy says, as well as being part of a 700 acre parcel? A. Yes, 700 acre parcel of Tatmar, the property, yes, Tatmar.

Q. And unless there was to be a general release then the subject land was more remote from existing development than Kulnamock? A. Yes.

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Q. The subject by reason of size would find more difficulty in the provision of a sewerage service, and drainage service than Kulnamock? A. Yes.

Q. Then you conclude that the land north of the TLE is worth less than Kulnamock? And that the figure of \$5,500 per acre, you've resolved doubts in your view in favour of the dispossessed owner? A. Yes. 10

Q. Now I want to ask you some questions about Mr. Alcorn's view, he says, the subject land is 25 per cent better than Kulnamock, do you recall that? A. Yes.

Q. Now firstly, do you agree or disagree with that assessment of the relative quality? A. I disagree with that.

Q. Now what points would you make - wish to make in favour of your disagreement? A. Well the first one I'd make is the chances as I'd see it, of obtaining a rezoning of the land, that was the first, and by far the prime consideration I would think that would be in the mind of the purchaser. 20

Q. Now on that point you're not talking about rezoning south of the TLE are you, or are you talking about rezoning of the whole of the subject land? A. I'm talking about rezoning of that land north of the TLE at this time.

Q. Yes. That is comparing it with Kulnamock? A. Comparing the 275 acres with Kulnamock, yes. I'd see a greater risk of rezoning because of the fact that Kulnamock adjoined urban land, lands that were already zoned urban; in part they were residential, and in another part they were industrial, but it was urban land Kulnamock adjoined. 30

Q. Adjoined to the north? A. Adjoined on the northern side of Kulnamock. I think that the speculative purchasers of land that were hoping or expecting rezoning, expects that the block or property first adjoining existing development, will be the next one to develop. In other words, that the services will progress in an orderly manner, and be urbanised as the services reach out, rather than you would pass through Kulnamock or any other land and come to our 275 acres first. 40

Q. Right. A. I think that the Kulnamock land is superior in the views that could be obtained from Kulnamock versus the 275 acres, the lands on parts of Kulnamock are somewhat steeper, and there would be a higher proportion of the cottages there get a view. There may be some on this 275 acres get a view, but 50

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nowhere near the same amount, or the same proportion of the development. Kulnamock is not greatly affected by the easement, but this 275 acres has a rectangle right along the easement, would be overshadowed by it.

Q. But is Kulnamock affected by the easement? A. Not affected at all. Kulnamock is not affected by the easement. But the 275 acres is affected. 10

Q. It has the easement as its southern boundary?
A. It has the easement as its southern boundary, it may even be oppressive to be living right - the first house backing onto the easement. That is why - or another point why I think the 275 acres is not as good, and certainly not better than Kulnamock.

Q. Now of course Mr. Alcorn's 25 per cent subject land better than Kulnamock, was looking at the whole of the subject land - I'm sorry, the whole of the subject land other than the site of the TLE? A. Yes. 20

Q. Now have you any other reasons which would support your disagreement? A. I think Mr. Alcorn made criticism of Kulnamock as being an irregular shape, and not having the same access to existing streets for development.

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OFFICER: Q. Now looking at --

HIS HONOUR: Q. I'm sorry, I thought - when you say they tend to confirm, I thought you had said that \$6,500 per acre for the 146 acres north of the line was too high? A. I'm sorry, your Honour, I didn't follow this. 10

Q. I thought you said that \$6,500 that you had attributable to the area of 146 acres north of the line was, you thought, a bit too high? A. I think that the \$6,500 seems to indicate that the parties to this settlement, or that settlement, Burnley, had some regard to whether the market was continuing to run. Otherwise I think that if they had agreed that the market had stopped then perhaps the figure should be lower when I look at the \$6,000 for the Kulnamock sale. 20

Q. Yes. And in your view though, I think, you were saying that the market had stopped running? A. My view is that the market had stopped running in this type of land, yes.

Q. Is it right to say that although there probably - Burnley to some extent confirms your analysis of the other sales, if it accorded with them totally, it would be a smaller price that the Housing Commission would have paid? A. It would be a smaller price, yes.

Q. By how much? A. I would think that in the case of Emu Plains by \$500 an acre. 30

Q. For the 146 acres? A. For the 167 in Emu Plains and a similar reduction in Burnley for the 146, yes.

Q. Thank you. I follow now. Yes.

OFFICER: Q. If these two settlement figures are to be looked at and if one, as you have done, concludes that the \$6,500 may have been due to a feeling that the escalation hadn't ceased by September, then the escalation component would have been of what amount, \$500 or -- HILTON: A. It is difficult to put it precisely but I think it appears to be in that order, yes. 40

Q. So that if \$500 is the escalation component, that would be escalation from May, the Kulnamock sale?
A. Yes.

Q. Towards the end of May until late September?
A. Yes, to the date of this resumption, 28th September, yes.

Q. It is a matter of mathematics, the \$500 over that period is what percentage increase, if we related

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it to the Kulnamock figure of \$6,000 an acre?

HIS HONOUR: As at May, I suppose we would have to work that out, yes. He might be able to do it in his head, I don't know.

HILTON: A. 500 on 6,500 is 13 per cent over 4 months. 10

OFFICER: Q. 13 per cent over 4 months? A. Yes. 3.3 per cent.

HIS HONOUR: Q. Could I ask you this question? I appreciate you do have problems you say with the use of Burnley and Emu Plains, but if you assume that they are sales to which you can have regard and if you assume that the reason why \$6,500 an acre is a proper analysis of the land, is due to this what has been called in this case creep or market acceleration, why wouldn't you assume that that was operating in the mind of people in the market, contrary to your belief as to what ought to be operating on their mind? A. Because I think that the people in the market are the first ones to know whether they can borrow. They may find a property for sale, even enter in the contract "conditional on finance" or what not, or if they find a property and then make enquiries as to whether they can have finance for that type of purchase, I think their answer comes back to them very quickly, it's either a no straight out or, yes, there's a possibility we will have to arrange it. 20 30

OFFICER: Q. Would you look at the Emu Plains analysis? We know that the land resumed in the hands of the Housing Commission has access only via Luttrell Street? A. That is so, yes.

Q. Because the land which gave Emu Plains access up that corridor to Mulgoa was resumed separately some months later? A. Yes, it was.

Q. In the hands of the owner, dispossessed owner, he of course did have access via that strip to Mulgoa Road? A. He did have, yes. 40

Q. So far as one has regard to the resumption payment, it was payment to an owner for land which in his hands did have access to Mulgoa? A. That would be right, yes.

Q. Just to straighten things out on that point, will you turn to page 19? The 40 acres severed off Burnley-Penrith, that I think was an area that had - did not have relation to the access strip corridor to Mulgoa Road? A. I'm not certain but I think that, yes, it must have, otherwise there'd be no need to pay compensation for the loss of that access to the 40 acres left. 50

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And as the papers say, part portion 30 left without access.

OFFICER: Q. One would really need, I think, to know where the portion 30 was. I mean, if portion 30 were right to the south of Burnley, then the resumption of Burnley would leave it without access? A. Yes, I understand that it is to the south of Burnley and its access was through the part of the land taken, out to Mulgoa Road. 10

Q. I'm sorry, I think you have given me the explanation I was seeking as to whether this 40 acres not taken was part of the corridor that ran from the main Burnley property up towards the - Mulgoa Road?
A. No, I don't think so.

Q. Would you go back to your report please and I think I asked you yesterday, looking at the sales shown on page 21, and I think you gave some description yesterday or made reference to those? A. Yes. 20

Q. But in a compendious form, they are the sales to which you have regard being of land with minimal potential for rezoning? A. Yes.

Q. Mr. Hilton, I want to ask you some questions with regard to some of the evidence that has been - you have heard given in Court. Firstly, I think you heard reference and I don't think I am wrong on this occasion, by Mr. Alcorn to sales at Gosford of swamp country, swampy country? A. Yes. 30

Q. I think he gave a figure of \$10,000 to \$15,000 an acre being paid for it? A. Yes.

Q. You were, you have told us, in charge of the Gosford area from 1971 to 1975? A. September 1971 till the end of January 1975.

OFFICER: Was I wrong in that?

HEMMINGS: You are wrong again. I am instructed from behind me that Mr. Alcorn made no reference to a Gosford sale. 40

HIS HONOUR: Yes he did. He referred to some swampy land up at Gosford. I rather thought it was a bit of a - I remember some reference to swampy land.

HEMMINGS: I'm told it was Mr. Moore.

HIS HONOUR: Mr. Moore, was it, I'm sorry.

OFFICER: Sorry. I knew I'd be wrong in some respect. Mr. Moore.

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Q. To your knowledge over that period as being in charge of the Valuer-General's Department at Gosford, were there any such sales? A. Not of swampy land at those sort of prices, and that is of non urban land.

Q. I want to ask you some questions with regard to the question of creep. From the evidence you have given, you concede that for a while, even in regard to fairly large areas creep was operating? A. Yes, over a period of time in the seventies, yes. 10

Q. And from what you have said yesterday, you do not deny that for some time after May 1973 creep continued with regard to lots of the size such as you've described yesterday as being 5 or 11 acre lots, home sites, or land which could be divided into - subdivided into 5 acre allotments and the like? A. Yes. 20

HIS HONOUR: Q. But where you are saying, but not in respect of other land? A. But not in respect of the type of land that could only recoup a price paid by urbanisation.

Q. Just so I get it clear, and that's why you say that the price paid for Burnley on your analysis, and Emu Plains, was to the extent of \$500 per acre wrong? A. Yes, it seemed to reflect some creep.

Q. Evidence was given that - and this was particularly by - or was by Mr. Parkinson at least - in his exercise dealing with Kulnamock and he makes an addition to the analysed resumption figure per acre for what he calls either repair or remedial work. Do you recall that? A. Yes I do. 30

Q. Remedial cost? A. Yes.

Q. And he adds that and says, well, that brings him to - or the Kulnamock resumption to \$9,018 per acre? A. Yes.

Q. Do you agree with that - in the first place, that process? A. No. 40

Q. The process that a purchaser uses? A. No I do not agree with the process.

Q. What does a purchaser do? A. I expect a purchaser to do, and the valuer certainly does if Kulnamock was sold for \$6,000 an acre, then for value of his subject land, he can look at that sale and say, well, that has fetched \$6,000. Now my land, is it better or worse? If it is better, well it is worth \$6,000 for a start. Now how much better?

HIS HONOUR: Q. Would you go over that again, just so 50

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I understand what it is you're - when you say no purchaser uses it, but - first could I just go back to that? What does that mean? HILTON: A. Well I think that the purchasers in the market, they are looking to make up their minds as to a price to pay --

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Q. I suppose if a purchaser went to Mr. Parkinson, he'd use it. A. Could be. If they are looking to make up their mind as to a price to pay for a property and then trying to form their opinion of price, if they look at what other property has sold for, they can say, well, that one has sold for \$6,000 an acre. Now this one that I am considering, if it is better, then it is worth at least \$6,000 an acre, but how much better? And then start to make adjustments of the subject property --

20

Q. Did you say if the property is the same, well, now how much have I got to spend on the land I know the price of to bring it up to the quality I know the land I am going to buy is? A. I don't think it is a wise approach at any rate and probably not proper in that if you do that and you add to the \$6,000, you've got a figure untested by the market at any rate. It is not sold for \$6,000 plus \$1,500 - it is not sold at that.

Q. But if you wanted to find how much more you would pay per acre if land was up to a certain quality, everything else being equal, wouldn't the cost of bringing it up to that quality be at least a guide?

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A. In looking - the figure we are looking to find is a price for the subject land. I don't think we can --

Q. Say you have a block of land identical - identical blocks of land, identical in size, and the only thing that differentiated them was that you had to build a weir at the end of one and that was going to make them then absolutely identical properties. Without the weir, one property was not as good as the other. Wouldn't the cost of that weir - if you knew the price of that property and then added the cost of that weir to it, wouldn't that give you an idea of what the other identical property would be worth, they then being identical?

40

A. No I don't think so because the purchaser is not interested in the sale property he is looking at. He is only looking at that to find what was the level of the market of that type of land.

Q. That's what I'm just adding - I added another factor. Assume the weir is necessary in order to subdivide the land and sell it off as blocks? A. I think he looks at the sale of the land with the weir and if that's at a certain figure --

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HEMMINGS: In this example there is no sale of property.

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HIS HONOUR: Q. There's no sale of property with the weir. There is a sale of property - in order to make it comparable to another property you are valuing, you have to put in a weir? HILTON: A. There's a sale of a property?

10

Q. Yes without a weir. A. Without a weir?

Q. Yes but you know - and you want to use it for the identical purpose that you want to use the property you are valuing for, but you also know that to get it to an identical state, you would need to put a weir in to the subject property, that's the property that's being - that has been sold. Wouldn't the cost of that weir give you some idea as to how much you should pay for the identical land next door that doesn't need a weir being installed or built? A. There is a sale of a property without a weir?

20

Q. Yes. And next door there is a property that you want to put a value on, and you know it is absolutely identical to the property that is being sold, or, rather, it would be if and only if a weir was built on the property that was sold. That would bring that property up to a comparable state, the property that you are valuing. Why don't you have regard to the -- A. I think that the purchaser looks at the fact established in the market, properties being sold for \$6,000 without a weir. He looks at that fact, that's established in the market, he comes to the subject property he's considering, and he says, well, this has that extra advantage. Without that advantage it is worth \$6,000. Now how much more will I pay for the weir? I don't think he - he is not interested in what the one sold, the one that's not up to him to consider buying. He is not interested in the adjustment of that.

30

Q. How much does he determine how much extra he will pay for the land that doesn't need the weir over and above the price that was paid for the land that will have to have a weir put in? A. If he is still without a sale of any land showing what the value of the weir may be, he's just got to make a judgment to the best of his ability.

40

Q. Does he say: It is best to make a judgment based on nothing than to make a judgment based on the cost of the weir? A. Firstly, if he did attempt - and I am not suggesting that he tries to adjust the cost of that one sale without the weir - but if he does say, well, this one has a weir, what would it cost me to put that weir there? Even if he gets a figure for that.

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Q. But he doesn't want a weir on the land he is buying. He wants to know how much to pay for the land he

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is buying. He knows it doesn't need a weir. A. It doesn't need a weir?

Q. Yes. A. Then I suggest that if he has regard to what a cost of the weir would be, even if he establishes that, he has still not established that the market will pay the additional cost for the benefits that a weir might give. 10

Q. No because - but couldn't it be a guide for him coming to a conclusion as to how much he will pay for the land he is looking at? A. It can be some guide. It could be some guide, but the point I am trying to make is that if there is a sale with advantages or defects and the only thing established in the market is the price for that land as it is, to adjust that and try and carry it to the subject property, you have adjusted it to a figure that is untested in any market. 20

Q. You are saying in effect that you don't know in the example I gave if the weir was there, whether it would carry this higher assumed price and I appreciate that.

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HILTON: A. Well this document is talking of it, Commission's advanced land acquisition programme, yes.

GILES: Q. Mr. Hilton, you saw the terms of the request didn't you? That the land might appropriately be acquired by the Commission for future residential use? 10
A. Yes, that's right.

Q. That was a question? A. That's right.

Q. And the answer came back yes, didn't it? A. Yes it did, yes I see that.

Q. Even though it was outside the Sydney Region Outline Plan? Is that right? A. Even though - yes, it is this land outside the Sydney Region Outline --

Q. And can not for any relevant purpose be distinguished from a rezoning point of view from the land to its immediate south? Can it? A. We're talking of -- 20

Q. Tatmar and Penrith? A. Tatmar and Penrith?

Q. Yes. A. Oh yes, that is so, as I say I have no recollection of ever seeing those documents, or that plan, or an indication of the SPA.

Q. Now his Honour has put to you, whether you've given thought to - perhaps before I go to that, your Honour, might I have the file - the Equity Court file?

HIS HONOUR: Well so much as has not been tendered.

GILES: So much - yes, I think it is probably only one or two things left your Honour. 30

Q. Now Mr. Hilton, I'm showing you an affidavit of Mr. Bourke of the 18th of February 1975, and I think your notes indicate you saw that affidavit in draft form, is that correct? Can we have the plan back again please. And Mr. Hilton, I think you can - and my friend will correct me if I'm wrong, but the notes that I was shown the other day, indicated you had seen this document in its draft form? A. I've seen some documents regarding Mr. Bourke, yes.

GILES: Well perhaps if I call for the document you saw, your Honour, it might be safer. If you could hand me that back. 40

Q. Well your notes indicate you saw a draft affidavit of Mr. Bourke, and I show you a document produced out of the relevant file, which is a draft of Mr. Bourke's affidavit. Now I just want to direct your attention to paragraphs 1 to 7, have you read those? A. I've read partly.

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Q. Yes, well you let me know when you --

HIS HONOUR: And when did you see this draft?

GILES: Q. February 1975 was it, Mr. -- A. No, I didn't see --

Q. You did before the October confirmation? A. Yes, 10
somewhere about that time I would think, either the
October confirmation whether it was any later than that,
I think I still had dealings with this land for a year
or two after that date of October.

Q. Yes. A. Yes, I have seen this document.

Q. All right, well now seeing that document, do you 20
see that the Chairman of the Housing Commission was ex-
pressing the view in May 1973, at the time when the
Commission met to decide whether to go ahead with this
acquisition, that during the course of special investi-
gations, what Mr. Bourke said - during the course of
special investigations aimed at securing substantial
parcels of land for our future activities, officers of
the Commission have inspected an area of 2,100 acres of
land, including this land which is south of the main
centre of Penrith and zoned non-urban. A. Yes.

Q. They subsequently found that despite the existing 30
zoning the land was attracting considerable interest by
land speculators, who were apparently confident that a
rezoning for urban use could be achieved. Mr. Bourke
goes on: On the basis of all the evidence it seems
that whilst there might be very good reason from a plan-
ning viewpoint to justify the land remaining non-urban,
it is in my opinion inevitable that the zoning will in
fact change, and in that event, having regard to the
Commission's desperate need of land, for both its nor-
mal activities and its operations in accordance with the
Government's directions as a land development authority,
the land should be acquired by the Commission. Do you
see that? A. Yes, I see that. 40

Q. And Mr. Bourke was the acknowledged expert in that
field, wasn't he?

OFFICER: Well I object, your Honour, what field?

HIS HONOUR: I suppose he can say how he regarded him,
but whether or not that is the view that --

OFFICER: Yes.

GILES: Yes, I hand that back, your Honour.

OFFICER: Are you going to tender that affidavit, or --

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GILES: Well I'm happy to, I don't --

HIS HONOUR: Well it can become part of those other affidavits that were tendered, they can become part of AY.

GILES: Well the draft perhaps should be tendered as a document. 10

HIS HONOUR: Well the draft, yes. Have you got any objections to --

OFFICER: None, your Honour.

HIS HONOUR: It will become part of AY, it will become AY3, that is the draft affidavit of Mr. Bourke.

TENDERED, ADMITTED AND MARKED EXHIBIT AY3 - DRAFT
AFFIDAVIT MR. BOURKE

GILES: Q. As to whether you had given thought to the valuation of the land on the footing there would be inevitably a rezoning, that there would be a rezoning? 20
A. No, I have not --

Q. I appreciate that, his Honour was asking you to think about that you see, and I expect his Honour was going to ask you some further questions in due course about it. May I perhaps start your process of reasoning about that? A. Yes.

Q. Would you agree that the two methods which would be conventional to measure potentiality are these, No. 1, take land which has the potential realised and discount for the time it will take to realise that potential, that is an accepted - is it not? A. Not in my thoughts, no. 30

Q. Not in your thoughts? A. No.

Q. Well just to make it quite plain, if you assumed that - let's just take for the sake of argument, assume the land was going to be released in 5 years' time, would you - one way of approaching value is to take land which is presently available for residential use, and in the area and comparable, and - wait a minute, just come the first step with me, having arrived at the comparable land which is immediately available, you then say, well I can't allow that, because it is not going to happen for 5 years, I will therefore discount it by a discount factor, is that not a conventional valuing approach? A. If I assumed that the land not yet available? 40

Q. Yes. A. Is certain to become available?

Q. Yes? A. Then it could be.

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HIS HONOUR: I think what you are asked is do you take what its value would be if it were now available, and then discount that by some factor, depending upon how long it is you assume it is not going to become available.

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GILES: Q. Yes. HILTON: A. Yes, only if I can assume that it certainly will be available.

GILES: Q. Yes, right, and then if you are - if you have some residual doubt about that, you might take off a further figure for contingencies --

HIS HONOUR: Or the possibility it mightn't ever even happen.

GILES: Q. It mightn't happen? HILTON: A. That it might never happen.

HIS HONOUR: Or it might happen a bit earlier?

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GILES: Or a bit later.

HIS HONOUR: Yes.

GILES: Q. Well will you agree that is a legitimate approach to the question? HILTON: A. I agree, yes, it is possibly a legitimate approach I don't know that - it is possibly a legitimate approach.

Q. Right, the other alternative I would suggest is available to you, is to take land which has the same potentiality, and which is comparable, and see what it is selling for.

30

HIS HONOUR: That is the better one, isn't it?

HILTON: That would be the best one I think, yes.

GILES: Q. I'm not ranking them, I'm just saying that is another alternative? HILTON: A. Yes.

Q. And I would suggest that they really exhaust the possibilities, do they not? A. No, I think there might be a third.

HIS HONOUR: What is that?

HILTON: A. I was thinking of land that may be phased for release, but I want to give that more thought.

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GILES: Q. But isn't that with the second alternative; in other words, if you concluded this land was going to be released in say 10 years, within 4 to 10 years.

HILTON: A. If I assume that it is certain to be released at some time.

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Q. Well you'd go to an area comparable with this area phased for release at that time, wouldn't you, and see what it is selling for? HILTON: A. Yes, if this is going to be released, yes.

Q. And you might take something off it because it is a - even though you are pretty confident there is a contingency involved? A. There is a contingency, yes. 10

HIS HONOUR: You are not suggesting it is one or the other in this exercise, are you?

GILES: No. Take both and see what they arrive at.

HIS HONOUR: Yes and maybe you come to No. 2, think it is comparable and it may be there is an extra 2 years difference, so therefore you discount it one way or the other?

GILES: Certainly. 20

HIS HONOUR: Can I ask you this? They being the two ways, which one did you - you didn't pick the discounted one for this exercise, you must have picked the second one?

GILES: Your Honour I don't think he --

HEMMINGS: He used Kulnamock.

HIS HONOUR: He used Kulnamock I suppose.

HILTON: I used Kulnamock.

GILES: Your Honour it all depends on the assumptions that my friend -- 30

HIS HONOUR: Yes I know. Would you mind - when one is doing this I suppose, it will depend on what discount - assuming this is a legitimate approach, what period of time there is, whether it is 8, 15, 20 years?

GILES: It depends entirely upon your Honour's findings as to what the - as to the proper assumption to make. Your Honour will recall there was some evidence led from our valuers about that.

HIS HONOUR: Yes I know. I'd ask you to think about this. I can do this in one of two ways. Ask him to think about it when the cross-examination finishes so that he can have a word with Mr. Officer about it, or he can see Mr. Officer in the meantime even though - do you have any objection to that? 40

HEMMINGS: No, I would like the evidence to be given in chief so that I can handle it, and then --

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HIS HONOUR: I appreciate that but I - well I don't know, really I don't see why - why can't he talk with his lawyers over this?

HEMMINGS: No, I'm not saying - not - what I am saying your Honour, I prefer that to happen. It's best for Mr. Officer to lead it obviously the first thing on --

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HIS HONOUR: All I can say Mr. Officer is, I have asked him to perform an exercise. It doesn't seem to me that it is at all ...

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16th November, 1981

TATMAR PASTORAL COMPANY PTY. LIMITED & ANOR

-v-

THE HOUSING COMMISSION OF NEW SOUTH WALES

HIS HONOUR: Yes. 10

OFFICER: At the adjournment your Honour I asked Mr. Hilton to take an assumption that this subject land would be valued in due course - would be rezoned. Mr. Hilton has done an exercise. May I hand your Honour a copy? My learned friends have copies.

HEMMINGS: Your Honour, I don't object to the document. It has only just been given to me. I haven't had a chance to even read the whole document. Can I take it, your Honour, by not objecting to the document, I can still object to any part of it if any objection appears as the evidence is taken? 20

HIS HONOUR: Yes certainly.

OFFICER: I think your Honour had in mind that I should take Mr. Hilton on this document before my learned friend continues?

HIS HONOUR: That is what I rather hoped but if --

HEMMINGS: I don't mind your Honour.

HIS HONOUR: You don't mind? Thank you. I will make this - could I make this part of Mr. Hilton's exhibit and I will make it exhibit 2(c). 30

OFFICER: There is a 2(c) already I'm told.

TENDERED, ADMITTED AND MARKED EXHIBIT 2(e) -
HANDWRITTEN VALUATION REPORT.

FRANCIS JAMES HILTON

RE-EXAMINATION

OFFICER: Q. Mr. Hilton, following upon what his Honour said to you when you were last in the box, you have done an exercise assuming that the subject land will be rezoned in due course? A. I did.

Q. Then for the purpose of working out possibilities on that assumption, you took the sale Goodacre to Cambridge Credit? A. Yes I did. 40

Q. Of 8th February, 1973. That was land which at the date of sale had, except for some 18½ acres, been zoned for residential? A. It had been, yes.

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Q. Then you - the area I understand, your Honour, that was not - if your Honour looks at the easel, your Honour sees the Goodacre to Cambridge Credit, I understand the 18½ acres is that north-eastern triangle which has pink on two sides and black on the western side. That little triangle is the 18½ or thereabouts which was not released. 10

HIS HONOUR: Yes.

OFFICER: It had been, I understand, in the phased release area but it was not rezoned. There may have been some problem about it.

Q. Anyway, you deduct for the 18½ acres and thereby reach a price of \$12,000 odd for the 605 acres that was residential at the date of sale? A. Yes.

Q. Then you ask yourself if rezoning were to be achieved at 3 years. A. Yes. 20

Q. Then you set out three rates of interest by which you make a deferral in the price to accommodate the fact that zoning on this hypothesis would be three years on? A. That is so, yes.

Q. Then below that on the left hand column, you set out possible percentage adjustments for the quality of the subject land as compared with the Cambridge Credit lands? A. Yes.

Q. Then in the brackets, you have a figure which would result, after adding 8 per cent per month for 7 months from the date of the Cambridge Credit sale up to the date of resumption? A. I have, yes. 30

Q. And you adopt the 8 per cent by reason of evidence you have already given? A. Yes, by reason of the 8 per cent between the Kulnamock - and private sales of the Kulnamock property.

Q. Then over the page you make the same series of calculations on the basis of zoning achieved at 5 years? A. Yes. 40

Q. And likewise at 7? A. Yes.

Q. And at 9? A. And at 9, yes.

Q. Over the page, page 3, likewise at 12 years? A. Yes.

Q. Then you proceed to say that some element of creep may need to be recognised between the date of the Cambridge sale and mid-year 1973 and that's for reasons

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you have already given in evidence in the last few days?

A. That is right.

Q. Then if it was decided that the creep should be at 8 per cent for the 4 months terminating in mid-1973 and no creep thereafter, then you say the foregoing figures in brackets need to be read by deducting from each bracketed sum 16 per cent? A. Yes.

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Q. Then you comment that it assumes, contrary to your view, that land both north and south would all be rezoned at the same time? A. Yes.

Q. If a purchaser would reflect the possibility of the TLE being the boundary, then the land south of the TLE would not meet the levels that are shown in these calculations? A. Yes.

Q. Then lastly, you say the exercise so far is not as if the land were phased for release at a given point? A. That's right.

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Q. If the purchaser were advised that the best available judgment was that the land would be available in, say, 5, then he would not pay as though that was a certainty but would cover his risk by only paying on the 7 year, or if advised of 7, by paying on the 9 year? A. Yes.

Q. Then on the assumption, at the commencement of the note, it will be rezoned, even so you think the appropriate period would be 9 years and you consider that that is confirmed by what has in fact happened? A. Yes I do.

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Q. That it has not been rezoned earlier and therefore a purchaser in 1973 would, on the basic assumption, look to the 12 year table to cover his risk? A. To cover his risk, yes.

HIS HONOUR: Q. On page 1 I see that you have used the Cambridge Credit and then you have said if rezoning is achieved in 3 years, 10 per cent, and you get the figure of \$9,130. I'm just not sure, what is that 10 per cent of? I mean what's that figure - what is the figure that that is - that you apply 10 per cent to get \$9,130? A. I applied \$12,174 per acre to the purchase at 3 years at that interest rate, which gives \$9,130.

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Q. What, you have used the 10 per cent to show the discount if you were certain it was going to be rezoned in 3 years? A. No. I have set out 10, 12 or 15 per cent, being a range of the cost of money in 1973. I think 10 per cent is down below the bottom end, 15 per

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cent may be over the top end, but I have given the range rather than just one figure.

Q. But are you saying, so I can understand this, that if the land is identical and based on the Cambridge Credit sale, you expect that someone would pay \$9,130 per acre by allowing a 10 per cent factor for the reason that it wouldn't be rezoned for 3 years? A. No. That has nothing to do - that 10, 12, 15 has nothing to do with the chances of rezoning. I am saying that he would pay \$9,130 if he could finance and hold the land at 10 per cent interest on his money.

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Q. And hold the land for 3 years? A. 10 per cent cost of money for 3 years.

Q. And that reduced it then to \$9,130? A. It reduces to \$9,130.

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Q. Accordingly therefore, when one gets to the 12 years, that's holding the property for 12 years and paying 10 per cent interest on the money that is outlaid? A. Yes. It reduces to \$3,879. \$12,174 deferred for the 12 years --

Q. Can I then ask you this? Is this your appreciation of what people were doing in the market in 1973 or the way you would have liked to see intelligent people go about it? A. No. I have carried out this exercise as your Honour wished me to --

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Q. Yes, I know, but - yes. A. But I would say that standing at that date in 1973, an intending purchaser would have to pay more than 12 per cent for his money. I have just set out 10, 12 or 15 as a range, possible, from what I consider to be low to what I consider possibly getting high.

OFFICER: Q. Mr. Hilton, I think his Honour asked you a question and I am not sure that you have answered it.

HIS HONOUR: It mightn't have been a proper question, I don't know. Anyway, I did ask the question though.

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OFFICER: May I try it again your Honour?

HIS HONOUR: Yes.

OFFICER: Q. Mr. Hilton, you have a developer who knows that Cambridge Credit, already rezoned, was bought for - and a large parcel - bought for \$12,000 odd per acre?

A. Yes.

Q. If the developer is offered land which is not phased for - I'm sorry, which is to be rezoned in 3

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years time, would a developer look at the Cambridge Credit price and then defer the price that he is prepared to offer for the land which is - the zoning of which is 3 years off? A. I think if he felt certain that it was 3 years off, he may do so on that short term, yes, he may do. 10

Q. And depending on the cost of money to him, he would reach the prices which you show there, \$9,130 and the other figures on that same line? A. That's right.

Q. Then I turn back to the last page of the exercise. Then as to the percentages for quality of the subject land as compared with the Cambridge Credit, you say you agree the subject are 10 per cent better but they are not higher than 15? A. Yes.

Q. As to the appropriate rate of interest in your view, certainly 12, perhaps a little higher, certainly not 10, and you make the point that the finance houses were paying for money they borrowed, 9½ per cent? A. Yes. 20

HIS HONOUR: Yes.

HEMMINGS: Excuse me a moment. I thought my friend would be a bit longer than that.

OFFICER: I'm sorry, may I ask him one other question?

HEMMINGS: Please do, while I get organised.

OFFICER: Q. Mr. Hilton you took the sale Goodacre to Cambridge Credit as your starting point on the basis that it was a large parcel even after the deduction of 18½ acres and therefore that eliminated any adjustment for size? A. Yes, to a great extent it does. The subject part was still somewhat larger but the Cambridge Credit parcel is a large parcel of land. 30

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HEMMINGS: Q. Now Mr. Hilton --

HIS HONOUR: Could I mention this also Mr. - if you wish to know this Mr. Hemmings, that I have - we are starting this on February 2nd, resuming this hearing on February 2nd.

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HEMMINGS: Yes your Honour.

HIS HONOUR: And I will go - I've in fact set two weeks aside for it, I don't think it will take that time but I want to use that time to write the judgment. I don't want to be caught as I am at the present writing a huge judgment while another case is going on. But I have also put aside therefore - although there is some other matter I've got, but then the week commencing 22nd for that National Trust and the Parramatta Park.

HEMMINGS: Of January or February?

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HIS HONOUR: February.

HEMMINGS: If your Honour pleases.

HIS HONOUR: That's the earliest day I - but I just thought I'd tell you.

HEMMINGS: Thank you your Honour.

HIS HONOUR: Yes.

HEMMINGS: Q. Mr. Hilton you break up the Goodacre to Cambridge sale in the second paragraph of 2(e)? A. Yes.

Q. And you break it up between the non urban land and the residential land? A. Yes.

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Q. And of course the higher the figure you place on the non urban portion of the land, the lower that it analyses for the urban land? A. That would follow, yes.

Q. It would follow, would it not? A. Yes.

Q. You haven't told us where you derived the \$6,500 for the non urban land? A. I have derived it from that Colony Town Estate sale.

Q. From the Colony Town Estate sale? A. Yes.

Q. So that means that that parcel of land being part of the --

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HIS HONOUR: That's the Vicinage land, is it?

HEMMINGS: No, it is the Colony Town Estate.

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HIS HONOUR: Sale - that's sale 2?

HEMMINGS: VG sale 3, I think it is, your Honour.

HIS HONOUR: 2.

HEMMINGS: Sale 2 yes your Honour, thank you.

HIS HONOUR: Sorry, yes.

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HEMMINGS: Q. That assumes that the land within these 18½ acres is equal, acre to acre, to the Colony Town non urban land? A. It assumes it as being about equal, yes.

Q. Well exactly equal, isn't it? A. Well 6½, yes.

Q. This area of land is the little triangular shaped parcel up in the north-eastern corner of the allotment?
A. Yes.

Q. A difficult shape for development? A. It is not the best, yes.

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Q. Yet you assigned the same value to this area as you have assigned on your analysis to the Colony Town's parcel? A. Yes.

Q. This area, the 18½ acres, was not released at the same time as the balance of the land, that is, 605 acres, because there is a ridge that follows the black line that chops off that top right hand corner, is there not? A. Yes.

Q. It is in a different catchment? A. Yes.

Q. Didn't that give you a further indication that releases of land follow physical features such as the top of the catchment rather than artificial features such as transmission lines? A. It gives me an indication that a ridge may be one of the features that it could follow.

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Q. And in fact the IDO as it extends in the St. Clair follows the ridge line as well, does it not?

A. There is a ridge at Walker's Lane and it comes over that ridge.

Q. Well the answer is yes, isn't it? The releases that have been made follow the catchment and the ridge lines? A. It comes over the ridge at Walker's Lane.

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Q. The area of land to which you have assigned \$6,500 in the north-western corner - thank you, north-eastern corner, because it is in a different catchment,

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although there is no expressed statement anywhere, I suppose because of your comparison with the Colony Town's property, you've made the assumption that if that land is going to be released for urban purposes, it will be released about the same time as the Colony Town's land? 10

A. It could be or earlier.

Q. But there is nothing to indicate either way, is there? A. There is nothing to indicate either way.

Q. If it is released at the same time as the Colony Town land, from the date of this sale, it could be up to 22 years away for release? A. It could be, yes.

Q. But that is purely an assumption because there is nothing specific indicated for that corner of the land?

A. I think it was originally indicated as phased 1970-1980. 20

Q. If this parcel of land with its irregular shape of uncertain release but likely to be up to 22 years away is worth \$6,500 an acre, how does that compare with your assessment of \$3,000 per acre for the subject land?

A. This is a parcel that I take as being phased for release.

Q. But you told me that it is uncertain as to when it's released. You've got to guess because of the release of the land in the vicinity? A. Yes but it is still said to be for release at some time. 30

Q. And you agreed with me that a person would be most imprudent to rely upon any specific date for release in the Sydney Region Outline Plan? I put that to you specifically yesterday. A. And specific date, yes.

Q. I will put the question to you again. On this parcel of land with its irregular shape, not released with the balance of the land, but at the highest, likely to be released with other lands in the area up to 22 years away, you say that is worth \$6,500 an acre yet you put \$3,000 an acre on the balance of the subject land? A. Yes. 40

Q. You don't see any inconsistency there? A. No. I am dealing with a small parcel here.

Q. The sale itself took place in February of 1973?

A. Yes.

Q. Did you examine the circumstances surrounding the sale? A. I am examined the contract.

Q. When did you do that for the first time? A. Just recently. 50

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Q. This week? A. Or it may have been last week, yes.

Q. Certainly not when you formed your opinions about the parcel of land when you prepared your exhibit 2(b)? A. I had only made enquiries as to what our Department knew of the sale. 10

Q. Your only knowledge of the circumstances surrounding this sale, can we take it, is what you have deduced from examining the contract in the last week or so?

A. That's by enquiries of our local office some years ago.

Q. And what was that enquiry? A. If as to whether there was anything unusual about the sale that ruled it out as being evidence against.

Q. And what was the answer? There was nothing unusual about it? A. There was nothing unusual. 20

Q. So the extent of your knowledge is, what you saw in the contract in the last week or so and advice from officers in your Department that there was nothing unusual about the sale? A. Yes.

Q. And that exhausts your knowledge of the sale?
A. Yes.

Q. You told us that you did not know at the time that you prepared your report 2(b) that betterment tax is referred to in the contract but you now know it does?
A. Yes. 30

Q. But you told us, for the reasons you gave yesterday, that you still make no adjustment for betterment?
A. I haven't made any adjustment for that tax.

Q. If you did make an adjustment for betterment tax, you would be looking towards a figure of about \$1.3 million, would you not? A. It is difficult for me to say. It would be a large figure.

Q. In that order? A. It could be in that order.

Q. Then you make certain mathematical adjustments and I am not - let me say I am aware that you were asked to carry out this exercise and you don't necessarily say that it is the way to go about it. But you were asked to make an assessment of the value of this land, the subject land, on the basis that the whole of land might have potential in the future for urban development, and you chose this method? A. If I was to assume that the land would be released at some time. 40

Q. The whole of the land? A. The whole of the land.

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Q. And you had a number of options open to you, but you chose this method? A. Well this was the method that I chose, yes. I don't know what other options there were.

Q. Well the other option of course would be to try and use the sales of comparable land in the locality, where people were buying land that had a potential for release say within 5 years, 10 years, 20 years or more, that would have been one way, wouldn't it? A. Well I thought that if I had to assume that the land would be released -- 10

Q. If we get the reasons; one method would have been, rather than make this mathematical calculation, to look to the various localities in the vicinity of South Penrith, look to areas that have been indicated in the Sydney Region Outline Plan, as being released for urban development, 5, 10, 15 or 20 years, and see the range of prices that people were paying for such lands in those areas, that would have been one way of approaching it, would it not? A. It could be one way, I haven't thought deeply about that. 20

Q. Well you didn't do it that way, what you've done you've made this mathematical calculation? A. Yes.

Q. And when you do a mathematical calculation of course, the final figure that you end up with depends upon the reliability of the various assumptions? A. Yes. 30

Q. Then of course to arrive at all of these figures involves a number of steps where you have to make assumptions? A. Yes.

Q. And the proof of the pudding is in the eating I suggest, and that is to check the final figures with sales? A. Yes.

Q. Yes, thank you, your Honour.

HIS HONOUR: Yes, Mr. Officer.

FURTHER RE-EXAMINATION

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OFFICER: Q. Mr. Hilton, you were asked yesterday some questions by my learned friend about the calculations that have been made of the Burnley property, and your attention was drawn to the fact that there was 146 acres of good land in Burnley? A. Yes.

Q. Then there was some land south of the TLE, and under the TLE? A. Yes.

Q. And the flats over near Mulgoa Road? A. Yes.

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Q. And some very steep land? A. That's right.

Q. And it was put to you that looking - that if one treated the Burnley total value so assigned, as having been paid for the 146 good acres, then of course it was put to you, the subject land would be worth more than \$8,000 an acre? A. Yes. 10

Q. Now of course if one does that exercise in that way, one is treating the creek flat in Burnley, and the steep land as having no value at all? A. That would be so.

Q. And would one be treating also the land south of the TLE in Burnley, and the land subject to the TLE in Burnley as having no value whatever?

HIS HONOUR: Well that follows, doesn't it? I think that by the way the question was put, it was just dividing the purchase price by 146. 20

OFFICER: Yes.

Q. Now you were asked a number of questions relating to your sales 6 to 9? A. Yes.

Q. And you said that they gave you the bottom of the range for land with no potential? A. Yes.

Q. Now how did you use those - the information those sales gave you, in order to get guidance as to the - any part of the land, the subject land? A. Well I used them to come to a value on the land south of the TLE. 30

HIS HONOUR: Q. Yes, I know, but -- HILTON: A. But I looked at those as being the bottom of the market, the land south of the TLE that I thought --

Q. Do you mean bottom of the market for that sort of land, or bottom of the market for land south of the TLE? A. Bottom of the market for land without any potential, or practically no potential whatsoever for urbanisation.

Q. Virtually no potential at all for urbanisation? A. Yes, and I had to make a judgment that the land I'm dealing with I thought had some potential, and I had to make a judgment as to how far I should move above that level. 40

OFFICER: Q. And apart from the some potential that you've mentioned - I'm sorry, I'll ask you, you've said you made an adjustment from your bottom rung as it were, because the land south of the TLE you thought had some potential? A. Yes.

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Q. Were there any other adjustments which you made?
A. No, I made it in one step, knowing that the land I had to value was better land and had better potential.

Q. And was there any other factor apart from better potential and better land, that you reflected in fixing your value for south of the TLE? A. I don't think so. 10

Q. Now I want to - you heard various - and your Honour, perhaps I should have put this to him in-chief, I want to direct his attention to two contracts, and ask him whether he regards the terms as at all unusual.

HIS HONOUR: Yes. Which ones are they? The contracts --

OFFICER: The Leagues Club purchase; may I approach the witness?

HIS HONOUR: Yes.

HEMMINGS: I'll just note - I didn't ask any questions on this subject -- 20

HIS HONOUR: No, I appreciate that, Mr. Officer is really asking this by leave. I appreciate you may very well ask questions. Yes, you have leave, Mr. Officer.

OFFICER: Q. You've heard reference being made to the Leagues Club purchase? HILTON: A. Yes.

Q. And I show you a copy of the Leagues Club contract?
A. Yes.

Q. And would you look at the special conditions appearing therein, and I want to ask you whether you regard those as at all unusual? A. No, I don't think so. 30

Q. I want to show you --

HIS HONOUR: When you say the Leagues Club contract; this is the Leagues Club in Jamison Road?

HEMMINGS: Jamison Road.

HIS HONOUR: ASL, is it ASL?

HEMMINGS: No, it is next door to it.

OFFICER: Q. And I show you the contract for the sale Stocks and Holdings to Kawacka, of land at Casula. And would you read the terms as to payment of that and I want to ask you whether you would regard those at that time as being unusual or beneficial for the purchaser? HILTON: A. No, I don't think so. 40

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Q. Now with regard to your exercise, exhibit 2(e)?
A. Yes.

Q. Do you recall that? A. I have it.

Q. And it was suggested to you that a different way of doing the exercise would have been to have looked at lands in the general area of the subject land, which by their phasing at 5, 10 or 20 year potential for rezoning? A. Yes it was. 10

Q. Now you have of course said a moment ago that you regard phasing as an advantage to land, that one can't be precise within the phase period, as to when it will be rezoned? A. That is so.

Q. And you therefore regard as being some uncertainty with regard to a future phased release, as to whether it would occur - might occur early or late within the 10 year period or whatever be the period? A. Yes. 20

Q. Would it in your view introduce an element of uncertainty if one were to try and do your 2(e) exercise, by saying, well I'll look at land that is phased to be released 1980 - 1990, and I will assume a mid point; would in your view that introduce an element of uncertainty? A. Yes, there's an element of uncertainty there.

Q. Or an assumption which you would not feel justified in making? A. I would feel that it was another resumption other than those that are already contained in this exercise. 30

Q. If you look at areas which, even by taking the mid-point of their phasing, if you looked at sales rather which even by taking the mid-point of the phasing period, one could assume were for release in 5 or 10 years or the like, are there such areas which in your view could be used without introducing, at least in some of the sales that you used, necessarily some discount for size? A. Not that I know of. 40

Q. I'm sorry, if you take the 5 year --

HEMMINGS: On re-examination.

OFFICER: Q. If you took a 5 year period by halving the - are there any phased release periods 1975-1985?
A. I don't know. I am not sure. I don't think so. I can't recall.

Q. Perhaps I can just ask you this broad question. Have you - are there, rather, a range of sales all of areas which in size are comparable to the subject land

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and which by halving the phasing period would give you a sale of a large area phased for release in 5 years, and 7 years, and another one 9 years or 10 years, and so on? A. I don't know and I didn't, in doing this exercise, try and find sales in those phased release areas. I understand there have been sales but I don't have the details of them on which to base an exercise.

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HIS HONOUR: Q. Does that mean that if you assume this land might be released within 15 years, there were no sales that you could go to to compare it? A. There is the sale of Colony Town Estate that's in a phased release period. That's the only one I have details with me.

OFFICER: I think the witness has already said that was phased - he said yesterday, your Honour, his conclusion as to that Colony Estate buying back in and the price they paid was that they expected it for earlier release than the phasing.

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HIS HONOUR: Yes I remember him saying that.

OFFICER: He said (a) that they bought that - having sold it they bought it back again, and, secondly, the price they paid was a price that in his view indicated that they believed that it was for earlier release.

HIS HONOUR: Thank you Mr. Hilton. Yes.

OFFICER: Your Honour I don't know what Mr. Hilton wants --

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HIS HONOUR: He may leave. Yes certainly, you are excused. You may stay if you wish. You are excused, you may leave if you wish.

ALAN AINSLEY HYAM

CROSS-EXAMINATION (CONTINUED)

GILES: May I ask a few questions?

HIS HONOUR: Well yes. I don't want this to turn into one of those - what used to take place in the old Tenancy Courts. It won't be long will it? 10

GILES: It hasn't happened so far your Honour.

HIS HONOUR: No it hasn't. All right. I hope this will be - as I say this will be a baker's dozen, the few questions.

GILES: Q. Can I direct your attention to the Penrith Pastoral Company land? You have just been asked a number of questions about magnitude, discount for it?

HYAM: A. Yes.

Q. Yet I note that you have allowed the same figure per acre for the Tatmar land as the Penrith Pastoral Company land? A. That is true. 20

Q. And yet the parcel owned by Penrith Pastoral Company is, of course, considerably smaller than the Tatmar land, is it not? A. Yes.

Q. Why have you not added value to the Penrith Pastoral Company land for that factor? A. I've regarded it as being all within the same property; it's operated the same property. You have common directors for the two owner companies and for all intents and purposes, it's the same property. 30

Q. Is it not a separate parcel of land? A. It is a separate parcel of land, yes.

Q. Owned by a separate legal entity? A. Yes.

Q. And is not your task, or the task of a valuer in those circumstances, to value that parcel of land?

A. I looked at the value of the property on an overall basis. I had had regard that they were in the same ownership and, as I said, with common directors.

Q. In other words, you have reduced the proper value of the Penrith Pastoral Company parcel of land, because it happens to be owned by a company with common directors, to an adjoining parcel of land, do I understand you correctly? Do you say that? A. Yes. 40

Q. Do you agree that that's an impermissible discount?
A. No, that's the basis upon which I had approached --

HIS HONOUR: Q. What factor, for magnitude, would you add?

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GILES: Q. How much would you increase it by to regard it as a separate parcel? HYAM: A. I haven't applied my mind to that, your Honour. I'd have to have regard to a number of factors; have regard to the location of the Penrith Pastoral land, if it were a separate entity and to -- 10

HIS HONOUR: Q. What percentage did you knock off Kulnamock, to arrive at the figure you did? A. I think it was 20%.

Q. Well, prima facie, you'd add 20% back on, wouldn't you? If you were consistent. A. No, I don't think so, because I think you would have to have regard to - if you looked at them in isolation, I've looked at the two as a whole.

Q. But you justified them? A. Yes. 20

Q. You're being asked now to look at them in isolation. A. I think the Penrith Pastoral land is about twice the size of Kulnamock, if I remember rightly. 188 acres, or something of that nature.

GILES: Q. But it's a good deal less than the total of the Tatmar land and the Penrith Pastoral land, isn't it? A. Yes.

Q. What adjustment do you make? A. I haven't applied my mind to that.

Q. Could you do so now? A. No, it would be something that I would have to think about and have regard to all the circumstances. 30

Q. Haven't you just told my learned friend, Mr. Hemmings, that you rely for this, principally, on your experience over the years. A. Yes.

Q. Aren't you able to bring that experience to bear on this problem immediately? A. No, when something like this is brought on to me all of a sudden, I'd like to think about things, to give them due and proper consideration so that I take in all relevant factors. 40

Q. Can I just also ask you some questions about your sale number 10 as compared with the Penrith Pastoral land? A. Yes.

Q. You attribute a value to the non-urban component of sale number 10, of \$7,080 per acre? A. That is correct, yes.

Q. That contract was dated the 8th February, 1973, is that right? A. That is true.

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Q. The land, therefore, if it has escalated forward, there was obviously a considerable margin to be added to that figure. A. If it escalated, there would have to be something added to it, yes.

Q. And depending upon your escalation figure, of course, it would vary, but taking your 3.3% - or the figure Mr. Hemmings calculated as 3.3% - it would work out at over \$8,700 an acre, would it not? A. I haven't done the calculations. 10

Q. Would you do so?

HIS HONOUR: Would you mind just telling me --

GILES: Sale 10, your Honour, the non-urban component, is put at \$7,080 per annum. The contract date was the 8th February, 1973 and I'm asking the witness to do an exercise on his 3.3% escalation figure. 20

HIS HONOUR: Bringing it up to where? August?

GILES: Late August. Seven months, I'd suggest, your Honour, is a reasonable period.

HYAM: A. On that basis, it would work out about \$8,700 an acre.

GILES: Q. And if you took higher escalation rates, you would reach a higher result again? A. Of course.

Q. That land, in your analysis, you said: Well, that, of course, is within the Sydney Regional Outline Plan and that accounts for the drastic reduction you've made from that to the subject land. A. That and a few other things, yes. 30

Q. But, of course, under the Sydney Regional Outline Plan, that was phased 1985 to 1995; wasn't it? A. That's right.

Q. So taking a median, it was 17 years into the future. A. Not necessarily.

Q. No, but taking a median, it was 17 years into the future, wasn't it? At date of sale. A. If you accept the median of the period 1985 to 1995, yes. 40

Q. It would follow, of course, that if the subject land were viewed as being the release 1975 to 1985, it would be very much more valuable than the land in sale 10, that's so, isn't it? A. I would have to think about that.

Q. Does it require really any thought at all?
A. Yes, it does.

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Q. If you were regarding this as likely to be released in the period 1975 to 1985, would it not follow that it would be much more valuable than land phased for release 1985 to 1995? A. No, because there are other factors associated with this \$7,000 an acre. 10

Q. And I would suggest that all those factors are in favour of the Penrith Pastoral Company land, are they not? A. No.

Q. Is it not much more desirable land from an urban point of view? A. No. This non-urban land is quite high land. It has an easterly aspect and also it had the capability, as I understand it, of pushing sewer into this land - indeed, the Land Commission are doing this at the moment, I think they are putting a low-level, either a pumping station or a low-level sewer main to pick the parcel land up for urban development. 20

Q. Let me just take you back a step to test that reasoning, if I may. Is it not so that you got your \$7,080 per acre for this parcel of non-urban land from the Colony Town sale? A. Not solely, no.

Q. Where else did you get it from? A. As I said, I made inquiries about sales of other lands within that particular release period and also I had regard to the fact that I knew that this land had a strong possibility of being released at a considerably earlier date because of the situation regarding the extension of sewer. 30

Q. Colony Town is in the same catchment, is it not? A. Yes, it's on the other side of the road.

Q. That land is flat and uninteresting in comparison with the Penrith Pastoral land, is it not? A. I've never actually walked on the land. It is very high on the frontage along Erskine Park Road and it would then fall back towards the creek tracts fronting onto Ropes Creek, but I've never actually walked through the land, but certainly it is quite high along that frontage to Erskine Park Road. 40

Q. You wouldn't agree that it is flat and uninteresting, is that right? A. No.

Q. What about flooding? A. There would be some flooding along Ropes Creek, I would expect. As a matter of fact, there is some quite good land along Ropes Creek.

Q. Wouldn't you agree the Penrith Pastoral Company parcel of land would be, if developed for residential purposes, the dress circle of Penrith? A. No, not necessarily. It's nice pastoral land, I'm not denying that. 50

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Q. And it's very well located in relation to Penrith, is that right? A. It's located - I think I've said earlier - this distance from Penrith, yes.

Q. And it's got excellent access? A. I wouldn't term it as excellent access, 10

Q. Very adequate. A. It has access to three roads, none of which were made at that particular point of time, nor are made now.

Q. But we are talking about urban development. It has three public streets, does it not? A. Yes.

Q. You couldn't get much better access than that, could you? A. I'm not sure about Luttrell Street, as to whether that's a public road along there, but certainly it's a road.

Q. It's a regular and convenient shape for subdivision? 20

HIS HONOUR: Q. Did you say Luttrell Road?

HYAM: A. Yes.

HIS HONOUR: Are you talking about the Penrith land or the Tatmar land?

GILES: Penrith land, your Honour.

HIS HONOUR: The question you asked that led to this was, you were asking Mr. Hyam to assume Penrith was phased 1975 to 1985?

GILES: Yes. 30

HIS HONOUR: And why, therefore, you say, shouldn't that at least get to \$8,700 per acre.

GILES: No, much more than that.

HIS HONOUR: At least that, because that's how you escalated Cambridge Credit too.

GILES: No, Cambridge Credit, your Honour, is 1985 to 1995.

HIS HONOUR: Therefore, much more.

GILES: Yes. There are two things I've covered, your Honour. One is the escalation for what has been called creep, between February and August, and the other is the hypothesis that the release date of this would be assumed to be much earlier than the release date of the sub-division. 40

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HIS HONOUR: Q. The event that Penrith Pastoral Company was released earlier than you would assume the Cambridge Credit land was released; the non-urban --
HYAM: A. Yes.

Q. You say that the Tatmar land wouldn't be worth as much per acre as the Cambridge Credit land? A. Your Honour, I haven't addressed my mind to that particular problem and I would have to, again, sit down and give consideration to all the circumstances. 10

Q. And what factors would you have to have regard to that you don't know now? A. First of all, I would look at the capability of that land to be provided with the services, when it was certain the services would be provided.

Q. Which land? A. Either parcel of land. And have regard to likelihood of attaining a re-zoning, in respect of the Cambridge land, here it is on a plan which had been on public exhibition for a number of years, clearly stating what are the intentions - what's the government's intentions in respect of that -- 20

Q. I don't really want you to list them. You are, it seems to me, correct me if I'm wrong, you're listing matters that you already do know about but what are the matters that you don't know about, that you'd need to - I mean you know about the sewerage to Tatmar. A. Yes. 30

Q. And I suppose you must have known about that sewerage to Cambridge Credit, otherwise you couldn't put a figure on it. What additional factors are there that you need, other than it may be - I'm not now talking about whether you just want to sit down outside a witness box, and in the calm of - away from the hurly burly of the Court; but are there any other factors that you know of that you need - facts you need to know in order to make the assessment? A. I'd need to think about that too, your Honour. 40

GILES: Q. Now may I finally suggest to you, that having in mind the physical characteristics of the Penrith Pastoral Company land, including its location, its topography and the like, that far from there being a discount - I withdraw that; far from it being less than Kulnamock, it would be worth a significant margin more than Kulnamock for urban development? A. No, I couldn't agree with that.

SHORT ADJOURNMENT

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MERVYN PARRY BUTLER SHEARMAN
EXAMINED

SMART: Q. (contd) ... Planning and Environment Commission as a divisional planner, urban releases?

SHEARMAN: A. That's right, yes.

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Q. And Mr. Shearman was the situation this, that in the State Planning Authority, you had the Authority itself? A. Yes.

Q. And then you had the Chairman and Deputy Chairman, both of whom were members of the Authority and full time officers? A. That's right.

Q. Then did you next have the chief planner? A. Yes.

Q. The deputy chief planner? A. Yes.

Q. About two or three assistant chief planners?

A. Yes.

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Q. Some principal planners? A. Yes.

Q. And did you have a couple of those? A. There were two principal planners I believe at that time.

Q. And then did you have under them assistant principal planners? A. That's correct.

Q. And I think Mr. Crockett was an assistant principal planner? A. He was.

Q. And then you had divisional planners? A. That's right.

Q. And underneath the divisional planners, you had town planners and assistant planners? A. Yes.

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Q. Mr. Shearman in relation to your work, did you handle in the period from 1969 to 1977 matters of urban release? A. That was my prime responsibility, yes.

Q. And did that work relate to releases of land under the Sydney Region Outline Plan? A. Yes it did.

Q. And was the implementation of that plan one of your responsibilities? A. Yes.

Q. And Mr. Shearman --

HIS HONOUR: Q. So what was your position at that time?

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SMART: A divisional planner your Honour.

SHEARMAN: A. Urban releases.

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SMART: Divisional planner, urban releases.

Q. And you held that position particularly in 1972, 1973 and 1974? SHEARMAN: A. That's right.

Q. Now in relation to urban land releases, did you report in the main directly to the Chairman and the Deputy Chairman? A. Yes. 10

Q. And did you also report to an early releases sub-committee of the State Planning Authority? A. Yes I did.

Q. And was there some secrecy about your work? A. Yes, obviously it involved land releases.

Q. And Mr. Shearman in relation to the officers who were senior to you, did you report to them from time to time? A. On some matters, but not all matters.

HIS HONOUR: Q. You mostly went to the Chairman or Deputy Chairman? A. Where it concerned future land releases to the Chairman and Deputy Chairman; but there were other aspects of the work that I would refer to other officers. 20

SMART: Q. And would the other senior officers have some familiarity with land releases, but not the detailed knowledge that you had? A. Yes, that's right.

Q. Mr. Shearman in relation to matters of land releases - might I withdraw that question. Did you become familiar with the operation and administration of the Sydney Region Outline Plan? A. Yes, that was one of my functions. 30

Q. And Mr. Shearman in relation to that operation of that plan - in relation to the area in the western sector, and particularly in South Penrith, what was the situation in relation to the boundaries of the Sydney Region Outline Plan?

GILES: Is my friend asking: what are the boundaries?

HIS HONOUR: What is the question?

SMART: Your Honour I am going to ask him first of all what were the boundaries, and then how was the plan administered in relation to those boundaries. 40

HIS HONOUR: The matter that's important for me is, is to what people understood the boundaries to be, isn't it?

SMART: Yes your Honour, but I think there would be two things that would arise; firstly what were they, and

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how did - how was the plan in fact administered by the Authority; and then thirdly the question would arise as to what was the attitude of the State Planning Authority to any releases outside of the boundaries; and fourthly your Honour what was the policy in relation to applications of outside -- 10

HIS HONOUR: Yes. Mr. Giles what --

GILES: Your Honour, no doubt he can give some evidence about what he did in his job. I have some doubts about his ability to speak on policy; presumably - subject to relevance, presumably the Authority would have means of formulating policy, your Honour.

HIS HONOUR: Yes, but it's going to come down, isn't it, to what people were told, isn't it?

GILES: Your Honour, it may be that if the truth is that it was to be released, then we've got the argument your Honour appreciates that they can't speak with a fork tongue; notionally, that is, because we're dealing with a hypothetical purchaser. Perhaps I should wait and see what he has to say. 20

HIS HONOUR: Yes I think so. I'll allow the question. I appreciate what you're saying. Would you ask the question again?

SMART: Q. Mr. Shearman in relation particularly to the South Penrith area, what were the boundaries of the Sydney Region Outline Plan? 30

HIS HONOUR: You mean other than as appear on the plan itself?

SMART: I'm going to get him to - that's what I wanted him to direct his attention to; and then I wanted to direct his attention as to how they were administered by the Authority.

HIS HONOUR: I just don't understand. Are we going to start at Wollongong and start moving round with the surveyor? 40

SMART: No your Honour, that's why I've gone specifically to the South Penrith area.

HIS HONOUR: Yes I know, but it's only a question of words I think; but when you say: what are the boundaries; what do you mean by that, so I understand it?

SMART: Your Honour what I'll be asking him in relation --

GILES: Do you mean the urban boundary?

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SMART: Yes.

HIS HONOUR: But do you mean - is he going to say: yes, have a look at the outline plan as appearing in - that means you're going to say something else?

SMART: No, he's not going to say anything else - he's not going to suggest that they were other than-- 10

HIS HONOUR: I was just wondering how this carries the matter - I'm just not sure if I were Mr. Shearman I'd know how to answer that question: what were the outlines - unless it was that outline as appeared in the Sydney Region Outline Plan that's there. Is that what you're asking him in effect?

SMART: Your Honour I wanted to go there, and then I want him to tell the Court - indicate what they are, and that in a particular area they were definite and fixed. 20

HIS HONOUR: As a matter of policy?

SMART: As a matter of administration and how it was administered; in other areas they had to be adjusted, and this was how it was administered.

HIS HONOUR: You're not really asking him what the boundaries are, because that appears from the plan, but you're asking him questions as to what his understanding of the policy of the Department was in relation to the release outside --

SMART: Your Honour the first question was undoubtedly an introductory question. 30

HIS HONOUR: Would you ask the question first? You don't have to ask the question as to what the boundaries were, you say they appear on that plan.

SMART: Q. Mr. Shearman I want to direct your attention if I could, to the Sydney Region Outline Plan, and in particular to the boundaries shown in the South Penrith area. Now in relation to those boundaries, you have an area bounded by Bringelly Road, and an area bounded by the western freeway. Now in relation to the administration of the Sydney Region Outline Plan in the South Penrith area, what was the policy and the administration of the State Planning Authority, in relation to maintaining those boundaries? 40

GILES: I object.

HIS HONOUR: Is it 1973?

SMART: Yes.

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HIS HONOUR: What is your objection, Mr. Giles? Is it that it doesn't matter what it was, it is what was known, or is it that he can't speak about what the policy was?

GILES: Firstly your Honour, if there is to be argued that there is a policy - we know it is an authority, it surely must have means of formulating a policy and giving it to - and recording it your Honour. We haven't seen a scrap of paper to suggest that there is such a policy. Mr. Shearman may produce it but we haven't seen it. That's the first objection your Honour. Secondly, we would submit that it is the best course with a witness of this type is to ask him what he actually did with people because that may end up to be the relevant question.

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HIS HONOUR: What he told them?

GILES: Yes.

HIS HONOUR: Mr. Smart, the difficulty I have is this, that - first of all you are seeking to get from this witness what the Department's policy was?

SMART: Yes, how it administered it your Honour.

HIS HONOUR: You are not going to call anyone else?

SMART: I will be ultimately, yes.

HIS HONOUR: Someone higher up?

SMART: Higher-up.

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HIS HONOUR: So that evidence he gives will be confirmed by someone?

SMART: Right.

HIS HONOUR: And the other problem I have is that - is it going to be - so you can tell me this - said that what he is saying as to the way these boundaries were released was a matter that was made known to people who enquired?

SMART: Yes. If they did enquire, that was the --

HIS HONOUR: If they did enquire, yes.

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SMART: Your Honour he will deal with the interview of 25th July with Mr. Satara and that will be put in a somewhat special category.

HIS HONOUR: Yes well I appreciate that. I will allow this evidence Mr. Giles. Yes.

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SMART: Q. Have you lost the question --

SHEARMAN: A. I think I have the question. It was a firm boundary.

HIS HONOUR: Q. Sorry? A. It was a firm boundary.

Q. And when you say - what was a firm boundary? 10

A. The western freeway and Bringelly Road.

Q. You mean south of the western -- A. If I can just explain, we are talking about South Penrith and it depends what you define as South Penrith.

Q. That's right. That's what you are asked about, South Penrith. So when you say it is a firm boundary, what are you referring to? A. We used to refer to the area to the north of the freeway as the South Penrith release area and that was bounded by the freeway and Bringelly Road, and there was no further development proposed south of the freeway in that locality, between the Nepean River and Bringelly Road. 20

SMART: Q. Mr. Shearman in the administration of the Sydney Region Outline Plan in the area from say St. Marys to Penrith, was a corridor plan adopted?

A. That's correct.

Q. What do you mean by a corridor plan? A. A corridor plan was based on the existing infrastructure in that locality being the highway, the railway and the two proposed freeways, and it indicated that there would be consolidation within that urban corridor extending from perhaps around Parramatta out towards Penrith and the Blue Mountains. 30

HIS HONOUR: Q. From Parramatta to the Blue Mountains?

SHEARMAN: A. Yes.

SMART: Q. Mr. Shearman in the administration of the plan by the Authority, was the principle applied that development would be kept within the corridor?

A. That's right.

HIS HONOUR: But not from Parramatta to - was it? 40

SMART: I'm sorry, I am talking about from the area, say, from St. Marys to Penrith.

GILES: That's the danger of a leading question.

HIS HONOUR: Q. When you say the corridor, you mean the corridor between the two proposed expressways?

SHEARMAN: A. Yes. Well no, I'm sorry --

Q. It doesn't apply from Penrith, does it? That makes provision for release south of it? A. I should

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explain, if I may, it was originally proposed that the development would be contained between the two freeways and there were negotiations with the Department of Main Roads to secure the relocation of the planned western freeway to the southern boundary of the corridor. In discussions with the then Commissioner, Mr. Russell Thomas, he --

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Q. When is this we are talking about? A. 1968.

GILES: Your Honour I object to this. Unless we have the benefit of knowing who had the discussions, whether there were documents, it has not been exchanged your Honour, and --

HIS HONOUR: No, but they wouldn't be exchanged though, would they, presumably the Housing Commission --

GILES: With us. Your Honour these are - there is Mr. Shearman's statement actually exchanged and there is not a word of these conversations in it and your Honour may recall we have had some little difficulty in getting details of the location of the F4. It was said it was just too difficult.

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HIS HONOUR: Well I perhaps gave him - I mean Mr. Smart didn't ask him that question, I did.

GILES: Your Honour it is obviously relevant and we don't mean to shut it out but we'd just like to have the same advantage that the Housing Commission has.

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HIS HONOUR: Q. Are there any documents relating to this? SHEARMAN: A. No I would say not.

Q. None at all? A. It was discussed at a State Planning Authority meeting.

Q. Is there a minute of that? A. There may be.

Q. You don't know where it is? A. No.

SMART: Q. Mr. Shearman, were you at the particular meeting where it was discussed? A. I can't be sure of that because - I can't be sure, I may have been at that meeting.

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HIS HONOUR: Q. How do you know this happened then? Wouldn't there have been some documentation on it? A. There is an explanation for this but I did at some times attend meetings because at one stage I was the Assistant to the Chief Planner and I was able to hear the discussion at the meetings. Now if in fact I didn't hear this particular discussion, I would have learnt about it later on.

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HIS HONOUR: Mr. Smart, I really think --

SMART: Mr. Ashton will be called. He was at --

HIS HONOUR: I think you might confine him to matters - I appreciate that the rules don't apply here but really to put a fact of some significance before the Court which is dependent on someone - Mr. Shearman overheard-
ing what someone - either overhearing what someone
might have said or someone might have told 14 years
ago --

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SMART: Your Honour certainly Mr. Ashton will deal with the matter who was at the meeting.

HIS HONOUR: Yes all right. So perhaps - probably I shouldn't have - I led into it by asking him what happened about the corridor.

Q. In all events, you say 1973, if you could just - did you say - was there a policy about that corridor then? SHEARMAN: A. Yes, there was.

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Q. And that was? A. That the southern limit - if I perhaps could clarify that Mr. Smart referred to St. Marys. In fact the corridor extended from - I said Parramatta to Penrith and Blue Mountains. In fact I suppose you could argue that it extended from the existing urban boundaries south of Blacktown towards the Blue Mountains because there are certain lands proposed for release in that area, and the southern boundary was the transmission line which extended from Sydney West substation to Bringelly Road and thereafter the boundary follows the western freeway or the route of the proposed western freeway.

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SMART: Q. Mr. Shearman, you are aware that in the Sydney Region Outline Plan and in particular page 5 that it is stated: generally the proposals of the outline plan are drawn in a semi diagrammatic way. The translation of the broad proposals for any area into detailed plans with the delineation of precise boundaries is primarily a matter for local Councils? A. That's right.

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Q. Mr. Shearman, in the administration of the Sydney Region Outline Plan and particularly in the western sector, where you didn't have a fixed boundary such as a freeway or Bringelly Road, what sort of local adjustment took place.

GILES: Your Honour I object to that.

HIS HONOUR: Yes that is a bit too general I think, isn't it?

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SMART: Your Honour, it can be dealt with in a general way and then I'll come specifically to deal with some of the individual cases. That's what I was proposing to do. There was a broad administration and then it was dealt with specifically in relation to given localities. And that is why I put it in the broad instance - in the broad way first. 10

HIS HONOUR: Very well but I don't know that the broad way will help very much, but however. Yes.

Q. Broadly what happened? You say in any place outside an area bounded by the transmission line or the --

SMART: No he didn't your Honour. He said Bringelly Road.

HIS HONOUR: Bringelly Road rather, or the freeway?

SMART: Yes, or the freeway. 20

SHEARMAN: A. The boundary would be determined by flood lines, contour, a road, or a catchment boundary, those sort of boundaries.

SMART: Q. Mr. Shearman if in the course of 1973 developers called at the State Planning Authority and enquired about permissible developer in the South Penrith area south of the freeway, and they saw you, what did you tell them, or what would you have told them? A. They would have been told that the land was outside the urban proposals of the Sydney Region Outline Plan. The land was designated in the Sydney Region Outline Plan as non urban. 30

HIS HONOUR: You are talking about the subject land now, are you, an enquiry about the subject land, or any land south of the freeway.

SMART: South of the freeway.

HIS HONOUR: Yes.

SHEARMAN: A. The land was designated in the Sydney Region Outline Plan as non urban.

HIS HONOUR: Q. And what if someone had said, well, what are the prospects of it getting released at all? A. I would have said none. 40

Q. None at all? A. None at all.

Q. Ever? A. Ever. Well, as far as the Outline Plan is concerned.

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Q. What does that mean, if I am an enquirer?

A. I don't think anything is constant in planning.
It is always changing.

Q. That's what I mean. If asked you though and said, well, you say it is now non urban. Does that mean that it will never be released? What would you say to that? Not now, I might say, what would you have said if somebody has asked that in 1973? A. What I'd say, as far as the Authority's policy on the Outline Plan was concerned for the year 2000, it would not be rezoned. 10

SMART: Q. Mr. Shearman, from 1972 did part of your duties include acting as a liaison officer between the Housing Commission and the State Planning Authority?

A. Yes.

Q. In that period of 1972 and 1973, were there numerous conferences held by you with Housing Commission officers? A. Yes. 20

Q. Did you direct the officers of the Housing Commission to various areas of land which the Housing Commission might consider for purchase? A. Yes.

GILES: My friend, I assume now, is wanting to lead more than necessary about this particular area of it.

HIS HONOUR: Yes all right. Just remember that.

SMART: Certainly your Honour.

Q. Mr. Shearman, can you recall now to what particular areas you directed the Housing Commission's attention, particularly in the west and the south-west? 30

A. I can't recall the particulars but at various times I would have suggested they look at Cecil Park.

HIS HONOUR: Q. Is this all documented? A. I don't know. I would think it would not be documented on Authority files.

Q. Then it is not on the Housing Commission files or is it? A. Yes I would think it would be on the Commission files. 40

Q. Wouldn't it be easier if there were documents about this?

SMART: Your Honour the only documents that deal with this that I have been able to see don't really cover the matter in all those - is apparently the discussions - from the file is that discussions took place but the detail of them - I haven't seen - I stand subject to be corrected, any great detail on the matter.

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HIS HONOUR: Why not? It's either relevant in these proceedings, or it's not. If it's relevant, why weren't they kept?

SMART: Your Honour, I think there was a situation where you had constant discussions going backwards and forwards, various areas being raised and discussed. 10

HIS HONOUR: You say that it is - anyway it's not covered by documents.

Q. Cecil Park - where is the park?

SHEARMAN: A. Cecil Park, Bonnyrigg, Quakers Hill, Doonside, Werrington, North Penrith, South Penrith.

Q. What do you mean by South Penrith? A. The subject land.

Q. You mean south of the freeway? A. South of the freeway. 20

Q. More than the subject land, or all the land south of the freeway? A. No, just the land between the freeway and the transmission line.

Q. That was nominated was it, as a possible site for the Housing Commission --

SMART: Your Honour I'll deal with that specifically.

HIS HONOUR: Q. Can I just ask questions generally. These areas you're talking about are areas - you say were nominated - what were they nominated by you, or were they subject of discussion -- A. Perhaps I can explain the situation to you. The Housing Commission wished to acquire various parcels of land for housing purposes. And if a site was offered to them, they would normally come to me and say: Look, what are the prospects of this land being rezoned? Or they might say that they wanted some land say at Blacktown or Penrith or Campbelltown or somewhere. And we would then discuss the likelihood of that land being released, and also the question of whether services would be provided in the short term, the medium term or the long term, based on my knowledge and liaison with the Metropolitan Water, Sewerage and Drainage Board. On other occasions I would have directed their attention to certain parcels of land which I thought might be appropriate for housing purposes, and they would then investigate them. 30 40

Q. So they fell into one of those three categories?

A. That's right.

SMART: Q. Mr. Shearman in relation to the land at South Penrith, south of the freeway but north of the 50

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transmission line, did you direct the attention of the Housing Commission to that? A. I did.

HIS HONOUR: Q. You directed them to that? A. Yes.

SMART: Q. And was it limited to the area north of the transmission line, as far as you can recollect? 10

A. Initially I directed their attention to the land between the transmission line and the freeway, but some of the parcels - affected land which extended south of the transmission line, it was made quite clear that my comments were solely in relation to the lands lying north of the transmission line.

HIS HONOUR: Q. That's what you were dealing with you say? A. That's right.

SMART: Q. Now Mr. Shearman in relation to the various sites which were canvassed, other than this area at South Penrith, south of the freeway, were those areas within areas phased for release under the Sydney Region Outline Plan? A. In the main they were, yes. 20

HIS HONOUR: Would you repeat that question again?

SMART: Q. In relation to the lands other than the ones at South Penrith, south of the freeway, were they within or without --

HIS HONOUR: Q. Which is in the main - what's that mean, some were, some weren't - most were? A. That's right. 30

SMART: Q. And Mr. Shearman which ones were not? A. Occasionally the Housing Commission would ask me about a large area of land, and some would have been proposed for urban use in the outlying - others might have been --

GILES: Your Honour, with respect, can we have examples?

HIS HONOUR: Q. I think you were asked - I think the question was nominate those ones that were outside the Sydney Region Outline Plan, and for this purpose I understand you are to exclude the land south of the freeway and west of Bringelly Road. A. I want to clarify one point, your Honour if I may and that is when you say outside the Sydney Region Outline Plan, the Sydney Region Outline Plan is shown on the map there; I'm referring to lands proposed in the Sydney Region Outline Plan for urban purposes. Now we were looking at one stage at land in Quakers Hill, which is within what we call the egg shown on the plan there; the north-west sector. And there is also shown - I think it's shown on the plan a special uses area, and 40 50

part of the land they were looking at was included in the special uses area.

Q. When you say part of the land they were looking at, what do you mean by that? A. Part of the land which I was asked to comment on was within a proposed special uses area. 10

Q. This is the Quakers Hill? A. Quakers Hill, half the area. And another example would be the land that's Cecil Hills, which was partly within a proposed special use and open space corridor.

Q. Where is Cecil Hills? A. South of Elizabeth Drive.

SMART: Q. Now Mr. Shearman various sites were discussed in the course of your discussions with the officers of the Housing Commission? A. That's right.

Q. And I think many of your discussions were held with Mr. McDermott of the Housing Commission? A. Yes, amongst others. 20

Q. And Mr. Shearman in relation to the land south of the freeway at South Penrith, and west of Bringelly Road, did you tell the senior officers of the Housing Commission anything in relation to the use of that land by the Housing Commission, and the acquisition of that land? A. Yes I told them it was outside the Sydney Region Outline Plan.

HIS HONOUR: Q. This is the land south of the freeway -- 30

SMART: West of Bringelly Road --

HIS HONOUR: Q. -- and north of the easement?

SHEARMAN: A. Right.

GILES: Could we have determined when your Honour?

HIS HONOUR: Q. I think this is somewhat important, you might tell me - tell me if I am right? I understand that you were referring only to the land to the north - or at least of the easement, west of Bringelly Road, south of the freeway; now who was it you had the discussions with, Mr. McDermott was it? A. With Mr. McDermott, I would think I had discussions with Mr. Ravenscroft, and I think with Mr. Bourke. 40

Q. And what was the query raised, and what were your responses? A. There were various discussions over a period of time, but initially my discussions --

Q. And what's the period of time? A. Probably a year.

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Q. When? A. From 1972 to 1973, I can't say exactly when the discussion was first started, because there were continuing discussions which might have included other land at various times - it might have excluded this land, it would just depend on which matters were raised at a particular time. 10

Q. What was asked and what was said? A. It would have been made quite clear that the land was outside the urban proposals of the Sydney Region Outline Plan, but that I felt that there was a case for the Commission to acquire the land, because of the particular problems the Commission was having at that time.

SMART: Q. And what were those problems, Mr. Shearman?

GILES: I object to that. Mr. Smart's clients can tell us about their problems, your Honour, I imagine rather than SPA, unless they were part of the conversation. 20

HIS HONOUR: Q. Were you told what the problems were that you applied your mind to, when this advice was being given? A. I'd had long discussions with the Commission about their problems, and including with Mr. Bourke, who was concerned that the Commission was unable to obtain sufficient land for its future needs. And there had been discussions about other pieces of land, where the Commission had had difficulties, or perhaps couldn't pay the price which developers were paying. And there was I think a change in the Commission's policy if you like - if you can call it a policy, to look towards large areas of land in relatively few number ownerships, rather than the 5 acre parcels which tended to predominate in the western sector, and elsewhere in the Sydney region. So that acquisition would be facilitated and that presumably the land could be resumed fairly readily, because the Commission had a difficulty in other areas, such as at Bonnyrigg where there were quite a number of large 5 acre parcels, and found it very difficult to consolidate sufficient areas of land for its needs, so that it could be economically developed, in the way that the Commission develops land. 30 40

Q. And when you said - so I know: I said it was outside the Sydney Region Outline Plan, but I felt that there was a case for Commission; you were telling me the Commission as opposed to anybody else? A. Yes definitely, only the Commission. I felt the Commission had special needs.

Q. That's a planning matter, is it, as to who uses the land - anyway that was your view? A. That was my view. 50

Q. Were you asked: how long will we have to wait;

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or not, or didn't anyone ever talk about that?

A. Quite clearly the question of how long was a matter for the Authority itself to determine.

Q. But were you asked that by the -- A. I was probably asked whether the land could be serviced, which usually determines how soon land can be rezoned, if approvals are given.

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Q. I just want to get it clear, because this is an important part of the case, Mr. Shearman. When you say "probably" you mean you were or weren't, or don't remember? A. It would have been part of the discussions, yes.

Q. And when you say part of the discussions, what would you have said? A. In relation to sewerage I said that it could be serviced in conjunction with the adjoining lands to the north, that is the lands north of the freeway; and that as far as water was concerned, there didn't appear to be a major problem in obtaining the supply. Sewerage was the major factor normally in determining whether land could be released, not so much water.

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Q. Keep your voice up, I'm sorry. A. Sewerage was the major determining factor in determining whether land could be rezoned; water tended to be less of a problem in most cases.

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Q. And sewerage you thought could be connected to the land north of the freeway; and water you didn't think there would be a problem? A. That's right.

Q. Is this right, still nobody mentioned when all this might happen. A. The problem in Penrith was that the Water Board was not reservicing --

Q. No, what I'm asking is, when you were giving the advice to the Housing Commission, did the question as to when this land could be released come up, or not?

A. Yes, it would have been discussed.

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Q. When did you advise them it would be, or it could be? A. I can't recall, it was somewhere during that period.

Q. I don't mean what was the month you advised them, what is the time within which you said the land would remain unreleased? A. I think there were two distinct matters here, one is: when can the land be serviced, and the other is when it can be released.

Q. And you thought it could be serviced -- A. I thought it could be serviced fairly readily --

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Q. Fairly quickly? A. Fairly quickly.

Q. Then the next question, when could it be released, immediately thereafter? A. This would depend on the Authority, if the Authority was to agree to it.

Q. But did you give any advice about that, that's what I'm asking you? A. I don't think I did give any advice, because clearly it was not a matter which I could advise them on. I could merely give them my indications related to the servicing of the land. 10

Q. There's no documents about this? A. No.

SMART: Q. Mr. Shearman do you remember being present at a meeting between Mr. Bourke, the Chairman of the Housing Commission and Mr. Ashton, the Chairman of the State Planning Authority? A. Yes I do.

Q. And do you remember the question of rezoning being raised? A. I do. 20

HIS HONOUR: When was this?

SMART: Q. Can you remember approximately when it took place? A. I can't say exactly, it was during that period.

HIS HONOUR: Q. But what period, during the year? A. Between the period when I first had discussions with the Housing Commission and the date of resumption.

Q. And when did you first start discussing with the Housing Commission? A. I can't recall exactly it could have been early 1972, I just don't recall. 30

SMART: Q. At this conversation at which you were present, can you tell the Court what Mr. Bourke said and what Mr. Ashton said? A. Mr. Bourke of course was acting on the advice which I had given to --

HIS HONOUR: Q. Just tell us what was said. He might have said that, I don't know. A. Mr. Bourke said that the Commission was anxious to acquire the land south of the freeway for Housing Commission purposes and he said that he was aware that the land was outside the area set aside for urban purposes in the Sydney Region Outline Plan. However, he felt there was a case for the land to be acquired by the Housing Commission because it did need land for its future housing needs. 40

Q. What land was being discussed? A. The land in question, I recall, was Tatmar's land but Mr. Bourke was quite aware of the situation that --

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- Q. Well just - Tatmar land was being discussed. Tell us - well he may have made his awareness known in the conversation. What did he say? A. A request for rezoning related to the land north of the transmission line. 10
- Q. He asked that, did he? A. I think you are asking me to recall precise words of a conversation had about 10 years ago.
- Q. No but what I am asking you - and I must say Mr. Shearman if you don't know please say so. I don't want you to try and reconstruct this by reference to events that might have happened in the last 10 years. If you don't know, please say so, that's all I am asking. If you remember clearly, say so, if you don't, please say so. A. The purpose of the meeting your Honour was for - the purpose of the meeting was to discuss the question of whether this land could be rezoned and Mr. Bourke came, possibly with other officers, and discussed that question with Mr. Ashton, Mr. Kacirek and Mr. Wickham, and I was present. 20
- Q. Mr. who? A. Mr. Wickham. I think Mr. Wickham was also present. The conversation related to question of whether the land could be rezoned, putting it very simply.
- Q. And it is your clear recollection that was talking about the land north of the transmission line easement? A. Yes. 30
- Q. Yes, well, you're asked what was said? A. By Mr. Ashton?
- SMART: Q. Yes, by Mr. Bourke and by Mr. Ashton?
A. The representatives of the Authority, including Mr. Ashton, were opposed to the land being rezoned because it was outside the Sydney Region Outline Plan and they felt that any departure could cause a breakdown in confidence in the plan. 40
- Q. That was the effect, was it, of what Mr. Ashton said to Mr. Bourke? A. That's right.
- Q. Was there any discussion about acquisition by the Housing Commission of the land at that meeting?
A. Yes there was.
- Q. Can you tell the Court what was said about that by Mr. Bourke and by Mr. Ashton? A. Mr. Bourke wished to acquire the land.
- Q. Yes and was there any - can you remember any discussion about the various reasons for acquiring it given by Mr. Bourke? A. Not specifically. 50

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HIS HONOUR: Q. When Mr. Ashton was saying he opposed it, was he saying that he preferred it didn't go or was he saying: In my position, I can tell you so far as I can be sure about anything, this land will not be rezoned, will not be - or released? Or was he saying it might be but I prefer it not to be? A. No I think he was making it quite clear that the Authority would not recommend the rezoning of the land. He was very firm about it. 10

SMART: Q. Mr. Shearman, do you recollect whether at that meeting after Mr. Ashton had communicated his views, there was any discussion as to whether or not the Housing Commission would proceed to resume the land? A. Where I have difficulty is that I can't recall whether these matters were discussed at that meeting. 20

HIS HONOUR: Q. Sorry? A. Where I have difficulty is that I can't recall whether that matter was discussed at that meeting, whether it was discussed at subsequent meetings or whether I was advised of that fact, but I knew the Commission intended to proceed with acquisition.

SMART: Q. Mr. Shearman, to the best of your recollection --

HIS HONOUR: Q. When you say acquisition, what did you understand the Housing Commission was going to acquire in relation to the Tatmar land? The whole of the land including the land south of the transmission line or -- A. No, the resumption of the whole of the land. 30

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GILES: Q. (contd) ... of the State Planning Authority or its representatives, to the acquisition. Do you wish to add to that evidence, that there was such an agreement at that meeting or not? SHEARMAN: A. I don't, because I think I said --

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HIS HONOUR: He's not sure what meeting it was.

SHEARMAN: A. I think I said that I'm confused as to what was actually said at that meeting; what might have been said at subsequent meetings; or what my understanding of what happened at subsequent meetings might have been, and it's very difficult for me to go back over 8 years and recall precisely what happened on a particular day.

HIS HONOUR: Q. And there's no note or anything of this, you say? A. Not as far as I am aware, no.

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GILES: Q. Have you inquired? A. Yes, I've examined the files.

Q. May I put it to you a little more directly though, was it agreed that the land might be appropriately acquired by the Commission for future residential use?
A. No, it wasn't agreed.

Q. That would be quite wrong to suggest that?
A. That's right.

HIS HONOUR: Q. Was it your understanding the Housing Commission thought it was getting it for residential use? A. It's quite clear that the Commission intended the land to be used for residential purposes - when it approached the Authority. The Authority proposed the re-zoning of the land - or its designation in the Outline Plan - for urban purposes, but I recall the Commission intended to proceed anyway. The feeling was that if it was acquired, it would do no harm because it was in public ownership and at some future date it could be used for some other urban purpose. The non-urban sectors in the Sydney Region Outline Plan were intended to be used for a multitude of uses, including open space, defence establishments, aerodromes, a whole range of public uses, amongst other things.

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Q. You may not be able to answer this but, I think you've told me that the Planning Authority actually acquiesced in the Housing Commission acquiring it, just what I'd like to know is, why do you know that it would do that? Wouldn't it have occurred to the Authority that once a government body like the Housing Commission got its hands on it, it was going to be hard to keep it out of the re-zoning, at least harder than it would be if it stayed in private hands, or not? A. I think

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this arose because of the determination of the Housing Commission to proceed with acquisition.

HIS HONOUR: Q. I know that, but I thought you told me that the Planning Department actually acquiesced in the Housing Commission buying it. A. Acquiesced in the sense that they knew it was going to be acquired. They couldn't oppose it. 10

Q. Earlier you did say they agreed with it, if you don't know, please say this Mr. Shearman, this is an important matter. A. I think if I explain; my difficulty is that I am trying to put events into a certain time period. There were discussions later on with the Housing Commission about phasing of this land, whether it could be serviced. The Housing Commission had a plan indicating that it might be used in - whether it was 1986 or 1990, I don't recall, but it certainly proceeded with the idea that the land would be used for residential purposes some day in the future. The Commission knew - sorry, the Authority knew that the Commission was going to proceed with acquisition, so in that sense, they agreed. 20

HIS HONOUR: Q. Is that what you mean by agreed? They didn't agree, they just didn't -- A. They didn't agree with the rezoning but they didn't oppose the acquisition by the Housing Commission. They didn't oppose - better - probably didn't agree with, they acquiesced. It's the same thing though. 30

Q. My next question, why not opposed? What did they have to lose by opposing? A. There was no commitment to rezone the land.

GILES: Q. I'd just ask you the question again if I may. Was it agreed in discussions between the Chairman of the Authority and the Chairman of the Housing Commission that the land at South Penrith, and I refer to the whole of the South Penrith site, 7770, should be acquired as part of the Commission's advance land acquisition programme? A. Well I still say yes, it was agreed. 40

Q. It was agreed? A. Mm.

Q. It was explicit in that, certainly understood I suggest to you, between the two Authorities that the land might appropriately be acquired by the Commission for future residential use, that's so, is it not? A. Definitely not.

Q. You'd deny that, would you? A. Deny it. 50

Q. You understand I am talking about the whole of

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site 7770, that is, not just the Tatmar and Penrith Pastoral land but the site we know the boundaries of. Do you understand what I am saying? A. Yes, definitely not.

GILES: Your Honour might the witness be shown exhibit AAB? 10

HIS HONOUR: What's that?

GILES: That's the correspondence, your Honour. April 1974 your Honour. Do you mind your Honour --

HIS HONOUR: Yes, pass it to Mr. Giles.

GILES: Q. I would like you to look at the document I've shown you from this exhibit which is dated 5th March, 1974, and it is a letter to the Authority, just read that to yourself. A. Yes.

Q. Do you see that? A. Yes. 20

Q. And there the Authority was being asked whether land might be appropriately be acquired by the Commission for future residential use? Please Mr. - just take it one step at a time. A. I am setting them out against the letter, if you don't mind.

Q. Just wait a minute. You will get the chance in a moment. The letter is to the Authority seeking confirmation that the land might appropriately be acquired by the Commission as a future residential use. That is right, is it not? A. That's right. 30

Q. Would you agree with me that the heading of the letter refers to site 7770? A. Yes.

Q. Would you agree with me that the plan referred to includes land - relates to land within that site? If you want the original, we can probably get it from the file. A. I am not aware what site 7770 applies to.

Q. It is the Garswood Road land, you know that land?
A. A few parcels of land stand in Garswood Road. Is it this land here?

Q. Yes that's the land there. There's no red edging, I'm afraid. A. No, but you mean site 7770 is this land here, is it? 40

Q. No, site 7770 is the whole of the South Penrith area to the south of the expressway which you referred to the Commission for purchase or acquisition.

A. Down to the transmission line.

Q. Past the transmission line, Mr. Shearman. I'm not

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going to argue about transmission lines at the moment.

A. I didn't refer the land south of the transmission line to the Commission, I'm sorry.

Q. You didn't? A. No.

Q. We will come back to that. Have you identified in your own mind the location of the Garswood Road land referred to in the letter of 5th March? A. Yes. 10

Q. There are no different considerations applying to that land to that which applies to any of the Tatmar land to the north of the easement, is there? So far as acquisition is concerned? A. Is this Bringelly Road here?

Q. Yes. It is all outside the Sydney Region Outline Plan, isn't it? A. That's right. Yes, it is.

Q. Would you then look to the reply of -- A. Sorry, I was just - the second plan here, what is this land? 20

Q. I will take you to that in a moment. Would you just turn back a sheet and you'll see a letter of 15th March? Back over again. Do you see that letter of 15th March, 1974? A. Yes.

Q. You will see by the initials that you were the author of that letter, were you not? A. That's right.

Q. Would you read that to yourself, please? Have you read that? A. Yes that's right.

Q. That was the reply which you drafted to the letter of 5th March, wasn't it? A. That's right. 30

Q. The Housing Commission by their letter was saying: Will you confirm that we can acquire this for residential use, weren't they? A. That's right.

Q. And your letter back gave that confirmation, didn't it? A. No it didn't.

Q. Do you suggest Mr. Shearman that your letter was not the green light that they were seeking? A. No, it was not.

Q. What was your purpose - you didn't write back and say no, did you? We will not confirm that use? 40

A. The question is whether the land might appropriately be acquired by the Commission for future residential use.

Q. You didn't write back and say no, did you?

A. I didn't say yes, either.

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Q. Mr. Shearman, you didn't say no, did you?

A. I didn't say no to acquisition.

Q. Mr. Shearman, you didn't say no to their question, did you? A. I did not say no to acquisition.

Q. Mr. Shearman, I hope we are at cross purposes. The question that they were asking you was whether it might be appropriately acquired for future residential use, wasn't it? A. That precise question wasn't answered. 10

Q. I was going to come to that. That was the question you were asked, wasn't it? A. That's right.

Q. Yes. Did you answer it? A. A reply was given which didn't answer that question in full specifically.

Q. Why not? A. Because of the State Planning Authority's opposition to rezoning. 20

Q. Why didn't you say so? A. The Commission knew that already.

Q. Mr. Shearman, if you were intending to say no, it was easy enough to say so, wasn't it? A. This letter was dated, when, March 1974. This was after the acquisition by the Housing Commission of the other land. I knew the Commission intended to buy additional land.

Q. Mr. Shearman, I am not understanding you, I don't think. Were you intending to say to them: No, you have the wrong idea; or yes, you have the right idea? A. I didn't answer the question. 30

HIS HONOUR: Q. You didn't answer the question? A. No, it is quite clear from the way the letter is worded.

GILES: Q. So you solemnly wrote back to another public authority where they have asked you a very clear question, a deliberately obscure reply, did you? A. I don't know that was deliberately because I don't recall being deliberately obscure about anything and all I have done is replied to a letter in relation to land. I haven't replied specifically to their question as to whether it could be acquired for future residential use because of course the State Planning Authority was opposed to its use for that purpose. 40

Q. You say that but there is not a word of it in the letter, is there? A. Of course there isn't because I act on directions from the Authority. The Authority's view is that there shouldn't be any rezoning of land.

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Q. If that was the view, why didn't you say so, sir?

A. I have no idea now why I didn't answer that one specifically but presumably it was because of the Authority's policy because --

Q. I see, you were intending in any event to say no, were you, you can't acquire for future residential use? 10

A. You can't ask me now what I intended to say 7 years ago. There is my reply to that letter. It was obviously thought out at the time because I had avoided the question of future residential use because of the Authority's policy.

HIS HONOUR: Q. Why did you avoid it? A. There was no need to avoid it. The Commission was aware of the State Planning Authority's policy.

Q. I'm sorry, I thought you said you avoided it, that's all. A. I obviously avoided it because I made no specific reference to rezoning. 20

Q. And why did you avoid it? A. Because the State Planning Authority's policy was opposed to rezoning. I couldn't write a letter saying yes, I agree with the proposal that you acquire for residential use.

Q. No, but I think you are asked why couldn't you have written saying: We oppose it?

GILES: Q. As you well know, we are opposed to it?

A. Well because - I think this bears out what I was saying earlier about - in fact it does bear it out. It was agreed in discussions that land should be acquired. 30

Q. As part of the Commission's advanced land acquisition policy? A. That's right.

Q. You knew that the Housing Commission's statutory charter was to - was for housing purposes, didn't you?

A. No, but they'd acquired land for other purposes. They didn't just acquire land for residential purposes.

Q. Can you explain to me if that was the purpose of your letter why you went on to write paragraph numbered 3? Water may be made available, sewerage etc., new works would serve the lands. Just read paragraph No. 3 in your letter, Mr. Shearman, please? A. Yes I'm reading that. 40

Q. Have you read your No. 3? A. Yes I have.

Q. That is clearly indicating that the land was suitable for residential use? A. Yes that's right.

Q. And contemplating its use for that purpose, wasn't

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it? A. Obviously the question wouldn't be asked if the Commission didn't have an intention to develop the land.

Q. Mr. Shearman, the letter you were answering was requesting confirmation by the Authority of its attitude, wasn't it? A. That's right. 10

Q. Well the Housing Commission knew what they were going to do or wanted to do, didn't they? A. That's right.

Q. It wanted confirmation of the Authority's attitude, didn't it? A. I think that's been confirmed though.

Q. If you were intending, as I think you told us, to politely avoid the question because of the firm opposition by the Authority, why did you go on to - in paragraph 3 of your letter, refer to the availability of water and sewerage for those lands, if it weren't to say to the Housing Commission, yes, you may go ahead on the assumption that you have asked me to assume? 20

A. I think I always expected the Housing Commission to develop that land or press for its development at some stage in the future. That was borne out by later events.

HIS HONOUR: Q. I'm sorry? A. That was borne out by later events. 30

Q. But you say that's the view you had at the time you wrote the letter? A. Yes, it was.

GILES: Q. Were you abandoning as it were the State Planning Authority's opposition? A. I couldn't abandon the SPA's opposition because that was their policy as stated by the Chairman, Deputy Chairman and Chief Planner.

Q. Even though they had made the agreement referred to in your letter? A. That's right.

Q. You, in any event, I take it, would you agree that the land was acquired by the Housing Commission with the SPA's full knowledge and approval? A. Full knowledge and agreement. 40

Q. Well approval, would you accept approval?
A. No, I wouldn't say approval.

Q. How do you distinguish - how do you construe the word "agreed" in your letter that you have just looked at? A. Well "agree" is to go along with it and "approve" is to give recognition to it or support it.

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Q. Did you accept that from the time of that agreement which I'd suggest to you was prior to acquisition of this land, that there was an obligation upon the Authority to make the land available for public housing when required by the Housing Commission? A. Could you just ask the question again, I missed the first part?

10

Q. Yes. Do you accept that from the time of the agreement referred to in your letter that there was an obligation upon the Authority to make the land available for public housing when required by the Housing Commission? A. Definitely not.

Q. You'd say that. just -- A. Definitely not.

Q. Definitely, no question about it?

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GILES: Q. (contd) ... that the letter you wrote,
exhibit AAB -- A. I said no.

Q. Perhaps can I put it to you again so that there
can be no misunderstanding about it? In your letter of
15th March, 1974, were you not saying in paragraph 2 that 10
it was agreed that in the discussion to which you refer
that the land should be acquired as part of the Commis-
sion's advanced land acquisition programme for future
urban development? A. Yes, I did. I would like to
qualify that though.

Q. You'd like, well, to correct me or qualify it?
A. Qualify it. Because the advanced land acquisition
programme by the Housing Commission wasn't necessarily
wholly for residential purposes.

Q. But Mr. Shearman, when you go back, if you would, 20
to the letter from the Housing Commission, would you
look back to that letter from the Housing Commission?
A. Yes.

Q. What they say to you is, your confirmation is
requested that the land might appropriately be acquired
by the Commission for future residential use? A. Yes,
that's correct.

Q. That was their proposal, was it not? A. Yes
that's correct.

HIS HONOUR: Q. And you say your words "urban 30
development" --

GILES: Future urban development.

HIS HONOUR: Q. -- is not the same as their future
residential use? SHEARMAN: A. No, definitely not.

Q. When you say definitely not, can I tell you - if
I read this, on the face of it, it seems to me it is
exactly the same? A. If I can explain the situation,
in the north-west sector, for example, the Housing
Commission acquired considerable areas of land at
Quakers Hill. Peel's Dairy land was one of the parcels 40
in question. The Authority also acquired some land
there, but because there had been no definition at that
stage of how the land would in fact be zoned within
that area, there could be no guarantee that the land
acquired by the Housing Commission would in fact be
used for residential purposes. It was envisaged there
could be some exchange, as long as there was some pub-
lic ownership within that area there could subsequent-
ly be an exchange of land between perhaps other
Government departments or even private interests to en- 50
sure that the land which the Housing Commission did

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develop was in fact set aside for that purpose in the detailed planning?

Q. I appreciate that but what I'm asking is this. In the minute - have you got them in front of you?

A. Yes, I have.

10

Q. In the letter that you got, were you asked this? Before the matter is referred to the Commission, so the Secretary of the Commission is saying and I suppose this is confirmation, I haven't got it all in mine, your confirmation is requested that the land might appropriately be acquired by the Commission for future residential use. A response to that is in accordance with paragraph 2, and you say it was intended by paragraph 2 not to give the Commission the impression that you were confirming and agreeing to them using land for future residential use? A. That's right, yes.

20

Q. You say that the reason why they should not have got that impression is because of your use of the words "future urban development"? A. And also because of the Authority's policy at that time.

Q. Why didn't you put that policy in the same document? A. I didn't put it in the document, I suppose - I mean, I am sort of looking back in hindsight now - because the Commission, as far as I was concerned had a clear understanding that the Authority had taken the view that the land would not be rezoned for residential purposes, and that probably is why in the first paragraph I said: The land is not included within areas proposed for future urban development under the Sydney Region Outline Plan.

30

GILES: Q. Mr. Shearman, urban purposes would be purposes other than non urban, wouldn't they? A. They would.

Q. Yes, and that would involve a breach of the Sydney Region Outline Plan, wouldn't it? A. If it was urban, yes.

40

Q. Do you seriously suggest that there is a distinction for present purposes between future residential use and future urban use in this correspondence? A. Yes I do.

HIS HONOUR: Q. Can you tell me this then? What did you have in mind might be the urban development the Housing Commission had - that doesn't include the residential? A. I think I did explain earlier your Honour that "urban" includes other uses than residential, when I was talking about the Sydney Region Outline Plan.

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HIS HONOUR: Q. What did you have in mind though when you wrote that? A. I included perhaps some industrial use, some commercial uses, open space uses or even special uses.

GILES: Q. Open space is urban, is it? A. In association with other uses, yes. 10

Q. In association with a residential subdivision I suppose it is? A. That's right.

Q. What do you mean? That they might have a residential subdivision on it and part of the land be taken for - opened for active recreation? A. If it was residential, yes.

Q. Mr. Shearman, was it not - you have agreed with me that the - that you set out to persuade a worthy authority that this was an appropriate case where they could approve future residential use? Correct? 20
A. Yes that's right.

Q. Are you saying that you failed in that task, that Mr. Ashton or the Authority rejected your advice?
A. They definitely rejected the advice.

Q. Definitely? A. Yes.

Q. No two ways about it? A. No two ways about it.

Q. And rejected it, what, face to face with Mr. Bourke? A. Yes.

Q. When they said in that letter: Would you please give confirmation, did you regard that as a very cheeky thing to do to try and trap you like that? A. I can't recall as I'm having to go back 7 or 8 years. 30

Q. Just looking at the letter? A. It seems that they were trying to trick me perhaps, yes.

Q. Didn't you write back and say: What are you talking about, a confirmation? You know very well that Mr. Ashton and Mr. Bourke didn't agree on anything of that conversation. A. Well because I assumed that they knew and, as I've explained already, the first sentence in the second paragraph indicates quite clearly that the land is not proposed for future urban development. Now if the Authority at that time in 1973 or whenever it was, had agreed with Mr. Bourke, presumably I could have been in a position to say, the land was included within the areas proposed for future urban development. 40

Q. But we all know from looking at the document, it wasn't, was it, in 1968, included? A. No, but we are

talking about 1974 and discussions which took place perhaps since 1972-1973.

Q. In any event, you certainly would deny that in November of 1973 you confirmed to Mr. McDermott the understanding that the Authority would have found it most difficult to resist any application by private interests to have either the whole of the sites or a substantial part of the sites developed for urban purposes, possibly on a piecemeal basis, and at the most, the more preferable course would be for the land to be acquired by a statutory authority? A. Yes at November 1973. 10

Q. Did you confirm that to the Authority - to the Commission at that time? A. I don't recall.

Q. If you had said that, that would have been quite at odds with the evidence you are giving now, wouldn't it? A. I think the situation was that I was always of the view that the land would be used for urban purposes. 20

Q. But Mr. Shearman if the Housing Commission's officer rang you for record purposes to say, look, would you just confirm the arrangement or understanding which has been arrived at, that putting it shortly we can use this land, you wouldn't have agreed to that surely in the face of what you now say was Mr. Ashton or the Authority's clear opposition would you? A. Well you see the problem is that I knew that the Commission was proceeding with plans to develop the land -- 30

HIS HONOUR: Q. Why does that alter, do you say? A. I was in the situation where I had supported the development of this land for residential purposes --

Q. Yes. A. And it had been my firm view right until the time when the discussions were held between the Commission, that's Mr. Bourke and Mr. Ashton, that a reasonable case could be made for the land north of the transmission line. And when that meeting took place the Authority did not agree; and the Commission still proceeded with acquisition, so it was quite clear that at some stage the Commission would seek to have that land developed for residential purposes. 40

Q. Yes. A. And there were ongoing discussions where all the sites which the Commission had acquired or had under consideration, were being assessed as to when they could be developed, based on servicing and the Commission's housebuilding programme, and on the - I think I, did I mention services, and on the provision of services? 50

Q. Yes. A. And this was constantly being reviewed

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and updated. I'm sorry, and the potential number of lots available, too. And there were ongoing discussions on this basis.

Q. But I'm sorry, I don't understand why that compels you to agree with a statement that was made by the Housing Commission, which I think you said you thought they were trying to trick you. A. Well they were trying to trick me in the sense that they did, quite rightly in that letter say they wanted the Commission's confirmation that it would be used for future residential use. I couldn't give that confirmation because the Authority -- 10

Q. No I think you're being asked, what was the inhibiting factor in sitting down and writing a note to this effect: we don't understand why you're asking this confirmation, you know that the chairman, the deputy chairman and your chairman agreed on no such thing. What was the inhibiting factor in doing that? A. Well I can't recall because it's some years ago. 20

GILES: Your Honour I also had in mind exhibit S when I asked those questions.

HIS HONOUR: What's exhibit S?

GILES: That's - I can't cross-examine this witness on it your Honour because it's a Housing Commission document.

HIS HONOUR: As long as you refer to it in address. 30

GILES: Q. May I ask you directly, did you in November 1973 confirm to Mr. McDermott or one of his officers the understanding previously reached concerning the acquisition of this land? A. The answer is I don't know.

GILES: Could I have exhibit S in due course your Honour?

HIS HONOUR: Don't you have a copy of it?

GILES: No I don't have a copy of the plan your Honour.

HIS HONOUR: Well there's no plan attached to my S. Oh is there? No, I'm told there is I'm sorry. Yes. Do you want to show that to Mr. Shearman? 40

GILES: Could I just have a look at it first your Honour.

Q. Now isn't it so that it was known certainly fairly shortly after acquisition that the Housing Commission were planning to develop this land, actually develop it during the period 1979 to 1983? A. I can't be sure of that.

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HIS HONOUR: When was that do you say, that was in --

GILES: Shortly after acquisition your Honour. Certainly by 1975 that was known.

HIS HONOUR: Yes.

GILES: Q. Now Mr. Shearman do you recollect receiving an application in relation to this land, by a man called Lindenberg? A. It was a letter, yes. 10

Q. And of course that application related to a large parcel of land, the substantial part of which was south of the transmission line, that's right isn't it?

A. It was a large parcel of land, I don't know whether it included land south of the transmission line or not.

Q. Now that was directed to you of course, that application was it not? A. Yes to my section. 20

Q. To your section. And it was received around about the 20th of June 1973? A. Yes.

Q. And it referred and purported to be of course in response to the Ministerial statement - Premier's announcement and the Ministerial statement didn't it?

A. Well could I see the letter? I don't recall.

Q. Yes certainly.

HIS HONOUR: Which land was it referring to?

GILES: It's a plan your Honour, it refers to all the subject land plus lands to the south and to the east. Sorry, almost all the subject land, plus adjoining land to the south and west, I'm sorry. 30

HIS HONOUR: South and west.

GILES: Emu Plains and this one to the south I don't know.

HIS HONOUR: Yes.

GILES: Q. Now Mr. Lindenberg referred his application to the Premier's announcement, that right? A. That's right yes.

Q. And purported to show that this land complied with it, is that correct? A. Yes that's right. 40

Q. And included reference to a firm of town planning consultants. A. That's right yes.

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Q. Now do you recall receiving a memorandum from Mr. Armstrong about this matter?

HIS HONOUR: Mr. Armstrong being who Mr. Giles?

GILES: Q. An officer of yours? A. Yes. Yes I asked for a report. 10

Q. And he gave you one? A. Yes, that's right.

Q. And Mr. Lindenberg was not told that the area was outside the Sydney Region Outline Plan and therefore could not be considered, was he?

HIS HONOUR: Q. Well can I just ask you this, do you have any recollection one way or another other than by what was in that file? A. No. I remember the matter coming before the - well coming to the Authority.

GILES: Q. And Mr. Shearman is it not clear to you from that file that Mr. Lindenberg was not informed that the proposition was out of court? A. Well I'm not sure he was informed anything as yet. 20

Q. But I'm just asking you to affirm my proposition.

OFFICER: What if he does?

HIS HONOUR: Well he may need to go through the file in more detail to determine this, you know there could be notes, could be anything, I don't know, advanced to him.

GILES: Well your Honour he's the officer in charge and he's got the file in front of him.

HIS HONOUR: Now he has, but maybe he wants a few more -- 30

Q. Are you able to tell that against that question now? A. I can't see a reply, this is why I'm --

HIS HONOUR: Q. No it's not suggested there is a reply, is there anything in that file that would indicate to you that you really said to him in effect, well look there's no point in doing anything about this because you're outside the Sydney Region Outline Plan? A. Not as far as I can see so far, I'm just seeing when the file was marked to me. 40

GILES: Q. Let me try and assist you Mr. Shearman, I'm not going to cut you short from your opportunity to look through it, but if you follow with me for a moment you'll see that the application comes in and you refer it to Mr. Armstrong for his report do you not?

A. That's right.

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Q. And we see that in writing. A. Yes.

Q. We have Mr. Armstrong's urgent report do we not?
A. That's right.

Q. And that recommends simply saying that because
the area is outside the SROP the Authority will have to
make a policy decision before agreeing to any such
proposal. That was the recommendation wasn't it? 10
A. That's right.

Q. Now I suggest to you and you can check this, that
the only other note on the file that we can discern
about this matter is the note of the 7th of November
1973: Now resumed by the Housing Commission, no further
action required. Which was on - I think on the --
A. Can I interrupt - can I give some information?

HIS HONOUR: Yes you can. 20

SHEARMAN: When Mr. Satara came to see me --

GILES: Q. Well I just want to make it clear that I'm
talking now of communications by the SPA to Mr. Linden-
berg. A. Well so far I can find no reply to Mr.
Lindenberg.

Q. Can I just go back to the application, I want to
draw your attention to some words. On the letter of
application you'll see the words, now resumed by the
Housing Commission no further action required 7/11/73.
A. Right, I've found that. 30

Q. Well now your officer recommended that he be told
that the Authority will have to make a policy decision
before agreeing to any such proposal? A. Yes that's
right.

Q. You can't find in the file as you sit there, any
evidence that that was done? A. No.

Q. Nor can you find any evidence in the file that
Mr. Lindenberg was told anything, is that correct?
A. No he wasn't because in between times I've found
that Mr. Lindenberg had no authority to make application. 40

Q. All right. A. And I think a letter was received
from the company.

Q. Yes, on the 1st of August 1973? A. 30th of
August, received on the 1st of August 1973.

Q. And the application of Mr. Lindenberg had been re-
ceived on the 20th of June had it not? A. 25th.

Q. 20th. A. Yes it's a bit puzzling actually. The

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main letter has got the 20th and there's another one got the 25th.

Q. Well certainly you must have received them by the 20th must you not? A. Yes, well this says the 20th.

Q. Your own note says the 20th doesn't it, down at the bottom of the page? A. Yes that's right. 10

Q. But in any event Mr. Armstrong reported to you urgently as requested? A. That's right.

Q. When did he report to you? 26th was it?
A. On the - no date.

Q. Is there a note on the file itself? A. No there's no date.

Q. In any event you've got no reason to believe that he did other than report urgently to you have you?
A. Well he would have reported prior to the 30th of July, there's an exhibit on the file. The folios are numbered. 20

Q. Yes. Now I -- A. Excuse me. If in fact the file reached me because I note on the file that the marking of the file is to Armstrong on 28th June which suggests that I hadn't received this minute by 28th June, so I don't know when that was received by me, if it was received at all.

Q. In any event, you have no reason to believe that his recommendation would not have been followed if anything were done so far as communicating with Mr. Lindenberg was concerned? A. No because I had to approve that recommendation. 30

Q. Having reviewed it, have you any reason to believe that you would have taken a different view? A. I think I would have said it was outside the Sydney Region Outline Plan, that's right.

Q. That's not what he says, Mr. Shearman, is it? That because the area is outside the Sydney Region Outline Plan, the Authority will have to make a policy decision before agreeing to any such proposal?
A. That's right. 40

Q. Do you see any reason to disagree with that approach to the minute? A. No but it doesn't mean that I couldn't reply saying that it was outside the Sydney Region Outline Plan.

Q. I am asking you a simple question. Do you see any reason to disagree with that recommendation?
A. No, that's okay, that particular recommendation, yes.

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Q. Where land - I withdraw that. Your liaison with the Housing Commission involved cases where it was desired to alter the phasing of release of land, is that so? A. That would have been the end result, yes.

Q. Now the phasing of land for release under the plan was, you knew I suggest to you, a matter of great significance in the market for land, was it not?
A. Yes, that's right.

10

Q. And a change in the phasing would alter the value of land? A. Yes, it could.

Q. More than likely would? A. Yes.

Q. Because - well it is obvious. Were there occasions when detailed investigation of land by you in your capacity as a liaison officer led to the conclusion that from a planning point of view, land should be released earlier than envisaged by the plan? A. Should be or could be?

20

Q. Should be. A. This would depend on the circumstances.

Q. But can you recall such circumstances arising?
A. I don't think any proposal could be put before me.

Q. Is it not so that upon investigation of particular parcels of land, if it became known that for example sewerage and water would be available earlier than anticipated, that it may have become appropriate to advance the release of the land as compared with the Outline Plan phasing? A. Yes.

30

Q. Can you recall occasions when the - in relation to such a parcel of land, the Housing Commission sought again through the liaison arrangements, confirmation - I withdraw that - that you suggested to the Commission that it ought to acquire land for early residential development although it wasn't being phased for such development? A. Yes that's right.

Q. One of the examples of that was South Doonside, was it not? A. Doonside, I can remember that, yes.

40

Q. Which was phased for 1980-1990, is that right?
A. That's right. Can I qualify that? Part of South Doonside?

Q. Certain lands at South Doonside? A. Part of the land at South Doonside which we were considering at that time.

Q. But discussions with the Water Board showed that the services would be available to a greater part of

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the land earlier than anticipated? A. That's right, yes.

Q. So you suggested to the Commission they should acquire that land for early development for residential purposes? A. Yes.

10

Q. Mr. Shearman, that being so, did you suggest that although that was the fact and although you knew that the Housing Commission intended to proceed, that the land should not be included within the forthcoming announcement of the fourth stage release areas?

A. This is South Doonside you are talking about?

Q. Yes. A. I think that is right, yes.

Q. And that you made that recommendation because if the land were included in the announcement, the Valuer-General might attribute a higher land on its potential for residential use? A. Yes that's right I think.

20

Q. Mr. Shearman, have --

HIS HONOUR: Q. Where's this land, was this --

A. South Doonside.

GILES: Q. South Doonside. It is not part of this particular -- A. No.

Q. In other words, although you had referred the Housing Commission to the land? A. Yes.

Q. Although you knew that it was going to acquire it for the purpose of residential development? A. Yes.

30

Q. And do so on the footing that it would be released earlier than phased? A. Yes.

Q. That fact should not be told to the public?

A. That's right, I agree.

Q. Because it may lead to higher resumption values?

A. That's right, yes.

Q. You saw nothing improper about that? A. Certainly not.

Q. Is that sort of a tactic something you discussed with Mr. Ashton or brought to the attention of the authorities in a formal way? A. No, I would not say in a formal way except that it was generally accepted that land for public purposes, and that would include the Housing Commission, could where possible be able to prepare quite in advance of rezoning. In fact, the Authority had done this in Campbelltown.

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Q. Mr. Shearman, you appreciate that course was to say the least most misleading to the public, wasn't it?

A. I don't think it is misleading to the public, no.

Q. Was there any such motivation behind the way the Lindenbergs application was dealt with or not dealt with?

10

A. The reason that was not dealt with, I would suggest, is because of the discussions which had taken place with the Housing Commission and the understanding that the land would be acquired by the Housing Commission, by resumption.

HIS HONOUR: Q. Sorry, the understanding? A. That the land would be acquired by the Housing Commission by resumption.

GILES: Q. What, you mean it wasn't dealt with for that reason, is that so, is that what you are saying?

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A. That may have been the reason, yes.

Q. Mr. Shearman, you have given evidence concerning your recollection ...

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HIS HONOUR: Q. (contd) ... it north and then you wanted to -- ASHTON: A. It wasn't all in the one conversation.

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Q. No, in the first conversation - well, the first decision was that the freeway be shifted to the north and then later you attempted to see if it could be shifted a bit further to the south but that was unsuccessful? A. Yes.

Q. When was this first decision? A. It would be in about 1964 I think, of that order.

Q. And the second - well, not decision, the second -- A. That decision was in 1968. The decision was he wouldn't move it, put it that - I mean the line of it, not the - the expressway was not then built.

20

SMART: Q. Mr. Ashton, the freeway boundaries - sorry, the boundaries of the Sydney Region Outline Plan in the western sector were then subsequently fixed as shown on the Sydney Region Outline Plan? A. Yes they were fixed along the boundary of the expressway as you just mentioned earlier and then we went south to the - down along the line of the high tension power lines.

Q. Then you came to Bringelly Road? A. I think it was east of Bringelly Road.

30

Q. Yes sorry, but they followed the line of the high tension easement east of Bringelly Road and came to Bringelly Road, the boundary, and then along the freeway? A. Yes.

Q. In about 1973, do you remember some discussions taking place between, amongst others, yourself and Mr. Bourke of the Housing Commission? A. Yes I remember discussing it with him.

Q. Do you remember the discussions relating to some land west of Bringelly Road and south of the freeway? A. Yes.

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Q. In particular, relating amongst other matters to the Tatmar and Penrith Pastoral Company land? A. I would presume it was included in the land I was talking about.

Q. In the course of your conversation with Mr. Bourke, was - did Mr. Bourke say anything to you --

GILES: I object to this question.

HIS HONOUR: Just let him ask the question first.

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GILES: Your Honour, it is obvious it is a leading question by the form of it. Could he not ask, your Honour, what was said. Your Honour, the topic of the conversation is this land.

HIS HONOUR: I know that, but you know we are talking about what was said 12 years ago. 10

GILES: Unless the witness is allowed to give his version your Honour, we will have Mr. Smart's version.

HIS HONOUR: I know but I mean, Mr. Giles, this is this artificiality of these rules, isn't it? As if anyone can stand up here 13 years later and give a verbatim account of what took place in a conversation --

GILES: I am not your Honour - your Honour does me less than justice. I am not suggesting that that be done. What I am suggesting is that not only the rules of evidence but the rules of common sense dictate that if a conversation is to be recalled after that length of time, it is better and safer for the witness to give his recollection than counsel to select bits of it. 20

HIS HONOUR: I suppose that - yes I acknowledge that, yes. Well you'd better ask him what his recollection of these events were.

SMART: Q. Mr. Ashton do you have a recollection of conversations concerning this land with Mr. Bourke amongst others, in 1973? A. Yes I can remember the conversations and my view was that as far as I was -- 30

HIS HONOUR: Q. The view you expressed? A. The view I expressed was that the boundary had been fixed after some careful thought and discussion, and we were not in any way inclined to change it as far as the State Planning Authority was concerned.

Q. Were you asked to change it? A. Well we inferred that it should be changed yes.

Q. While we're on that subject, can you tell me what the changes asked were? A. Not in detail no. 40

Q. In general. A. In general it was to allow some urban development south of the freeway on the land which the Housing Commission wished to acquire.

SMART: Q. And do you remember Mr. Ashton what Mr. Bourke said at the meeting about the land that the Housing Commission wished to acquire and the reasons that he gave to the meeting? A. I don't remember his reasons exactly but quite clearly the gist of them was that he was anxious to get land for expansion of

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Housing Commission urban property and he thought it was a good site and he'd like to use some of it in the future.

Q. And you've told the court that you told Mr. Bourke that you didn't see that there was any good reason for changing the zoning, or words to that effect? 10

A. Yes, I certainly did.

Q. And was that the view you adhered to? A. As far as I know I adhered to the view that we were not proposing to change the boundary.

Q. And that the boundaries of the SROP in that South Penrith area should remain as specified in the outline plan? A. Yes.

Q. And Mr. Ashton did you agree with the suggestion that there was a case for extending the boundary down to the transmission line? 20

GILES: I object to that your Honour.

HIS HONOUR: Oh Mr. Smart really, there's never been a mention to date of that and we are trying to get a recollection.

SMART: Q. Well Mr. Ashton do you have any recollection at the meeting of there being any discussion about - do you have any recollection as to which part of the land or whether it was part of the land or all of the land that was to be - whether Mr. Bourke was interested in rezoning -- A. I don't think that was really important to me. I just didn't want that boundary changed. 30

Q. In relation to the acquisition of the land, do you remember Mr. Bourke at that meeting or a subsequent meeting discussing whether the acquisition would proceed?

A. I think he said he'd go ahead with acquiring it, or trying to acquire it, put it that way, which was nothing I could do about that. That's his prerogative as Chairman of the Housing Commission.

Q. Yes. Can you remember whether anything was said by Mr. Bourke about whether rezoning would occur eventually? A. Well I suppose he said he'd do what he could to get it rezoned, and I said, you know -- 40

HIS HONOUR: Q. Over your dead body? A. Well my body got dead after that your Honour, in the sense that I went to another soft job.

SMART: Q. In 1973 would you have regarded the rezoning of the 884 acres of Penrith Pastoral Company and Tatmar as a major matter? A. Indeed I would yes.

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Q. And if any private developer had wished to see you about that what would your reaction have been?

GILES: I object on relevance your Honour.

HIS HONOUR: Well I think, when you say relevance, leaving aside whether that's the step the developer is going to take, but assuming that he is, wouldn't Mr. Ashton's view - I mean put another way let me assume Mr. Ashton had the view that given his druthers he would have released this land like -- 10

GILES: Given half a chance.

HIS HONOUR: Given half a chance, you wouldn't have thought it was irrelevant.

Q. Yes, had a developer come to you in the middle of 1973 and said, what are the prospects so far as you are concerned about me, a private developer, getting this land of Tatmar which you've just looked at, rezoned - what would you have said? ASHTON: A. I would have said no because I'd have said no to plenty of others by then. Not in that particular area but in similar situations, that is outside the boundary. 20

Q. You would have said no you wish to adhere to the boundary? A. Yes.

SMART: Q. And for a major development such as this one you'd have been prepared to see a developer? Would you have been prepared to see? A. I don't know, I can't answer that question, I think that's too theoretical, with respect your Honour. 30

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ASHTON: A. (contd) ... that, all sorts of detailed developments have to be worked out with the various bodies, particularly the local Councils, the service authorities, in some cases the road authorities, and so on. We are really talking about all the multiple details which have to be worked up and put forward in more detailed form for the development of the Sydney Region Plan as shown in these plans. Take for instance the Campbelltown area, that's a very good case, where you had the plan developed and detailed. But that isn't - there's nothing in that to propose that you destroy the planned development. 10

GILES: Q. No. There are certain broad principles which you would fight for including the corridor principle, is that right? A. Yes. 20

Q. But you wouldn't be suggesting that the precise position or the precise detailed position of the boundary of an individual residential zone would be a matter fundamental to such a broad strategy, would you? A. No, but it doesn't say that of course.

Q. No. A. But I would say that the boundary of the Sydney Region urban corridor was certainly fixed in the matter under discussion, in my mind.

Q. By the freeway? A. Yes.

Q. You yourself would not willingly have brooked any interference with that? A. No because of my experience of many years - over many years. 30

Q. And that experience showed you, did it, that where land was suitable for redevelopment that there would be great pressures brought to bear upon the planners to agree to its demogrification of its zoning? A. Yes.

Q. Pressures both through the local Council, is that correct? A. Well it can be through various methods, yes.

Q. May I suggest some of them? First of all, pressure from local Councils, is that correct? For urban development? A. No we didn't have much of that, strange as it may sound. 40

Q. It was on occasion a factor though, was it not? A. I think all the Councils who thought they had some expansion possibilities received some under the plan.

HIS HONOUR: Q. Received - sorry? A. Received some under the plan if Council had some growth proposals for it. That's the Councils which were in the line of growth.

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GILES: Q. But is it true that - would you not agree that your experience over the years showed you that one method of pressure being applied for rezoning were requests from local Councils? It happened, did it not?

A. Yes.

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Q. Secondly, there were approaches directly to the Ministers and to politicians involved, quite marked in the --

A. Yes, it was ever thus.

Q. Of course there were also direct approaches by developers to the State Planning Authority, that is so, is it not?

A. I would say so, yes.

Q. No doubt there were other ways which I haven't listed. But would you not agree that in order to - that when you came to the precise question of the limits of an urban zone, there are many detailed investigations which are relevant to that question, including for example the catchment area for the provision of services? Is that right?

A. That was all considered in the preparation of the scheme, yes.

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Q. I am not asking you whether it was for the preparation of the scheme, Mr. Ashton. Is it not right that the detailed planning which is envisaged by the Sydney Region Outline Plan would take into account as one of the important factors the catchment area for the provision of services?

A. Yes.

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Q. The topography of the land also?

A. Yes.

Q. Its propinquity to existing urban facilities?

A. Yes.

Q. And the arguments which might be advanced as to one area being more suitable for release than another area upon detailed investigation?

A. That was considered by the - yes, during the release programme.

Q. Mr. Ashton, what I am suggesting to you is that those features and no doubt many other detailed features could not be done in depth for every part of the Sydney region. That's so, isn't it, before the publication of the 1968 plan?

A. Not in detail, no, but the boundaries - you are talking about boundaries, are you not?

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Q. Mr. Ashton, what I am simply talking about is this. The Sydney region is a very large area, is it not? Was then?

A. 1,500 square miles I think.

Q. Yes and the Sydney Region Outline Plan covered the whole of that region, didn't it?

A. Yes that's right, the Sydney Region, much more than that. I was

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thinking of the County of Cumberland. Yes.

Q. Right. But this - but the Sydney Region Outline Plan covers the whole of what it describes as the Sydney region? A. Yes it does.

Q. It said some should be non urban and some should be urban? A. Yes. 10

Q. The detailed decision as to releases of land under statutory instruments was something which the Sydney Region Outline Plan did not address itself to, I suggest? A. Excuse me, it very well did and it is very carefully put out and the phasing was put out and as far as I know, the phasing while I was the Chairman was adhered to.

Q. Mr. Ashton are you -- A. I am answering your question, sir. 20

Q. Yes certainly but do I take it from that that your view then was that the Sydney Region Outline Plan as to its boundary of urban development and as to its phasing of urban development was final and immutable? A. I didn't say that.

Q. No but is that your view? A. No. I said that you would maintain that phasing as and when you could and clearly up to that stage and since then, by and large, that's been the situation.

Q. I am not talking about by and large, Mr. Ashton. A. Well I am. I can't -- 30

HIS HONOUR: Q. If you don't mind Mr. Ashton, if you just wouldn't mind just answering the questions that are asked. I have a feeling that you are anticipating what you think Mr. Giles might be getting at and you might be right but it doesn't help very much if you - I think the question you are asked is, as at 1973, for example, from 1968 to 1973 was it your understanding that the boundaries between urban and non urban had not changed or had only changed in accordance with the phasing or there had been some exceptions, or what? A. As I understand it, there had been no major exceptions at all. 40

Q. And by major, you mean what? A. I presume that you had to interpret to some degree the boundaries for the corridors, for instance, open space corridor and so on, but where a line is quite fixed and there was no argument about it, that line wasn't broken. Like an expressway.

Q. Like a road or a -- A. Or the high tension line. I mean there is no argument your Honour - you're on one side or the other. 50

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GILES: Q. But you mean where the plan is clear?

A. Yes.

Q. But Mr. Ashton, may I understand you? Are you telling us that your administration of the Sydney Region Outline Plan was based upon the view that no matter how good a case could be put up for a detailed - on a detailed basis for the variation of the boundary between urban and non-urban, you would not consider it? Now is that what you are telling us? A. By and large I am saying that to you, yes.

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Q. And of course that led to great pressure, didn't it, from those critical of the intransigence of the Authority? A. I don't think so. It wasn't that that was --

Q. Did you not receive - didn't it come to your attention that people were saying that the Authority was far too rigid in its administration of the Sydney Region Outline Plan?

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HIS HONOUR: When are you talking about?

GILES: Back in 1973 your Honour - 1972, I'm sorry, 1972.

HIS HONOUR: I think it is a bit difficult for Mr. Ashton to answer this because I imagine someone administering the State Planning Authority's Sydney Region Outline Plan would be constantly criticised by some groups.

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GILES: I suppose so, yes.

HIS HONOUR: Q. But I think what you are being asked though is, did you become aware in 1972 that you were getting more than usual criticism from people who wanted to develop land or not, or don't you remember?

A. No, I don't think so because there was a considerable amount of land being released.

GILES: Q. Was there not a great deal of public debate about the effect of the Sydney Region Outline Plan upon land prices? A. Yes there was.

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Q. And was there not a considerable public debate about the effect of the policy of not - or requiring the public, as it were, authorities to actually get services to the land before it would be released? A. There was some criticism of it, yes.

Q. The criticism was that the supply of serviced land was not sufficient to meet demand, I would suggest, that is one criticism? A. That was a statement that in my view could not be sustained.

HIS HONOUR: Q. What, the statement that?

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GILES: Q. (contd) ... if the line had been drawn somewhat south of its present location it would not have breached the corridor principle would it? A. No.

Q. Am I correct in thinking that your concern was what I would call the precedent principle? A. Yes. 10

Q. That is -- A. Yes, it sets a precedent.

Q. -- that although individual cases might be made which could demonstrate that there may have been a more sensible line, once you gave in - I shouldn't use the word gave in, once you acceded to one such request you would be hounded with further requests, was that the thinking that you had? A. Well my view is that if you're going to do a major decision then you should alter your plan and allow people to deal with it in the proper way, you go through the general accepted systems. 20

Q. Yes. A. There's no case as I see it to alter it.

Q. Can I take you up on this point. Assume somebody came along in relation to this very parcel of land, and put up an excellent case for having it released for urban development, let me assume that as a planner regardless of other matters you'd see the merit of it.
A. Mm.

Q. Now would you suggest that the Sydney Region Outline Plan boundaries are so rigid that they do not permit of variation in such an eventuality? A. I would say to you that if you have a very large area and there's a very good case then you ought to put it up to alter the Sydney Region Outline Plan, that's what I would say. 30

Q. Right. And if that was put up then it would be viewed on its merits? A. Well yes presumably. But the organisation would have proposed alterations of the outline plan.

Q. But more particularly, as the outline plan is not a statutory plan and there was no machinery for "altering" it, the real mechanism is of course by other statutory means to alter the Penrith - in this case the Penrith Planning Scheme. A. I think you're taking a very legal view of the plan. The plan is surely a document and the legal issues are the means whereby you bring it into effect. 40

Q. But doesn't the plan itself, particularly the passages I've shown you, illustrate that it did not intend to be the equivalent of ...

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GILES: Q. (contd) ... of the discussion between you and Mr. Bourke. ASHTON: A. You can assume that, sir --

HIS HONOUR: Q. I think he's asking you whether you agree with that or not? A. I really can't answer that.

GILES: Q. You agreed with Mr. Bourke that the land at South Penrith should be acquired as part of the Commission's advanced land acquisition programme for future urban development? A. I don't think every bit of land they purchased was for future urban development - the acquisition programme maybe. 10

Q. Mr. Ashton, I'm putting to you a precise question --
A. The answer is no.

Q. -- and limited to this particular area of South Penrith, south of the expressway. I suggest to you that it was agreed that discussions between you and your Associate Chairman, and the Chairman of the Commission, that the land at South Penrith should be acquired as part of the Commission's advanced land acquisition programme for future urban development. A. No. 20

Q. Did you agree to its acquisition as part of the Commission's advanced land acquisition programme?
A. Yes.

Q. And was that on the footing that it would be released for public housing when the Housing Commission desired it to be released? A. I don't think so. 30

Q. You wouldn't be confident about that, would you?
A. I don't think so. I don't think that's what I did say. Not every piece of land that was acquired for that purpose had to be released for urban purposes. There might be other uses.

Q. But we are speaking now of the acquisition by the Housing Commission. A. Yes, the Housing Commission. I know what we are discussing, but not every piece of land that was being acquired by the Housing Commission at that stage was necessarily, in the long term, to be used for housing per se. 40

Q. For urban development, would that be a better description? A. Development, may be, but not necessarily even that. It might have been other major uses of some other purpose.

Q. I'm suggesting that the purpose -- A. I understand your suggestion.

Q. Might I have exhibit AAB, your Honour?
Mr. Ashton, I show you two letters ...

ASHTON: A. (contd) ... a high tension line and, you know, that wouldn't apply. You wouldn't be just 20 yards over the high tension line. I was explaining earlier why we took that line for that very reason that we didn't - wanted to have some line which was identifiable and if you've breached it, then you made a new proposition as to what you ought to do. 10

GILES: Q. Mr. Ashton, leaving aside that that --
A. I mean, that's what - that's how I saw it. That's what you are asking me.

Q. Yes I know but Mr. Ashton, I thought - in any event, I now ask you again. In relation to the boundary between urban and non urban in the Sydney Region Outline Plan, you are surely not telling the Court that you would not consider on its merits a case for altering those boundaries? You are not suggesting that surely, are you? A. Not necessarily, but you are asking me - you are not really asking me that, you want to ask me would I recommend it. 20

Q. No. A. I could consider it of course, the answer is yes.

Q. But are you saying that regardless of the merit of the proposition that you would reject it? That Mr. Ashton is -- A. Yes by and large I would.

Q. By and large, but you do accept, do you not, that simply to hear people and to reject them out of hand would be an example of bureaucratic intransigence at its worst, would it not? A. No, I would not. This scheme was put forward as a proposition. 30

Q. A flexible broad strategic plan? A. Which was made to very - you know quite adequately show what land we were going to release and the programme we had for it and there were details of that available.

Q. Mr. Ashton do you concede that although, by and large, you had an attitude of strong defence of the boundaries against the - you were protected from the assault, whilst that was your general position, you did as a sensible and reasonable man recognise that there could be cases made - or there could be a case made in particular areas for alteration to the urban/non urban boundary? A. Yes. Presumably that's fair enough, where - you know, if there was a good case for it and the boundary wasn't a sort of - once you breached it you were out in the mud, as it were. 40

HIS HONOUR: Q. Could I just ask you this question? What was the purpose of making, as I understand you to agree, Mr. Shearman a liaison with the Housing Commission? Was it to help them get this land or was it to persuade them to take it, or -- 50

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SMART: Q. Mr. Bourke is your name John Mountfort Bourke?
A. That's correct.

Q. And do you live at 34 Palace Street, Petersham? 10
A. Yes that's right.

Q. And are you a retired public servant? A. Yes.

Q. And Mr. Bourke were you employed by the Housing
Commission from October 1945 -- A. 1945 yes.

Q. To about the 12th of May 1981? A. This year, yes.

Q. And I think from about September 1970 you were the
chairman of that Commission? A. Yes, September-October.

Q. Now Mr. Bourke after you became chairman in late
1970, did you in relation to the lands of the Housing
Commission, make a review? A. Yes well this was our 20
biggest problem at the time. We knew our resources were
running low and there were conferences amongst ourselves
first and then we realised we had to do something dras-
tic.

HIS HONOUR: Q. When you say resources you mean land
resources? A. Land resources. And especially land
that could be readily serviced. And it was decided that
an authority of our size, and the nature of the construc-
tion programme, we needed to have a continuous programme. 30
It was important to build up a land bank. And the ex-
perts were of the view that from the time you acquired
land until the time you actually perhaps started con-
struction on the first cottage there was a delay of some-
thing like 10 years in going through all the planning
processes and your own and discussions with other people,
et cetera et cetera. So we thought we should have as
land grants 10 to 15 years if possible.

SMART: Q. So you set out about building up a land
bank? A. Yes.

Q. To cover your needs for the next 10 to 15 years? 40
A. Yes.

HIS HONOUR: Q. Well I think a land bank that - on the
basis I think he said that you couldn't start using the
land you now acquired, for 10 to 15 years, is that
correct or incorrect? A. That's correct yes. We didn't
have much in the immediate present, but we didn't want
to be faced - we wanted to correct that situation for
the future so that it didn't arise again if possible,
so that - perhaps I should say that as an incoming chair-
man I felt I'd been a bit let down by the past in as 50

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much as this was such a problem, land, because I felt they should have had a land bank before. And that by not building it up we had left ourselves in a very difficult situation, to keep the programme rolling.

SMART: Q. Now Mr. Bourke, from late 1970 and in the years 1971, 1972, was any activity undertaken in relation to land? A. Yes considerable activity. First of all there were discussions and planning amongst ourselves and there was conviction that we should if possible build up a bank of 10 to 15 years and then of course the next thing automatically to do was to sound out your land selection officers as to the practicability of getting it, where we could get it and where it was desirable to go, and that also meant discussions with the State Planning Authority. 10
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Q. Now did that activity of looking for land take place during 1971 and 1972? A. Yes.

Q. And was there liaison between the Housing Commission and the State Planning Authority? A. Yes. Because of its importance I arranged some meetings with the chairman and deputy chairman of the State Planning Authority personally so that I could tell them about the complications facing us, and what we had in mind, and seeking their advice and hoping we could work with them co-operatively to look after the interests of all concerned. 30

Q. Now I wonder if I could come forward into 1972 and by 1972, late 1972 had you had a look at a number of sites - had your officers had a look at a number of sites? A. Yes our officers had had a look at a number of sites in various locations, as scattered as possible, yes.

Q. And to your knowledge the sites that had been looked at were - I'm sorry. To your knowledge discussions were taking place with officers of the State Planning Authority? A. Yes. 40

Q. And you had discussions at times? A. Yes, with - particularly with the chairman and the deputy chairman.

HIS HONOUR: The Deputy Chairman, that's Mr. --

SMART: Wickham. Mr. Ashton was the chairman, Mr. Wickham --

BOURKE: Yes Nigel Ashton was the chairman and Mr. Jack Wickham was the deputy. And Mr. Kacirek who was their chief planner but I sometimes participated in the discussions too. 50

SMART: Q. But your normally dealt at that level?

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BOURKE: A. Yes.

Q. Now in late 1972 it had come to your notice - had you set in train or acquired land at various areas that were within the confines of what was known as the Sydney Region Outline plan? A. Yes.

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Q. And then did some land at South Penrith south of the freeway come to your notice? A. Yes, yes it did. Our officers drew my attention to it but there were other factors at work. As well as wanting the land for the future there were some local pressures, there seemed to be some local pressures for more public housing in the Penrith area. It came partly from a small section in the council and it came from some of the business people in the area. At that time there was considerable expansion of the larger more modern retail centres and shopping centres, and the old type of shopkeeper in the main road were rather nervous about the future, and they were very anxious to see us doing more because whilst we might accommodate low-income earners, their needs are quite frequently more consistent in the sense of the ordinary day-to-day needs for families than for an older more wealthy couple perhaps with only a small family if any family at all.

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Q. Mr. Bourke do you remember in relation to this land, to the land at South Penrith south of the freeway, discussions being held with senior members of the State Planning Authority? A. Yes, they weren't very happy at all at the thought.

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HIS HONOUR: Q. They weren't happy? A. No.

Q. What do you mean, could you just tell me what you mean by that? A. Well they told us that they thought it should be open space and they didn't want the Commission to be interested in it.

Q. Yes. A. And of course at the same time the deputy chairman of the Housing Commission was also - he wore two hats, he was also a member of the State Planning Authority, Professor John Shaw. And John was quite adamant in support of the planning view, the State Planning Authority view that it should remain open space. Now I and others were not unsympathetic to their arguments and their views, but we thought that inevitably sooner or later the pressure for residential land on reasonably flat or undulating land could be so great that a rezoning would become inevitable.

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HIS HONOUR: Q. That was your view, yes. A. It was only a view.

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SMART: Q. Mr. Bourke you've told us that Mr. Ashton wasn't happy and thought the land should remain open

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space. A. Yes. We had many discussions with Mr. Ashton about land and the location such as Bonnyrigg and Doonside and Quakers Hill and elsewhere. In some cases they were very happy, in fact they saw advantages for them as well as ourselves, especially at Bonnyrigg. But when it came to South Penrith they weren't happy at all.

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SMART: (contd) ... I think he saw it as a long hard battle.

HIS HONOUR: Yes.

SMART: Q. Mr. Bourke I think you've been telling us before the adjournment about a discussion with Mr. Ashton. Now I wonder if you could tell the court as best you can what you said to Mr. Ashton and then his reply to you? A. Well Mr. Ashton was aware of our concern about our future land holdings and our intentions if we could to build up the 10 to 15 year land bank. And we had discussed a number of areas and we'd always got on fairly well, but he was not at all happy about our proposal that we put to him that we acquire this land at South Penrith. And I was concerned because it was important to establish a happy relationship with the State Planning Authority, and also of course I was conscious of the fact that our deputy chairman and somebody for whom I had the highest regard, was also a member of the State Planning Authority, and I knew that he took the same view as Mr. Ashton that this land should stay open space. And I didn't want a dissention in our ranks of the Housing Commission, especially if we were going to make a submission to the Minister for a resumption. Resumption action is something you don't take lightly for many reasons and you certainly don't like, if you're going to recommend a resumption you certainly don't like to go to the Minister saying that only 4 commissioners agree and one dissents.

Q. Yes. A. And that dissenter is an expert in the planning field, and he thought it should be open space. So Nigel of course knew how much Shaw supported his own contention that this should be open space and it was clear from the very beginning that Mr. Ashton would not change his attitude nor would his senior advisors, the deputy chairman and the chief planner, and of course his associates on the State Planning Authority. So these discussions took place on several occasions and usually lengthy, usually conducted courteously but it was always very clear that Mr. Ashton and the Authority would continue to oppose the use of this land for other than open space. None of our arguments could convince him otherwise, whether it be used by the Commission or anybody else. And so we eventually arrived at the situation where we agreed to disagree and I said I would still be making a submission to the Commission and to the Minister that we resume this land and then we'd see what happened. If Nigel Ashton and company won the battle and it stayed open space, well we'd shake hands, hope we'd be good friends, and we hoped he'd substitute some alternative site from their land holdings. I was more interested in getting land than I was in

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getting monetary compensation if that situation arose.

HIS HONOUR: Thank you.

SMART: Q. Mr. Bourke, just in dealing with your conversation with Mr. Ashton, did you explain to Mr. Ashton how you saw the situation in relation to South Penrith land? A. Yes, I explained that it seemed to me that whilst he and Professor Shaw and all the associates might be right about the open space, that the argument would be set aside if the government had in other instances overruled the Authority and asked for rezonings and from sheer pressure of either local interests or just the demands for more housing in the Sydney Metropolitan area generally, which would force the government into changing thought.

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HIS HONOUR: He said this before lunch.

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SMART: I didn't think he --

HIS HONOUR: My note before lunch was, that he was expressing - correct me if I'm wrong about this Mr. Bourke, my note was that he was expressing the view to Mr. Ashton that in his view sooner or later pressures would result in this land being rezoned, and therefore he was telling Mr. Ashton, well you may be right in thinking in effect it's a pity, that it should never happen, but it's going to happen anyway, that's what you were saying.

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SMART: The additional element that got added in was, that I was interested that it was added in, was I thought of some importance was the fact that there would be government intervention to secure it.

HIS HONOUR: Perhaps be.

SMART: Well I would think so your Honour but that Mr. Bourke didn't mention before lunch.

HIS HONOUR: Yes.

SMART: And maybe it's north worth worrying about your Honour, but --

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HIS HONOUR: Well it's in anyway. I'll note that in - so in addition he was saying that he believed the government would intervene to --

GILES: Second it, your Honour.

HIS HONOUR: Well I'll ask him what he said. Just a minute Mr. Giles I just want to find out what he said.

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Q. What did you mean when you mentioned the government intervening? A. I meant the Minister and the Cabinet considering representations from various sources and particularly the growing need for serviced sites or sites that could be serviced, I thought the pressures would be such and I thought too a section of the Penrith council -- 10

Q. Might result in rezoning? A. Well of course representations to the Minister responsible, and he in turn would consult and put a submission to his colleagues recommending that the State Planning Authority be informed it was the government's view that the land should be, and was to be in fact, rezoned.

Q. For what purpose? A. For residential purposes. That hasn't happened as yet but it's still my view that it will become inevitable - it is inevitable. 20

HIS HONOUR: Yes, thank you.

SMART: Q. Mr. Bourke did you anticipate at that time in 1973 of making representations yourself at Cabinet level? A. Well yes I thought that we would probably have to. We were still trying - we were trying to get land elsewhere, it was a statewide operation the seeking of land not just in Sydney and that we were trying elsewhere in Sydney, and I thought that sooner or later our position would be such that we'd make representation, perhaps I did think in the back of my mind that as a public housing authority we might have a stronger influence in getting the Minister to -- 30

HIS HONOUR: Q. Than a private one might? A. In a way yes.

GILES: I object to that.

HIS HONOUR: Well that's what he said, isn't that?

GILES: No your Honour.

HIS HONOUR: He said --

GILES: Better than the SPA your Honour. 40

HIS HONOUR: I thought he was saying that he thought as a government department the Housing Commission would have a greater chance of securing a rezoning than a private person exerting the same pressure would.

GILES: No your Honour I didn't understand him to say that. I thought he was saying that he had a better chance than the SPA.

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HIS HONOUR: Well I'll ask him.

Q. What were you saying Mr. Bourke? A. I was saying that we would probably be able to pursue our Minister against their Minister, that they should re-zone --

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Q. Your Minister would win you thought? Rather you hoped. A. We knew that Mr. Ashton and company would put up a very strong fight, and I'm not an expert planner as they are but I could see that probably they had good logical arguments as to why it should stay open space but I thought that irrespective of their arguments that they would be overruled by the sheer pressure of demand for more residential land in the area, including Penrith which at that time had more ambitions about expanding than possibly they have today. It was a different age. And of course we still at that time were paying attention to the forecasts of population expansion in the County of Cumberland and the Sydney Metropolitan area generally.

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HIS HONOUR: Q. What forecast was that you were talking about? A. I've forgotten the exact figure but there'd be so many million people increase in the Sydney area, Sydney region --

Q. Is that the population forecast that appears in the Sydney Region Outline Plan? A. I think it's in the outline plan, yes. I think it's in there.

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Q. There are other people making forecasts too of course generally.

HIS HONOUR: I see, yes.

SMART: Q. Now Mr. Bourke taking yourself back to 1973, as best you can, what sort of time estimate did you make as to when rezoning might take place? A. I didn't see it before the 1980's, probably the mid-1980's at the earliest, that's if it happens at all.

HIS HONOUR: Q. Yes. A. And you have the chairman and deputy chairman of the State Planning Authority and their associates obviously feeling very strongly about it, about the zoning staying open space; I didn't know that we'd succeed.

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Q. But that was what you were -- A. Assuming, trying to look into the future. Knowing that there were already some pressures.

SMART: Q. Now Mr. Bourke in about May of 1973 did you cause a submission to be prepared for the Housing Commission? A. Yes.

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SMART: Your Honour I think that's exhibit X.

HIS HONOUR: Yes.

GILES: Once again I take it my friend won't lead unnecessarily in relation to this document?

HIS HONOUR: Yes.

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SMART: Q. Prior to you making your submissions had there been a submission from Mr. McDermott? A. Yes.

SMART: And your Honour that's part of exhibit 3.

HIS HONOUR: Yes I remember that.

SMART: Q. And you received Mr. McDermott's submission and then you prepared your own submission? A. Yes.

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HIS HONOUR: Is this the map that is annexed to AAB?

GILES: It's the memorandum which went with the map your Honour.

DISCUSSION

GILES: Q. Mr. Bourke, I'm showing you a memorandum from your files on this land, together with a plan which is attached to it. Now you can take it that if you turn over to the second page there is a type-written version of the handwriting. It's thus easier to read. Might I invite your attention to that typed up version plus the plan which you have with you. Do you see there that your officers are saying that the whole of this site south of the expressway at Penrith was suggested to them for acquisition, by the State Planning Authority? 10

A. Yes. 20

Q. Does that not cause you to have some second thoughts about the reliability of your memory on this point?

HIS HONOUR: And I think it would be clear - no, I won't say --

BOURKE: A. No. I think what - I don't know - you see this is officers talking at a junior - I shouldn't say junior level, but officers of the Commission communicating with the State Planning Authority or the Planning and Environment Commission. But I think possibly what happened was that the Planning and Environment Commission or State Planning Authority before them, had accepted that we were going to go ahead and that if eventually it wasn't so rezoned, and as far as they were concerned they were still holding the view that it shouldn't be rezoned, well at least we should consolidate it all and if it wasn't rezoned well it would have been in their open space and they would have it for the future - open space. That's what seems to have been done elsewhere; it was done at Bonnyrigg. We acquired land there in consultation with them and it was clear knowledge that a large part of it we wouldn't use. The same with Quakers Hill, that in due course they would take it from us and recompense us for it. These were an alternative to actual money. 30 40

HIS HONOUR: Q. Could I ask this question -- A. I don't know. I'm only assuming what - I don't know what these discussions were between the officers at that level, and these things didn't come my way. But as far as I'm concerned, Mr. Ashton and his immediate associates believed that this should be non-urban, and stuck to that view right through to this day. I haven't heard of any change. 50

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Q. Do you remember ever reducing this to writing, or seeing it in writing, anywhere in the files? A. No.

HIS HONOUR: Q. I've just got to be clear on this. Not that Mr. Ashton agreed originally, but that - two things: ultimately he came to agree, or that he -- 10
A. No. No officers ever pointed that out to me.

Q. Was there anything in the file then that sets out the nature of Mr. Ashton's objections? A. I can't say that. It's a long time since I've seen the files.

Q. You don't know? A. I don't think so.

GILES: Q. Mr. Bourke, you've been taken to your own memorandum to the Commission. You recall that? Your attention has been drawn to the paragraph in the middle of page 2. Were you not there saying that when you said all parties agreed as to the realities of the situation, that all parties agreed that the realities were that the land - that it would be impossible to resist the rezoning of the land under pressure from private interests? A. No I wasn't saying that. 20

Q. What were you saying? A. I was saying the realities were that we needed land and that there would be pressures for this to be rezoned, and that it was possible that the pressures would be so great that it would be rezoned, and in that event we could miss out on it for our purposes. 30

Q. Yes? A. But we weren't saying that therefore we should acquire it. I can't remember at any time, anyone in the State Planning Authority saying to me: that's okay, you go ahead and acquire it; we'll either turn a blind eye or we'll support what you're doing or we approve of what you're doing. That was what their inference was: well if you're going ahead we know you, and I have a reputation probably for being a bit persistent and stubborn - if you're going to go ahead, okay, but it's on your own head if it's never rezoned. And my answer to that would be: well okay, but if you win your battle and so it's non-urban for ever and ever, well then we'll ask for compensation from you, or better still we prefer you to give us - to disgorge some of the land that you might have elsewhere, for housing purposes. 40

Q. But Mr. Bourke -- A. I couldn't. You know, this was a submission that I was making, amongst others, to John Shaw.

Q. But you couldn't have - exactly, you could have hardly misled, or be misleading your own Commission, when Mr. Shaw was sitting there at your right hand? 50

A. That's right, and I couldn't have inferred that --

GILES: Q. You couldn't pull the wool over his eyes?

A. No.

Q. Well surely, when you said all parties agreed as to the realities of the situation, that could only mean that despite his opposition, Mr. Ashton and Mr. Wickham, and Mr. Kacirek, had recognised the reality that you were pointing out to them, namely that the land would be rezoned under private pressure. Now isn't that right?

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A. There was a likelihood that that could happen, although they would fight it to the last ditch. Because I knew that John Shaw, who would get a copy of the submission, would know all that was involved, and he had already indicated he'd heard that we were going to make a submission about land at South Penrith and he didn't want to know - see it or hear it or have anything to do with it, because he didn't approve of it. And I was going, in a sense, against his wishes in making this recommendation to the Commission, and creating an unhappy situation because Commissioners do like to get on. They don't like to have dissention in the ranks.

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HIS HONOUR: Where does the word appear?

GILES: Page 2, the second full paragraph, last sentence. That's exhibit X. Your Honour has really got to read the paragraph to get the --

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HIS HONOUR: Yes, I've got it.

BOURKE: A. In their efforts to talk me out of recommending a resumption, Mr. Ashton and Company had pointed out that it would surely be embarrassing to the Housing Commission if we resumed land not earmarked for urban development, and also that we would embarrass them by resuming land which they had zoned as non-urban, and which they wished to remain non-urban - well forever. And I agreed that there were those would be those embarrassments, and that's why I wanted if possible to rezone it, or indicate that they would rezone it in due course but they weren't prepared to do that. Mr. Shaw knew that, so that you had to put it here factually as the situation was. Whilst everyone agreed that what I was saying must have some logic in it, but they were not prepared to change it because because they were committed to non-urban and they felt they'd be committed to that indefinitely. Probably John Shaw was more adamant than even Nigel Ashton.

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GILES: Q. Yes. Now, you will recall - your Honour might I have the Equity Court file? Now, Mr. Bourke would you have been a party to using resumption for housing purposes - for a housing estate, really as a guise

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under which you can obtain land for the State Planning Authority? A. No. But in connection with Bonnyrigg, it was agreed between us that they would need certain - at that time they were talking about an express transport system - rapid transport system, and in the area of Bonnyrigg which they suggested to us - they said: and we'd better warn you that if you acquire this land we will want this part back, as a Railway Station, etc. And they did the same at Quakers Hill. They certainly - indeed they said they'd probably want it for open space. But in any case of course, in any planning development by a private developer or the Housing Commission, you have to allow space for open - for play and recreation - open areas, and we didn't see that as against our brief to acquire land for housing purposes. It's really - you acquire land for estate development residential development including the facilities that must go with it.

GILES: Q. But I'm not concerned about Bonnyrigg at the moment Mr. Bourke. I take it that you would not be party to use of the resumption powers for housing purposes, indeed the acquisition of land for housing purposes, housing scheme at South Penrith, simply is a disguise for the State Planning Authority to obtain -- A. I would be opposed to resuming land for housing for any other authority, and I wouldn't want to do it because, first of all it's never a popular past-time, of resuming land, and you don't find other people --

HIS HONOUR: Q. So you've no intention of doing it on behalf of anyone else? A. No.

GILES: Q. Would you just look at exhibit A, which is the resumption notice, in the left-hand column. A. Before I read this, may I say of course that I was hoping to keep it in public ownership rather than let it get - to remain in private ownership, because I thought it would have to be rezoned. I'm not trying to say that, but --

Q. Certainly. But just going over to the left-hand column you will see the purpose of resumption, and a heading "Housing Estate South Penrith". Is that right? Do you see the heading on the resumption notice? A. Housing purposes, yes.

Q. Housing Purposes (Housing Estate South Penrith). Now, that was the true purpose, was it not? A. Yes, including subdivision for this land development scheme.

Q. Housing estate, yes. And the idea was, I take it, that some part of the land would be developed by the Housing Commission with construction of cottages, and part would be subdivided and sold off; is that right? A. Yes.

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GILES: Q. Some short term and some slightly longer term? A. No. We envisaged probably it would all happen about the same time. We thought the rezoning, if we got it at all, the rezoning would probably be in the 1980s and if the - we were subdivided over all - setting aside part of the subdivisions for public housing and part of it to be sold off to the low income - people of moderate incomes who needed land to build their own homes.

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Q. Yes thank you. A. We did not envisage - as I say, I didn't think it was ever possible for it to stay open space. I still don't. So we weren't sort of doing this to cover up for them, although in a sense to them we were saying: this is another reason why you should not object to us resuming it.

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Q. Would you look at the document I show you? Do you recognise that as being an affidavit sworn by you in the course of Equity Court proceedings? Do you recognise your signature at the foot of the page? A. Yes.

Q. And go over just to make sure it's -- A. Yes.

GILES: I tender that, if your Honour pleases.

TENDERED, ADMITTED AND MARKED EXHIBIT AAR -
MR. BOURKE'S AFFIDAVIT

HIS HONOUR: What page do you want me to look at?

GILES: Your Honour it is not very long.

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HIS HONOUR: All right I will read it.

GILES: Could I, just while your Honour is looking at that, show the witness Mr. McDermott's memorandum your Honour which is an exhibit?

Q. You see that memorandum Mr. Bourke? A. Yes. I received that which preceded my submission to the Commission.

GILES: Thank you. No, just don't say anything for the moment.

HIS HONOUR: Yes I've read that.

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GILES: Q. Mr. Bourke the memorandum of Mr. McDermott which I am showing you of May, could I just direct your attention to the third and fourth paragraphs of it, starting: Confidential discussions? And then the balance of the land? A. Yes.

Q. That indicates, does it not, that the land to the north of the transmission line could be developed in the

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short term, is that right? A. Yes.

Q. The land to the south of the transmission line would be a longer term proposition? A. That was only the view of the officers, yes.

Q. That's right. A. If I remember correctly, that was not an important point to me, and my subsequent minute to the Commissioners was based upon this one, by a couple of descriptions, and I wrote that the question of the transmission line was not of great importance. It was of no importance or significance to me. I was interested in getting this whole area. 10

Q. The whole parcel? A. Mm.

Q. In any event, it is clear - and this report of Mr. McDermott, together -- A. I don't think that's correct. I don't think that is correct about falling outside the area designated. 20

GILES: Q. I'm sorry? A. I said I don't think that is quite correct, is it? It didn't fall outside.

HIS HONOUR: Q. I didn't hear that. What were you saying? A. This submission by Mr. McDermott says that the land falls outside the area designated for development of the Sydney Region Outline Plan. I don't think that's correct. I'm not sure, I can't remember now, but I don't think that's correct.

GILES: Q. Mr. Bourke, the report of Mr. McDermott which we were just looking at went to the meeting of the Commission which decided on the matter together with your own report, did it not? A. I can't be positive about that but it would be normal practice. 30

Q. I think you can take it from the affidavit that has been filed that that was so. Paragraph 8 your Honour.

HIS HONOUR: Yes he adopted the - yes.

Q. In your affidavit this was adopted.

GILES: Q. Mr. McDermott's memorandum was circulated to each Commissioner your Honour, I think? A. Yes that's right. 40

Q. Then Mr. Bourke, can I show you a further memorandum of Mr. McDermott of June, 15th June, 1973, your Honour, which is exhibit AZ, and I am referring you particularly to the heading Negotiations on Price? Page 2. Have you read that paragraph, Mr. Bourke? A. Yes.

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Q. Could I have it back please? Does that not indicate that your officer concerned had been told by the Authority that there would in time be no valid reason for refusing a rezoning application? A. I think that is purely a personal opinion at that level. That was a personal opinion at officer level, but that was not the opinion of the Chairman. 10

Q. Mr. Bourke, your officer is saying: The Authority has indicated in discussions. A. They hadn't indicated to me. The tone of my submission to the Commissioners would have been very different. I wouldn't have had to go into it at such lengths explaining the attitude of Mr. Ashton and the fact that they were adamant.

Q. Could I just suggest to you that back in - I withdraw that. I show you now a copy of - and I'm afraid it is not a terribly good one, but a copy of a memorandum of 1974, which I tender your Honour. 20

HIS HONOUR: Any objection?

SMART: No your Honour.

GILES: This relates to the Garswood Road acquisitions again your Honour. This your Honour really should be added I think to AAB.

TENDERED, ADMITTED AND MARKED PART EXHIBIT AAB -
MR. FLINT'S APPROVAL OF MR. HYAM'S REPORT

HIS HONOUR: It is the same time is it? 30

GILES: It is the same time your Honour.

HIS HONOUR: What part do you want me to look at?

GILES: I think your Honour the whole lot of it really needs to be read to get the drift of it.

Q. Just let me know when you finish reading it Mr. Bourke? A. I have read it thank you.

Q. You will see that that letter sets out the contents or the substance of the letter which - the contents of the letter of 15th March, 1974, that I showed you a little while ago, confirming the agreement between you and Mr. Ashton and then it refers to a Chairman's minute. A. That's wrong, Mr. Ashton did not agree to our decision. He accepted the fact that we were going to go ahead. 40

HIS HONOUR: Q. I didn't hear that I'm sorry. A. This suggests that he accepted it was desirable and agreed that we should go ahead and acquire. It was an

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acceptance of the inevitability that we were going ahead, as I understood it.

GILES: Q. It refers also under Remarks to your minute advising that the lands had been recommended by the State Planning Authority for acquisition by the Commission, does it not, page 2? It says: Pending investigation of the total area recommended by the State Planning Authority, it was considered appropriate to acquire the major holdings to forestall the possibility of the area being fragmented. That the third and fourth paragraphs on page 2? A. Yes.

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Q. Then they go on to say which ones they are going to acquire to tidy the matter up? A. I still maintain that Mr. Ashton was adamant that this land would remain open space so far as he was concerned, I'm sorry, non urban, but what discussions took place subsequently when he knew that we were going ahead and maybe it was with his staff or they with our staff, I don't know. It could have been that they thought then if we're going ahead they might as well take --

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HIS HONOUR: Q. I'm sorry, that last -- A. If they're going ahead, despite what I have said about being non urban, he and his officers may have thought, well, do it in the proper way or have a certain line of approach, but he didn't for a moment ever suggest that he was going to change his attitude. This was going to be non urban and remember this was a submission to the Commissioners. It would have gone to John Shaw as well as to myself. He would have raised his eyebrows if he'd read it other than the way I had read it. The trouble is, there seems to have been too much talk. We all knew what we were talking about and how opposed the State Planning Authority was to us getting this land and one of our Commissioners opposed, so much so that he dissented, which was a very unusual thing at a Commission meeting and something as I said which was avoided if we could reach a compromise. But we weren't careful enough in reading the implications of certain things that were said in submissions and by letters by - with junior officers.

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Q. Was there any dissent you knew about the other way in the Commission? Was there any dissent in the Commission - in the Authority, that you knew of? In other words, you have said one of your members were dissenting over this. Was there any dissent in the Authority? A. The only discussions I had were the most senior ones. I can't recall any with anybody else, except I did walk in on a few conversations, as I said earlier.

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HIS HONOUR: How much - I would like to finish the

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witness today if it is possible, but on the other hand, I don't want to --

GILES: No your Honour I think I would be fairly close to finishing.

HIS HONOUR: All right, I'll do that if possible. I'd save Mr. Bourke coming back tomorrow if it is possible. 10

GILES: Q. Mr. Bourke the document you have in front of you, you will observe, was a report to go to you. We don't have unfortunately the -- A. This last document you gave me?

Q. Yes. A. Is a submission to the Commission.

Q. Yes. A. It was to all the Commissioners.

HIS HONOUR: Q. Would that in the ordinary course have got to you? A. Yes. And I have made it a practice not to interfere with submissions going out. Normally I don't see them. They go out - well, it did in the past - they went out to the Commissioners. I'd be there that morning and I'd get my folder and they would get their folder on Friday evening. We'd take them home and read them over the weekend. 20

GILES: Q. There is space for you to indicate whether you agree or disagree, is there not, as Chairman?

A. Yes but I didn't see it. I would have to disagree when I - at the Commission meeting on the Monday either by adding another submission on my part or by telling them, usually by adding a submission. 30

Q. But in this case, we know that the resumption of these parcels of land went ahead, Mr. Bourke? A. Yes. With John Shaw's approval.

Q. With John Shaw's approval, and this is some months later than the resumptions of the Tatmar and Penrith Pastoral Company land? A. Yes but he was still adamant that he would oppose it, the change in his other role, he would oppose the change of zoning. He maintained that to his last days. 40

Q. What is troubling me, Mr. Bourke, is this. I would suggest to you that examination of your minutes show that what simply happened was that that recommendation from the Chief Lands Officer was approved. There is no dissent by anybody, no corrections by anybody.

A. No, so far as Professor Shaw is concerned, he must have said, well, they have gone ahead, I didn't - they have gone ahead and they've got it, they might as well consolidate. He may have - by this time I don't know - accepted the argument that it would be better in public 50

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ownership, the Housing Commission ownership, public ownership, no matter what its future was going to be, open space or - I'm sorry, non urban or urban.

Q. Whether that be so or not, what we see here, I am suggesting to you, is a history of this matter which alleges, quite plainly, or recites a letter from the State Planning Authority which clearly says there was an agreement about this large parcel of land? A. I can only say again there was no agreement that I knew of, no agreement with me. We've been persistently recommending a rezoning constantly since and we still haven't got it.

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Q. But surely Mr. Bourke weren't you - if you or Mr. Shaw took the view that that letter was quite wrong, then I take it you would have said so, would you not?

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A. I think we were reading it and interpreting it in the light of all the arguments that we knew were going on; no doubt at meetings of the State Planning Authority, Mr. Ashton would tell the other members of the Authority of the discussions he'd had and he'd definitely not given in at all about a rezoning, and made it clear that if we went ahead and acquired these areas and consolidated, it was entirely at our own risk. And as he was opposed - he would oppose it being rezoned and he was really opposed also to our acquisition of the initial sites because he thought it would be embarrassing both to the Housing Commission and more embarrassing to the State Planning Authority.

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GILES: Q. And of course there was a liaison committee, was there not, or a liaison arrangement made between the Housing Commission and the State Planning Authority?

A. And there were other authorities, the Water Board and in this case too it would have been Penrith Council, and the Education Department and so on, all those would be involved in any development. What they said, their instructions, I don't know. I didn't attend those.

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Q. The objective of that arrangement was to solve problems like this as far as possible, wasn't it, or one of the objectives? A. Problems with the Housing Commission.

Q. Yes, between the State Planning Authority and the Housing Commission. Incidentally, what position did Mr. Hyam occupy during this period? Did you come into contact with him? A. Yes, he would have been at that time, I think, Assistant to Mr. McDermott on the land side. I'm not sure if he was Assistant but he was one of the senior officers in the lands branch and later took over, from Mr. McDermott.

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Q. I take it that even whilst Mr. McDermott was

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there, you took Mr. Hyam into your confidence on matters relevant to land purchasing, did you? A. Yes.

Q. You have mentioned several times that you still haven't got the zoning of the South Penrith land. The fact of the matter is that demand for housing sites in the Penrith area has rather - did rather diminish with the change in population that's been -- A. It hasn't diminished to our planners because they wanted as early as possible advice so they weren't going to run up blind alleys with the Water Board and other people and with the Penrith Council and go to all the very very detailed planning and scheduling it in their future programming if they didn't have the rezoning or assurance that there was going to be a rezoning because they'd had neither. There's been no rezoning and there's been no - so far as I'm aware - no assurance of a rezoning despite what is said there. Maybe at officer level in both Authorities they thought, as I did, that rezoning would be pressurised through and stood by them by a Minister who would direct the State Planning Authority, as Ministers have, to rezone certain areas. But they were only beliefs and - feelings and beliefs, there's nothing in writing I have yet received. What I was aiming to get and our officers were aiming to get from the State Planning Authority, now the Planning and Environment Commission, was a positive indication that a rezoning would take place at such and such a time.

Q. May I suggest to you that the State Planning Authority knew from an early - that by 1975 the State Planning Authority knew that your plan was actual release of developed sites from 1979 to 1983? A. Our plan was released?

Q. No, I am suggesting to you that - perhaps I will put it in two parts. I suggest that by 1975 at the latest, the Housing Commission's plan was to develop the land between 1979 and 1983. A. It was slotted in --

Q. Slotted in at that point, and I suggest that the State Planning Authority knew that very clearly and very well by 1975? A. They probably did, yes. I should have known, through that committee.

Q. I suggest to you that that has been put back from 1979, not because of any problems with the State Planning Authority but because of other considerations?

A. No, I could see the reason why he'd made the suggestion, but that's not correct. Our Chief Planner, Mr. Spigelman, has been pressurising constantly from the very beginning to get the rezoning - that is, the question of the rezoning clarified and some positive decision made so that the real job of getting down to very detailed planning which the Education Department, for example, would require to know when the first primary

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school should go in and so forth, and we haven't had that indication in writing, but definitely the State Planning Authority no doubt took the same view as I did from the beginning that rezoning would be inevitable eventually. I don't think that was an illogical - well I'd be illogical myself if I didn't consider that a very distinct probability. But I don't know that the Authority itself thought that. As far as I am aware, right at this moment - I haven't spoken to Mr. Ashton for a long time but I think if I did he would tell me again it should be open space. If John Shaw was still around, I know he would say it should be open space and he was even more adamant because he felt he was in a very invidious position as a member of the Housing Commission going over the wishes of the Authority to which he belonged. That's why he dissented. 10 20

GILES: Q. Can I just ask you this? You mention in your evidence the existence of local pressures for public housing - sorry, you mention local pressures on several occasions but you mentioned that you saw pressures developing in relation to this land at the time you were considering acquisition? A. I think there were local pressures for the release of land for urban purposes generally from a number of sources, including the business community who were gravely concerned about the shopping centres, large scale shopping centres, being built and those shop-keepers on the old main road, and of course the freeway had affected them to some extent, they were nervous as to what this was doing to their business and they saw that public housing - and of course public housing once it gets started develops fairly quickly, it puts rather vast numbers in in a short space of time, I think they were pressurising. Then I think other people saw its possibilities as to private development and a couple of the aldermen on one occasion said to me, well, look, you are going to need housing out here for the battlers. I hope that was just consideration for them and not props for their political leanings. And as I said, it was the business community and some of the aldermen - not all of the aldermen, some of the aldermen were opposed to us. 30 40

Q. To you, yes, but there was additionally to those matters - there were pressures that you saw inevitably from -- A. Well pressures of the whole community of Sydney - community, for more land. 50

Q. And developers in particular? A. Yes.

Q. I think you said that -- A. This was still the time of people like Parkes Development and what not who'd beaten us to the punch in other locations perhaps later to their regret - it was regretted.

Q. They were pretty good operators, weren't they, in their field? A. My word. They weren't the only ones. There were a lot of good operators at that time. They could outsmart us. They had money when we didn't have money.

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HIS HONOUR: Q. They had money when you didn't? A. Yes.

Q. I thought you had plenty in 1973? A. No, I am not saying this was - I am talking about earlier and why we were so sensitive about land matters. I meant in the sixties particularly when we should have been getting land. They could always outbid us, not only Parkes, there were other people.

HIS HONOUR: Q. Were you still worried about that in 1973? A. We still need land to this day.

Q. I know, but were you still worried in 1973 that you had to get the land ahead of the developers?
A. Yes, because land which is suitable for residential development, by developers and by the Housing Commission, it's the same. It needs to be, if possible, near public transport, it needs to be reasonably level and --

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GILES: Q. Easy to service? A. Easy to service in particular.

HIS HONOUR: Q. Yes, I might have to -- A. The Sydney area is going to be especially difficult in the next several years because it's bound in to the north and south by rugged areas and national parks and the mountains to the west and the ocean to the east.

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GILES: All right. I'm sorry, your Honour --

HIS HONOUR: It is all right. Mr. Smart has to still re-examine.

SMART: I don't think I have a wish to.

HIS HONOUR: Don't you? How much longer are you going to be?

DISCUSSION

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GILES: Q. You mentioned in your evidence that there had been occasions when - that you knew of when State Planning Authority opposition had been overridden by people going directly to the Minister? A. I don't know whether people went to him direct but there probably were representations to him or he may have overridden just on his own --

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Q. On his own say so? A. Yes. His own knowledge of the situation.

Q. You confirm the very great public -- A. Just as we have been overridden by our Minister on occasions.

Q. Yes. You I think had observed, had you not, that people like Parkes Developments and other developers did have access to politicians? A. No, I didn't indicate that. 10

Q. I am not suggesting anything improper about it but that they were successful lobbyists? A. No I didn't suggest that. They were shrewd acquirers of land and had the wherewithall to go in quickly and especially take out options over land. I didn't say that they lobbied anywhere. I just think they moved quickly and astutely and with foreknowledge because I've always felt that the Sydney Outline Plan, so far as the Sydney area was concerned, was what they used to call a developer's guide book. 20

Q. Would you confirm the - you've referred to the December letter to your Commission widening its charter somewhat. At the same time you were aware that the Government made a public announcement inviting developers to put forward consortium proposals or large scale proposals, is that right? A. Yes.

Q. Moving around the real estate world, did you find quite a bit of interest in that Government announcement? A. No I didn't find any interest in it personally. I am not saying there wasn't but I didn't find any interest in it personally. 30

Q. Leading up to the December announcements, had there been a great deal of public -- A. I don't think there was any great interest because there was interest subsequently shown in the New South Wales Land Commission by builders and they associated themselves with them and using their resources which unfortunately some of those resources were taken from us for the Lands Commission, as you are no doubt aware. I don't think that private developers were very interested in the Government's invitation at that time. 40

Q. Did anybody put any proposal to you about -- A. Not that I am aware of. I can't remember any. It is so long it's impossible to say no. If anyone made approaches to us, they didn't come to me. I don't think there were any.

Q. You felt you were still in competition with them rather than working hand in hand at that time? A. I am afraid so, yes. 50

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Q. Just thinking back to those days, early years of the Whitlam Government, I think you'd agree that in the field that you were operating in, the acquisition of sites remained very difficult through the whole of 1973?

A. Yes.

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Q. And that the market rose during-- A. We had that tremendous programme at that time throughout the State because we were also building for the - in connection with the Bathurst-Orange development for the employees of the Central Mapping Authority, so that year we completed close on 10,000 dwellings throughout the State which placed an enormous strain upon individual officers and upon the resources of the Commission and the resources of the building industry.

Q. Yes, but is it not right that the acquisition of land, broad acre land, the market for broad acre land was in boom conditions during 1973? A. Very boom conditions, just prior to this --

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Q. And really didn't moderate until 1974? A. That's right.

HIS HONOUR: Thank you Mr. Bourke, that's all. You don't have to come back tomorrow now.

ADJOURNED TO 26TH NOVEMBER, 1981