

**BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY**

**HEARINGS: DAY 48**

(THURSDAY 14 OCTOBER 2021)

International Arbitration Centre  
3<sup>rd</sup> floor Ritter House  
Wickhams Cay II  
Road Town, Tortola

**Before:**

**Commissioner Rt Hon Sir Gary Hickinbottom**

Mr Edward Risso-Gill of Withers (instructed by the Attorney General) appeared for various BVI Government Ministers and public officials.

Counsel to the Commission Mr Bilal Rawat also appeared.

Mr Joseph Smith-Abbott gave evidence.

Hon Vincent O Wheatley gave evidence.

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Session 1

Mr Edward Risso-Gill, Withers LLP

Mr Bilal Rawat

Mr Joseph Smith-Abbott

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Mr Dame Peters, Audio-Visual Technician

Officer Denver Prince, Royal Virgin Islands Police Force

Session 2

Mr Edward Risso-Gill, Withers LLP

Mr Bilal Rawat

Hon Vincent O Wheatley

Mr Steven Chandler, Secretary to the Commission

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Mr Dame Peters, Audio-Visual Technician

Officer Denver Prince, Royal Virgin Islands Police Force

P R O C E E D I N G S

Session 1

COMMISSIONER HICKINBOTTOM: Good morning, everyone.

Just before we start, could I just raise one point with Mr Risso-Gil, who is here representing the Attorney General this morning.

MR RISSO-GIL: Yes.

COMMISSIONER HICKINBOTTOM: Mr Risso-Gil, I raise this with a little bit of diffidence because I know that the team working on this on behalf of the Attorney General is significant in terms of numbers, and you may not be the right person to answer this query, so if you aren't, just please say so, and we'll deal with it in a different way.

But the query concerns the redactions, the suggested redactions, from the IRU in relation to the assistance grants. Assistance grants, as you know, the Attorney is not going to make any legal submissions on them. I'm not going to hear any more oral evidence on them, but there was a bundle prepared for the Hearing. We asked for redactions. We've now got the redactions, the suggested redactions from the Attorney General. Again, as with past bundles, the redactions are causing some difficulties, particularly for me who has to determine whether parts of the document should be redacted because they don't appear to have been made upon any rational or logical basis that don't appear to me to be.

1           For example, redactions are made of documents which  
2 are--have been put in the public domain during the course of  
3 these proceedings. Redactions have been made of information  
4 which, for example, the Premier's Office was dealing with the  
5 assistance grants programme which is uncontroversial and appears  
6 to me to be part of the elected Ministers' case, and various  
7 parts of documents which are apparent critical of the elected  
8 Ministers' have simply been, it is proposed redacted, but for no  
9 obvious reason, no obvious legal reason.

10           Now, is that something you can help me on or should we  
11 deal with it in a different way?

12           MR RISSO-GIL: You anticipated correctly, sir, I'm not  
13 the right person on that. However, no doubt those who are  
14 dealing with that particular matter will have heard and listened  
15 carefully to what you just said, helpfully outlining what the  
16 problems are with what has been done so far, and we shall have  
17 to respond to that.

18           COMMISSIONER HICKINBOTTOM: Yes.

19           I mean, it is, as it were, a wider issue because the  
20 Attorney has--or the IRU, on her behalf, have sort of reserved  
21 the position of the elected Ministers in relation to quite a lot  
22 of documents. They've redacted documents on a basis which I  
23 find impossible to determine whether a redaction should or  
24 should not be made, and these issues will at some point have to  
25 be dealt with because at some point I will want to refer to some

1 of these matters in my Report, and we're going to have to deal  
2 with them. But I'm quite happy, Mr Risso-Gil, to deal with that  
3 in a different way, and I fully understand that you can't help  
4 me today on it.

5 MR RISSO-GIL: The only thing I ought to probably add  
6 very briefly, sir, is that I can attest to the very substantial  
7 burden which those within the team are bearing and, therefore,  
8 that may explain why things are not in the order that everyone  
9 would like them to be in on every occasion, but beyond that, I  
10 don't think I should venture further.

11 COMMISSIONER HICKINBOTTOM: No.

12 And it's understood because a lot of people,  
13 particularly I have in mind, Public Officers, not those who are  
14 helping the Attorney on a commercial basis, the Public Officers,  
15 and I've repeatedly made this clear as to how grateful I am for  
16 their efforts. I know that they are huge. But what I want to  
17 make sure is that their efforts are properly directed and  
18 efficiently directed.

19 But as I say, we will deal with the issue of  
20 redactions in a different way, and I fully understand your  
21 position, Mr Risso-Gil. Thank you very much.

22 MR RISSO-GIL: Yes.

23 COMMISSIONER HICKINBOTTOM: Mr Rawat.

24 MR RAWAT: Good morning, Commissioner.

25 Our first witness today is Mr Joseph Smith-Abbott, who

1 is a witness who is familiar now with the process of the  
2 Commission.

3 BY MR RAWAT:

4 Q. Mr Smith-Abbott, thank you for returning to give  
5 further evidence to the Commissioner.

6 When you attended on the first occasion, you made an  
7 affirmation. You are still bound by that. As I've said, you're  
8 obviously, I hope, familiar with our processes now. The only  
9 thing I think I need to do is just remind you as I do everyone  
10 else to keep your voice up for the Stenographer.

11 The topic that we're asking you to assist on is that  
12 of Crown Land today. If you take up, I think you've got it in  
13 front of you, the first bundle.

14 A. Yes, I do.

15 Q. If you turn, please, to page 1 in that bundle.

16 Now, you will see there a letter which the  
17 Commissioner sent to your Minister, Honourable Vincent Wheatley  
18 as the Minister for Natural Resources, Labour and Immigration on  
19 the 26th of June 2021, asking for an Affidavit addressing  
20 various issues concerning the disposition of Crown Land. You  
21 have provided that Affidavit and, in fact, as you have done on  
22 previous occasions when requests have been made to The  
23 Honourable Minister.

24 If we turn to page 10 in the bundle, we should see the  
25 first page of your Affidavit running through to page 46, please.

1 Can you confirm that it's dated the 2nd of September 2021 and  
2 carries your signature?

3 A. Yes, I do.

4 Q. And are you content, Mr Smith-Abbott, for this  
5 Affidavit, together with these exhibits, to stand as part of  
6 your evidence to the Commissioner?

7 A. Yes, I do.

8 (Pause.)

9 Q. Is it right that as with other Affidavits that you  
10 have provided that this task was delegated to you by the  
11 Minister because it involved the search of records at the  
12 Ministry?

13 A. That is correct.

14 Q. And is it also right that it would have been prepared  
15 with the assistance of other Public Officers working to you in  
16 the Ministry?

17 A. That is correct.

18 Q. If you go back, please, to page 10, and we look at  
19 paragraph 2.2, where you say something that you've said in  
20 previous Affidavits which is "at the outset, I should further  
21 say in this Affidavit, where I mention a document, I do not  
22 waive any privilege asserted in respect of it unless I do so  
23 expressly".

24 Now, when you were asked about this when you gave  
25 evidence about Belongership, together with Mr Penn, the Chief

1 Immigration Officer, you explained that this, in your mind was  
2 directed toward the disclosure of personal data. Is that the  
3 same case here?

4 A. That is correct, yes.

5 Q. Thank you. It is a helpful Affidavit because it does  
6 go through quite a lot of the detail and adopts the structure in  
7 the Letter of Request, and so hopefully we won't have to go  
8 through every part of it, but if we look at paragraph 3.1,  
9 please, you've explained there that, in terms of what's meant by  
10 Crown Land, that it's defined in section 41 of the 2007  
11 Constitution as "lands or other immovable property in the Virgin  
12 Islands or interests in such property that are vested in Her  
13 Majesty for the purposes of the Government of the Virgin  
14 Islands", and you go on to refer to the Registered Land  
15 Ordinance of 1970, and in particular, section 26, which provides  
16 that "the registration of land as Crown Land, shall, subject to  
17 any registered encumbrances enable the Governor in Council by a  
18 disposition registered under the Ordinance to dispose of such  
19 Crown--such lands".

20 So, those are the two provisions, if you like. That  
21 forms the legal framework that allows us to define the  
22 definition of "Crown Land"; is that correct?

23 A. That's correct.

24 Q. You go on in terms of setting out details as to the  
25 records that are available identifying Crown Land, and these are



1 records available to the Government. If I draw your attention  
2 to paragraph 5-point--I think it's 3.3, rather, on page 11, you  
3 say that there are maps which shows Crown Land but which are not  
4 up to date; is that right?

5 A. They--well, we have to distinguish what "up to date"  
6 means because there are effectively two sets of records. There  
7 of course, would be those that are kept by a survey in Land  
8 Registry which do have the most up-to-date information.

9 But again, in terms of scale of the production of  
10 those maps, because of the fact that you have parcels that are  
11 shadowed by the larger size or actually as you scale down in  
12 size, you will not be able to display all of the parcel  
13 information that will describe what is Crown from private, for  
14 instance.

15 So therefore, those records do exist. They are kept  
16 up to date, but the easily accessible maps which form part of  
17 the geographic system available throughout government  
18 departments for the purposes of managing day-to-day affairs,  
19 those are not necessarily always kept up to date to those that  
20 are--collectively form part of a separate and distinct record.

21 So, I just want to make that very clear because there  
22 are records. We do know very well what is Crown-owned Parcels  
23 versus those that are not.

24 Q. Can I separate the two because I think, as I  
25 understood your Affidavit, there is obviously the Land Registry

1 records.

2 A. Correct.

3 Q. And then there's maps held within the Ministry?

4 A. Correct.

5 Q. And if we take the Land Registry records, those would  
6 be surveys that are prepared for dispositions of land?

7 A. That's correct.

8 Q. And so, if an easement is granted over a piece of  
9 Crown Land that's held by someone, there will be a survey map,  
10 and that will be part of the documents relating to that  
11 easement?

12 A. That's correct.

13 Q. If the Crown disposes of a piece of land either by  
14 lease or by selling it to someone, that disposition will include  
15 a map showing the boundaries of the area that is actually being  
16 leased or sold?

17 A. That is correct, yes.

18 Q. And so, if one were to go through all of those  
19 records, you could build an up-to-date picture of the present  
20 state of Crown Land?

21 A. Very much so, yes.

22 Q. Where it is, how it's been disposed, who has rights  
23 over it, et cetera?

24 A. Correct, that would form part of the Registry.

25 Q. And separate to that, within the Ministry, as we've

1 understood your Affidavit, the Ministry holds maps showing Crown  
2 Land, but those are not necessarily up to date?

3 A. Yes because, again, if--and what I want to say about  
4 this is this, that maps showing Crown Land do exist, of course.  
5 They can be provided, as you would have pointed out.

6 Now, they're all corresponding to the scale at which  
7 you would want to present that information.

8 Now, the maps that we work within the Ministry at the  
9 scale at which we are working, there are individuals who would  
10 have access to those records at the Registry, but for the most  
11 part--for the most part, there is another scale of records that  
12 are not necessarily immediately synchronising with those at the  
13 Registry, and that is the distinction that needs to be made  
14 here.

15 Q. So--

16 COMMISSIONER HICKINBOTTOM: I'm sorry. It may be the  
17 same question that Mr Rawat was going to ask you. So, it's the  
18 Registry maps which are of a scale which is quite difficult to  
19 see.

20 THE WITNESS: Correct.

21 COMMISSIONER HICKINBOTTOM: Particularly in relation  
22 to relatively small parcels.

23 THE WITNESS: Correct.

24 COMMISSIONER HICKINBOTTOM: But those, as it were, are  
25 definitive and complete.

1 THE WITNESS: Very much so.

2 COMMISSIONER HICKINBOTTOM: And up to date.

3 And within the Ministry, you have larger scale plans  
4 which, as it were, show the plots better but they may not be  
5 absolutely up to date?

6 THE WITNESS: Absolutely.

7 COMMISSIONER HICKINBOTTOM: I understand. Thank you  
8 very much.

9 BY MR RAWAT:

10 Q. Aside from those, does the Ministry hold any other  
11 records on the status of Crown Land?

12 A. Yes. There are Registers of Parcels that are  
13 disposed, of course there would be a record of how those parcels  
14 would have been disposed of. Generally speaking, the disposal  
15 of any Crown Parcel would be supported by some decision by  
16 Cabinet action, there would have been negotiations, there would  
17 have been leases, there would have been an exchange of  
18 information among several Departments of Government prior to  
19 that disposal, if you may.

20 Q. So, if we take a hypothetical example of one disposal  
21 of a piece of land, does that mean that for that disposal you  
22 would have a Ministry file on it?

23 A. Correct.

24 Q. And so if Cabinet were to agree to dispose of a piece  
25 of a Crown Land but make it subject to conditions and conditions

1 before the lease, let's say, can be executed, would that be  
2 information be in your Ministry file?

3 A. Yes.

4 Q. And again looking at the records that you keep, if,  
5 for example, you have complications arising, for example,  
6 someone doesn't meet a particular condition that has been  
7 imposed, would that be recorded as well?

8 A. Generally it should be.

9 Q. And all in the same file?

10 A. That's correct.

11 However, in some instances you may find transactions  
12 straddling or disposals straddling Ministry files, so that would  
13 be based on ownership, prior ownership, current ownership,  
14 perhaps if it's being transferred on to another agent or another  
15 person, another entity. So, there may be instances where you  
16 may have to search records across several transactions, several  
17 Ministry files leading up to the whole story, if you may, as to  
18 what may have been the case with a particular disposal of Crown  
19 Land.

20 Q. Are your files kept by piece of land or are they  
21 kept--

22 A. No, they're kept--typically, they're kept by  
23 applicant.

24 Q. And so--and that's where the crossover could rise?

25 A. Correct.

1 Q. Because it may then connect that applicant to another  
2 applicant?

3 A. Correct.

4 However, the Registry will obviously maintain a  
5 history of the disposal of that parcel across those same named  
6 entities, whether it be individually or commercially by, say,  
7 another person.

8 Q. So, what has happened to a piece of Crown Land can be  
9 tracked through by either using your Ministry files or going to  
10 the Land Registry?

11 A. Correct.

12 Q. If there are conditions imposed on a sale or a lease,  
13 for example, in respect of a lease someone has to pay rent or  
14 there is a prohibition put or a Covenant put on the transaction  
15 so that they cannot sell within a specified period of time, does  
16 your Ministry keep track of compliance with such terms?

17 A. So, let's parse that because what I think I heard you  
18 express at the beginning of your question is whether, for  
19 instance, the Covenant would have been imposed leading up to the  
20 approval of that disposal; is that correct?

21 Q. No. Let me rephrase it.

22 A. Okay.

23 Q. Cabinet decides to dispose--

24 A. So, we already disposed that?

25 Q. Yes.

1 A. Okay.

2 Q. But there are conditions put on either on the sale or  
3 on the lease.

4 A. Yes.

5 Q. So, I now own this piece of land, I bought a piece of  
6 land, but there is a covenant that says I can't sell it within  
7 five years.

8 A. Correct.

9 Q. Or I've leased it and as part of the lease I have to  
10 pay rent?

11 A. Yes.

12 Q. Who would be responsible for ensuring that I comply  
13 with those conditions?

14 A. So, there are, for instance, clauses for rent review  
15 on a periodic basis, those would be monitored by the Ministry.  
16 There may be clauses related to what can and can't happen with  
17 that parcel. Those are, again, monitored and measured, if you  
18 may, by the Ministry proper, by offices within the Ministry, and  
19 certainly the re-sale of any property within a specified  
20 carrier. So, let's say, for instance, there's a disposal of  
21 land and you cannot resell that land within a certain number of  
22 years, that will also be monitored by the Ministry or the  
23 Departments related to that.

24 Q. Which was going to be the next question. In terms of  
25 who is responsible within the Ministry for dealing with Crown

1 Land and dealing with (unclear) conditions imposed before  
2 execution of a sale or the lease are complied with or afterwards  
3 are complied with. Is there a department within your Ministry  
4 that deals with it or is it spread across a number of entities?

5 A. It's spread. It's spread across entities, because,  
6 for instance, you may have a situation where someone may want to  
7 resell land, so there may be some indication, based on the  
8 Covenants that on transfer that state that, in order for that  
9 re-sale to take place, the Ministry would have to be informed  
10 prior. And, therefore, the Ministry received that indication,  
11 and we would then work with the Land Registry Department to  
12 again monitor the Covenants and conditions under which say that  
13 that re-sale may take place. The fact that, for instance, the  
14 statutory period would have been met prior to that re-sale.

15 Q. And your records held, are they physical records or  
16 are they electronic or a combination of both?

17 A. Combination of both.

18 Q. Is the approach of your Ministry to hold something in  
19 both electronic and hard copy form?

20 A. Yes.

21 So, the better of the records really at this stage are  
22 hard copies, and over time there will definitely be the  
23 digitalisation of those records so that there will be a  
24 duplicate, a replicate set, if you may, of electronic files.  
25 But all maps are obviously maintained electronically, as well as



1 with the recent physical maps, older maps that are also kept by  
2 survey.

3 Q. So, returning to what the Ministry knows of Crown  
4 Land, is the position that the Ministry could today provide an  
5 up-to-date summary of the status of all Crown Land in the BVI?

6 A. Yes. I would say "yes" that we should be able to, and  
7 those records are maintained in individual Registers, for  
8 instance, where parcels are either disposed for public or  
9 residential/commercial purposes. Those Registers are kept.

10 Q. Are they--do you understand the position to be that  
11 there may be areas of land that have not yet been mapped but  
12 which would be Crown Land?

13 A. Yes, especially in the context of reclamations. So,  
14 if you have, for instance, a reclamation that is ongoing  
15 or--yes, ongoing and not complete, of course, there would not be  
16 a survey of that parcel, so therefore at the outset of the  
17 completion of that Project, then we would Commission a formal  
18 survey, and then undergo the normal/usual procedures for  
19 registering that parcel of land in accordance with whatever the  
20 decision that would have been taken with respect to that  
21 disposition.

22 So, the seabed, of course, remains--resides in the  
23 Crown, so that parcel, "Parcel", as it's being reclaimed, is not  
24 surveyed but that interest remains, if you may, the--the  
25 interest of government over the seabed will remain until such

1 time when it's transferred or at least--

2 COMMISSIONER HICKINBOTTOM: So, in terms of  
3 reclamation which obviously is a project which takes time, the  
4 seabed being in the Crown, does the part that's reclaimed in an  
5 incomplete basis, that remains in the Crown until the  
6 reclamation is complete, it's then surveyed and then it's either  
7 retained by the Crown or disposed of in accordance with an  
8 appropriate decision?

9 THE WITNESS: Yes, it is.

10 COMMISSIONER HICKINBOTTOM: Yes. Thank you very much.

11 BY MR RAWAT:

12 Q. And there is Crown Land which falls within the remit  
13 of the Estate Lands Committees?

14 A. That's correct.

15 Q. We may need to ask you something about the role of  
16 those committees shortly, but there will be Crown Land that  
17 that's a way of dividing Crown Land--isn't it?--there will be  
18 Crown Land that falls within the remit of a Lands Committee and  
19 Crown Land that falls outside it.

20 A. That is correct.

21 And that's principally driven by a long-standing  
22 policy that we want to increase--Government will want to  
23 increase the stake, ownership, if you may, of individuals to be  
24 able to build homes, for instance, in most cases first homes.  
25 So, it's been a long-standing policy to facilitate that process,

1 either in some instance former Crown Land, which would have  
2 already been disposed through the Estate Committees, the work of  
3 the Estate Committees, or ongoing work that would be the subject  
4 of continuing dialogue with respect to how those parcels are  
5 then to be allocated to individuals.

6 But again, for the purposes of residential  
7 homeownership purposes, and it's been going on for quite a  
8 number of years, as the record would show.

9 Q. And I mean it's a point that you make in your  
10 Affidavit that the long-standing policy which, if I may, I'll  
11 come back to when we look at criteria, but can I turn to the  
12 roots by which an application to either purchase or lease Crown  
13 Land can be made. This is we're at paragraph 4 of your  
14 Affidavit which is on page 11.

15 But what you explain in your Affidavit is that the  
16 Governor, with the prior approval of Cabinet, has the power to  
17 make or authorize the disposal of Crown Land, and the Minister,  
18 currently it's obviously Mr Wheatley, has responsibility for  
19 administering Crown Land. But there are three routes by which  
20 someone can--an Applicant can either purchase or lease Crown  
21 Land. The first is by making a direct application to the  
22 Ministry, and you say that at 4.3, including, you say, "direct  
23 application to the Ministry, including with the encouragement  
24 and/or facilitation of a District Representative". And you've  
25 explained--and this is at paragraph 4.7 that the process where

1 there is a direct application would be the same if seeking to  
2 purchase or lease Crown Land.

3 A. That is correct.

4 Q. And what happens is that in that case, the application  
5 is made, and then the applicant's name is added to a file.

6 Is this a physical file or an electronic file or both?

7 A. Mostly physical.

8 Q. And looking at 4.7(b), you say that the file is kept  
9 for Virgin Gorda, Tortola, Anegada, and Jost Van Dyke, so are  
10 the files organized in any way other than by that?

11 A. So, you have direct applications to estates, you would  
12 have had or you would have applications for Estate Lands, those  
13 are kept in those particular files, and there are generally,  
14 whether it's Nibblers, Spooner's or whatever the case may be,  
15 those are kept in estate files, so you would be able to track,  
16 for instance, who are making--who are the individuals making  
17 applications for, say, the disposal of land in their favor.  
18 Then you may have general applications for lands that may be  
19 received by the Ministry. Those are not necessarily and  
20 immediately attached to an estate, an existing estate, so they  
21 may, for instance, recognizing that there may be a parcel  
22 available in X place, any of the islands, for instance, so  
23 direct reference can be made either to that parcel or just  
24 generally access to a parcel of land that they may want to then  
25 utilize to build a home. So we have to recognize that they are

1 obviously in some instances applications for lands in one case  
2 for existing estates or as the case may be, former estates that  
3 may have been available at the time, and then just general  
4 applications.

5 Q. And the general application would essentially be--

6 A. And those would then be kept by island.

7 Q. That's right. So, a general application is unrelated  
8 to a piece of land connected with an estate?

9 A. Correct.

10 Q. And those are--I will come in a moment to just the  
11 Estate Lands Committees as a route to apply, but where one is  
12 making a direct application to the Minister in this case, you're  
13 making a general application, and that will be categorized by  
14 island?

15 A. Yes.

16 Q. What you say, though, is that--essentially someone's  
17 name goes on a list, and you say the list is periodically  
18 reviewed by the Ministry who, from time to time, will make a  
19 recommendation to Cabinet for an allocation of land to one of  
20 the applicants.

21 How often does the Minister periodically review?

22 A. I cannot say to what extent in the past it would have  
23 been the case that a Minister would review a file. I know that  
24 in this particular administration there have been instances, for  
25 instance, where the file, as I understand it to be, would have

1 been revised, reviewed at some point for any lands available at  
2 least my understanding from a dialogue at least with the current  
3 Minister. So, there would have been, for instance, a review of  
4 available lands with a view to then making disposals in some  
5 instances, based on lands that were under estate Committees, and  
6 perhaps in some instances what other opportunities may reside  
7 outside of that.

8 Q. Sticking to the ones that are outside the Estate  
9 Committees, does it come down to--it's down to the individual  
10 Minister to decide how often they'll review that type of  
11 application?

12 A. I would say.

13 Q. And just so that we're clear, when they are reviewing  
14 those applications, are they always applications to buy or lease  
15 an identified piece of land, or do you get applications from  
16 people that say "I would like to lease or purchase Crown Land"?  
17 You decide, Minister, what Crown Land I'm entitled to? So, it's  
18 an open application? Or have they actually searched and found a  
19 piece of land and then make the application?

20 A. I'm not quite following the entire sequencing.

21 Q. A general application could, hypothetically, have been  
22 two forms.

23 A. Yes.

24 Q. It could be someone just submitting an application to  
25 the Minister saying "I would like to purchase and/or lease Crown

1 Land" but not identifying the particular piece of land that they  
2 are interested in?

3 A. Correct.

4 Q. The alternative is, that they have identified it, and  
5 they then submit a direct application to the Minister and say I  
6 would like to purchase or lease this particular piece of Crown  
7 Land? Do you get those types of applications?

8 A. Yes.

9 So, let's take the latter version or the latter part  
10 of your question which is that someone would have identified a  
11 particular parcel of land, and then that has to be considered.  
12 Before it would get to the Minister, I think it's safe to say  
13 that there would be some due diligence with respect to what  
14 would happened, what is the plan for that particular parcel,  
15 which may be a similar parcel in interest by, say, other  
16 individuals, so an individual can go to the Land Registry and  
17 identify the fact that a Crown Parcel exists without prejudice.  
18 In other words, you don't really have an indication of what that  
19 parcel is intended for, by, say, a separate and distinct  
20 applicant or by any other entity, and that may include  
21 Government for that matter.

22 So, there would need to be some understanding in the  
23 first place of what is the likelihood of disposing that land in  
24 a particular way before you even get to the stage of, say, a  
25 Minister deciding what he or she may want to do that parcel.

1           COMMISSIONER HICKINBOTTOM: Do you mean as to the use  
2 of the land?

3           THE WITNESS: The use of the land. So, there are  
4 competing applications or interests.

5           COMMISSIONER HICKINBOTTOM: But if someone comes to  
6 the Ministry making an application for a particular plot of land  
7 because he or she wants to build a house on this plot of land.  
8 I mean, there may be a number of reasons why they are not  
9 successful. There may be other applicants competing with them  
10 to purchase this land to build a house on, or, of course, the  
11 Ministry or other authority may have decided that this is not an  
12 area you want to build a house on, this is an area we don't want  
13 to build on at all or we want to use for some other purpose and  
14 therefore they can't have that land for that purpose.

15          THE WITNESS: Right.

16          COMMISSIONER HICKINBOTTOM: I assume the Ministry  
17 considers all of these things?

18          THE WITNESS: Yes.

19                 The situation is complex. Because there may be  
20 interests. Land, as we all know, is a limited finite resource,  
21 and varying people may identify the usefulness of that land for  
22 a particular purpose, so the Ministry would need to be minded to  
23 account for all of those in trying to dispose of that parcel.  
24 And that's generally what is being said before we get to a  
25 Minister making a final determination as to the disposal of that



1 parcel.

2 COMMISSIONER HICKINBOTTOM: No, I understand that.

3 Can you help me with this, or I note in the evidence  
4 somewhere: Is there a sort of Land Development Plan which says  
5 you know, "this part of this island we're going to use for use  
6 X", I don't know, tourism or something, "this part we're going  
7 to use for residential". Is there any--

8 THE WITNESS: Yes, so, I would have made reference in  
9 earlier testimony, I think--well, I can't recall which, but  
10 there is the National Physical Development Plan, and the  
11 National Physical Development Plan--

12 COMMISSIONER HICKINBOTTOM: You did.

13 THE WITNESS: --will speak to the fact that there are  
14 generally areas that you will want to encourage certain type of  
15 development without prejudice.

16 Now, whether it's binding to then follow that specific  
17 course of action, that gets negotiated--mediated by the Planning  
18 Authority when it looks at those plans against the National  
19 Physical Development Plan or the Local Land Committee  
20 Development from time to time against a particular application  
21 that would be submitted to them.

22 COMMISSIONER HICKINBOTTOM: I understand that.

23 So, in terms of the National Development Plan, it may  
24 be that a particular area of a particular island, a particular  
25 use is encouraged, whatever it is?

1 THE WITNESS: Yes. National Physical Development Plan  
2 which is separate and distinct from the National Development  
3 Planning process which is based on the Sustainable Development  
4 Goals. So, the National Development Plan, that layer is  
5 independent and distinct from what I'm referring to.

6 COMMISSIONER HICKINBOTTOM: The physical--

7 THE WITNESS: Because the National Physical  
8 Development Plan is actually called for in the Planning Act.

9 COMMISSIONER HICKINBOTTOM: Yes.

10 THE WITNESS: Yes.

11 COMMISSIONER HICKINBOTTOM: That makes perfect sense,  
12 Mr Smith-Abbott.

13 I think what you're saying is that if somebody wants  
14 to develop in a particular area where a use is encouraged, that  
15 doesn't necessarily rule that out altogether, but it's one  
16 factor that will be taken into account?

17 THE WITNESS: Generally, yes.

18 COMMISSIONER HICKINBOTTOM: I understand that. That's  
19 perfectly understandable. Thank you.

20 BY MR RAWAT:

21 Q. I think it was when you were giving evidence about  
22 Statutory Boards that you mentioned the National Physical  
23 Development Plan.

24 A. I figured that much, but--

25 Q. And obviously given I think your background as the

1 National Parks Trust Director--

2 A. Yes.

3 Q. --obviously informed your knowledge.

4 On that, can you just assist the Commissioner with  
5 what present state of play is with that plan.

6 A. Which plan?

7 Q. The National Physical Development Plan.

8 A. The National Physical Development Plan was approved.

9 So, as I mentioned, it was approved under the Act, so it was  
10 the--

11 Q. If I could pause you there. If we look at Part 3 of  
12 the bundle, please. This is something that the Minister may be  
13 able to help us on, but if you turn up page 2093, please.

14 A. Okay.

15 Q. This was one of the documents that was produced to the  
16 Commission quite early on because in May this had been provided  
17 to the Commission by your Ministry, and it was something that I  
18 think we asked the Minister about, and, in fact, your  
19 predecessor Dr Potter about, when they came to May 2021 to give  
20 evidence to the Commissioner, and what the Commission was  
21 interested in was the criteria and policies governing Crown  
22 Land, and this was one of the documents that was produced, which  
23 is the Virgin Islands Land and Marine Policy, which I think was  
24 produced in 2018.

25 If you turn through to 2102, please.

1 A. 2102.

2 Q. 2102.

3 A. Yes.

4 Q. There is a section headed "Comprehensive land-use  
5 planning".

6 Now, if you look at that, that refers to The National  
7 Physical Development Plan. We know that this Marine Policy was  
8 produced in 2010--in 2018, but here what it says is "The  
9 National Physical Development Plan--the Physical Planning Act  
10 requires amongst other things that development be guided by a  
11 National Physical Development Plan, and all developments must be  
12 approved/permitted. Development Plans were prepared in 1996 and  
13 2005, but never approved. Cabinet recently approved a Needs  
14 Statement for the preparation of a National Physical Development  
15 Plan 2013-2025, with the completion time set for early 2014.  
16 The National Physical Development Plan is currently being  
17 finalized with support from the OECS GCCA programme and is  
18 expected to be completed in 2019".

19 Now, this is obviously a 2018 document, so, your  
20 evidence is that that plan was, in fact, completed and has been  
21 approved?

22 A. Yes.

23 So, let me speak to the fact that the document that  
24 you are making reference to, the National Land and Marine Policy  
25 is a product of work that would have also taken place under this

1 particular project, the same one OECS, Global Climate Change  
2 Alliance programme. So, as part of the overall view of  
3 sustainable land management throughout OECS as Member States,  
4 there was a view that we wanted to include and articulate a  
5 National Physical Development Plan that would have captured work  
6 previously done on the matter. So, therefore there was a  
7 selection, in this case, of one or two Member States which were  
8 pretty much well advanced in their development of their National  
9 Physical Development framework. The Virgin Islands were chosen  
10 on that basis, on the fact that we already pretty much had  
11 iterations of planning exercises, as you would have read out  
12 starting very early in the 2000s all the way--well, really,  
13 going back even to the 70s, 90s, and then 2005.

14           So, on the strength of that body of work which would  
15 have also included a lot of assessment of people's views about  
16 how to go about developing the Territory, the grant was given to  
17 us, and it was administered through the Ministry, so I actually  
18 acted as a National Focal Point.

19           Q.    That's your Ministry?

20           A.    Yes, this was our Ministry.

21           Q.    Yeah.

22           A.    So, this particular project actually came through the  
23 Ministry under this Project, and, of course, it was led by the  
24 competent authority, which in this case would have been the Town  
25 and Country Planning, being mindful of the fact that the

1 Planning Act permits and allows for the adoption of this plan to  
2 guide decisions about physical development, and that the  
3 Planning Authority in this case would be guided by the presence  
4 of a completed National Physical Development Plan.

5 So, when I speak to the approval process actually  
6 speak to the fact that we were very careful and very mindful to  
7 look at the provisions in the Planning Act that will allow for  
8 the adoption at the end of this particular project, the adoption  
9 and use of a National Physical Development Plan, which will then  
10 guide decision making with respect to some of the issues that  
11 the Commissioner would have highlighted in terms of having an  
12 overall framework for physical development planning and land  
13 use.

14 So, that exists, and that is actually very much in use  
15 by Town and Country Planning and as well as by the Planning  
16 Authority.

17 Q. Just remind where Town and Country Planning sit in the  
18 ministerial structure? Do they sit under your Ministry?

19 A. They don't. They sit under the Premier's Office.

20 But because of the fact that, of course, you have this  
21 exchange of very close working need, working relationship with  
22 respect to land-use planning and then, of course, us--the  
23 Ministry, that is--having to address the matter of land-use  
24 planning through the management of Crown Parcels, we do exchange  
25 quite a late. And for the Ministry at that time it made sense

1 to facilitate really and truly the development of The National  
2 Physical Development Plan to facilitate and really provide that  
3 layer of overall policy guiding the use of land in general.

4 Q. And how does The National Physical Development Plan  
5 inform Crown disposals if at all? Because it's not a  
6 policy--it's not been disclosed to us as a policy that does so.

7 A. Now, you have this policy, the one that you're making  
8 reference to, the National Land and Marine Estate Policy, which  
9 is the next product of that--of that project, the GCCA project.  
10 And because of the fact that there is section 9, which is the  
11 one that you've just read, comprehensive land-use planning,  
12 overall there won't be a need, and we have identified the fact  
13 that decisions about disposals are lands that are required for  
14 public use, are there lands that are more suitable for  
15 residential homeownership. That is all falling within the scope  
16 of an ongoing dialogue as to the best use of Crown Lands, if you  
17 may, for varying purposes. This policy will call for at some  
18 point the formulation of a Crown Land Management Plan, which  
19 will look at those issues in particular, a very granular level,  
20 view of what the suitable of lands may be for varying purposes,  
21 whether they be for private, commercial, or public use.

22 Q. I mean on--so, bringing it together, you have--we have  
23 at present a National Physical Development Plan which, according  
24 to this paper, was completed in 2019, and you've said, in fact,  
25 if we can go one step further in that, it's been approved.

1           A.    Yes.  It's actually under the Act that has been  
2 adopted and approved and it is in use.

3           Q.    A development under the umbrella of the Physical  
4 Development--National Physical Development Plan is the Policy  
5 we're looking at, the Virgin Islands Land and Marine Estate  
6 Policy.  What state has that reached?

7           A.    So, let's take a step back.  So, we have these two  
8 policies.  What we also have as a third policy which is the  
9 Marine Estate Policy, so this is the Land and Marine Estate  
10 Policy.

11          Q.    That's the 1996 policy?

12          A.    The 1996 policy was actually upgraded and actually  
13 worked on.

14                So, the 1996 policy effectively would have guided, for  
15 instance, the way that jetties, reclamations, moorings are  
16 typically addressed, and will serve as the overall framework and  
17 guide for the manner in which various uses may be addressed for  
18 both Crown Lands as we know them as well as the seabed.

19                So, prior to the preparation of this--this document  
20 that we have that we're looking at, there was an update to the  
21 Marine Estate Policy, and that, actually, that update which is  
22 actually not part of this bundle because we're looking  
23 specifically at Crown Lands, not the marine estate, but there's  
24 updated Marine Estate Administration Policy which effectively  
25 was the subject of a lot of work because we needed to look at



1 that particular framework.

2           So, this document as we're looking at right now is  
3 still in flux because of the need to continue the review  
4 especially of Crown Lands as we are now doing.

5           But, in the intervening period between 2018 and really  
6 up to last year, we were actively working and would have had  
7 those guidelines that policy approved by Cabinet.

8           Q.    When you say--

9           A.    Marine Estate Administration Policy.

10          Q.    If you look at 2372, is that the Policy you're  
11 referring to?

12          A.    Correct.

13          Q.    Now, this is a 1996 policy. It's dated 1992. We, in  
14 fact, have two versions of it. Minister Wheatley has given us a  
15 version which looks more like something that would have been  
16 produced in 1996, but the differences between the two seem to be  
17 quite minor. What you're saying, Mr Smith-Abbott, is that there  
18 is, in fact, a more modern iteration of this policy?

19          A.    That's correct.

20          Q.    That has been worked on in recent years, and by recent  
21 years, I mean very recent?

22          A.    Yes.

23          Q.    And that updating that policy on the management and  
24 administration of the marine estate is the reason why this  
25 policy we've been looking at, the Virgin Islands Land and Marine

1 Estate Policy, is still in development?

2 A. That's correct.

3 Q. I see.

4 If we look, before we leave that, we may as well deal  
5 with this, but if you go to 2104 in that policy.

6 A. Page 2104?

7 Q. Yeah.

8 And paragraph 12 is the part of the document  
9 which--sorry, I will let you turn it up.

10 A. Yes.

11 Q. That's the part of the document that deals with Crown  
12 Land, and we asked Minister Wheatley about this back in May  
13 2021, and it points out at the end (reading): "There exists no  
14 Management Plan to provide for the sound planning, management  
15 and use of Crown Lands".

16 If you turn through to 2113, this is part of a table  
17 which is headed Policy Recommendations for Addressing Identified  
18 Issues, and 2113 we're dealing with the issue being described as  
19 "Suboptimal Management of Crown Lands", and there are a number  
20 of policy options that are identified, the first one being to  
21 (reading): "Enact legislation that requires" your "Ministry to  
22 develop and implement a comprehensive Crown Lands Management  
23 Plan, including plans for the short and long-term suitable use  
24 of Crown Lands within the framework of a wider National  
25 Development Plan (NDP), and the identification of additional

1 Crown Lands that are required for essential public purposes.  
2 The Crown Lands Management Plan should include plans for  
3 acquisition and disbursement and define sustainable financing  
4 mechanisms for Crown Land acquisition and the creation of a *Land*  
5 *Bank*".

6 Now, where it says National Development Plan, is that  
7 a reference back to the National Physical Development Plan?

8 A. No. This would be the much broader National  
9 Development Plan, which is attached to the Sustainable  
10 Development Goals.

11 Q. I see. So, we have a sort of hierarchy of plans, the  
12 National Development Plan sitting underneath that as the  
13 National Physical Development Plan sitting underneath this will  
14 be this Virgin Islands--

15 A. Parallel to--

16 Q. Parallel to.

17 A. Parallel to.

18 Q. But definitely sitting under the National Physical  
19 Development Plan is this Virgin Islands Land and Marine Estate  
20 Policy?

21 A. Well, I'm not going to get into where the plans sit by  
22 way of hierarchy.

23 Q. Happy if you move them around.

24 A. It doesn't matter. We will have a national--we have a  
25 National Development Plan which provides the overall framework.

1 That's really a view of the development at the broadest, widest  
2 scale. We have de--there has been a delivery of the National  
3 Physical Development Plan that governs the Planning Act.

4 The Ministry proper must have a framework which is  
5 ultimately what this policy aims to do, is to--and by the  
6 reference by the--there was a recognition that Crown Land  
7 management requires a framework for--Crown Lands require a  
8 framework for how do you go about managing competing interests  
9 in the use of a finite and very valuable asset. So, therefore,  
10 the--what you've read out in its entirety, which is the  
11 preferred policy option, is exactly what I would have stated  
12 earlier, which is that there is a requirement, there's a need  
13 for us to have an overall framework for rationalising how Crown  
14 Lands are to be disposed through the Crown Lands Management  
15 Plan. So, that's effectively what this bullet aims to do. You  
16 would have not seen much articulated under the main policy with  
17 respect to just the fact that Crown Lands are just simply  
18 identified as a sort of percentage of the overall distribution  
19 of ownership in terms of the Territory.

20 But the functional and practical aspect of work for  
21 the Ministry is to develop this plan that will allow us to then  
22 rationalise how Crown Lands are to be dispossessed.

23 Q. And what--you said this policy is in a state of flux.

24 A. Correct.

25 Q. Where are you with the Crown Land Management Plan?

1           A.    Well, first of all, we are really looking at what are  
2 some analogous examples.  What are some good practices  
3 internationally within the Commonwealth for how do you go about  
4 managing Crown Lands?  And there is some very useful examples,  
5 not only within the region but perhaps in Canada, as well as  
6 Australia, which have similar frameworks for managing Crown  
7 Lands.

8                   And by that I mean you were looking at legislation.  
9 What is the legislative framework that governs Crown Land?  
10 Crown Lands in these other jurisdictions, what are some of their  
11 policies with respect to varying aspects of their management  
12 frameworks and guidelines?

13                   COMMISSIONER HICKINBOTTOM:  So it it--is this correct  
14 that this is being considered.  It's obviously very important, I  
15 mean a very important aspect development as a whole, partly  
16 because Crown Lands represent about a third of the land in the  
17 Territory, and secondly because it's a very valuable resource,  
18 so that's being considered, and eventually there will be  
19 sums--it's proposed that there'll eventually be some statutory  
20 framework.

21                   THE WITNESS:  Yes.

22                   COMMISSIONER HICKINBOTTOM:  And that's being developed  
23 at the moment.

24                   THE WITNESS:  Yes.

25                   I mean we're now starting--effectively, this policy

1 right now is in flux, as you rightly pointed out, because we are  
2 having to review our--the framework, the mechanisms, the overall  
3 governance.

4           So, for instance--and I'm not going to preempt your  
5 questions about Estate Committees, but it is clear, and I'm just  
6 using that by way of example, Estate and Advisory Committees  
7 typically have a role in the disposition of lands; right? They  
8 would be responsible for vetting based on the availability of a  
9 number of parcels, suitable candidates based on the established  
10 criteria that would be disclosed to them.

11           However, one of the significant gaps in the trajectory  
12 of development of the disposal of lands is that you don't have a  
13 legal stand--they don't have a legal standing, if you may;  
14 right?

15           COMMISSIONER HICKINBOTTOM: The committees don't.

16           THE WITNESS: The committees, no. I'm referring to  
17 the committees.

18           So, one of the things that we need to really and  
19 carefully explore is how do we bring Estate and Advisory  
20 Committees into the Governance Framework, and I don't want to  
21 suggest that it will be done administratively, which is  
22 effectively the practice.

23           One of the key things that I think we need to be  
24 mindful of here is that they have a role. They are an important  
25 stakeholder. They provide the layer of vetting and the layer of

1 review of the applications that are likely then to be considered  
2 by a Minister and by Cabinet. So, the Ministry at this stage is  
3 very, very mindful of the fact that we have to reform the  
4 governance and the institutional arrangement that allows for  
5 those Estate Committees to have a more significant stake.

6 There's been an ongoing dialogue in some quarters  
7 about what is the role of an Estate Committee and Advisory  
8 Committee, and that has always been looked at and being taken  
9 very, very seriously, and certainly one of the things that, in  
10 reviewing other jurisdictions and reviewing the framework for  
11 how you go about integrating that critical layer of--

12 COMMISSIONER HICKINBOTTOM: Into a modern (unclear)--

13 THE WITNESS: --into a modern framework and has to be  
14 defined statutorily. It has to be defined statutorily. They  
15 have to be given standing. Those Terms of Reference, that  
16 are--which I'm sure we'll go through in a few moments--those  
17 Terms of Reference are administratively defined. But can we now  
18 begin to look at a mechanism whereby those Terms of Reference  
19 actually are enshrined in law?

20 So, if we receive, for instance, an application in a  
21 hypothetical sense, if we receive an application for Ancestral  
22 Lands, for Crown Lands, and I use the word very "purposefully"  
23 in terms of Ancestral Lands, because there are examples of  
24 Ancestral Lands that are actually dealt with, have been dealt  
25 with and are modernly being dealt with, then that means that we

1 as the Ministry have to find a way to give the Committees,  
2 whether they be Estate Committees or Advisory Committees, as the  
3 case may be, legal standing and a place at the table, in terms  
4 of the governance, so that the recommendations and some of the  
5 issues of accountability and transparency and good governance  
6 are addressed.

7 And that is, in part, some of the flux really and  
8 truly, if you want to define that in a practical sense, some of  
9 the flux in terms of the fact that this is still an ongoing  
10 dialogue and the Policy will, by necessity, have to reflect the  
11 views, the very strong views in some instances, but views as to  
12 how best to incorporate the public's input into the disposal of  
13 what is ostensibly a publicly held asset of great value. So, we  
14 have to do that.

15 So, we are looking at mechanisms elsewhere that  
16 are--that can provide at least some model, some template for us  
17 to then build on that, given the fact that recognizing that  
18 we've been managing estates, we've been receiving the inputs  
19 from Estate Committees, we've been receiving inputs from  
20 Advisory Committees, so--but administratively.

21 COMMISSIONER HICKINBOTTOM: Yes. That's very helpful.  
22 Thank you.

23 BY MR RAWAT:

24 Q. Just to finish up on that, the three--you're pointing  
25 towards, I suggest, the need to enact legislation which seems to



1 be the sort of doorway that's envisaged in this paper to having  
2 a Crown Lands Management Plan. The first step will be to  
3 determine after dialogue and research what sort of legislation  
4 you can have.

5 A. That's correct, yes. I mean--

6 Q. And you've taken it wider in the sense that it's not  
7 just about Crown Land management but the dialogue and possibly  
8 the need for legislation will be informed by what should the  
9 status of the Lands Committees be in the 21st century.

10 A. Yes, very much so.

11 I think that, just to, if you're concluding this  
12 particular issue or this point, 3.1 really and truly forms the  
13 basis for--3.1 and the preferred policy option, as you would  
14 have read--forms the basis of the work at hand. This Policy  
15 would have to vary to take on all the things that I've already  
16 stated, including the fact that there'll be a preferred set of  
17 options, legislatively speaking. What is a--what constitutes a  
18 reasonable legal framework that we can look at without  
19 necessarily having to build the house from scratch, if you may?

20 So, that becomes the important departing point.

21 And then inevitably--inevitably--there will be further  
22 dialogue with Advisory Committees, with Members who would have  
23 had experience managing Estate Committees, and there are a few  
24 of those individuals that are still around that we can rely on  
25 as to what would have been reasonable options and practices that

1 they would have employed, and then that--all of that volume of  
2 work would then have to be reflected in a proper legislative  
3 framework governing the management of Crown Lands in particular.  
4 And as you would have said, Commissioner, mentioned modernizing  
5 the practice and sort of regularising this layer of work that  
6 would have taken place over several decades; in some instances  
7 some may argue hundreds of years.

8 Q. Before we leave it, I mean, amongst the other policy  
9 options are developing a database of all Crown Lands and  
10 publicly managed lands; identifying land parcels where revenue  
11 is due and having an agency responsible for collection; and then  
12 undertaking an audit to ensure there is enforcement of penalties  
13 and collection of revenues. Those, on their face, don't  
14 necessarily need legislation to be taken forward. Are any of  
15 these three being taken forward?

16 A. Yes.

17 So, the Ministry right now is currently undergoing a  
18 review of all of the disposals of land irrespective of wherever  
19 they may have taken place. I made reference already to the fact  
20 that there are registers of lands, whether it be Crown Lands or  
21 Reclaimed Lands that would have already existed, so those have  
22 to be looked at, and we are looking at how do we then harness  
23 the geographic information system that currently is a shared  
24 resource across several Departments, and there are several  
25 Departments that comprise the National Geographic Information

1 Committee, Systems Committee.

2           So, some are--most of them the individuals are  
3 representatives from varying Departments of Government  
4 Ministries. So, all of that information is there. It's just  
5 that it's not necessarily purposed in a manners that if fit to  
6 address holistically how we manage lands in an integrated  
7 manner, so that information system, that land information system  
8 is being construed, is being looked at and design of an optimal  
9 arrangement for databases, or whatever the case may be, is being  
10 explored.

11           Q.    If I said--

12           MR RISSO-GIL:  It would be helpful just to--

13           REALTIME STENOGRAPHER:  Could you put your microphone  
14 on, please.

15           MR RISSO-GIL:  I do apologise.

16           Sorry for interrupting.  So it would be helpful to--

17           REALTIME STENOGRAPHER:  It's still not coming through,  
18 sorry.

19           MR RISSO-GIL:  Like that?

20           REALTIME STENOGRAPHER:  Yes, much better.

21           COMMISSIONER HICKINBOTTOM:  None of us turn it on  
22 correctly the first time.

23           MR RISSO-GIL:  Well, I'm grateful for the indulgence  
24 on the first time at least.

25           So yes, on the point to legislation, which the

1 Ministry are looking at, I was just going to refer you, sir,  
2 to--and it's further on, we may be coming to it, but there is an  
3 example referred to in Mr Smith-Abbott's Affidavit, it's 17.23,  
4 that's page 30 of the bundle: Not so long ago the Long Look  
5 Lands Commission and Titles (Amendment) Act, and so it may be  
6 that the Ministry will have resources to go to when it comes to  
7 legislation. There are older examples in relation to Anegada,  
8 but I point to that particularly, simply as a rather more  
9 recent--

10 COMMISSIONER HICKINBOTTOM: So, which paragraph?

11 MR RISSO-GIL: It's paragraph 17.23, page 21 of the  
12 internal paging--pagination on the Affidavit, page 30 of the  
13 bundle. It's referred to in a particular context there, but it  
14 was in respect of legislation which dealt specifically with the  
15 sorts of conditions that could or couldn't be imposed. So there  
16 is precedent.

17 COMMISSIONER HICKINBOTTOM: Yes.

18 MR RISSO-GIL: I hope that's helpful.

19 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

20 MR RISSO-GIL: That's all I wished to point out.

21 COMMISSIONER HICKINBOTTOM: Mr Rawat, are you  
22 moving--is there a convenient moment to break or--

23 MR RAWAT: If I could ask just one question and then--

24 COMMISSIONER HICKINBOTTOM: Certainly.

25 MR RAWAT: --then we will break. It will be a natural

1 break.

2 BY MR RAWAT:

3 Q. Can I take you back, please, to page 11 of your  
4 Affidavit, Mr Smith-Abbott, and just to finish this off, I'm  
5 looking at the root of it, which before we digressed at the  
6 applications that are direct to the Ministry, so, if you like,  
7 the general applications you were speaking of, and this was the  
8 ones that are periodically reviewed by the Minister. I want to  
9 keep estate applications separate.

10 But when you referred to the--that you anticipated  
11 that there would be some due diligence done before a Minister  
12 looks--or undertakes a review, because the Minister makes a  
13 recommendation to Cabinet; is that right?

14 A. Yes.

15 So--

16 Q. Your 4.7(c).

17 A. 4.7?

18 Q. C, page 12.

19 So you say that, you know, somebody makes an  
20 application, effectively they go on a list, Minister will  
21 review, time to time will make a recommendation to Cabinet for  
22 an allocation of land to an applicant.

23 But my question is: Whether there is advance due  
24 diligence before the Minister reviews or at the time that the  
25 Minister reviews, what's the criteria that are being used to

1 select which application will be considered?

2 A. So, I've not found criteria within the Ministry that  
3 would, say, guide the selection process.

4 Q. But, I mean, is it done on a first-come/first-serve  
5 basis, on the date of the application, or is it just--

6 A. I cannot speak to--

7 Q. --a broad consideration.

8 A. I'm not--it's broad consideration. I can't say what  
9 the parameters of--

10 COMMISSIONER HICKINBOTTOM: No, and I think that's  
11 consistent across the evidence that we've seen, Mr Smith-Abbott.

12 BY MR RAWAT:

13 Q. What you do say, just to finish this off, is that a  
14 survey and a valuation will be prepared before the application  
15 goes to Cabinet.

16 So--but these prepared before or after the Minister  
17 has considered the application?

18 A. So, if you're looking at--so let's see if I can parse  
19 this. If we're looking at commercial leases, normally there  
20 will be a valuation, and those will in some way inform  
21 the--whatever the rent values may be. For residential purposes,  
22 there would have not been valuations required for the disposal  
23 of lands, save that there's been a change in policy earlier this  
24 year and I'm sure--

25 Q. 2021.

1           A.    Correct, and I'm sure we will get to that.  But yes,  
2 typically and normally there would have not been valuations  
3 which would have been guided the disposal, so to speak.  There's  
4 been a recognition, obviously, since February of 2020 that  
5 that's a requirement, and as a matter of fact now, the Ministry  
6 is very much engaged in properly costing and factoring just  
7 that, what is the value of the--or what is the overall costs of  
8 the implementation of this policy with respect to the disposal  
9 of Crown Lands based on the presence of these valuations.

10           Q.    My question went to the timing because--

11           A.    The timing, so the context of timing in terms of  
12 whether they are considered before or after.

13           Q.    I mean if they're considered before, if they're  
14 available before the Minister considers the application and  
15 decides whether or not to make a recommendation and that could  
16 inform the decision, if they're available afterwards then they  
17 will be there to inform Cabinet's decision.  So just--

18                   (Overlapping speakers.)

19           A.    Right.  I--

20           Q.    Accepting that there may be situations where you don't  
21 have a valuation report, but do they--as a norm, do they come  
22 before the application is considered by the Minister or  
23 afterwards?

24           A.    I can only speak to the--what has emerged, what is  
25 developing right now, which is that valuations generally are now

1 being called for prior to any decision by Cabinet in this case.

2 COMMISSIONER HICKINBOTTOM: So, again, just  
3 restricting ourselves to what has developed, not historical, so  
4 the Minister will come to a recommendation, and then a valuation  
5 is obtained, so the Cabinet can approve the recommendation, as  
6 it were, with a value in it.

7 THE WITNESS: Correct.

8 COMMISSIONER HICKINBOTTOM: Either a disposal value or  
9 a rental value or whatever it is.

10 THE WITNESS: That's correct.

11 COMMISSIONER HICKINBOTTOM: I understand that. That's  
12 helpful. Thank you.

13 MR RAWAT: Commissioner, that is a convenient time.  
14 I'm moving on to something else.

15 COMMISSIONER HICKINBOTTOM: As you know, we have a  
16 Stenographer, Mr Smith-Abbott, so we have to break about every  
17 hour.

18 THE WITNESS: Yes, sir.

19 COMMISSIONER HICKINBOTTOM: So we'll break for five  
20 minutes now. Thank you very much.

21 THE WITNESS: Thank you.

22 (Recess.)

23 COMMISSIONER HICKINBOTTOM: Good. Thank you,  
24 Mr Rawat. We are ready to continue.

25 MR RAWAT: Thank you, Commissioner.



1 BY MR RAWAT:

2 Q. Mr Smith-Abbott, can we just go to paragraph 4.12,  
3 which is page 13 of your Affidavit, please. And you now move on  
4 to discuss the second route by which an application to purchase  
5 or lease Crown Land can be made which is via an Estate Lands  
6 Committee, and you set out the process here.

7 Now, the first point you make is that the application  
8 is first made to the Ministry. And you say application forms  
9 are usually drafted by the Ministry.

10 On what occasions would an application form not  
11 adopted be drafted by a Ministry?

12 A. I can't immediately recall any instance where an  
13 application form may not be initially prepared or drafted by the  
14 Ministry. Generally there are for every estate you're likely to  
15 then have disposals around, there is a form available, an  
16 application form, which would then be filled out by prospective  
17 applicants.

18 Q. In terms of estate land disposals, I presume there  
19 must be two types. The first is where there is an active Lands  
20 Committee, as we understand, is currently there is only one, the  
21 Anegada Advisory Lands Committee?

22 A. That's correct.

23 Q. And so the second type of disposal would be where  
24 there is no longer a Lands Committee, for example, Spooner Land  
25 Estate?

1 A. That's correct, yes.

2 Q. Where if someone is, if you like, redisposing of  
3 lands, then that would fall to the Ministry to deal with?

4 A. That's correct, yes.

5 Q. But if we're talking about a sort of an active process  
6 where, so it's the Anegada Lands Advisory Committee, you say  
7 that they take the view that direct applications can be made to  
8 them rather than the Ministry, but you seem to be saying that in  
9 general the norm is that the application should come, first of  
10 all, to the Ministry, which then passes it on to the Lands  
11 Committee?

12 A. That's correct.

13 Q. Why are applications submitted to the Ministry and not  
14 directly to the Lands Committee?

15 A. I think it's just simply to register the number and  
16 type of individuals initially before then passing those  
17 applications on to the estate committees.

18 Q. There appears to be a difference of opinion with the  
19 Anegada Advisory Lands Committee because they take a different  
20 view.

21 A. Yes.

22 In other words--in other words, typically--typically  
23 the applications would come into the Ministry like you would  
24 have mentioned, and then are passed on. The Anegada Advisory  
25 Lands Committee takes a view that those applications, because of

1 the historical ties to the land, the fact that they are  
2 defining, for instance, Anegadeans who ought to--and they do the  
3 vetting work around the Anegadees who would have legitimate  
4 claim that, in those circumstances, they should be able to also  
5 receive those applications.

6 COMMISSIONER HICKINBOTTOM: This, Mr Smith-Abbott, is  
7 not intended to be a test but it is for my education.

8 The Estate Lands Committees, my understanding is that  
9 they have been in existence for some time. Do they go back to  
10 the Unencumbered Lands Act which were in the--do you know how  
11 long they have been going, that they played a part, I mean the  
12 part may have varied over time, but how long they played a part  
13 in this process?

14 THE WITNESS: No, some of the earliest ones go back to  
15 the 70s.

16 COMMISSIONER HICKINBOTTOM: Yes, I just wondered  
17 whether they went back historically a lot more than that or  
18 perhaps not. Perhaps they--certainly the product of the  
19 mid-20th Century.

20 THE WITNESS: I would say. I haven't--there are  
21 instances--it sounds like a test--

22 COMMISSIONER HICKINBOTTOM: No, no.

23 THE WITNESS: You do have Commissions that were  
24 established to look at matters of lands.

25 COMMISSIONER HICKINBOTTOM: And those go back to 1854.

1 THE WITNESS: Exactly.

2 COMMISSIONER HICKINBOTTOM: I understand.

3 THE WITNESS: But in terms of the practice of the  
4 establishment of Estate Committee, yes, that tends to be--

5 COMMISSIONER HICKINBOTTOM: More recent.

6 THE WITNESS: More recent. And by that I mean you're  
7 looking at 40-50 years, so "recent" is relative, of course.

8 COMMISSIONER HICKINBOTTOM: And, I'm not holding you  
9 to this, it's for my education, so all of this was done by  
10 Commission from the mid-19th Century when the estates were  
11 unencumbered and freed, but then the place of the Estate  
12 Committees came in relatively recently, the last 50 years or so?

13 THE WITNESS: Yes.

14 COMMISSIONER HICKINBOTTOM: Yes. That's very  
15 interesting. Thank you.

16 BY MR RAWAT:

17 Q. Is that something that is being worked out with the  
18 Anegada Advisory Lands Committee, how the application should be  
19 processed?

20 A. That's correct, yes.

21 Q. And as I understand it from your Affidavit, and this  
22 is at paragraph 14.39, which is at page 26, the stage that we're  
23 at with that Committee is that it was sort of revived in July  
24 2020. It's got Terms of Reference. And if you go to 1441, you  
25 say that the AALC provided a proposed amended Terms of Reference

1 which largely adopted the same criteria, which is what you set  
2 out at 1439. This is criteria for who qualifies for the grant  
3 of land.

4 But at what stage have they reached as a committee?  
5 Have they got established Terms of Reference and an established  
6 membership now?

7 A. Yes, there would have been established Terms of  
8 Reference, that would have given way to the approval of the  
9 Committee in the first place. So there would have not been an  
10 approval of that Committee without the Terms of Reference  
11 accompanying that, that process.

12 Q. And does that approval have to be done by Cabinet?

13 A. Exactly, yes.

14 Q. I know you say they're not on a statutory footing but  
15 I noticed that you've put in, for example, the Terms of  
16 Reference, the draft Terms of Reference for 2009 Virgin Gorda  
17 Lands Committee as one of your exhibits. And that has, for  
18 example, an ex officio Member from the Ministry on it.

19 Is that how the Lands Committee's function, there will  
20 be at least a representative of the Ministry on the Committee?

21 A. That's correct.

22 Q. So, in some ways, they are akin to a Statutory Board  
23 in that they will have ex officio Members from the Ministry?

24 A. That's correct, yes.

25 Q. Do they have a budget?

1           A.    No, not one that I have at least been able to discern,  
2 that is, embedded, for instance, in the normal submissions that  
3 would be given to Government for funding.

4                    And I think that if you look at the strict statutory  
5 body enacted by law, National Parks Trust, for instance, which I  
6 will be obviously very familiar with--will receive a subvention,  
7 so there's a subvention that is defined and which will be  
8 ratified in the House of Assembly as part of the Budgetary  
9 process.

10                   I have not seen a similar practice with the  
11 Committees. There may be some allocation granted or given on an  
12 incidental basis.

13           Q.    Which would have to come from--

14                   A.    Which would have to come from the existing Ministry  
15 budget, but certainly in defining the legal framework and giving  
16 standard, because of course, there are costs attached, of  
17 course, to the management of these processes. So, part of the  
18 view that I would have made reference to earlier as part of the  
19 testimony of evidence would also require some real serious look  
20 at the costs attached in the management of these processes,  
21 because they're very energy and time consuming and  
22 resource-intensive in terms of just--

23                    If, for instance, a Committee is going to receive an  
24 application directly, the administrative cost is borne by  
25 someone, so that has to be accounted for somewhere. And that

1 review, that process of accounting for that then must be taken  
2 into consideration somewhere, and that's parts of what we need  
3 to look at, seriously.

4 First of all, the recognition that there are  
5 administrative costs, quantification of what those are, and then  
6 subsequently how are they going to be addressed as part of, say,  
7 a regular budget.

8 Q. So, Members of a Lands Committee essentially  
9 would--are volunteers, they would work for free?

10 A. Yes, very much so.

11 Q. And in terms of the process that they  
12 undertake--you've explained that part of the rationale behind  
13 the Lands Committees is that they are--they are a means by which  
14 effect can be given to a policy to encourage and empower  
15 Belongers to own land?

16 A. Yes.

17 Q. So, that's the--the incentive is not for them to  
18 dispose of land at-market value it's, in fact, the opposite.  
19 The incentive is to dispose of land at prices that Belongers can  
20 afford?

21 A. That's correct.

22 Q. Now, the third route that you set out is the  
23 discretionary allocation, which presumably that is Crown Land  
24 being granted at the discretion of Cabinet?

25 A. That's correct, yes.

1 Q. Would it be done on the recommendation of the  
2 Minister?

3 A. So, the--as I understand it--as I understand it--there  
4 may be instances where--for if there are lands availability, for  
5 instance, in an area, any given area, there will be some  
6 consultation--there may be consultation with the District  
7 Representative for the particular area to understand from that  
8 individual, from that Member who may be individuals who should  
9 be considered for homeownership or the disposal of lands. So,  
10 that's at least the understanding in terms of how that  
11 discretion may be applied. There might be some consultation  
12 with respect to, say, the awareness and knowledge of that  
13 representative of individuals who may be considered, and then  
14 the subsequent recommendation.

15 Q. And in terms of the mechanics, it would still--let's,  
16 is it--an approach is made by a District Representative, but  
17 ultimately because it involves Crown Land, does it still have to  
18 be taken by your Minister to the Cabinet?

19 A. That's correct.

20 Q. And I think your Affidavit gives examples of  
21 discretionary applications, as I understand it from the  
22 Affidavit, it's not just to recognize somebody who has made a  
23 contribution to the BVI. It can also be used as a way of  
24 dealing with individuals who may be in a particularly vulnerable  
25 position?



1           A.    That's correct.

2           Q.    But is it again that there is no set criteria, it will  
3 depend on Cabinet's analysis of the particular circumstances?

4           A.    That's correct.

5                    So, there's no--there are no guidelines or criteria  
6 governing the selection or preselection process, what should  
7 guide the selection of an individual. I can't say that I found  
8 it.

9           Q.    If I ask you to turn up the second bundle, part 2,  
10 please, and just go to page 1902. This is part of a  
11 letter--excuse me--it's dated the 18th of November 2020, and you  
12 will see starting at 1900, Mr Smith-Abbott, but it's on your  
13 predecessor, Dr Potter, and it's addressed to the Governor, and  
14 it's setting out essentially how land distribution in the  
15 British Virgin Island Crown Land distribution is undertaken.

16                    At 1902 at the very bottom, you will see that there is  
17 reference to a sentence which begins, "Dr Potter has discussed  
18 the Lands Committees", and it says "besides the Lands  
19 Committees, recommendations are also made by the Minister which  
20 is what we have looked at, and in some cases by the District  
21 Representative of the District where the development took place  
22 where the Committees are not in place".

23                    So, it seems to be or Dr Potter seemed to be pointing  
24 towards a situation where you don't have an existing Lands  
25 Committee, then a District Rep can make recommendations to a

1 Minister. Have I understood that correctly?

2 A. That's correct.

3 Q. And is it only in those situations--I'm assuming this  
4 is a reference, by Dr Potter to estate land. Does the District  
5 Rep only become involved where the Committee is no longer in  
6 existence?

7 A. I cannot say that.

8 I guess it pre-supposes, it pre-supposes that--if I'm  
9 understanding the question correctly--that if there is a  
10 committee in place, would the District Representative then also  
11 have a role to play? Is that--

12 Q. Yeah.

13 A. I cannot say because, because barring the fact that I  
14 would have not really worked within an Estate Committee at the  
15 time when they were actively involved, beyond the one in Anegada  
16 in this case, I'm not certain that I can speak to whether they  
17 would have been or not involved at that time.

18 Q. But where there isn't a committee and we're then  
19 dealing with a situation like Spooner's where you had a  
20 committee established, it distributed land but now perhaps there  
21 is a re-disposal, as I've called it, but there is no Committee  
22 to oversee that, is that the sort of situation where a District  
23 Representative can make recommendations to the Minister?

24 A. Yes. It is my understanding that, yes, there would  
25 have been an approach, there would have been some consultation

1 in terms of an understanding who once lands became available for  
2 redistribution, at least some consideration of individuals who  
3 may qualify or may be worthy or whatever the parameter may be--I  
4 cannot necessarily characterise what would constitute  
5 something--what would constitute a parameter to then select an  
6 individual or not, but yes, there would have been some  
7 consultation at that stage in the absence of that Estate  
8 Committee.

9 Q. And where you are dealing with that, this situation  
10 where it's estate land but there is no Estate Committee, is that  
11 still described as an estate application rather than a general  
12 application?

13 A. It will still be described generally because it still  
14 falls within the criteria and parameters in the original Terms  
15 of Reference--

16 Q. Of the estate?

17 A. Of the estate.

18 And it is also my understanding that the selection of  
19 individuals, say for Spooner's in this case, may have reverted  
20 back to the original list of recommendations.

21 COMMISSIONER HICKINBOTTOM: The original list of  
22 criteria?

23 THE WITNESS: And recommendations made by the  
24 Committee at the time when they were active in terms of the  
25 individuals who may be considered.

1 COMMISSIONER HICKINBOTTOM: Yes.

2 THE WITNESS: Whether that was strictly adhered to or  
3 not, I'm not certain, but at least there would have been some  
4 consideration of those names appearing on that Report, on the  
5 Estate Committee's Report at the outset of its work to then at  
6 least nominally inform the selection.

7 BY MR RAWAT:

8 Q. And where you have--taking it back away, you have a  
9 general application, are there instances where the District  
10 Representative can write in support of the application?

11 A. It's possible. I do not see something that specific,  
12 I certainly wasn't looking for that, but it is possible that  
13 they may or may have not done so. I can't say.

14 Q. Just one matter on discretionary allocations, where  
15 that is being considered, what information will--is required to  
16 go to Cabinet?

17 A. Generally, the same information that would support any  
18 application, proof of Belongership; some fact that they have  
19 qualified, that they have met the criteria according to the  
20 estate criteria granted or given at the time. Whatever--

21 Q. So, it would be the criteria that applied to that  
22 piece of land?

23 A. Applied to the piece of land generally speaking, at  
24 least from my understanding. I may be subject to correction,  
25 and I would certainly have to look into that that more

1 specifically but at least that's the general impression.

2 COMMISSIONER HICKINBOTTOM: And I assume this is a  
3 pretty general discretion when it gets to Cabinet. In addition  
4 to the matters which, as it were, have to be shown, proof of  
5 Belongership, the satisfaction of any particular criteria for a  
6 particular estate, I assume that also what would be set out to  
7 Cabinet are the reasons why the recommendation is made, the  
8 factors--

9 THE WITNESS: Yes.

10 COMMISSIONER HICKINBOTTOM: --which have led to--

11 THE WITNESS: Which have governed.

12 COMMISSIONER HICKINBOTTOM: --which have led to the  
13 recommendation.

14 THE WITNESS: So, in the case of--the specific cases  
15 that is being referred here, you would have had some examination  
16 of the parcels available, whether, for instance, there may have  
17 been individuals who may not have met the conditions of the  
18 original grant. So, in this case, individuals who just simply  
19 not paid. So, there was a decision taken to claw those back, if  
20 you may, rescind that approval, so it then afforded some  
21 opportunity to reallocate those--those parcels, and it's in this  
22 context that then you have this discussion about the fact that  
23 the Estate Committee would not be in place because it would have  
24 already determined--made Recommendations at the time, via  
25 Report, those recommendations would have been considered, and

1 lands would have been granted at whatever time.

2 And now you have this window and this opportunity for  
3 reallocation. So under these conditions what are the best  
4 options available--in this case, discretion, and that discretion  
5 will be exercised in part by having that conversation, that  
6 dialogue with the District Representative.

7 BY MR RAWAT:

8 Q. And what we have in terms of the need to establish  
9 Belongership status, that is a requirement for where you're  
10 going through an Estate Lands Committee?

11 A. That is correct.

12 Q. It's a requirement for a discretionary allocation?

13 A. That is correct.

14 Q. So, in terms of a Non-Belonger seeking to apply to  
15 purchase or lease Crown Lands, we'll look at the detail in a  
16 little while, but that can only be made through a general  
17 application direct to the Ministry?

18 A. Non-Belongers are not applying for the subset of lands  
19 available for this programme, so therefore Non-Belongers are  
20 governed by the Non-Belonging Land Holding Act, and they would  
21 go through an entirely different process, so this is not  
22 immediately related to any aspect of Crown estates--Crown Land  
23 estates.

24 Q. As I understand it--

25 A. Right.

1 Q. --the Estates Lands Committee?

2 A. Correct.

3 Q. --serve a particular purpose, which is a policy  
4 purpose. It's not driven by--

5 A. It goes beyond policy. There is quite a lot of  
6 administrative work.

7 Q. No, but what I meant--

8 A. Oh, yes, in the support.

9 Q. The point about the fact it's about through the  
10 history of the committees, going back to Spooner's in 2008 and  
11 before that, but what you have is the purpose of them is  
12 essentially to make land affordable to Belongers?

13 A. That is correct.

14 Q. It isn't just--it isn't driven by, you know, finding  
15 buyers for land at market value?

16 A. No, not at all.

17 Q. And so, Belonger Status serves as a neat divide  
18 because if there is going to be a discretionary allocation by  
19 Cabinet, Belonger Status will be a factor. If there is going to  
20 be an estate land disposal, it has to be a factor?

21 A. Yes.

22 Q. So, for the Non-Belonger seeking to purchase leased  
23 land whether for commercial or residential purposes, their route  
24 is through the Ministry?

25 A. They're route is through the Ministry. And that's

1 governed by a different--

2 COMMISSIONER HICKINBOTTOM: Different scheme?

3 THE WITNESS: Different scheme altogether. So you  
4 would not have a situation where Non-Belongers are applying in  
5 this matter.

6 COMMISSIONER HICKINBOTTOM: Thank you.

7 BY MR RAWAT:

8 Q. If we go to 5.5 please and just look at the process by  
9 which--

10 A. We are finished with this? This was the number two.

11 Q. Yes, we are. If we go back to number one, please.

12 Sorry. Back to your Affidavit.

13 A. So, I'm being directed to go to?

14 Q. Paragraph 5.5 of your Affidavit on page 14 of your  
15 Affidavit, Mr Smith-Abbott.

16 This is where you start to explain the process by  
17 which someone can make an application, and you focus on how  
18 someone can apply to purchase Crown Land and then you go on to  
19 say that the application to lease is largely the same. You make  
20 the point and this is at paragraph 8.1, that a difference  
21 between the commercial application and a residential application  
22 is perhaps obvious but it's in the former, the submitted  
23 presentation can include a business plan and that where there is  
24 a business plan submitted, then that falls to be considered by  
25 the Premier's Office.



1           Another difference which perhaps we've just touched on  
2 is at 9.2 on page 17?

3           A.    One word about 8.1 and the context.  A business plan  
4 may be required under those conditions if there is a Development  
5 Agreement, so there are some instances where there may be  
6 Development Agreements being negotiated under the Planning Act,  
7 so there is a specific reference here to the fact that there may  
8 be an agreement in progress under negotiations, and a business  
9 plan would be called for under those set of conditions.

10           And I make that point in the context of why it would  
11 go to the Premier's Office, based on that context that it would  
12 go to the Premier's Office.

13           Q.    Just go back a little bit further.  Can you set out  
14 for the Commissioner circumstances in which an application for a  
15 commercial lease or a commercial purchase won't require a  
16 business plan.

17           A.    I'm not certain that--well, in some instances there is  
18 at least a statement of purpose why you may want to lease a  
19 particular parcel of land.  That statement of purpose may be in  
20 some instances expressed by letter, not necessarily the  
21 development of a full business plan, and you have to appreciate  
22 that there is no standard format for the presentation of  
23 business plan, so to speak, so I'm not seeing anything that  
24 prescribes what that business plan ought to include, but I have  
25 seen some instances expressions of interest which are just

1 simply described by way of letter, I want to lease this land to  
2 set up X or Y type of business or in some instances there may be  
3 the requirement for the full-fledged business plan. But those  
4 may be called for specifically.

5 COMMISSIONER HICKINBOTTOM: So, these are obviously  
6 fact-specific circumstances, but what--before Crown Land is  
7 disposed to anybody, for a short lease, a long lease, freehold,  
8 whatever, you have to have comfort if it's commercial that  
9 there's going to be a proper commercial purpose and there's an  
10 intention, as it were, to carry out that commercial purpose.  
11 But what supports that comfort depends upon all of the  
12 circumstances, including, I suspect, the length of the lease and  
13 the nature of the business and all sorts of other things.

14 THE WITNESS: That's correct.

15 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

16 BY MR RAWAT:

17 Q. So, if I just, as I said before we go back to  
18 section 5 of the Affidavit, what you make the point at 9.2 is  
19 that applicants are required to identify the status and identity  
20 of the applicant, because preference is typically given to  
21 belonger and BVI Islander applicants who don't possess the  
22 economic resources to purchase land otherwise. Additionally,  
23 Non-Belongers and Non-BVI Islanders are not permitted to own  
24 land without first obtaining a Non-Belonger Land Holding  
25 Licence, which is a point you made earlier.

1           If we go back to section 5 on page 14. At 5.4, you  
2 say that the applicant has to provide certain documents, whether  
3 they are applying as an individual, a company or a statutory  
4 body. But where you have an application being made on behalf of  
5 a company or a statutory body, who should be the applicant?

6           A. You're asking in the context of a commercial  
7 application, who should be the applicant?

8           Q. Yes.

9           If there is a company making the application, is the  
10 Company the applicant, or is the requirement that it be a  
11 director or a Senior Manager or a Shareholder?

12          A. Again, on the matter of purchases, again, there is  
13 nothing specifying whether that individual should be a company  
14 Director, as the case may be. So, there would be other  
15 statutes, I guess, or provisions, but I certainly have not seen  
16 anything in the Ministry that would speak to that nature of that  
17 applicant, so to speak, whether that should be the commercial  
18 entity or whether it should be a director in their own right  
19 representing.

20          Q. You set out there at 5.4 a number of documents that  
21 need to be provided, and you say "should be provided", and you,  
22 for example, refer to a Development Agreement between the  
23 Developer and the Government of the Virgin Islands.

24                 Are there circumstances where an applicant--an  
25 application would still be considered valid if the required

1 information is not submitted?

2 A. I cannot say. I can say that there may be some  
3 instances where the application would have been considered  
4 without some of these requirements as described in 5.4.

5 Q. But where there are those instances, are they going  
6 against the process, are they outliers rather than actually what  
7 the process should be?

8 A. As I understand, the process described in 5.4, these  
9 are general requirements for how purchases would be considered  
10 generally, so there would be the provision of the Passports,  
11 business plan if one would have been called for, and the general  
12 Certificates pointing to whether the Company and its Directors  
13 are in good standing.

14 Q. And in terms of an approach, is what you set out there  
15 written down or is it a matter of practice within the Ministry?

16 A. I think it's a matter of practice within the Ministry.

17 Q. Now, as to a lease, you point out that, and this is at  
18 5.13 on page 15, that a lease can either be for--its intended  
19 purpose can either be agricultural or commercial. If we look at  
20 8.2 on 17, this is where you're discussing the processes for  
21 residential and commercial purposes, you make the point that  
22 residential approvals are predominantly freehold, that  
23 commercial approvals are predominantly leasehold.

24 So, does it follow that it is possible to have a  
25 residential lease?

1           A.    I have--I have not encountered a residential lease.  
2 Most disposals for residential purposes, once that individual  
3 would have discharged that with the Ministry would then receive  
4 a transfer of freehold, freehold land--

5           COMMISSIONER HICKINBOTTOM:  So, technically possible,  
6 I mean it's technically possible?

7           THE WITNESS:  I guess it's technically possible, but  
8 in practice--

9           COMMISSIONER HICKINBOTTOM:  It doesn't happen because  
10 the person to whom the land is disposed will be a Belonger, it  
11 will be for residential purposes.

12          THE WITNESS:  That is correct.

13          COMMISSIONER HICKINBOTTOM:  And the whole purpose is  
14 that that's, as it were, for the family home?

15          THE WITNESS:  Yes, exactly.

16          BY MR RAWAT:

17          Q.    But if a Non-Belonger has a Non-Belonger Land Holding  
18 Licence, can they make an application to purchase residential  
19 land?

20          A.    Yes, but not through this particular process that we  
21 are referring.

22          COMMISSIONER HICKINBOTTOM:  Through a different set of  
23 Regulations?

24          THE WITNESS:  Yes.  Generally, you're talking about a  
25 parcel of land that may be available for sale.

1 BY MR RAWAT:

2 Q. So, the process that we're talking about is disposal  
3 of Crown Land.

4 A. Correct, whereas--  
5 (Overlapping speakers.)

6 A. --Non-Belongers are governed, and like I said, those  
7 are typically parcels that are available in the open market for  
8 sale, the rules will apply, at least some consideration of that  
9 land being purchased, for instance, by Belonger or BVI Islander.  
10 If there is no such person interested in that, then that  
11 Non-Belonger may place that application and then purchase that  
12 land, and then there is a licensing process governed by the Act  
13 that would be carried out.

14 Q. And does that apply whether the Non-Belonger is  
15 wanting the land for residential purposes or commercial  
16 purposes?

17 A. Yes, respective. I mean, the process would still be  
18 the same for that Non-Belonger.

19 Q. So, Crown Land is really aimed at Belongers? I mean,  
20 a Non-Belonger will need to--they can go on the open market. If  
21 they got the Licence, they can go on the open market whether  
22 they want land for--

23 A. Well, the Licence is for the purchase of a specific  
24 parcel in this context, so they wouldn't necessarily just  
25 receive a licence just to go and, say, speculate.

1           COMMISSIONER HICKINBOTTOM: But could a Non-Belonger,  
2 for example, in relation to commercial land, could a  
3 Non-Belonger seek a lease of Crown Land for commercial purposes  
4 with a Licence?

5           THE WITNESS: Yes, I guess technically it is possible  
6 that that Non-Belonger can pursue Crown Land, yes.

7           COMMISSIONER HICKINBOTTOM: For commercial purposes.

8           THE WITNESS: Not for residential purposes as you  
9 described, but for commercial purposes it is possible, yes, and  
10 very much the case.

11          BY MR RAWAT:

12          Q. And I mean, you draw a distinction between sort of an  
13 agricultural lease and a commercial lease, but some can obtain  
14 or can have an agricultural business that is commercial?

15          A. Yes, very much so.

16          Q. So, how is the distinction drawn between an  
17 agricultural enterprise and a commercial enterprise?

18          A. I think that is mostly where you're likely to see  
19 that, first of all, in terms of it--types of lands available for  
20 agricultural purposes, where you're likely then to  
21 consider--locate such a type of application.

22                 Yes, that Non-Belonger, who may have a larger  
23 enterprise can, for purposes--for commercial purposes,  
24 agricultural purposes, now in this case, can indeed pursue the  
25 leasing of that land for that purpose.

1 Q. Can you just clarify--if we can move on to page 17, if  
2 we look at paragraph 8.1, please.

3 A. Page?

4 Q. Sorry, paragraph 8.1, page 17, please.

5 This is taking us back to commercial purchases and  
6 then leasing of Crown Land, and you say at--you've explained the  
7 point about business plan but it's just picking it up at 8.3.  
8 You say depending upon the commercial value, the difference  
9 would be--and this is the difference between commercial purposes  
10 depending on the commercial value of the business or  
11 development, and the difference would be having a registered  
12 Development Agreement.

13 So, just to clarify, what is a registered Development  
14 Agreement?

15 A. A registered Development Agreement again is that which  
16 is governed by the Planning Act. A Development Agreement would  
17 then form the basis for a commitment by that Developer to carry  
18 out whatever works, bring in however many jobs or generally  
19 speaking, satisfy and discharge whatever would have been agreed  
20 between Government and that Developer, so to speak.

21 And that--and that instrument would be registered, so  
22 to speak, yes.

23 Q. And is it only in that context that they would be  
24 required to produce a business plan?

25 A. Not necessarily. I mean, so we are making



1 distinctions about scale and size of development, and I think  
2 that that's where we may need to parse this a little more.  
3 Under some--in some circumstances, as I understand the process,  
4 there are some instances where the scale, size, and importance  
5 of development may be of such nature that that is undertaken,  
6 that layer of negotiations, so to speak, may be undertaken. The  
7 Ministry will obviously have some input because if that--if that  
8 parcel being considered is Crown Land, and it could include  
9 reclaimed land for that matter, too, there will be some  
10 exchange.

11           And also there will be exchanges because in some  
12 instances there may be labour requirements that may need to be  
13 met in terms of importation of labour to assist in the  
14 development process. And I'm just using that by way of example  
15 of how much broader view of a Development Agreement may  
16 necessitate some degree of coordination which would be  
17 undertaken by the Premier's Office in this case.

18           But there will be a number of stakeholders around the  
19 table of which, of course, the Ministry will be one of those in  
20 the context of whatever our portfolio--thematic areas under  
21 their portfolio may be, Labour, Lands, Immigration in some  
22 instances, those are things that we will have to be mindful of  
23 in also considering that.

24           So, that business plan or at least the parameters of  
25 what would need to happen in order to facilitate that

1 development will be articulated through a business plan or may  
2 be articulated through some other means which would then form  
3 part of that agreement as to what Government now is going to do  
4 to facilitate that process.

5 Q. And that is all led by the Premier's Office?

6 A. In that context, yes. In the context of a formal  
7 development agreement--

8 Q. Yes.

9 A. --under the Planning Act, yes.

10 Q. Where you reference, as you do, at paragraph 8.3, a  
11 public consultation may be required depending on the  
12 environmental impact. That's again referring to the same  
13 context.

14 A. Correct.

15 And those circumstances, an environmental impact will  
16 be vetted by a Ministry because we are responsible for the  
17 receipt of that, alongside with the Town and Country Planning,  
18 so the entry point will be the Town and Country Planning  
19 Department, and then that Environmental Impact Assessment  
20 Report, whether it's limited or full scope, will be given to the  
21 Ministry, it will consider that and recommend accordingly.

22 Q. Taking you back to 8.1 on the same page, you note at  
23 the end of that paragraph that particular concerns have arisen  
24 in the context of leases where the lease is granted by then  
25 financing falls through and the development never proceeds. I

1 think this was a point that Minister Wheatley made when he gave  
2 evidence in May where it's essentially the land is never built  
3 on or never used for the purpose it was disposed of.

4           What is being done at the moment to address those  
5 concerns?

6           A. Well, I think that if I then go back to earlier  
7 statements that will feature in that whole discussion about what  
8 is the suitable response, legislatively or otherwise, to  
9 instances where--where you have nonperforming lands.

10          Q. That goes back to the sort of internal dialogue that's  
11 going on about taking the Marine Policy one step further and  
12 having a Crown Land Management Plan?

13          A. That's correct.

14          Q. If I take you back to 6.1 on page 15, please. You  
15 were asked to address whether there are published policies or  
16 guidance setting out the process for applying to purchase or  
17 lease Crown Land, and you say: "There are no published policies  
18 or guidance setting out the process. The Ministry is in the  
19 process of producing guidelines for publication. Further, the  
20 Ministry is always happy to respond to individual inquiries".

21               When do you intend to publish your guidelines?

22          A. So, I want to--I want to go back to the baseline of  
23 this discussion which is that the National Land Policy provides  
24 a platform to articulate exactly what these guidelines may be,  
25 similar to what would have happened with say the Marine Estate

1 Policy and the Marine Estate Administration Policy. There needs  
2 to be a similar exercise where we are indeed minded to publish  
3 guidelines such as these. And that will form part, not--it may  
4 form part of the Policy, it may be an appendix to the policy.  
5 No decisions have been taken that is firm around that. But  
6 there is a recognition, a very strong recognition that the  
7 Policies and the guidance for how you go about applying for  
8 Crown Lands, what is actually required, the means by which you  
9 make Determinations and Recommendations. And parameters for  
10 what should guide the decision-making process. All of that is  
11 certainly under review.

12 COMMISSIONER HICKINBOTTOM: There is no timeline yet  
13 for, say, guidelines?

14 THE WITNESS: If I take the process that would have  
15 been undertaken with respect to taking the update of the Marine  
16 Estate Policy into the current state of the administration  
17 policy, a similar process would be undertaken. So, I would say  
18 that this is something that we are actively working on, and it's  
19 a matter of priority. It's a huge priority for us.

20 So, I would venture to say that--you know, within the  
21 next few months to within a year, we should be able to at least  
22 have a very clear notion because we already pretty much have a  
23 baseline, and a baseline again is the same policy that you're  
24 making reference to. The guidelines--and I want everyone to be  
25 mindful of the fact that the determination of guidelines, the

1 consultation around--around how do you come about stating a firm  
2 position as to what we're going to do, of course the drafting  
3 process, it's a series of steps because there are a number of  
4 agencies involved in this process as described in the response  
5 and in the Affidavit, it's clear that we will also need to  
6 consult internally and externally as to how these guidelines are  
7 going to emerge.

8           So, that policy, by necessity, will be republished for  
9 consultation and for further review. And that process is  
10 time-consuming, so I will want to say that certainly it's  
11 something that we are going to engage very much in the public  
12 domain because we do have a good baseline, a good starting  
13 point.

14           Q. Is it sort of--I'm not being disrespectful, I'm just  
15 trying to put it in context, but is it just one element of the  
16 whole package of work that you're undertaking--

17           A. Very much so.

18           Q. --which includes when we looked at the draft Virgin  
19 Islands Land and Marine Estate Policy, you've got--and that  
20 policy drafted in 2018 still in draft. But that envisages the  
21 need, as you have done, Mr Smith-Abbott, the need for  
22 legislation, it envisages the need for a Crown Land Management  
23 Plan, and then you have spoken of updating the Policy for  
24 Management and Administration of the Marine Estate, the 1996  
25 policy. But guidelines--obviously, there must be an awful lot

1 of work still to do?

2 A. Yes. That is--

3 Q. In terms of a timeline of a few months to a year, is  
4 that--is that a little ambitious?

5 A. It may be. I think that, given the legislative  
6 process--so let's--okay. Let's--let's break this up a little  
7 more because I think that we have to recognize the legislation  
8 is not something that we are going to complete in a year.

9 So, to that point, yes. Legislation takes time to  
10 articulate and flesh out. Even if we were to adopt a comparable  
11 legislative framework that we can look at, as I made reference  
12 to, that process takes time.

13 So--

14 COMMISSIONER HICKINBOTTOM: I mean, the steps you  
15 could take really are firstly, the legislative framework, which  
16 is the framework which you'll be working under, and as I  
17 understand it, you're looking at other jurisdictions for models  
18 but any model will need to be tailored to this particular  
19 jurisdiction.

20 THE WITNESS: Exactly.

21 COMMISSIONER HICKINBOTTOM: Which has its own  
22 characteristics. So, you need to have the legislative  
23 framework. And the guidelines will sit under the legislative  
24 framework.

25 THE WITNESS: That's correct.

1           COMMISSIONER HICKINBOTTOM: That's where they will  
2 sit.

3           THE WITNESS: That's correct.

4           COMMISSIONER HICKINBOTTOM: So, that's the timeline  
5 that you're working to.

6           THE WITNESS: So, if you were to break that up a  
7 little further, because I think that when references are made as  
8 to what can reasonably be done within the scope of months to a  
9 year, we have to first of all define in a very clear way exactly  
10 what that framework looks like. In other words, if we are  
11 addressing, for instance, applications, disposal, and all  
12 aspects of disposal as would have been described through parts  
13 of this dialogue that we're having this morning, if we're  
14 looking at the role of valuations, if we're looking at public  
15 use of lands, private use of lands, Crown Lands in this case,  
16 reclamations, et cetera, it's a very dynamic and complex  
17 environment that has to be defined. I think that we've defined  
18 generally speaking in broad terms what the high-level policy  
19 objectives are, whether it's to enable economic activity,  
20 commercial development, homeownership, recreation. There are  
21 issues of biodiversity conservation. There are issues of  
22 protection of critical infrastructure because there are going to  
23 be some assets that are going to be deployed to protect the  
24 shoreline in whatever ways that we define. That is where you  
25 have a National Development Plan, a National Physical

1 Development Plan, to guide how you begin to rationalise the  
2 optimal and best use of lands that are fit for purpose.

3 That framework pretty much is already ongoing, and I  
4 would have already spoken to that in not only this testimony but  
5 that testimony.

6 Now, to the specifics of how do you then dispose of  
7 that land for that--for that--for the intended purpose? So,  
8 there may be a decision made that we want to designate an area  
9 for biodiversity purposes for protection of the shoreline as the  
10 case may be, or for residential purposes or commercial activity.  
11 That plan for the most part, what we're going to rely on is the  
12 fact that we do have existing Registers of the current uses of  
13 lands, and we do have some baseline and an understanding of what  
14 some lands are intended for. So, we're not starting from  
15 scratch. There is information within the Ministry that can be  
16 used for this purpose.

17 Now, how do you then bring all of this together is  
18 really the Crown Lands Management Plan. Then you take a step  
19 back from that, what actually calls for that Crown Lands  
20 Management Plan is an act. What does that act specify? What  
21 does it do for us? Is exactly what you would have said,  
22 Commissioner, you have to look at the models, you have to look  
23 at what's relevant to us, what is fit for purpose. And then you  
24 say okay, these elements are good, these are not relevant to us.  
25 We need to introduce, like I would have made reference to,



1 Estate Committees, Advisory Committees, we need to bring those  
2 into this framework. Those are not necessarily going to feature  
3 in some of the legislative frameworks that we may be looking at.

4 So, that means that we have to consult with former and  
5 current Members of Advisory Committees and Estate Committees.  
6 That process can take a while, but I say, I could say that we  
7 are going to start that dialogue, we're starting that dialogue,  
8 obviously.

9 COMMISSIONER HICKINBOTTOM: I absolutely understand  
10 all of those steps, and it seems to me that those are the steps  
11 that you propose to take, and those are the steps that you will  
12 need to take, but in terms of the guidelines, the guidelines  
13 will sit under all of that--

14 THE WITNESS: Correct.

15 COMMISSIONER HICKINBOTTOM: --and I mean, logically  
16 be--have to be dealt with after all of that is really pretty  
17 well in place. And the guidelines themselves are not  
18 straightforward. Guidelines to sell, let's say, residential  
19 land, guidelines to sell residential land to the highest bidder,  
20 relatively speaking would be straightforward. But here, the  
21 guidelines for residential disposals are not straightforward  
22 because, for understandable reasons, it's not the intention to  
23 sell land to the highest bidder but to sell land to Belongers at  
24 a price which they can afford. That's putting it very shortly  
25 and less sophisticated than it really is. But those guidelines

1 will take some consultation and some thought.

2 THE WITNESS: Very much so.

3 And I revert to an earlier statement which is that  
4 land is a valuable and finite asset, so the number of  
5 individuals far exceed the lands available, so that means that  
6 some due care and consideration has to be given to the whole  
7 question of how do you, in a transparent manner, if you're going  
8 to publish such guidelines, how do you ensure that there is some  
9 transparency and equity and fairness in the disposal of that  
10 land, given the fact that, as you rightly pointed out, is not as  
11 straightforward. If you're going to sell a plot of land, half  
12 an acre, \$100,000, I outbid you by 10,000, 110,000, I'm going to  
13 go with the highest bidder as the seller. Sold. That's not the  
14 case here.

15 COMMISSIONER HICKINBOTTOM: I see.

16 THE WITNESS: Because the Policy states that we are,  
17 Government is looking to increase the stake of homeownership,  
18 the stake of landownership. How do you do that? It's not  
19 straightforward, as you rightly pointed out.

20 COMMISSIONER HICKINBOTTOM: It's not straightforward,  
21 and that has been a policy that is to allow people of the Virgin  
22 Islands to own their own homes, to put it very shortly, that's  
23 been a policy for a long while, and it's not straightforward.

24 And I think all we can say really, isn't it,  
25 Mr Smith-Abbott, is that all of that is even if you're going to

1 take a little while--

2 THE WITNESS: Yes.

3 COMMISSIONER HICKINBOTTOM: --because there is a lot  
4 of thinking, a lot of consultation to do to bring all of that  
5 home.

6 THE WITNESS: Yes, that is very true.

7 But I think that just to round up my response to that  
8 is that there is a recognition that the Estate Committees,  
9 Advisory Committees--

10 COMMISSIONER HICKINBOTTOM: Have an important part to  
11 play in that.

12 THE WITNESS: --have an important part to play. In  
13 terms of opening that process up, even when that Committee may  
14 not necessarily be in place. There may be some reconsideration  
15 for the reestablishment of that Committee on an ad hoc  
16 committee, or some reestablishment of or reenactment of or  
17 revisiting that list that they would have generated for those  
18 people who may not necessarily have been awarded lands at the  
19 time when--so yes, there is some thought. And yeah, these  
20 things do take time.

21 So, the Terms of Reference, so to speak, for how do we  
22 go about defining all of this, yes, within the scope of months,  
23 a year or so. But yes, the actual work is years in the making.

24 COMMISSIONER HICKINBOTTOM: Yes, thank you.

25 BY MR RAWAT:

1 Q. I think three things that flow from that is that,  
2 firstly, you may ultimately need to produce more than one set of  
3 guidelines.

4 A. Inevitably, yes.

5 Q. Secondly, it is not as simple as mirroring the  
6 processes that you have set out in your Affidavit in written  
7 form.

8 A. Yes.

9 The Affidavit makes reference to what obtains or--what  
10 it would have obtained when those committees, perhaps, would  
11 have been active, so that's perhaps an example, as Mr Risso-Gil  
12 would have also made in his brief intervention, examples of  
13 where the committees have informed and provided some layer of  
14 transparency in terms of--

15 COMMISSIONER HICKINBOTTOM: In practice?

16 THE WITNESS: In practice, in practice.

17 COMMISSIONER HICKINBOTTOM: Yes.

18 THE WITNESS: How do you then bring that into a  
19 framework that suggests that this is part of the way that we're  
20 going to do business legislatively, by law. So, therefore, it  
21 removes the appearance of any opacity around this.

22 COMMISSIONER HICKINBOTTOM: But Mr Rawat's point is  
23 this, I think, that under the current scheme in practice, which  
24 you very helpfully set out in your Affidavit and described  
25 today, there are no guidelines, and so obviously by introducing

1 guidelines, you're not simply replicating in written form what's  
2 happening now.

3 THE WITNESS: No.

4 COMMISSIONER HICKINBOTTOM: You are creating a modern  
5 system.

6 THE WITNESS: Exactly.

7 COMMISSIONER HICKINBOTTOM: For the allocation of  
8 Crown Land in all its various forms.

9 THE WITNESS: Exactly.

10 BY MR RAWAT:

11 Q. And it is--the point is its various forms because you  
12 will have--I mean, I can use the term "ancestral lands", where  
13 you have an estate--let's take Spooner as the example or the  
14 current Anegada Advisory Land Committee--they will have a  
15 defined purpose, and a defined "area" of land that they have to  
16 consider. You will also have residential land that falls  
17 outside the estates, which is Crown Land, and which the Minister  
18 will have to consider. And then on top of that, you have the  
19 commercial side of things where Crown Land being leased for  
20 commercial purposes, which again will call for a different set  
21 of guidelines entirely. But that--I think what you're talking  
22 to about is promulgating, ultimately, guidelines about this is  
23 how you can apply and qualify for Crown Land, but internally, is  
24 the intent also to produce guidelines as to how an application  
25 will be processed and considered?

1           A.    Yes, very much so.

2                    And I think that the short answer to your question is  
3   yes.  There has to be some determination as to how that  
4   application moves from the public sphere into the administrative  
5   processes that we are now having to manage because there will be  
6   a Cabinet Paper that will make recommendations, that will take  
7   the input of the Estate Committees, Advisory Committees, they  
8   will be acted on because there will be something that will  
9   happen in the Ministry would understand me, defining what that  
10  is that will prepare that, so that space that you've now carved  
11  out has to also be defined.

12                   And it will go to the point of how the institutional  
13  arrangement, how the governance of the--of Crown Lands ought to  
14  be conducted from start to finish.

15                   And on top of that, you have--in addition to all of  
16  the purposes that you've described, there is a legitimate use,  
17  which is a public use, so we also then have to look at other  
18  Ministries to inform schools, health facilities, roads, et  
19  cetera, that those also fall within Crown Lands, and that also  
20  has to be defined.

21                   I mean, we're talking about the disposal of lands  
22  because of the residential or commercial purposes, but there is  
23  a public good also to be considered, and those public goods and  
24  services are legitimate, have a legitimate place and  
25  expectation, and they have to be met.

1           So, it's going to--this is--you pointed out rightly  
2 that this is not a process that we can undertake to complete in  
3 a year, but at least what we do want to say about this is that  
4 framework for elaborating this ought to be defined within a  
5 reasonable period. Within a year, you could define at least  
6 what we just described sort of conceptually and to some extent  
7 hypothetically right now, but that is the scope of what ought to  
8 be done.

9           Q.    And taking--you said taking it from start to finish,  
10 it will be then how applications are processed within the  
11 Ministry, the basis on which the Minister may determine to make  
12 a recommendation, and the finish is the basis on which Cabinet  
13 may then make its decision.

14           A.    That's correct.

15           Q.    If I could ask you just to turn up page 18, please. A  
16 quick question, I hope, on--in terms of agricultural leases  
17 because you point out there that whilst it's your Minister and  
18 your Ministry that's responsible for dealing with application to  
19 purchase and lease Crown Land, where you have agricultural  
20 leases, then another Ministry, Ministry of Education and  
21 Culture, Agriculture and Fisheries, becomes responsible. But  
22 I'm right in thinking that they can make the recommendation but  
23 it will still be for your Minister to take the matter to  
24 Cabinet.

25           A.    That's correct.

1 Q. Now, you say, and this is at paragraph 11.1 on the  
2 same page, and--that the criteria applied in assessing an  
3 application for the purchase or lease Crown Land are not  
4 recorded in written policies and guidance, but you then point  
5 to, at 11.2, general criteria for residential applications which  
6 include the age of applicant, family considerations and housing  
7 considerations and whether they can afford to develop.

8 How is--how does the Ministry assess whether someone  
9 can afford to develop?

10 A. So, right now there is no set way in which the--the  
11 ability to carry out that development currently exists.

12 COMMISSIONER HICKINBOTTOM: You just want comfort that  
13 if land is sold for a residential development, for a house, that  
14 that house is going to be built within a reasonable time.

15 THE WITNESS: Correct.

16 COMMISSIONER HICKINBOTTOM: And that comfort could, I  
17 suspect, come in different ways from different people, but  
18 that's the comfort you're looking for.

19 THE WITNESS: Right.

20 So, if the land is disposed for the purposes of  
21 building a home, does that person have the capital required not  
22 only to dispose of that debt which is the purchase of that land  
23 but then ability to erect the building.

24 COMMISSIONER HICKINBOTTOM: Yes.

25 THE WITNESS: Yes. So, that I've not seen where that



1 test of the ability to carry out the work has been--exists.

2 BY MR RAWAT:

3 Q. And does it come down to, in reality, in practice, to  
4 a Public Officer within the Ministry making an assessment and  
5 then providing that information to the Minister?

6 A. If you look at the Non-Belonger line holding process,  
7 that Non-Belonger would have to provide financial records that  
8 would indicate that he or she or they would be in a position to  
9 conduct, carry out the development as indicating in their plans  
10 for holding that licence and, by extension, holding that land.  
11 So, there is no similar test or requirement when it comes to  
12 this particular area.

13 Q. And in terms of family and housing considerations,  
14 what does that refer to?

15 A. That refers to whether you're looking at--again, it's  
16 part of the Policy to facilitate home ownership across various  
17 clusters of family types, so whether it's a single parent with a  
18 child or whether you're talking about a family, are you  
19 providing that land so that it will facilitate home ownership to  
20 someone who may have not necessarily been able to afford,  
21 otherwise, land, so that's--those are some of the considerations  
22 by family.

23 Q. When we're having this discussion, we're talking about  
24 consideration within the Ministry of a direct application  
25 because--

1           A.    Well, yeah, it was still--it will still obtained, to  
2 some extent.

3           Q.    Well, I mean, it--that's what I've taken it as  
4 because, in terms of considering the application for estate, I  
5 mean, I'll rephrase that.

6                    If there's an existing Land Committee, the Ministry's  
7 role, at least initially, is to act as a conduit to guide  
8 applications to the Advisory Committee to make recommendations?

9           A.    That is correct.

10          Q.    Where you have a direct application, the Ministry will  
11 have two roles.  If it's Crown Land that isn't linked to an  
12 estate, then the Ministry will consider it and make a  
13 recommendation.  If it Crown Land that is linked to an estate  
14 but there is not an extant committee, the Minister will again  
15 consider it.  But in that instance, what the Minister must have  
16 regard to must be the criteria that applied to that estate.

17          A.    Yes.

18          Q.    So--I mean, Spooner--I keep coming back to Spooner's  
19 because that's the example that Minister Wheatley gave us in  
20 May, but Spooner's have defined criteria.  So, presumably,  
21 whenever you're dealing with Spooner's estate land, you always  
22 have to go back to those criteria.

23          A.    Yes.  That should be the case, yes.

24          Q.    But--and it's a point you make in your Affidavit, that  
25 the criteria that you applied to non-estate land will be

1 informed by how the Estate Land Committees dealt with it.

2 A. Yes.

3 In other words, if you're looking at a situation where  
4 you have a parcel of land where someone still wants to build a  
5 home, it's outside of an estate per se, then, broadly speaking,  
6 the parameters are pretty broad in and of  
7 themselves--Belongership or--of some sort, age, what the  
8 familial situation may be--and those are things that are  
9 carrying or have been carried out of the various iterations of  
10 Estate Committees which--who would have in their own right  
11 looked at these issues themselves. They would have looked at  
12 the particular conditions under which that individual, the  
13 applicant would have found themselves; their own knowledge, so  
14 to speak, and--of those individuals because they are coming in  
15 some part from within the communities that are looking at these  
16 applications. So, there's several factors that would be taken  
17 on board that you can transpose into this other realm of  
18 non-estate disposal of Crown Lands for residential purposes, for  
19 argument's sake.

20 Q. What you go on to say, and this is at 11.3, is you  
21 turn to commercial applications, and you say the considerations  
22 you set out there, the considerations that may be had. And  
23 you've referenced political and policy considerations and  
24 economic and social aims that a government may have. So,  
25 whether how Crown Land is disposed of for commercial purposes,

1 it just comes down to it will be dependent upon the Policy of  
2 the Government of the day.

3 A. Yes.

4 I mean, you may have examples of a particular sector  
5 that you may want to develop, agricultural or otherwise, and you  
6 will seek investors or you may seek individuals who can bring  
7 value economically to the Territory. So, those are high-level  
8 policy directives that will then be followed up with the  
9 suitable lands to accommodate such an activity.

10 Q. What happens if you have a change of policy or a  
11 change of Government?

12 A. If you--in what context (unclear)--

13 (Overlapping speakers.)

14 Q. Well, if someone--you have policy A which, let's say,  
15 encourages a particular type of commercial venture and somebody  
16 makes an application to purchase land on that basis but then the  
17 Policy changes or a new Government comes in, what happens then?

18 A. Well, my understanding at least nominally will be that  
19 there will be, depending on how vested that entity may be in  
20 that parcel of land, say, because it all depends on the level of  
21 how vested that individual may be or if the purpose of that land  
22 was intended for one reason but then it was switched  
23 without--transformed, changed with a change of administrations,  
24 I guess there will be some dialogue with the impacted  
25 individuals, the stakeholders to come to some negotiated

1 resolution as to how that land may be employed, may be used.

2 COMMISSIONER HICKINBOTTOM: But, I mean, normally in  
3 developments where there is a change in policy and obviously  
4 there are changes in policy all the time in all sorts of ways--

5 THE WITNESS: Exactly.

6 COMMISSIONER HICKINBOTTOM: --is that there will come  
7 a point where it's too late for the change of policy to affect  
8 the development because the development is underway, and the  
9 land has been sold to the Developer, and the Developer has  
10 started to build whatever it is. There will come a point where  
11 it's too late. But until the point's come when it's too late,  
12 the Policy change can result in a different approach to any  
13 particular application.

14 THE WITNESS: Yes. Yes, very much so.

15 COMMISSIONER HICKINBOTTOM: That's just how--that how  
16 politics works.

17 THE WITNESS: Exactly.

18 COMMISSIONER HICKINBOTTOM: Yes.

19 BY MR RAWAT:

20 Q. And in terms of you've made the point that the general  
21 criteria, as you've called them, and you've set out criteria for  
22 residential applications and commercial applications, so they're  
23 not recorded in written policies or guidance, so these have just  
24 emerged as a matter of practice.

25 A. Yes, over the years, I would say "yes".

1 Q. And you make--and you also say--and this is at your  
2 12.1, Mr Smith-Abbott--"The general criteria have not changed  
3 since 2007".

4 You then go on to say (reading): "There are three  
5 things which are now due to be insisted upon, going forwards, in  
6 respect of applications made direct to the Ministry for a  
7 disposal of Crown Land for residential purposes:" and you set  
8 out the three things: That the applicant be a first-time  
9 homeowner; have a genuine intention to develop the property for  
10 residential use; and is able to demonstrate an ability to do so.

11 In terms of those three things that you are going to  
12 use taking forward, I mean, do you definitions? For example, do  
13 you have a definition of a first-time homeowner?

14 A. Well, yes. I mean, that first-time homeowner must not  
15 have in his or her possession land elsewhere.

16 Q. Of any sort that could be turned to residential use.

17 A. Potentially, yes.

18 I mean, I think that here is where we will have to  
19 define, because I just gave you a very quick example, but here's  
20 where we have to define what first-time home ownership may be.  
21 That person may have commercial land. I don't really, frankly  
22 know. In this hypothetical environment that we are start of  
23 casually--

24 Q. Wandering--

25 A. Wandering around, yes.

1 I mean, that person may have land to develop  
2 commercially. They may not have land to develop a home. Does  
3 that person get excluded from this programme? It's yet to be  
4 determined, I think, but, yes, but as a matter of principle and  
5 policy, yes.

6 We are encouraging first-time homeownership as a  
7 principle. However it gets defined and promulgated to public,  
8 then that becomes the subject of what we then need to do.

9 Q. And it's, I suppose, what you set out there are the  
10 Policy, what they--

11 A. Correct.

12 Q. --needs work to do is the mechanics.

13 A. Correct.

14 Q. So refine the Policy, and this is again--I know we've  
15 explored it with more than one witness--and the Ministers will  
16 set the Policy and that's what you set out there, the Public  
17 Officers then have to deal with the technical details as more  
18 than one witness has described it, but it's, as you say,  
19 defining what a first-time homeowner would be, defining what a  
20 reasonable period of time would be.

21 A. Right.

22 Q. They--having an assessment process for--to demonstrate  
23 an ability to develop the property for residential use, which is  
24 something we've talked about.

25 So, there is something where there's more work to be

1 done.

2 A. Yes.

3 Q. Can I just ask, though, one thing about the Estate  
4 Land Committees, and I've tried as we've gone through to make  
5 this distinction between the direct application to the Minister  
6 which would have to then be considered internally and with the  
7 Minister taking recommendation and the process that goes through  
8 the Estate Lands Committees.

9 Would you accept that there is benefit having a Land  
10 Committee that drafts its own criteria because they have local  
11 knowledge?

12 A. Well, let's look at this. There is, I think, what has  
13 emerged with the Estate Committees is a relatively consistent  
14 practice of determining who qualifies for lands, and we've had  
15 several iterations, several Estate Committees, so we're not  
16 starting from a blank slate, so to speak.

17 Are there, then, objective conditions that will govern  
18 specific disposals across islands. Because of historical  
19 consideration, I again go back to the whole notion of ancestral  
20 lands because there is a notion that there is not only long-term  
21 occupation of that land or use of that land in particular ways.  
22 There may be historical precepts that will govern how that land  
23 gets disposed. So, that also needs to be taken into account.  
24 That needs to be closely studied, consulted, and agreed.

25 And then does the Estate Committee have a right to



1 inform that process? By all means. By all means.

2 COMMISSIONER HICKINBOTTOM: That's the answer, isn't  
3 it, Mr Smith-Abbott, that when you're preparing--when these  
4 guidelines are being prepared, you will want, you will need  
5 input from the Estates Committees because there will be in  
6 relation to various estates different islands, different factors  
7 that will apply in their case that need to be fed into the  
8 guidelines?

9 THE WITNESS: Very much so.

10 COMMISSIONER HICKINBOTTOM: I mean, that doesn't  
11 necessarily mean that the Estates Committees should be able to  
12 dictate exactly what their criteria are; it doesn't necessarily  
13 mean that, but they should at least have an opportunity for  
14 input into the criteria that you're adopting.

15 THE WITNESS: Yes. And what I'm also stating is that  
16 that input right--because right now it's administratively done,  
17 so therefore to the point made earlier, it has to be enshrined  
18 in law somewhere.

19 COMMISSIONER HICKINBOTTOM: It needs to be, as it  
20 were, written down.

21 THE WITNESS: Written down, so you could start by way  
22 of policy. You could start by way of practice.

23 COMMISSIONER HICKINBOTTOM: But end up with some  
24 written guidelines so that everybody knows transparently and  
25 openly--

1 THE WITNESS: What we--how we're going about doing  
2 this.

3 COMMISSIONER HICKINBOTTOM: Exactly.

4 THE WITNESS: How we're going about disposing of lands  
5 for any particular need. We are looking at residential  
6 purposes, but there are a number of other legitimate uses.

7 COMMISSIONER HICKINBOTTOM: Where different guidelines  
8 will apply.

9 THE WITNESS: Where different guidelines will apply,  
10 which you'll have to mediate conflicts, conflicting uses, where  
11 there must be some degree of adjudicating that conflict in use,  
12 the role of Cabinet in this whole process. That has to be  
13 addressed. How do you get public input and feedback  
14 from--through the Committees, if that's the mechanism we're  
15 going to use, the Estate--

16 COMMISSIONER HICKINBOTTOM: Into the process?

17 THE WITNESS: Into the process, and how do we then  
18 loop that information back to them.

19 COMMISSIONER HICKINBOTTOM: I understand that.

20 MR RAWAT:

21 Q. If we just turn--

22 MR RISSO-GIL: Again, in the hope of being helpful,  
23 there is evidence in the bundle of the current sort of dialogue  
24 that takes place with respect to the Anegada Land Advisory  
25 Committee, so I could give you the reference rather than take

1 you to that.

2 MR RAWAT: Mr Risso-Gil is reading my mind because I  
3 was just going to ask him to turn to page 283.

4 (Overlapping speakers.)

5 MR RISSO-GIL: It's very good--

6 COMMISSIONER HICKINBOTTOM: Always steal thunder at  
7 every opportunity, Mr Risso-Gil.

8 BY MR RAWAT:

9 Q. I think Mr Risso-Gil had in mind, I hope, 283, if you  
10 could turn it up, perhaps, just illustrative of the kind of  
11 complexity.

12 A. Which?

13 Q. Page 283, the same bundle.

14 MR RISSO-GIL: And 620 and 621, which is a product of  
15 the Anegada Advisory Land Committee, as well.

16 COMMISSIONER HICKINBOTTOM: Thank you very much.

17 Just before we go to this, and not stopping us going  
18 to this. I see the time, how long do you think you'll be--

19 (Overlapping speakers.)

20 MR RAWAT: I was going to suggest we have a short  
21 break for the Stenographer, and then I'll try and finish  
22 Mr Smith-Abbott within sort of 20 minutes after that.

23 COMMISSIONER HICKINBOTTOM: Do you want to deal with  
24 this first?

25 MR RAWAT: Yes, please.

1 BY MR RAWAT:

2 Q. I think the reason I was going to highlight it,  
3 Mr Smith-Abbott, because it is--I think it's a record of a  
4 meeting of the Committee, but the first question they ask is who  
5 is an Anegadean? And that sort of perhaps illustrates, firstly,  
6 is the potential complexity of the questions that have to be  
7 asked; but secondly, also, that they may be specific to  
8 different islands, for example, because you make the point in  
9 your Affidavit that Anegada has a particular significance in the  
10 BVI and has its own separate history, and so different questions  
11 will arise in different contexts.

12 A. Right.

13 So, therefore, do you impose a model that may have  
14 been suitable or reasonable for other islands, save Anegada, so  
15 Anegada has a particular set of conditions that govern--long  
16 history--that governs the adjudication of lands which have not  
17 been settled, which is still the ongoing work in tandem with the  
18 Committee.

19 COMMISSIONER HICKINBOTTOM: Yes.

20 THE WITNESS: So, that has to be worked on, and will  
21 be worked on, will be worked on in dialogue with the Committee  
22 to the extent to which subdivisions that are currently taking  
23 place will be guided by the input of the Committee for either  
24 residential or commercial purposes. So, they are having a  
25 dialogue internally, and then the Ministry will be guided by

1 those recommendations.

2 Q. Thank you.

3 MR RAWAT: Commissioner, I suggest a short break for  
4 the Stenographer, and then we'll try and finish Mr Smith-Abbott.

5 COMMISSIONER HICKINBOTTOM: We'll have a five-minute  
6 break, Mr Smith-Abbott, and then come back and complete your  
7 evidence. Thank you very much.

8 (Recess.)

9 COMMISSIONER HICKINBOTTOM: I think we're ready to  
10 resume.

11 Just before Mr Rawat asks his next question, could I  
12 just ask one question because you'll be able to help me.

13 On--you don't need to look at it, but on the Anegada  
14 Advisory Land Committee minutes, there are a list of people who  
15 want deeds, and so on, and some of them have in brackets  
16 afterwards "ancestral", and you've referred to ancestral claims  
17 to land. Can you just help me in a couple of sentences about  
18 what that means.

19 THE WITNESS: So there is a system, a network of walls  
20 which were very much well-understood to have individuals vested  
21 in the use of that land for whatever purpose, so that network of  
22 walls, there is sufficient information and memory as to who  
23 those individuals would be.

24 COMMISSIONER HICKINBOTTOM: Yes. So, these are  
25 effectively plots of land but marked by walls.

1 THE WITNESS: Yes.

2 COMMISSIONER HICKINBOTTOM: There is, as it were,  
3 historical knowledge and information about who owns these  
4 particular plots of land. Is this simply on Anegada or is this  
5 on other islands, too?

6 THE WITNESS: Just strictly Anegada.

7 COMMISSIONER HICKINBOTTOM: That's very helpful.

8 Thank you very much.

9 Yes, Mr Rawat?

10 MR RAWAT: Thank you.

11 BY MR RAWAT:

12 Q. If I take you to 27, please, Mr Smith-Abbott, and it's  
13 your paragraph 15.3, you're discussing the general criteria, and  
14 you say (reading): I am not aware of any differences in the  
15 general criteria depending on whether the land to be leased or  
16 purchased is to be used for residential or commercial purposes".  
17 I just want to--

18 A. I'm sorry? Which/

19 Q. Sorry. Your paragraph 15.3 on page 27 of your  
20 Affidavit. You say essentially no differences between--in the  
21 general criteria. But just to clarify that a little, if we go  
22 back 11.2 and 11.3 on page 18...

23 A. 11.3?

24 Q. Yeah.

25 So there you set out general criteria for residential

1 and general criteria for commercial. Were you--there are  
2 obviously differences between the two. Were you intending at  
3 15.3 to refer to whether something is purchased or leased?

4 A. So, effectively the process, the application process,  
5 if you want to think about the manner in which the Ministry  
6 begins to act on a request for the use of that land,  
7 that's--that doesn't, by process, differ that much. It's  
8 generally by letter. In the case of Estate Committees, you will  
9 have an application process, but someone would instigate that by  
10 simply writing to the Ministry, suggesting that they want to  
11 have--make use of the land in whatever purpose, manner that they  
12 described, and then that will begin the actions within the  
13 Ministry, and there are no distinctions between residential or  
14 commercial purposes for the purposes of beginning that--the  
15 action at the level of the Ministry.

16 Q. If we jump forward to page--just look at page 19  
17 briefly. You say at 13.4: "We are currently preparing guidance  
18 for a distribution in respect of the Copper Mine Estate  
19 subdivision".

20 What stage has that guidance preparation reached?

21 A. So, we are making use of the existing templates of  
22 Estate Committees. We are introducing the basic principle of  
23 financial capacity, in other words, the ability to do or carry  
24 out the works, the residential projects, so to speak, build your  
25 home within a reasonable period of time. There is work already

1 in terms of a subdivision plan which already pretty much  
2 determines that there are X number of parcels available, and  
3 effectively what we must then carry this process forward, at  
4 least begin to take into consideration, given the number of  
5 applicants, what is a reasonable way to at least not only  
6 register interests but then dispose of that land.

7           So, although the--there's a notion that they will take  
8 time to develop the framework, it has to be balanced against the  
9 reality that there are disposals that are likely to take place.  
10 And in terms of defining, at least, some parameters that were  
11 reasonable within the scope of what has been done in the past  
12 and again the introduction of financial capacity, the  
13 introduction of reasonable time frame for the implementation of  
14 works, that has to--those two elements or determinants of the  
15 criteria has to be introduced into the Terms of Reference so  
16 that at least in this particular disposal of them, we begin to  
17 exercise some of what we've gone through.

18           Q.    But have you actually got draft guidance available?

19           A.    They're still in progress, but again we are going to  
20 use the existing Terms of Reference from the Estate Committees,  
21 the ones that obviously we would have disclosed in the bundle  
22 and modify those, so there is at least a baseline from which we  
23 can then proceed to define these other parameters in a very  
24 practical sense.

25           Q.    The one you reference in that paragraph of the Virgin



1 Gorda Lands Advisory Committee which was--

2 A. Exactly.

3 Q. --a draft from 2019.

4 A. Correct.

5 Q. So, that's the--although it's still a draft, that's  
6 the most recent version of a--

7 A. Exactly.

8 (Overlapping speakers.)

9 A. And we will build on that one.

10 Q. Can we turn just to--

11 MR RISSO-GIL: The Anegada Terms of Reference are more  
12 recent; I think they're dated 2020.

13 COMMISSIONER HICKINBOTTOM: That's right.

14 MR RAWAT: Yep. It's paragraph 14.39.

15 BY MR RAWAT:

16 Q. In terms of Valuation Reports, which we've touched on,  
17 you make the point in your Affidavit that they are now a  
18 standing requirement for residential applications since  
19 February 2021. Does that mean that an application doesn't go  
20 forward if you don't have a valuation report?

21 A. That is correct.

22 In other words, what the Ministry intends to do is to  
23 ensure that the Valuation Reports form a part of the Cabinet  
24 Paper as it proceeds on for determination.

25 Q. And what you say is that--

1           A.    Which bullet are you looking at, please?

2           Q.    We're now at page 27.  If you look at 17.1 is where  
3 we--you start, you discuss this.  If you--if I draw your  
4 attention, Mr Smith-Abbott, to 17.3 (reading):  "The current  
5 policy view is that even if the Government of the Virgin Islands  
6 wishes to maintain support to BVIlanders and Belongers in this  
7 way", and that's the way you're referring to takes us back to  
8 17.2 where it says, you know, (reading):  "Government policy has  
9 consistently been to make land available at deliberately low  
10 prices to BVIlanders and Belongers for residential purposes".

11                    But you say the change, and it's going back to 17.3 is  
12 that:  "It is right that the cost of that policy in terms of the  
13 difference between the value of the land on the open market and  
14 the price at which it is disposed of should be recognised".

15                    So, what is meant by "recognised"?

16           A.    So, let's take a step back and use a hypothetical  
17 example.  In the open market, Plot or Parcel X may realise  
18 50,000, I will say, but the purchase price of that parcel may be  
19 at 30,000.  So the difference of \$20,000 is the cost of this  
20 house, excluding the administration costs which can be  
21 calculated if we really wanted to get that far into it, but  
22 excluding the administration costs, the equity position, in  
23 other words, we have--the Government has given that applicant  
24 \$20,000's worth of equity, and that difference is the cost of  
25 the Policy, so that Valuation Report will give you exactly the

1 basis for asserting that the costs of implementation of the  
2 Policy over time is the addition of any number of disposals--

3 COMMISSIONER HICKINBOTTOM: Yes.

4 THE WITNESS: --including commercial, including any  
5 other reasonable use of land that can then be appraised by an  
6 expert, by a land appraiser, which is effectively the Policy  
7 that we are currently implementing, so every parcel now is  
8 appraised, and that Report forms part of Cabinet's submission.  
9 So, those--the composite--the aggregate number of reports over  
10 any number of disposals for this particular programme will be  
11 added up and can be disclosed as part of, say, the indicators  
12 are disclosed in our budget, because there is an input of money.  
13 So, it--we may have X number of hundreds of thousands of dollars  
14 on an annual basis to build roads, build infrastructure, to  
15 facilitate the home ownership programme, so that's an easily  
16 quantifiable measure of the costs of the Policy.

17 COMMISSIONER HICKINBOTTOM: And it also enables the,  
18 whoever it is, the Cabinet, I suspect, to take an informed  
19 decision as to whether to continue the Policy or change it or--

20 THE WITNESS: Correct.

21 COMMISSIONER HICKINBOTTOM: --or do whatever it wants  
22 to do.

23 THE WITNESS: Exactly.

24 COMMISSIONER HICKINBOTTOM: Yes.

25 BY MR RAWAT:

1 Q. So, it's a way, as you say, of assessing the costs of  
2 the Policy. What it doesn't mean is that Cabinet will follow  
3 the Valuation Report because to follow the Valuation Report will  
4 be to go against the Policy.

5 A. No--no, no. In other words, we know that the value of  
6 the land is 50,000. The sale-purchase--the sale value is 30,000  
7 because that is exactly what the Programme is intended to do, to  
8 make home ownership affordable. So, therefore, the Policy  
9 position here is that we are going to discount--"discount"--X  
10 amount to improve the equity position of that applicant so that  
11 they can use that equity position to get banking arrangements or  
12 whatever the case may be. I'm not going to speculate.

13 But for the purposes of what the Ministry has to do is  
14 it has to, under this new--"new"--environment, it will take the  
15 aggregate sum of that favourable equity position given to that  
16 applicant. So, \$20,000 times however many disposals plus  
17 whatever other costs that we may have been minded to budget for,  
18 so in this very loose example it may have--we may have allocated  
19 \$300,000 for roads and whatever else, and we may have disposed  
20 of a million dollars' worth of land, for argument's sake, which  
21 means that the cost of that policy, if you were to sell that  
22 land, that total amount of land for \$800,000 is \$200,000. So,  
23 the cost of the implementation of that Policy is half-a-million  
24 dollars, because there's a \$200- equity position plus the  
25 300,000 that is a Budget allocation.

1 Q. And I suppose to maintain the distinction, this says,  
2 as a policy, the gateway is whether you are--you have Belonger  
3 Status or BVIlander status. That's what opens the door to you.  
4 If you are a Non-Belonger, you have to go through a different  
5 route.

6 A. Open market.

7 Q. Open market, purchasing private land.

8 A. So that is not costly.

9 Q. Yes.

10 A. That is not factored anywhere in this.

11 Q. Yeah. Because you don't fall within this programme at  
12 all.

13 A. That's correct.

14 Q. And commercial, the disposal of Crown Land on a  
15 commercial basis, whether by lease or sale, is different because  
16 there valuation does matter, and it has always--it has been  
17 since the '70s.

18 A. Correct.

19 The basis of determining, just for clarity's sake, the  
20 basis of determining a ground rent or lease value is typically  
21 on the unimproved value of that land plus whatever percentage is  
22 applied on that unimproved value to give you that ground rent or  
23 it may be founded on historical precepts of other similar leases  
24 that may have been granted. So, that is a totally different  
25 environment, which is not to be confused with this particular

1 programme.

2 Q. Which has a particular policy objective.

3 A. Correct.

4 Q. And which is the Policy objective that has spanned  
5 different governments.

6 A. Exactly.

7 Q. Now, just clear this up for me, please, if you look at  
8 17.4(a) you say that "The valuation report is generally required  
9 prior to submitting the matter to Cabinet for approval". And  
10 you say the same thing at (b) where you're speaking of disposal  
11 by an exercise--

12 A. Which one are we looking at?

13 Q. We're looking at page 27, 17.4, at the bottom there,  
14 please.

15 A. Right.

16 Q. Just at (a) you say that "the valuation report is  
17 generally required prior to submitting the matter to Cabinet for  
18 approval", and you say the same thing at (b) when you're  
19 saying--when you're dealing with disposals as a matter of  
20 discretion.

21 In what circumstances would it not be required?

22 A. I cannot say right now under what circumstances it  
23 will not be required. In other words, my understanding is that  
24 in general terms commercial--Valuation Reports are generally  
25 used to determine the value of the--of a lease, say, for

1 instance.

2 Q. I mean you--I think you've clarified that,  
3 Mr Smith-Abbott, the difference between the uses of Valuation  
4 Reports or res--since February 2021, which is about being able  
5 to assess the costs of a particular policy.

6 A. Right.

7 Q. Whereas actually when--it has more distinct--more  
8 specific use with a commercial situation because it informs what  
9 price Government is prepared to let the land go at.

10 A. Right.

11 Q. Well, if I could move you, then, just to 17.19, which  
12 is at page 29, please.

13 Now, you take us here to the New Anegada Advisory Land  
14 Committee Terms of Reference, and you say that they include  
15 "recommendations as to conditions which should be imposed", and  
16 these are conditions as to how long someone should hold the land  
17 before they can part with it.

18 At 17.20, you say: "This was a deliberate initiative  
19 taken late last year, to protect Anegada from abuse of"  
20 process--"of the process. In particular, it was designed to  
21 prevent flipping, where a Belonger obtains land at a heavily  
22 discounted price and makes a windfall profit on an onward sale".

23 How common is flipping?

24 A. I cannot speak to how common it is. I know that in  
25 dialogue with the current Committee, this is something that

1 really is a concern because it goes to the core of whether, for  
2 instance, whether Anegadeans, locals, will be able to afford  
3 land in the future at reasonable rates. So, there is some  
4 consideration, really, being given as to how do you begin to  
5 address any "flipping", as you called it.

6 Q. You called it as "flipping"?

7 A. I called it "flipping", yes. So, yes. But--yes,  
8 flipping, and that you effectively look at holding that land for  
9 seven years, and then you would have received that land at  
10 exceedingly beneficial rate in keeping with the fact that you  
11 were--you had sought the land based on ancestral claims and,  
12 therefore, you would want to retain that land in local ownership  
13 for as long as you may.

14 Q. And clar--help me with this, please, because--and we  
15 can move it out of Anegada, but the Policy has the benefit that  
16 it makes land affordable to Belongers; and so, as you say, you  
17 have--somebody can purchase land at a beneficial rate. If--once  
18 they get it, they usually get it as a freehold. So, when they  
19 do sell on that land, are they restricted as to who they can  
20 sell it to? I mean, can they sell it to a Non-Belonger who has  
21 the--who obtains the right licence or must they always sell it  
22 to a Belonger?

23 A. Well, what I do know is that Government has a first  
24 right of refusal and that is typically built into the transfer  
25 documents. So, at first instance, you then have the



1 ability--Government will have the ability to reacquire that  
2 parcel for redistribution. That's obviously one way of looking  
3 at it.

4           And it transcends. This is now across all islands.  
5 This is not just any singular place. Again, I go back to the  
6 point of the equity position that you are favorably given by  
7 granting under the Programme, lands in question--right?--which  
8 were former Crown Lands now being held in freehold. So, the  
9 transfer document will specify the fact that, say, you are to  
10 give consideration to Government so that the Programme can then  
11 continue if you don't to want to retain it.

12           Is it a practice, then, that you may want to foster  
13 that that equity position then benefits, which was a public  
14 good, may I add--it was a public good--it was public lands--then  
15 who should effectively benefit from that position at the end?  
16 And that is something that is being looked at right now.

17           Q.    And is that part of the overall sort of--let's call it  
18 "policy review" that you--that we discussed with you earlier--

19           A.    Correct.

20           Q.    --where the Crown Land Management Plan will have to  
21 develop, and so part of that will need to consider, I suppose,  
22 how Government can best take the land back or exercise its Right  
23 of First Refusal.

24           A.    Correct.

25           Q.    Which could mean, I mean, if Government is purchasing

1 it off someone who--do they have to pay Market Price, or can  
2 they get it discounted for the benefit--

3 (Overlapping speakers.)

4 A. Well, right now there's no guidance around that.  
5 There is no guidance around the conditions for re-sale, so that  
6 would be--

7 MR RISSO-GIL: This may be of assistance on page 30 at  
8 6, at the top of that page.

9 THE WITNESS: That is--so, the statement here is  
10 (reading): "To increase the number of years to seven (7) given  
11 to landowners (crown land) before land can be sold and in the  
12 event that it should happen, the Government of the Virgin  
13 Islands has first preference or right of refusal in purchasing  
14 the crown land (undeveloped land) back from the land recipients  
15 for redistribution to other applicants who did not receive Crown  
16 Land before at the same cost between land owner and the  
17 Government of the Virgin Islands".

18 And this is one of the elements of what the Lands  
19 Committee on Anegada is contemplating very seriously.

20 COMMISSIONER HICKINBOTTOM: So, I mean, to put it at  
21 its broadest, the possibility of flipping is very much in your  
22 mind, the Ministry's mind, and as part of the review you're  
23 conducting, I know it's an inelegant term, but you will be  
24 considering anti-flipping measures. You will be considering  
25 measures to prevent a purchaser of Crown Land from simply

1 selling on at possibly a very large profit. I mean, those  
2 measures, it seems to me, could take a number of forms, either  
3 simply the number of years or a requirement to give Government  
4 first refusal on any sale on some terms or both. But, I mean,  
5 there are a number of ways it could be done.

6 Is that--and this, I think, these paragraphs 5 and 6  
7 in paragraph 17.19 of the Recommendations from the Anegada  
8 Advisory Land Committee as to what they would like to see in  
9 respect of Anegada.

10 THE WITNESS: Right.

11 So, I want to make sure that it's clear that the  
12 recommendation is not coming necessarily solely from the  
13 Ministry. The Committee itself is--

14 COMMISSIONER HICKINBOTTOM: I understand that.

15 THE WITNESS: --it is thinking about these issues.

16 COMMISSIONER HICKINBOTTOM: Yes. No, no, I  
17 understand--

18 THE WITNESS: Right. So--

19 COMMISSIONER HICKINBOTTOM: But the Ministry is  
20 thinking about it in the context--

21 THE WITNESS: In the context of a much broader--

22 COMMISSIONER HICKINBOTTOM: Exactly.

23 THE WITNESS: --issue, because, of course, we are not  
24 just disposing lands on Anegada.

25 COMMISSIONER HICKINBOTTOM: Yes. No, no, I understand

1 that.

2 MR RISSO-GIL: One small correction, so that--at  
3 17.19, those are the Ministry's terms. There is reference below  
4 that at 17.21, without citing them, to what the Anegada Advisory  
5 Land Committee came back with in response to that, and that was  
6 the reference to pages 620 and following which I gave you  
7 earlier.

8 THE WITNESS: Which is to 21 years.

9 MR RISSO-GIL: So there was a slight difference  
10 between them but not much.

11 COMMISSIONER HICKINBOTTOM: So 17 and 19 are the--

12 MR RISSO-GIL: That's the Ministry.

13 COMMISSIONER HICKINBOTTOM: The approved--

14 MR RISSO-GIL: Yes.

15 COMMISSIONER HICKINBOTTOM: --the approved version.

16 MR RISSO-GIL: Yes, that's right, sir.

17 COMMISSIONER HICKINBOTTOM: Thank you.

18 MR RAWAT: So 17.19 is the Ministry's proposal.

19 MR RISSO-GIL: That the Ministry including 5. and 6.,  
20 that 6. deals with members of the family and so on.

21 MR RAWAT: Which we find, Commissioner, at  
22 page--that's at page 611 and 612 in the bundle.

23 MR RISSO-GIL: Exactly.

24 COMMISSIONER HICKINBOTTOM: And then the Ministry--the  
25 Lands Committee came back with--

1 MR RISSO-GIL: Slightly different.

2 MR RAWAT: And this is at 17.21, that rather than the  
3 period being seven years, they should be increased to 21 years.

4 MR RISSO-GIL: Yes. And they removed the provision  
5 restricting sale beyond the member of the family or household.

6 COMMISSIONER HICKINBOTTOM: So, I mean, so it's a  
7 different way of doing it.

8 MR RISSO-GIL: Different way of doing it, yes.

9 COMMISSIONER HICKINBOTTOM: No, that's very helpful.  
10 Thank you.

11 BY MR RAWAT:

12 Q. If I just take you, please, to page 31, in the bottom  
13 there. Mr Smith, you were asked to deal with a selection of  
14 sample disposals just to see how the process worked and to  
15 explain it, and you set out in the remainder of your Affidavit a  
16 summary of--in respect of those transactions, but just so we are  
17 clear, I mean this isn't--these are not transactions you have  
18 direct involvement in because they would have occurred before  
19 you took over your post as Permanent Secretary.

20 A. That is correct.

21 Q. And so, were you just dependent on the research that  
22 was undertaken by your team identifying the relevant papers and  
23 putting a chronology together?

24 A. That is correct.

25 Q. Now, at various instances--and we can see an example

1 of that--if you look at 23.11 on the next page, and there are  
2 other instance of this, where you use the words "I understand",  
3 so you say (reading): "In summary I understand the position in  
4 respect of this disposal to be as follows".

5           Where you say that, is that--is your understanding  
6 based on your reading of the papers and information you have  
7 received from Public Officers working to you?

8           A.    That is correct.

9           Q.    And you also say, "I believe", at 23.12, on page 34--

10          A.    That is correct, yes.

11          Q.    --again that comes just from your reading of the  
12 papers that--

13          A.    That is correct.

14          Q.    Now, there have been instances and one example we see  
15 at 35 where we asked you to look at a transaction that involved  
16 the BVI Electricity Corporation, and you say that you regret  
17 your "officers have not yet been able to locate and gather the  
18 paperwork for this transaction".

19                Now, I think there was another one which is--

20          A.    Yes, at the end.

21          Q.    Blunder Bay.

22          A.    Correct.

23          Q.    Which again is the very last paragraph of the  
24 Affidavit.

25          A.    That's correct.

1 Q. And can we take it that those searches have not born  
2 fruit and no papers can be iden--located for those?

3 A. Yes. Unfortunately, I cannot--we cannot locate those  
4 files.

5 Q. You have explained in your Affidavit, I should put on  
6 the record, that the circumstances in which files are--certain  
7 historical files are held, obviously the material was lost  
8 because of the hurricanes and then subsequent to that, you--a  
9 system by which you stored material has changed, hasn't it?

10 A. That's correct.

11 Q. And that's affected Officers' the ability to retrieve  
12 material.

13 A. That is correct, yes.

14 Q. Can I deal with one final matter, and I hope I can  
15 deal with it shortly.

16 As Permanent Secretary to the Ministry of Natural  
17 Resources, Labour and Immigration, you've sent a Warning Letter  
18 which dealt with various circumstances arising out of Crown  
19 Land. You were invited--as you know, we've done this with you  
20 before, to submit a Written Response. Some of the issues raised  
21 in that Warning Letter were canvassed today, especially the  
22 availability of written criteria or policies or guidance. But  
23 is it right that, firstly, you haven't submitted a Written  
24 Response as Permanent Secretary but you adopt the response  
25 that's been provided on behalf of The Honourable Wheatley?

1           A.    That's correct.

2           Q.    Thank you.

3           MR RAWAT:  Commissioner, I have reached the end of my  
4 questions.  Can I conclude by thanking Mr Smith-Abbott for  
5 coming today, for the time that he's given the Commission but  
6 also very much for the way in which he has given his evidence.

7           Thank you, sir.

8           COMMISSIONER HICKINBOTTOM:  Could I just ask one last  
9 question, and again I'm afraid it's a test question, and if you  
10 don't know the answer, we'll find out the answer from somewhere  
11 else.

12           But throughout your Affidavit, but particularly when  
13 discussing Anegada Valuation Reports, you refer to--this concern  
14 the Policy that's we've been discussing--that the Government  
15 Policy has consistently been to make land available at  
16 deliberately low prices to BVI Islanders and Belongers.

17           Could you explain to me--I've got an idea about this,  
18 but it would helpful if you could explain to me the difference  
19 between BVI Islanders and Belongers, as you understand it.  As I  
20 say, if you don't know, it's not intended to be a sort of  
21 examination and we will find out because there must be a legal  
22 basis for this.  I found a legal basis, but I just wondered, you  
23 may be able to confirm what the difference is.

24           THE WITNESS:  By, in a practical sense with respect to  
25 all that we've discussed, there is no functional difference.  A



1 Belonger is entitled to any and all of what we've just  
2 discussed.

3 COMMISSIONER HICKINBOTTOM: Quite.

4 THE WITNESS: So a BVIlander typically arrives  
5 citizenship by descent.

6 COMMISSIONER HICKINBOTTOM: Exactly.

7 THE WITNESS: By descent.

8 COMMISSIONER HICKINBOTTOM: No, and I think that's how  
9 I understand it.

10 THE WITNESS: And birth of either of their parents.

11 COMMISSIONER HICKINBOTTOM: Yes.

12 THE WITNESS: And a Belonger may not necessarily have  
13 that.

14 COMMISSIONER HICKINBOTTOM: Because a Belonger may be  
15 a Belonger by certification or--

16 (Overlapping speakers.)

17 THE WITNESS: Correct, which we would have addressed  
18 in the other Affidavit.

19 COMMISSIONER HICKINBOTTOM: And this may be something,  
20 if Mr Risso-Gil knows the relevant provisions that he will be  
21 able to respond to if you can't.

22 As I understand it, BVIlanders are a subset of  
23 Belongers. So, if you're a BVIlander, you've got to be a  
24 Belonger, but if you're a Belonger, you don't have to be a  
25 BVIlander.

1 THE WITNESS: Right, sir. BVIslander, so a Belonger  
2 is, yes, I guess, is a much larger group.

3 COMMISSIONER HICKINBOTTOM: And BVIslander fit within  
4 that group. So, if you're a BVIslander, you're definitely a  
5 Belonger.

6 THE WITNESS: Yes.

7 COMMISSIONER HICKINBOTTOM: Yes.

8 THE WITNESS: Yeah, definitely a Belonger.

9 COMMISSIONER HICKINBOTTOM: Yes.

10 THE WITNESS: If you're a BVIslander, you're  
11 automatically a Belonger.

12 COMMISSIONER HICKINBOTTOM: Exactly.

13 MR RISSO-GIL: And if it would be helpful, I suppose  
14 we could go to 61 of the bundle and quickly look them with  
15 Mr Smith-Abbott, if that would be of assistance, Sir. It's  
16 at 61 of the first volume of the bundle.

17 COMMISSIONER HICKINBOTTOM: No, I don't think it is  
18 because I think--

19 MR RISSO-GIL: We know where we are.

20 COMMISSIONER HICKINBOTTOM: I think we know where--if  
21 Mr Smith-Abbott had answered in a different way, that may have  
22 moved the foundation of my understanding, but--

23 MR RISSO-GIL: Very well, sir.

24 COMMISSIONER HICKINBOTTOM: Thanks, Mr Risso-Gil.

25 Can I just say thank you very much, Mr Smith-Abbott,

1 for your evidence. Some of these--the explanation of some of  
2 these things is not straightforward, and you've made--your  
3 evidence both in writing and this morning has been very clear  
4 and very helpful in understanding the system. Thank you very  
5 much.

6 THE WITNESS: Thank you, sir.

7 (Witness steps down.)

8 MR RAWAT: Now, we've asked the Minister to come at  
9 2:30, sir.

10 COMMISSIONER HICKINBOTTOM: Oh, fine.

11 MR RAWAT: We will resume at that point.

12 COMMISSIONER HICKINBOTTOM: Good. Thank you very  
13 much. We'll resume at 2:30. Thank you.

14 (Recess.)

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Session 2

COMMISSIONER HICKINBOTTOM: Are we ready to proceed?

MR RAWAT: We are, Commissioner.

COMMISSIONER HICKINBOTTOM: Good. Thank you very much, Mr Rawat.

MR RAWAT: Commissioner, our next witness is The Honourable Vincent O Wheatley, and just for the record, if I could confirm that Mr Edward Risso-Gil for this session continues to represent the Attorney General and the elected Ministers.

BY MR RAWAT:

Q. Honourable Wheatley, thank you very much for coming back to give further evidence to the Commissioner. You will by now be familiar with the Hearing process.

A. Very.

Q. And so the only thing I need to do, I hope, is to remind you just to keep your voice up for the Stenographer.

The topic today is one that we've actually canvassed with you before, and that is Crown Land. I think you will remember if we can go back that far, that in May when you were then-Permanent Secretary, Dr Potter came to give evidence to the Commissioner. It was on that topic.

A. Yes, no problem.

Q. I will also need to just ask you some questions about Belongership which follow on from evidence that The Honourable

1 Premier gave recently.

2 A. Okay.

3 Q. Now, since May, the Commissioner has received more  
4 disclosure on the topic of Crown Lands. He also has an  
5 affidavit which your current Permanent Secretary, Mr Joseph  
6 Smith-Abbott, made on your behalf. Have you had an opportunity  
7 to read that Affidavit?

8 A. Absolutely.

9 Q. Thank you.

10 Now, you were sent as Minister of Natural Resources,  
11 Labour and Immigration a Warning Letter, which is dated the 21st  
12 of September. If you don't have a copy, you should see a copy  
13 on the desk with you.

14 And you will appreciate the nature of this Warning  
15 Letter, which, as I've explained to you and to others, is it is  
16 intended to notify you of potential criticisms. They are not  
17 the view--they do not represent the provisional or completed  
18 views of the Commissioner. They are there to, for fairness to  
19 you, to give you notice of matters that you may wish to put in  
20 the Response to.

21 You did, in fact, put in a Written Response, if we  
22 could just take a quick look at that, please.

23 A. Which one? This one.

24 Q. You should have something which is headed "Appendix A,  
25 Response of The Honourable Minister". Do you have that?

1 A. Um-hmm.

2 Q. And it has with it a small bundle of documents.

3 Can you confirm, please, that that carries your  
4 signature and the date, the 29th of September 2021, it's on the  
5 penultimate page.

6 A. No, it's not there.

7 Q. If we go back to the front, Honourable Wheatley, you  
8 will see that it's headed--

9 A. Okay. Page 9.

10 Q. Have you got it?

11 A. Page 9.

12 Q. Thank you.

13 A. Yes, that is my signature.

14 Q. And it's dated the 29th of September 2021; is that  
15 right?

16 A. That's correct.

17 Q. And can you confirm that you are content that this  
18 Written Response and the accompanying documents to form part of  
19 the evidence to the Commissioner?

20 A. I am content.

21 COMMISSIONER HICKINBOTTOM: I should also add to what  
22 Mr Rawat said, Minister, that this morning we heard evidence  
23 from your Permanent Secretary on the system. And I admit it was  
24 very helpful in explaining with his Affidavit how the system  
25 works and the guidance that there may be, the policies that

1 there may be, and so we may not have to go over much of any of  
2 that. That, I think, now is very clear to us. Thank you.

3 THE WITNESS: That's good to know.

4 BY MR RAWAT:

5 Q. What followed from your submission of your Written  
6 Response, Honourable Wheatley, is that the Commission wrote to  
7 the Attorney General raising a number of additional questions  
8 and queries, and you then submitted a further response, which  
9 you should have that on the desk in front of you on as well.  
10 It's headed "Response to The Honourable V Wheatley to e-mail".

11 A. Um-hmm.

12 Q. If you go please to page 6, which is the very last  
13 page.

14 And can you confirm that carries your signature and  
15 date, the 7th of October 2021?

16 A. Not that page.

17 (Pause.)

18 A. Page 6 of 9 doesn't have a signature on it.

19 Q. I think you might be looking at the bundle that  
20 accompanies it. There should be a separate smaller document.  
21 If you go to the front of the bundle you're looking at.

22 A. On page 6 there is no signature on this page.

23 Q. I see.

24 I think they have been combined, so do you have a  
25 document which is headed "Response of The Honourable V Wheatley

1 to e-mail"?

2 A. Yes.

3 Q. If you go through that?

4 A. Page 6?

5 Q. Yes.

6 A. Yes, my name is there, but there is no signature.

7 Q. I see.

8 A. Dated October 8th?

9 Q. Seventh of October. The version we have is signed on  
10 the 7th of October.

11 A. This one says 8th, but there is no signature on it so,  
12 I'm not sure.

13 Q. It may have been submitted afterwards on your behalf.

14 COMMISSIONER HICKINBOTTOM: Can I be sure that they  
15 are the same documents. The document I have is signed by you,  
16 Minister, dated the 7th of October.

17 THE WITNESS: What I have is 8th, and it's unsigned on  
18 page 6.

19 COMMISSIONER HICKINBOTTOM: Can we just check that  
20 they are the same documents. If we're speaking from different  
21 documents, that's not going to help.

22 MR RAWAT: Show this to Mr Wheatley.

23 (Pause.)

24 COMMISSIONER HICKINBOTTOM: We're just making sure you  
25 have exactly the same document. Which it sounds as if that, in



1 substance, is the same in substance, but this will be--this will  
2 be your signed document.

3 (Pause.)

4 BY MR RAWAT:

5 Q. I think it appears that probably an electronic version  
6 was submitted with a different date unsigned, but if you're  
7 prepared, Honourable Wheatley, we will use the signed version.

8 Whilst that is being sorted out, can you just confirm  
9 that you have the accompanying bundle to this has an index to  
10 it, which has, again, it's got the headed and index to bundle.  
11 Do you have that?

12 A. I do believe so.

13 Q. All right. And that should have 48 pages to it, with  
14 the very last page being an e-mail.

15 A. Yes.

16 Q. With the heading "Financial Implications, Legal  
17 Implications", and that's from your former Permanent Secretary.

18 A. Yes.

19 Q. So, at least we've got the right bundle.

20 A. You have the right bundle. Let's try this again.  
21 Yes, on page 6 that is my signature, dated 7th October 2021.

22 Q. And are you content that that should also stand as  
23 part of your evidence before the Commissioner?

24 A. As far as memory serves me, yes.

25 Q. I mean, it's important that--

1 A. Yes.

2 Q. --it be your evidence, Honourable Wheatley?

3 A. Yes.

4 Q. But you're happy?

5 A. I'm happy. Yes, I'm content.

6 Q. And that should be without qualification, are you  
7 content?

8 A. I'm content.

9 Q. And that contentment, does that stretch to the  
10 accompanying documents?

11 A. The accompanying documents?

12 Q. Yes, which are the ones that we looked at?

13 A. Mr Rawat, we will see where you take me today.

14 Q. You submitted those documents--

15 A. Yes.

16 Q. --to the Commissioner.

17 A. Yes.

18 Q. I just wanted to confirm that you're happy--

19 A. Yes, I'm content.

20 Q. --that they should be part of the evidence?

21 A. They should be part of the evidence.

22 Q. Can you just help me with one thing. In the first  
23 Written Response, when you signed your name, you wrote "I  
24 believe that the facts stated in this Response are true". And  
25 the second, where you were just answering a number of additional

1 queries, you wrote: "The facts and matters set out in this  
2 response are true to the best of my recollection, knowledge, and  
3 belief".

4 Why did you choose to use a different Statement of  
5 Truth the second time round?

6 A. After the file that we referred to, we could not  
7 find--you never know something when you're going to find  
8 afterwards, so this is a safeguard because the file related to  
9 the submission, so we have to protect ourselves, in case we find  
10 additional information.

11 Q. If we turn, then to the--there are two aspects of the  
12 Warning Letter. The first is the issue of what might be said to  
13 be the availability of items and policies on the disposal of  
14 Crown Land, and also the second relates to a specific disposal  
15 of land. I would like to take them in those two parts, please.

16 So, if we can deal with the first, if you turn up your  
17 first Written Response, please.

18 Do you have your Point A?

19 A. Uh-huh.

20 Q. Now, the potential criticism that was raised was that  
21 there were no or there are no alternatively inadequate published  
22 written policies or guidance that set out the process to be  
23 followed by applicants when making an application to purchase or  
24 lease Crown Land.

25 A. That is correct.

1 Q. And you accept for that is correct?

2 A. Um-hmm.

3 Q. Now, you say, though, however, that that save for the  
4 Marine Estate Policy, and I just wanted to confirm which policy  
5 you were referring to. If we pick up, please, the Part 3 of the  
6 bundles, it should be a bundle that starts at 2062, Honourable  
7 Wheatley.

8 A. 2000?

9 COMMISSIONER HICKINBOTTOM: So does mean mine,  
10 Minister, so we're together on that.

11 THE WITNESS: Okay.

12 MR RAWAT: I think I may have slightly different  
13 pagination from everyone else.

14 COMMISSIONER HICKINBOTTOM: You've got the right  
15 bundle.

16 BY MR RAWAT:

17 Q. Turn up 2093, please.

18 A. 2093. Yes. That is the Marine Estate Policy. Land  
19 and Marine Estate Policy.

20 Q. And is that the Policy that you were referring to?

21 A. Yes.

22 Q. So, you say save for the Marine Estate Policy. So,  
23 that's the Policy you have. Now--

24 A. That policy was passed in Cabinet, I think, in 2019,  
25 so we were working with--

1 Q. Right.

2 A. --since taking office.

3 Q. That's something I wanted to just ask you a few  
4 questions about.

5 So, if we go just so that we can orientate ourselves  
6 on the date, if you go to 2110, you will see that there is a  
7 section where it summarises the Policy Recommendations, and can  
8 you see the footnote at the bottom, Footnote 7? It says the  
9 policy was drafted in 2018.

10 A. Um-hmm.

11 Q. When you gave evidence in May 2021, I asked you about  
12 this, and at that time what you were able to tell the  
13 Commissioner was that the policy had gone to Cabinet?

14 A. Yes, that's correct.

15 Q. And then gone to the Attorney General's Chambers. Am  
16 I right to assume that that's for vetting of the Policy?

17 A. That is correct.

18 Q. And then you said, and your words were, and I  
19 quote--you said it would be "finalised in the next six weeks".

20 So, you're able to update the Commissioner and say it  
21 was approved by Cabinet?

22 A. By Cabinet, yes.

23 Q. What stage has it reached now in October 2021?

24 A. Well, that I wouldn't know. I would have to found out  
25 from the technocrats in the office. It would not come back to

1 me.

2 Q. I see.

3 But if you can, do your best just to explain how it  
4 works. So, it's obviously a policy that predates your arrival  
5 in office.

6 A. That's correct. We finalised it, took it to Cabinet.

7 Q. And then it goes to the AG?

8 A. Yes.

9 Q. It doesn't have to go to the House of Assembly?

10 A. It depends if it requires any kind of legal changes.  
11 If we have to change any laws, it must go to the House of  
12 Assembly.

13 Q. I see.

14 A. And I wouldn't know until they send it back to me and  
15 say you have to take this to the House of Assembly to make this  
16 change--this change of law.

17 Q. So, once it's been approved in Cabinet, it comes back  
18 to the technocrats, and they do something with it?

19 A. To AG Chambers, Attorney General's Chambers.

20 Q. Once it's left the Attorney General's Chambers, where  
21 does it go?

22 A. It comes back to my office to the technocrats.

23 Q. What do they do with it?

24 A. It depends on what the guidance is from the AG's  
25 Chambers. It just depends on what the guidance is.

1 Q. Could the guidance be that there needs to be changes  
2 to the document?

3 A. Or the law or some particular law to implement what  
4 you're trying to do.

5 Q. Right.

6 Now, the topic, Honourable Wheatley, as I indicated is  
7 Crown Land. If you go through to page 2113, you'll see there  
8 that under the heading "Suboptimal Management of Crown Lands",  
9 it points out that there is no Crown Land Management Plan, and  
10 there makes a number of policy options--policy recommendations,  
11 if you'd like--one is to "enact legislation that requires the  
12 Ministry of Natural Resources and Labour to develop and  
13 implement a comprehensive Crown Lands Management Plan".

14 And then if we go on to the next page, you'll see that  
15 it speaks of developing a database of all Crown Lands and  
16 publicly managed lands. Then "identify land parcels where  
17 revenue, fees and dues are to be collected", and then lastly  
18 (reading) undertake an audit in relation to the enforcement of  
19 penalties and collection of that.

20 A. My understanding is it is being worked on. The Policy  
21 has two parts. The marine estate and administrative part and  
22 the land management part. The marine side has been finished  
23 because, as a Territory, there is more water than land, so we  
24 gave that marine part the priority. We are currently working on  
25 the land side or the land part of it. It is a working trend.

1 Q. But in terms of what is being done specifically in  
2 relation to Crown Land, can you assist the Commissioner at all  
3 with what stage that has reached?

4 A. I wouldn't know exactly where it has reached. I would  
5 have to find out from the technocrats where exactly that process  
6 is. There have been several discussions about it because one of  
7 the things that as a new government, we strongly believe in is  
8 empowerment for people through landownership. It's something  
9 very dear to us.

10 Q. That is a point that is made in Mr Smith-Abbott's  
11 Affidavit, because he has--and he's explained this today, that  
12 the distinction--and tell me if I've misunderstood this--that  
13 anyone can make a distinction between commercial disposal of  
14 Crown Land for commercial purposes and disposal of Crown Land  
15 for residential purposes. When you're looking at residential  
16 disposals, it is disposals to Belongers and BVI Islanders at  
17 prices that are deliberately kept--

18 A. Reduced.

19 Q. --below market value?

20 A. That is correct.

21 Q. Because of a policy that has been the Policy of a  
22 number of governments to encourage homeownership?

23 A. That is correct.

24 Q. Whereas when you're dealing with commercial disposals,  
25 it's a different thing, and then Market Price is a factor?



1 A. Usually that's the intention, that's usually the case.

2 Q. Now, if we move on, then, to your--back to your  
3 response to the Warning Letter, what you say as (b), and if this  
4 is in response to a potential criticism that there are no  
5 published written policies or guidance that set out the process  
6 by which the Ministry, that's your Ministry, yourself as  
7 Minister and the Cabinet would follow when deciding how to  
8 dispose of Crown Land and on what terms.

9 A. Um-hmm.

10 Q. And what you say is that the Ministry is in the  
11 process of producing guidelines to applicants for publication,  
12 and has noted the suggestions of the former Governor in letters  
13 to me and to the Ministry dated November and December 2020. We  
14 will also consider producing guidelines for the Ministry and  
15 Cabinet.

16 So, starting there, you accept that there are at  
17 present no published written guidelines?

18 A. Not that I'm aware--not that I'm aware of. I know  
19 that when they had the various estates, those committees do have  
20 guidelines that they use, or criteria in selecting persons, but  
21 in terms of having publicly broad guidelines, I'm not aware of  
22 any.

23 Q. Or what Mr Smith-Abbott explained is that you have  
24 currently one Land Advisory Committee in place?

25 A. One active one, yes.

1 Q. The Anegada Advisory Committee?

2 A. Yes.

3 Q. And he echoed evidence that you gave in May 2021 when  
4 you spoke to us about the use of the Spooner's Estate.

5 A. Yes.

6 Q. Again, correct me if I've misunderstood, but the  
7 Minister, yourself, may be asked to deal with a direct  
8 application for a disposal of Crown Lands. So, that can come in  
9 to your Ministry--

10 A. Yes.

11 Q. It can come in in two ways. Someone can identify a  
12 piece of Crown Land that's outside one of the estates and apply  
13 it to you.

14 A. Um-hmm.

15 Q. Or where you no longer have an estate and there is a  
16 new disposal of estate lands, a piece of--a parcel of land or  
17 Spooner's Estate, that somebody wants to sell it on or whatever,  
18 you'll be involved in that?

19 A. Intention--when these Crown Lands are disposed of the  
20 intention is not for the person to sell it on. The intention is  
21 for the persons to actually use the land for its intended  
22 purpose.

23 In studying this whole issue of lands when I came into  
24 the office, a number of strange things were discovered that we  
25 have been trying to address long before you came along, we have

1 been addressing some of these issues. They do have to go back  
2 to Cabinet. If somebody acquires Crown Land, it retains the  
3 right of first refusal. But I think, as I would have told you,  
4 the challenge we found is that the persons get property on  
5 discounted prices. However, when they intend to dispose of  
6 them, they go to Market Prices, and we had no real defences as  
7 to how do you handle that because Government will not give you  
8 land for \$200 and buy it back from you for \$80,000 to sell to  
9 somebody else for \$200 again.

10 So, they found a loophole that persons were able to  
11 acquire Crown Land and not use the Crown Land for the intended  
12 purpose, which is usually residential, and then try to sell it  
13 on for a huge profit. It is something I did not like and I  
14 still do not like.

15 COMMISSIONER HICKINBOTTOM: And Mr Smith-Abbott  
16 explained that that was something that was--something that was  
17 being considered in the context of this broader review.

18 THE WITNESS: Absolutely.

19 COMMISSIONER HICKINBOTTOM: On how to deal with land  
20 generally but in particular Crown Land.

21 THE WITNESS: Yes.

22 I was--I was quite shocked when I came to the Ministry  
23 to realise there were really no strong systems in place, so  
24 immediately we started putting systems in place to strengthen  
25 our landownership division and our land management.

1 COMMISSIONER HICKINBOTTOM: Yes.

2 THE WITNESS: There are ongoing things. A lot of work  
3 to do. We have done a tremendous amount of work. Apart from  
4 this, these distributions, we also met a number of old  
5 outstanding land disputes that we tried to address as best we  
6 can, but we will get to that later on, but we want, and even  
7 going forward, we want, and we do give persons land for  
8 homeownership that actually built homes on the properties  
9 clearly within reasonable times, we have to be reasonable  
10 persons. Things are very difficult.

11 Q. You refer or reference the suggestions of the former  
12 Governor. Let's look at the letters that he made the  
13 suggestions in.

14 If you pick up, I think I'm hoping it's in the second  
15 bundle, the second bundle on that side?

16 A. Two?

17 Q. Yes.

18 At page 1299.

19 A. 1129?

20 Q. 1299.

21 Do you have it?

22 A. I do have it. I remember this letter well.

23 Q. Right. It's dated the 16th of November 2020. It's in  
24 response to a letter of yours of the 11th of November, and what  
25 the then-Governor Augustus Jaspert wrote was that, "as I'm sure

1 you will agree, it's important the comprehensive guidelines are  
2 in place to be used as a benchmark for anyone who is involved in  
3 the decision-making process, and would serve as an essential  
4 document, not only for my successor and it would serve as a  
5 guideline for the Attorney General's Chambers when providing  
6 comments for advice on land matters. I assume that the Ministry  
7 is operating from guidelines that stipulate priority of the  
8 allocation process, selection process and the guidelines by  
9 which individuals are recommended to Cabinet for disbursement of  
10 Crown Land".

11           The other letter to which you refer from Mr Jaspert is  
12 at 1304. This is a letter to Dr Potter 18th of December. He  
13 says, "in keeping with our efforts to maintain transparency, as  
14 it relates to the equitable and fair distribution of Crown Land,  
15 I'm seeking further clarity on the process." And then he speaks  
16 about specific tangible criterion used by committees, Ministers  
17 and District Representatives to determine how land is allocated,  
18 who's eligible, how lands are apportioned, then he says what  
19 considerations are used when the Minister uses discretion and  
20 what are the rights and privileges that are granted as well as  
21 any other associated conditions. He then refers to the use of  
22 Valuation Reports.

23           And we saw those two letters, but what particular  
24 suggestions have you noted from those letters?

25           A. If I can be honest, with that particular Governor,

1 Augustus Jaspert, he seems to have a real problem with locals  
2 owning Crown Land. I look at these as deliberate attempts to  
3 stop or slow up a process. I had a lot of trouble getting  
4 lands--always someone I think he wanted something else, and this  
5 here seemed to be just that. You have these land transfers, the  
6 Governor must sign, and they're held up for months upon months,  
7 persons are calling me every single day, and every day how you  
8 come to this here, who you came to that there. We have to go  
9 through a lot of time going through all these estates explaining  
10 how--there was no general policy, like I said. I didn't meet  
11 the general policy. There were estate policies. I had to go  
12 through every single estate.

13 Q. Can I break that down a little.

14 A. Yes, sir.

15 Q. And just asking, sometimes you speak a little fast.

16 A. I stutter sometimes because it took me to a funny  
17 place.

18 Q. We're talking across each other, so it's important  
19 that we hear you, so could I just ask if you speak up a little  
20 bit because your voice does drop.

21 A. Okay, I will do that.

22 Q. Just to take you back to the question. You said in  
23 your Written Response that the Ministry is in the process of  
24 producing guidelines for--

25 A. Yes.

1 Q. --publication.

2 A. Yes.

3 Q. And has noted the suggestions of the former Governor.  
4 All I wanted you to do was point the Commissioner to which  
5 suggestions had been noted?

6 A. The one he pointed out was that criteria, and I  
7 explained to the then-Governor that it depends on where the land  
8 allocation is, if it's a Spooner's, one of the ones you liked,  
9 you go to the Spooner's file, and the criteria is there. If  
10 it's a North Sound, you go to the North Sound file. If it's a  
11 Stephens Estate, you go to the Stephens Estate file. If it was  
12 a Nottingham Estate or Nibbler Estate, whatever, you go to that  
13 file and the criteria is there. There's no general policy. I  
14 found no general policy. That is what we are currently working  
15 on.

16 COMMISSIONER HICKINBOTTOM: And Mr Smith-Abbott helped  
17 us with this again this morning.

18 My understanding is that there are criteria for the  
19 Estate Committees.

20 THE WITNESS: Yes.

21 COMMISSIONER HICKINBOTTOM: I think the most recent  
22 one is Anegada, which I think was reviewed quite recently. I  
23 think at the end of--

24 THE WITNESS: --copper mine. That's not in process  
25 now.

1 COMMISSIONER HICKINBOTTOM: Yes, yes. We've looked at  
2 Anegada which is the end of last year--

3 THE WITNESS: Correct.

4 COMMISSIONER HICKINBOTTOM: --which is in place. The  
5 Committee is in place.

6 THE WITNESS: Yes.

7 COMMISSIONER HICKINBOTTOM: So, the Estates Committees  
8 have various criteria. You went through this with us helpfully  
9 in May, and they're not identical, but they follow a similar  
10 pattern, but they have some criteria.

11 But as Mr Rawat said and as Mr Smith-Abbott confirmed  
12 this morning, firstly applications can be made outside the  
13 estates system.

14 THE WITNESS: That is correct.

15 COMMISSIONER HICKINBOTTOM: And in any event, even  
16 with the estates system, the applications will come to you for a  
17 recommendation.

18 THE WITNESS: Yeah, I take all recommendations to  
19 Cabinets for confirmation.

20 COMMISSIONER HICKINBOTTOM: And they'll eventually go  
21 to Cabinet.

22 So I understand that the Committees have some  
23 criteria, but in terms of exercise of your discretion--

24 (Overlapping speakers.)

25 THE WITNESS: Oh.



1           COMMISSIONER HICKINBOTTOM: The discretion, there are  
2 no criteria. You've confirmed that, Mr Smith-Abbott has  
3 confirmed that.

4           THE WITNESS: Besides, sir, not quite that there are  
5 no criteria. It's just very general like you must be a  
6 Belonger, you must have land already, those general things.

7           COMMISSIONER HICKINBOTTOM: That was my fault. No  
8 written criteria.

9           THE WITNESS: Right.

10          COMMISSIONER HICKINBOTTOM: And I know as, again,  
11 Mr Smith-Abbott told us that, firstly, you've got to be a  
12 Belonger or else you're in a different system, and there are  
13 criteria which he mentioned which are often or usually taken  
14 into account, and he went through those with us, but there are  
15 no written guidelines, and he explained that that's part of the  
16 current process.

17          So, when the former Governor asked for--it's important  
18 that there are comprehensive guidelines in place, that's  
19 different from simply the guidelines which apply to each estate  
20 because these are guidelines which--under which the discretion  
21 is exercised.

22          THE WITNESS: Technically, yes.

23          To answer the question, I don't know of any lands that  
24 were granted to anyone who went to Land Registry or anywhere,  
25 saw a piece of land and wrote into the Ministry and got it.

1 I--none comes to mind. Merely one or two, I've seen some  
2 persons did identify land and say I would like to purchase that  
3 piece of land, but I don't recall any of them being granted.  
4 Most of the lands that are granted used to come through an  
5 estate or through a committee. I mean, none comes to mind, I'm  
6 not saying any, but none comes to mind right now because I think  
7 I can call every piece of land I gave out since I've been in  
8 Government.

9 BY MR RAWAT:

10 Q. That's helpful to know because, I mean, I'm trying to  
11 separate residential from commercial.

12 A. Correct.

13 Q. And I think we're talking about residential?

14 A. Residential, sorry.

15 Q. That's fine. I just want to make sure we're on the  
16 same page.

17 But what Mr Smith-Abbott explained is that it is  
18 possible, it may not happen very often, but it is possible to  
19 make a direct application to a Minister.

20 A. Oh, absolutely.

21 Q. And that's where the point goes to because where you  
22 are dealing with a piece of Crown Land sought for residential  
23 purposes that falls outside the estates, then it appears that  
24 the only--you have what Mr Smith-Abbott called the general  
25 criteria, you must be a Belonger, but there isn't any standard

1 criteria for those kind of disposals.

2 A. Mr Commissioner, I'm not sure where the concern came  
3 from because no land was given out like that. I don't recall  
4 any. The one that the Governor had at that time was for  
5 Spooner's Estate. He kept them held up for months. I couldn't  
6 understand why, asking for document after document after  
7 document, when it was very clear what the guidelines were for  
8 awarding those lands. The only conclusion I could see is he  
9 didn't want to sign them. That's the only conclusion I could  
10 come to. He had a problem signing lands for locals. Because we  
11 came into office campaigning and giving locals land.

12 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Rawat, but  
13 that's not what these letters say. These letters say--they do  
14 say that it's important to have, and you must have comprehensive  
15 guidelines about how prioritisation is done.

16 THE WITNESS: Yeah. And we have worked on that.

17 BY MR RAWAT:

18 Q. So, you don't disagree with the thrust of the letters?

19 A. Not in this case, no. It's not correct because those  
20 areas had guidelines. If he made a suggestion--I didn't need  
21 the Government telling me we need guidelines for lands. I  
22 explained it to him we need guidelines. When I came in there  
23 were none. We started working on guidelines right away, but  
24 these lands are complex matters to deal with. You don't rush  
25 through lands like that. We have limited landmass. You have to

1 be very, very careful when you're going to create subdivision  
2 and disbursing lands, you don't have infinite amount of lands.  
3 It's something we're working through very, very carefully.

4 COMMISSIONER HICKINBOTTOM: I understand that, and  
5 again, Mr Smith-Abbott's evidence was very clear on that, and he  
6 said that the guidelines are part of a process which will start  
7 with overarching frameworks, and then go through policies, and  
8 then end up with guidelines.

9 And in terms of the Crown Land Management Policy,  
10 that, in the document we looked at, is to be over a five-year  
11 period.

12 THE WITNESS: Yeah.

13 COMMISSIONER HICKINBOTTOM: So, that's going to take  
14 some time. And the guidelines, of course, will fit under the  
15 Policy. So, we are years away from having comprehensive  
16 guidelines.

17 THE WITNESS: He's because a technocrat. I don't have  
18 five years in my term.

19 COMMISSIONER HICKINBOTTOM: Quite.

20 THE WITNESS: He has no five years. It has to be done  
21 sooner.

22 COMMISSIONER HICKINBOTTOM: Quite.

23 So, what has been done, if anything, in relation to  
24 writing down the guidelines that are used in the meantime  
25 pending--

1 THE WITNESS: And that's what we are doing. That's  
2 what we are doing. They're working on it as we speak because  
3 we've started a subdivision and a copper mine. We start in a  
4 bond next week. Those properties will be coming up very soon.  
5 The guidelines must be published, we got to make sure the proper  
6 guidelines are well-known by everyone seeking to apply for Crown  
7 Land. We are addressing that issue.

8 BY MR RAWAT:

9 Q. I think that there are potentially--I think there are  
10 two issues that arise from Mr Smith-Abbott's evidence, the first  
11 is that it's not a simple picture.

12 A. It is not.

13 Q. Because there is--there may be historical associations  
14 with a particular estate that affect how you can dispose of that  
15 land.

16 A. Yes, that is true.

17 Q. There are island-specific issues, so he writes in his  
18 Affidavit about the distinct history of Anegada?

19 A. Anegada, yes.

20 Q. So, it's not a one-size-fits-all approach, again I'm  
21 paraphrasing his evidence, but his evidence is why this process  
22 is going to take so long, is because the starting point is, he's  
23 explained, you have a National Physical Development Plan, you  
24 then have the Planned Marine Estate Policy that you've explained  
25 has just gone through. Then the next stage, and we're speaking

1 about Crown Land, is the Crown Management Plan, and that has to  
2 factor in, not only what you do in Crown Land, but what you do  
3 in Crown Land on Virgin Gorda, what you do with Crown Land on  
4 Anegada, do you need legislation, how do you involve Lands  
5 Committees, what status do you give Lands Committees.

6 So, that was the picture--and so as part of this  
7 package, the guidelines will emerge as part of this process.

8 Now, I appreciate that a politician may have a  
9 different timeline in life from a technocrat?

10 A. Yes, always.

11 Q. But would you disagree with Mr Smith-Abbott that--and  
12 you may not have had an opportunity to listen to his evidence  
13 today, but that it is a complicated picture?

14 A. Oh, absolutely. It's a complicated matter. That's  
15 why we can't necessarily rush it but you can't take forever  
16 either. We never are gonna get a perfect system before we start  
17 distributing land.

18 (Overlapping speakers.)

19 A. The point you made is what I tried to explain to  
20 Augustus Jaspert. These things are sometimes island- or  
21 estate-specific. This general thing he is looking for does not  
22 exist. We are now creating it, but it's going to take time.

23 Q. Yes.

24 A. Until we get to that point, we have to use what we  
25 have.

1 Q. But--and isn't that what approach is being taken with  
2 the Copper Mine Estate?

3 A. Exactly.

4 Q. By using what you have?

5 A. And we've improved upon it because when I think of the  
6 PS work should have said one of the things that we want to avoid  
7 is studying the land distribution over the last 30 or 40 years.  
8 You would see a number of persons were given Crown Lands who  
9 never developed them 30 years ago, never developed the land.  
10 Land is limited. You are trying to avoid situations where  
11 somebody is awarded Crown Lands and doesn't develop it and then  
12 maybe at some point in time tries to sell it. So we're going to  
13 include a criteria in there where you must demonstrate an  
14 ability to develop within a reasonable time. You either ask me  
15 what does that mean? Demonstrate an ability, the easiest thing  
16 to do, just like the Non-Belongers, is to show a bank statement,  
17 I have the money to build this house tomorrow. But that's not  
18 the only way you can demonstrate an ability. Maybe you have an  
19 uncle show is a contractor who will say I will build you this  
20 house at cost or Anegada will say I will pay for the house for  
21 you. And some persons in anticipation have already bought  
22 materials and have the materials stored at a shop or in  
23 somebody's yard who can very quick and easily commence building  
24 a home.

25 So, it is something we are trying to see how it is

1 going to work. I agree with the criteria should be published.

2 We are going to do that.

3 COMMISSIONER HICKINBOTTOM: In respect of these two  
4 letters--and I appreciate you think that they were unreasonable  
5 demands by the former Governor, but just looking at them  
6 dispassionately, what they say is there should be comprehensive  
7 guidelines which are transparent, so everybody knows what they  
8 are, in respect of the distribution of--the disposal of Crown  
9 Land, and there should be Valuation Reports in respect of  
10 disposals of land.

11 Just stopping there, I appreciate you may say that's a  
12 counsel of perfection, but from what you said, you agreed with  
13 that as a proposition, there should be comprehensive guidelines  
14 and there should be valuations?

15 THE WITNESS: And the reason being because you have  
16 limited land, so as--

17 COMMISSIONER HICKINBOTTOM: No, no, I--

18 THE WITNESS: We always have a lot more applications  
19 than properties. So, our guidelines don't really in this case  
20 is eliminate persons. They don't have them get it, they  
21 eliminate persons because you have 10 pieces of Crown Land and  
22 1,000 applications, you have to eliminate persons, I see those  
23 guidelines as eliminate more people.

24 COMMISSIONER HICKINBOTTOM: And only doing that.

25 THE WITNESS: It will do more harm than good if you



1 take it too far. Yes, there should be guidelines, there should  
2 be transparency. I'm all for that. Valuations are useful so  
3 you could know what you are giving away.

4 COMMISSIONER HICKINBOTTOM: But there are two sorts of  
5 guidelines in the way that you're speaking, Minister. Firstly,  
6 there are preconditions, one obvious one would be--

7 THE WITNESS: Belonger.

8 COMMISSIONER HICKINBOTTOM: Belonger. And so, if  
9 you're not a Belonger, you don't get on the pitch. I mean,  
10 you're just not within the scheme.

11 THE WITNESS: For Crown Land disposal scheme.

12 COMMISSIONER HICKINBOTTOM: Yes.

13 THE WITNESS: That is correct.

14 COMMISSIONER HICKINBOTTOM: And I appreciate there is  
15 another scheme for Non-Belongers, but under what we're talking  
16 about. So, those are sort of preconditions, I understand that.

17 But what the Governor was pressing for is guidelines  
18 in the assessment process. So, you may have a 100 or 1,000  
19 applicants for a limited number of pieces of plots but what are  
20 the criteria which you apply, not to eliminate people which are  
21 different criteria, but to assess which of who amongst this  
22 large, perhaps, group of people should get these plots?

23 THE WITNESS: And that's what--and that's what I'm  
24 saying, that's a new criteria we have put in. Because what I've  
25 seen from studying the various files, the intentions were simply

1 to put lands in persons' hands which I have no problem with.

2           If you continue like that, you will soon have a bunch  
3 of people with land undeveloped land, the criteria that we're  
4 trying to implement is to capture those persons who are mostly  
5 ready to build, which is where that criteria comes in, their  
6 ability to develop within a reasonable time. That there would  
7 take out a bunch of persons, because most persons might not be  
8 ready to build tomorrow or five or ten years. We will counsel  
9 them later on but what about those who are ready to build now?

10         Q.    And do you apply that criterion to estate lands as  
11 well?

12         A.    Only--only Crown Lands.

13         Q.    No, but I'm dividing Crown Lands, residential Crown  
14 Lands--

15         A.    Yes.

16         Q.    --to estate land and non-estate land?

17         A.    Private land?

18         Q.    No, sorry. I'm confusing you.

19         A.    Yes.

20         Q.    What my understanding so far is, you can take a number  
21 of estates. You have Spooner's, you have the Nottingham Estate,  
22 you can have, you know, the Copper Mine Estate, and I have  
23 collectively, with Mr Smith-Abbott, just called that "estate  
24 land", so where you have the Anegada Advisory Land Committee,  
25 they will make Recommendations to you.

1           A.    Correct.

2           Q.    Where there is no longer an extant Lands Committee,  
3 you decide from the disposal?

4           A.    I understand your question.

5           Q.    You do it by reference to the existing--you know, you  
6 go to the Spooner's file and you say what are the criteria?

7           A.    Okay.  No, you're not--you're not correct at all.

8                    So, whenever there is a distribution of land, usually  
9 there is a committee put in place.  So, for the copper mine  
10 division, subdivision, there will be a Lands Committee put in  
11 place to go through that vetting and to collect the applications  
12 and make sure everything is there.  There will be a committee  
13 put it place, then.

14          Q.    All right.

15          A.    For example, when I came to office, there was no  
16 Anegada Lands Committee, but I knew I wanted to get Anegada  
17 lands sorted out.  It's 136 year-old problem.  A Committee is a  
18 vital part of getting that problem sorted out, so I reinstate a  
19 new Committee.  So, before any lands are given at, a new  
20 Committee should be and will be put in place.

21          Q.    Just explain this scenario to me.  Someone who has  
22 inherited or a piece of estate land passes through--the only  
23 reason I use Spooner's Estate, Honourable Wheatley, is because  
24 you used it all the time in May.  So, that's why it's stuck in  
25 my head.  But that piece of land gets to a point where someone

1 decides to sell it or someone else decides to buy it, but there  
2 is no Spooner's Estate Committee, is there?

3 A. Oh, okay.

4 Q. So, in that instance, as I understood it, the Ministry  
5 becomes involved, and when you're looking at a disposal of that  
6 piece of land, you apply the previous criteria.

7 A. No. You're confusing two separate things. The  
8 Committees are only involved with the original distribution.  
9 They're not involved in any other aspect of that.

10 Q. Exactly.

11 A. They're not involved in any re-sale.

12 Q. Yes.

13 A. We do have a concern with that issue you pointed out  
14 there because we don't want persons reselling Crown Lands.

15 Q. Yes. And I understand that, but my question goes to  
16 this, is that when you are involved in a re-sale and the  
17 Ministry gets involved and let's say you buy it back and then  
18 you decide to sell it again.

19 A. Oh, okay.

20 Q. Are you using the original Lands Committee criteria?

21 A. Yes.

22 Q. Or are you going to be adding your new criteria which  
23 is are you ready to build?

24 A. That's a hard question to answer because we have no  
25 history of it. We have no instances where the Government has

1 bought back land in an estate to resell it. I don't know of any  
2 single case, so it is something to consider what would happen in  
3 that case, but I would guess that in that case since the land  
4 was bought and it was under covenant, you would have to use  
5 whatever covenant the land was first acquired under.

6 Q. So, you have an ongoing situation where estate land  
7 which was originally disposed of some time ago is passing out  
8 essentially into private hands?

9 A. Yeah. I don't know of any instances where the Crown  
10 ever bought it back to redistribute. If it happened, not in my  
11 time, not in recent history. I don't recall any instances where  
12 the Crown bought any land back for the reasons I said earlier,  
13 because they get them at discounted prices, which they all look  
14 for, but re-sale is always market, is always market, re-sale,  
15 always market. I would not be buying market price land to give  
16 to somebody like that.

17 Q. So, effectively it passes out of the absolute control  
18 of government?

19 A. Exactly, which is something we have to try our best  
20 not to let happen, it should never go out of that situation.  
21 And we are going to address that in our going forward, make our  
22 amendments to the law I don't know. But it's something we are  
23 very mindful of because I do know cases where the Crown Land was  
24 eventually sold into private.

25 Q. I understand.

1           If we just move on through your response, this is at  
2 your Point C and E, which is in response to the potential  
3 criticisms that there are no alternatively inadequate published  
4 written policies or guidelines which record the criteria which  
5 the Ministry, Minister, and Cabinet should take into account  
6 when deciding whether to dispose of Crown Land. You say that  
7 it's right that there are no written or no published/written  
8 policies or guidance setting out the general criteria?

9           A.    General, because again these lands are area-specific.

10           So, over the point of publishing a general guideline  
11 when if you're going to go to Spooner's, it's a very specific  
12 situation, if you're going to buy land in Anegada, it's a  
13 specific situation, so there can be no general guidelines at  
14 this point in time. I'm not sure what it would say.

15           Q.    But as we understand from Mr Smith-Abbott, the  
16 exercise that is--that has begun, which will take some time to  
17 come to fruition--

18           A.    Um-hmm.

19           Q.    --will produce guidelines which are not necessarily  
20 reflective of the practice at the moment. It's all bets are  
21 off.

22           A.    We will see what they say.

23           Q.    Exactly.

24           So, there may be changes, but you point to the Estate  
25 Lands Committee criteria being a useful guide.

1 A. Yes.

2 Q. And you say that there is policy for the management  
3 and administration of the Marine Estate.

4 Can I ask you just to turn that up in two ways,  
5 please. If you could go to Part 2 of the Part 3 bundle and turn  
6 up page 2372.

7 A. Sorry, what page?

8 Q. 2372, please, Honourable Wheatley.

9 A. Part 2 it?

10 Q. Part 3, I'm hoping. I've got slightly different  
11 numbers from you, but 2372.

12 A. 2372. Yes.

13 Q. If you also turn up your Warning Response--your  
14 Written Response came with a bundle of documents and if you turn  
15 those up, the first exhibit to those is the--is also the Policy.  
16 Do you see it?

17 A. What page are we in? Oh, yes, 2373?

18 Q. 2372. Keep 2372 open.

19 A. Okay.

20 Q. If you look at the first bundle of your Written  
21 Response? The bundle of documents it came with.

22 A. Which number are you on?

23 Q. And I'm looking at Page No. 1.

24 A. It refers to the Marine Estate Policy?

25 Q. Yes.

1           If you look that up, just open that up to Page No. 1  
2 because--that's it.

3           Now, go through, please. That's the actual response.  
4 Go through to the--you have the actual exhibits. I think it's  
5 that one. It should have Page No. 1 in the bottom right?

6           A. Yes, restricted.

7           Q. Exactly.

8           Now, 2372 is the version that was given to us back in,  
9 I think, March 2021, and if you look at the one that you have  
10 recently produced, it's both the 1976--1996 document?

11          A. Um-hmm.

12          Q. They are--the difference between them are relatively  
13 small, but the one that you've recently produced looks like the  
14 sort of thing that might be produced in 1996, whereas the one  
15 that we have is a more modern one. It has a handwritten date on  
16 of May 15th, 1996 on the top of it, whereas the date at 2372 is  
17 all typed.

18           And then--

19          A. 14 May, yeah.

20          Q. There is a difference in fonts, really. We haven't  
21 been able to spot any substantive difference. But can you  
22 account for why there are two different versions of this policy?

23          A. No, I can't.

24          Q. Mr Smith-Abbott said--explained that it has been  
25 recently updated. Do you know how recently it was?



1           A.    The one that we passed in 2019 as soon as we came in  
2 as Members, I'm not sure why you're saying 1996.

3           Q.    I'm saying 1996 because the one that you produced has  
4 the date May 15th, 1996.

5           A.    Oh.

6           Q.    And the one that your Ministry disclosed back in March  
7 also has the date 14th of May 1996.

8           A.    I'm not sure.  Maybe that was the original document  
9 that they were working from.

10          Q.    Right.

11                   Well, it's Policy from Management and Administration  
12 of the Marine Estate.  Has it been updated during your  
13 administration?

14          A.    As far as I know, yes.  If memory serves me right,  
15 yes, in 2019.

16          Q.    It might be helpful if we could get a copy of that  
17 update.

18          A.    Okay.  I thought you had it here.

19          Q.    Now, you point to that as providing criteria to  
20 allow--

21          A.    Very, very broad question.

22          Q.    Whichever version you want to use, but can you point  
23 the Commissioner to any particular criteria that apply to the  
24 use of Crown Land?

25          A.    The document that I used is a much bigger document.

1 I--when we said policy that we have last does not--only for  
2 marine administration.

3 Q. The reason I ask is because these are questions that  
4 we put not only to--in the request for an Affidavit to you,  
5 which Mr Smith-Abbott provided, but it doesn't appear--it isn't  
6 referenced as a document which gives criteria in Mr  
7 Smith-Abbott's Affidavit. Nor was it disclosed to us or to the  
8 Commission following a request on the 9th of March for  
9 disclosure of the criteria, so I wonder just--and I can show you  
10 that. If you go to 2366.

11 A. 2366? 2366?

12 Q. Yes, please.

13 When the Commission asked for disclosure of the  
14 criteria that governed disposal of Crown Land, we were given two  
15 documents. One was land distribution in BVI research which is  
16 correspondence, actually, that Dr Potter had with the Governor  
17 where she set out the details. And then the second one is Land  
18 and Marine Estate Policy in draft at that time. No mention of  
19 this 1996 policy. It's not mentioned in Mr Smith-Abbott's  
20 Affidavit, so the question becomes what's the basis on which you  
21 say that it informs disposals of Crown Land?

22 A. Well, we said it's the only one we had that mentions  
23 Crown Land. If you look at 2386, in the same bundle.

24 COMMISSIONER HICKINBOTTOM: 2386?

25 THE WITNESS: Yes. There's some mentions there about

1 it.

2 BY MR RAWAT:

3 Q. So, this is who owns the land, the seabed, water or  
4 shore for vested in the Crown?

5 A. Government's role and so forth.

6 Q. So, this is--and correct me--this is about the Marine  
7 Estate. This is about who owns the seabed, isn't it?

8 A. The original document that was divided in two. As I  
9 said the first part is in Cabinet, the second part we're  
10 currently working on that deals with the land.

11 Q. Right, but this is the 1996 document.

12 A. Right.

13 Q. So, I understand on the 2018 document that we looked  
14 at that that, you've explained, is that the marine side of  
15 things has been progressed.

16 A. Yes.

17 Q. And the land side of things is going. But it's just  
18 what is the 1996 policy helps us in terms of disposal of Crown  
19 Land?

20 A. No, the question is the only place which are actually  
21 addressed.

22 MR RISSO-GIL: In the hope of assisting, page 14 of  
23 the bundle attached to the 29th of September response, may be a  
24 place to go for this.

25 COMMISSIONER HICKINBOTTOM: Page 14?

1 MR RISSO-GIL: Page 14. Tab 1, page 14.

2 COMMISSIONER HICKINBOTTOM: Wrong document. I have  
3 the second part of the document.

4 MR RISSO-GIL: It should have handwritten Appendix C  
5 at the top and reclamation package, and it deals particularly  
6 with the reclamation of the seabed.

7 COMMISSIONER HICKINBOTTOM: I've got that.

8 MR RISSO-GIL: And there are criteria to be met set  
9 out there for the reclamation of the seabed.

10 BY MR RAWAT:

11 Q. So, this is criteria that has to be met when someone  
12 is seeking to reclaim the seabed?

13 A. Yes.

14 I was saying it was the only place where the question  
15 was addressed at this time which I find--which is highly  
16 inadequate, which is why we set out to modernize this.

17 Q. I see.

18 So, if I'm just to understand your response,  
19 Honourable Wheatley, the reason for pointing the Commissioner to  
20 this document is because whilst inadequate, it was the only  
21 document that you found that referenced Crown Land?

22 A. Yes.

23 Q. Okay.

24 A. In a general sense.

25 COMMISSIONER HICKINBOTTOM: And this doesn't directly

1 apply to Crown Land because--

2 THE WITNESS: It's the only reference we had. Hence  
3 why we started developing a policy.

4 COMMISSIONER HICKINBOTTOM: Because it only applies to  
5 the seabed or reclaiming that.

6 THE WITNESS: That is correct, Commissioner.

7 COMMISSIONER HICKINBOTTOM: Okay. Thank you very  
8 much.

9 BY MR RAWAT:

10 Q. If we just move through your Written Response, the  
11 next criticism is that there is no--or no--adequate use has been  
12 made of Valuation Reports by the Ministry, Minister, or Cabinet,  
13 when deciding whether to dispose of Crown Land, and if so, for  
14 what consideration. And what you point to is you say that  
15 Valuation Reports have been used for disposals for commercial  
16 purposes.

17 A. That's usually the case.

18 Q. But not usually for those for residential purposes?

19 A. That's usually the case.

20 Q. I think Mr Smith-Abbott explained that has changed  
21 because--

22 A. Yeah, we are now applying it, yeah.

23 Q. But he's also explained that what purpose those serve.

24 And you then explain that the particular approach to  
25 valuation by the Estate Land Committee--

1 (Overlapping speakers.)

2 A. I would venture to say I do believe, because the  
3 intention was then and still is now, the objective was just  
4 simply get land in person's land. The value of the land was not  
5 really considered. For whatever reason it wasn't considered.  
6 It wasn't important to the ambition. But when you try to do  
7 other things now, you realise you want to know what you're  
8 giving somebody, essentially, what you want to do.

9 COMMISSIONER HICKINBOTTOM: And said, Mr Smith-Abbott,  
10 and I understand it, how much it costs. So as--

11 THE WITNESS: How much--

12 COMMISSIONER HICKINBOTTOM: --a Policy--

13 THE WITNESS: It has a cost.

14 COMMISSIONER HICKINBOTTOM: --it has a cost, and this  
15 is in part how you calculate that cost.

16 THE WITNESS: There you are.

17 BY MR RAWAT:

18 Q. And the point is that the fifth sort of potential  
19 criticism arises is that applicants for Crown Lands sometimes  
20 made with the encouragement and facilitation of a District  
21 Representative, which will include the Minister and elected  
22 Members of the Cabinet, your response to that is that--

23 A. Elected Members, whether Cabinet or not.

24 Q. Yes.

25 A. Persons would go to their District Rep and say can you

1 talk to the Minister for me, could you write a letter or a  
2 recommendation for me to the Ministry requesting Crown Land. It  
3 does happen.

4 Q. Is that--you say "requesting Crown Land". Do they  
5 also write in support of their application?

6 A. Elected persons? Elected Persons?

7 Q. Yes.

8 A. I don't think--I think yeah, I think it happens in one  
9 case where a person wrote on behalf of their constituent and say  
10 could you please consider this person for Crown Land? It's  
11 reasonable to expect. Not really comes to mind but I'm sure--

12 Q. But to consider him for a particular piece of Crown  
13 Land.

14 A. Sometimes it's very general, sometimes it's specific.  
15 You may say Crown Land in Spooner's Estate or Crown Land in  
16 Nibblers Estate, or Crown Land in the "Bon" (phonetic), or Crown  
17 Land in Copper Mine. Sometimes it's very blank, consider me for  
18 Crown Land anywhere. I simply want to own a piece of property.

19 Q. And the elected Member will say--

20 A. I support this.

21 Q. I support this person who wants to buy a piece of  
22 Crown Land somewhere.

23 A. I think the instances where the Representative may not  
24 or may give a full response maybe if it's a--maybe a specific  
25 case or a Minister, this person's House has burned down, can you

1 consider giving this person some property to build back a house  
2 or whatever the situation is. In this case they may advocate  
3 for their constituent. That is quite common. That is quite  
4 common. Somebody may advocate on behalf of their constituents  
5 for whatever reason.

6 Q. What you point out is that an application will go  
7 through a process involving five different government  
8 departments.

9 A. The process of awarding Crown Land, yes. It goes  
10 through--actually, more like six.

11 Q. Well, can I try to list them and you could add the  
12 six.

13 I mean, firstly, it goes through your Ministry?

14 A. It comes to my Ministry first.

15 Q. Then it will go to Cabinet.

16 A. Uh-huh.

17 Q. AG Chambers?

18 A. Correct.

19 Q. Governor's Office?

20 A. Correct.

21 Q. Inland revenue?

22 A. Correct.

23 Q. Land Registry.

24 A. You missed one.

25 Q. I got six.



1 A. Survey Department. Survey Department.

2 Q. Right.

3 A. They have to make sure the land is properly surveyed  
4 and given block and parcel. Without that, you can't do any  
5 transfer.

6 Q. But in terms of, firstly, the Governor's Office will  
7 only be involved after Cabinet has made its decision.

8 A. That is correct. After Cabinet approves the  
9 recommendations--

10 Q. Then the Governor has to sign it.

11 A. Yeah, he sends on behalf of the Crown.

12 Q. Yes.

13 A. Not the Minister, the Governor's side.

14 That's what I was saying--that's what I said earlier.

15 A lot of those things were held up. The Governor refused to  
16 sign them, a lot of them, for a long time. He went through  
17 every Department. The Governor said I'm not signing these here,  
18 and I started asking a million questions, irrelevant questions,  
19 if you ask me, some of them may be important in terms of more  
20 transparency, but they've been through the process. They have  
21 been through the process. The Governor sits in Cabinet. Why  
22 you now holding this process up, asking for these things that  
23 you already have?

24 COMMISSIONER HICKINBOTTOM: But in terms of the  
25 process--

1 THE WITNESS: Um-hmm.

2 COMMISSIONER HICKINBOTTOM: There were no written  
3 guidelines, we know--I mean, I know that there were estate  
4 criteria, but in exercising the discretion which is exercised by  
5 the Ministry in terms of recommendation, ultimately by Cabinet  
6 who approve it, exercising the discretion, no written  
7 guidelines.

8 So, in that sense, a lack of transparency as to how  
9 the process works because, without guidelines, no one knows why  
10 A is chosen and B is not chosen.

11 THE WITNESS: We have--I understand what you're  
12 saying. We have general guidelines but not written. You said a  
13 general one, a Belonger. Once you're a Belonger, you may be  
14 considered based on circumstances. You could have other  
15 criteria like depending on whichever administration, I preferred  
16 younger persons to get them a better start in life.

17 COMMISSIONER HICKINBOTTOM: But every Minister in the  
18 Cabinet will have his or her own criteria--old, young, family--

19 THE WITNESS: Yeah.

20 COMMISSIONER HICKINBOTTOM: --all sorts of people who  
21 might be vulnerable. There are lots and lots of potential  
22 criteria. But without having written criteria, how does one  
23 know how the discretion, which appears to be pretty well  
24 unfettered, how is that discretion exercised? How do we know?

25 THE WITNESS: Yeah. We are going to fix that, that

1 concern, where we will publish the criteria.

2 COMMISSIONER HICKINBOTTOM: No, I understand that, and  
3 as I say, Mr Smith-Abbott spoke very eloquently as to the stages  
4 it needs to be gone through to get--to find the criteria  
5 guidance, which will be published so that all of the applicants  
6 as well as those dealing with the process, all the applicants  
7 will actually know the criteria and will be able to say, well,  
8 I--you know--I score strongly on these criteria and not on these  
9 criteria and so on.

10 But at the moment, those criteria are missing.

11 THE WITNESS: As general guidelines, yes, but when the  
12 Committees--the Committees do have their criteria. When you  
13 apply through a Committee, and I said in all land distribution  
14 it's very, very rare where Committees are set up to make sure  
15 that these guidelines are followed. Just look at Anegada land  
16 criteria, when you apply that they go through a checking of  
17 these things--

18 MR RAWAT: But so--

19 THE WITNESS: Now, in terms of--

20 MR RAWAT: I'm sorry.

21 THE WITNESS: --publishing them out in public, why  
22 would you publish Anegada land criteria in Tortola? Anegadeans  
23 will know what they are, and they're on their website.

24 BY MR RAWAT:

25 Q. I understand that. I understand I think the point

1 we've reached is that if we take the Anegada Advisory Land  
2 Committee, that is--or has reached a point where it has its  
3 Terms of Reference, and it has its criteria--

4 A. Develop--develop with--

5 Q. --or it's working towards its criteria which will  
6 be--and it's the benefit of no local knowledge--

7 A. There you go.

8 Q. So that's number one.

9 Number two, you have Copper Mine. That's going to go  
10 along the same route, so--but that is about disposing or  
11 resolving--if you like, it's a starting point. You have an area  
12 of land that is now going to be disposed to various people  
13 involving the local community through a Lands Committee.

14 But I--as I understood your criticisms of the former  
15 Governor is that when he was dealing with disposals involving  
16 estates where there was no longer a Lands Committee, and those  
17 were coming in, he was asking about what the criteria were, and  
18 you were pointing him to, well, it's Spooner's, here's the  
19 criteria; it's Nottingham, here's the criteria; and he didn't  
20 simply accept that those criteria apply.

21 A. Well, because there was no Committee?

22 Q. But where there is--I'm sorry, sir, I may have banged  
23 on about this a bit too much, but where there's no Committee, do  
24 you still apply the original criteria? Because you if still  
25 apply the original criteria, what's the basis on which you can

1 add your own criteria?

2 A. We use the same criteria.

3 Q. So--

4 A. If my memory serves me right, the only land  
5 distribution we really had was in Spooner's because when it got  
6 to the Ministry and I realized that there was no really clear  
7 policy, and before I could do a new distribution, I checked all  
8 the old distributions, and I made a startling discovery,  
9 particularly in Spooner's but it wasn't only in Spooner's, where  
10 a number of persons were granted land--Spooner had a big list of  
11 applicants, listed maybe a hundred applicants, there were  
12 probably 25 parcels of land. So they gave the 25 persons--they  
13 awarded land in Spooner's estate. I discovered a number of  
14 those persons did not pay for the land they were awarded. I  
15 found the same issue in Virgin Gorda, where a person was awarded  
16 land 27 years ago and never paid. I made a public announcement:  
17 All persons who were awarded land, I've giving you another month  
18 and a half to pay for this land or else I'm going to take you  
19 off the active list and put you on the reserve list and find  
20 persons who are already approved by Cabinet and put them in your  
21 slots.

22 There was--this was not anything new, which is why I  
23 couldn't understand why it was held up.

24 Q. Okay, I understand the context. But when you're do  
25 that--

1 A. Uh-huh.

2 Q. --if you're applying the original criteria established  
3 by the Land Committee, even if it no longer exists--

4 A. Um-hmm.

5 Q. --you can't add your own new criteria.

6 A. I didn't.

7 Q. So, what circumstance can you add criteria as a  
8 Minister?

9 A. I would get a new subdivision, which is what I'm  
10 doing.

11 Q. So, when Copper Mine comes up--

12 A. It will have--

13 Q. --in those circumstance, you, Vincent Wheatley, can  
14 add--

15 A. Yes.

16 Q. --whatever criteria--I mean if you--

17 A. That is correct.

18 Q. --you particularly favor the elderly or--

19 A. That is correct.

20 Q. --or the young--

21 A. Yes.

22 Q. --then you--

23 A. For that subdivision, yes.

24 Q. Yes.

25 But that will have a Lands Committee. Who ultimately

1 decides the criteria? The Minister or the Lands--

2 A. Oh, we do it together. We do it together. Just like  
3 with Anegada Lands Committee, there's a lot of backward and  
4 forward, a lot of meetings, a lot of--because we ideas, they  
5 have ideas. They have--

6 Q. Who has the ultimate say?

7 A. Cabinet.

8 At the end of the day, once we all finally agree on a  
9 final version, it goes to Cabinet for approval under membership  
10 and the Terms of Reference.

11 Q. If we move on, one of the things you cite is the  
12 memorandum--sorry, let me just finish this. It's--you say that  
13 when a recom--my recommendation is later made by me in respect  
14 to Spooner's estate to fill vacancies--

15 A. Um-hmm.

16 Q. --of those who'd failed in their applications--

17 A. Failed to pay.

18 Q. Failed to pay.

19 --merits of those applications were carefully  
20 considered before new allocations were proposed to Cabinet, and  
21 you cite a memo. But again, because it was Spooner's estates,  
22 they would have been considered against the Spooner criteria; is  
23 that right?

24 A. That's right, and approved list. More persons were  
25 approved than there were parcels of land, so it went to those

1 who didn't get a chance at first and brought them in.

2 Q. I see.

3 A. And put those who didn't pay back on the waiting list.

4 Q. If we move on a little swiftly, as I look at your  
5 points M to N through to O, please, Honourable Wheatley, you say  
6 that in the desirability of making improvements in order to  
7 conform better to the principles of--the desirability of making  
8 improvements in order to conform better to the principles of  
9 good governance is recognised, and so I have no instances on why  
10 the use of Valuation Reports. Now, that's the use in  
11 residential transactions.

12 A. Um-hmm.

13 Q. Where you say why do you use, why not insist on  
14 Valuation Reports for all?

15 A. We always--we usually would use them for only  
16 commercial, usually--

17 Q. Well--

18 A. --but now we've included residential, also.

19 Q. So, for residential going forward, standing  
20 requirement, you must have a Valuation Report.

21 A. You're required--

22 Q. And is it a standing requirement and has it been a  
23 standing requirement for commercials--disposals that you must  
24 have a standing--

25 A. I wouldn't say--



1 (Overlapping speakers.)

2 Q. --a valuation report?

3 A. I wouldn't say mostly. There are always exceptions.  
4 There are always things that go wrong. But I think it would be  
5 expected that there will be one. I'm sure you will find a case  
6 where there wasn't one.

7 Q. Well, you say that--I mean, yes, there are always  
8 exceptions to everything?

9 A. Um-hmm.

10 Q. But should it be the norm that there is a Valuation  
11 Report?

12 A. It's very useful. I mean, I would want it for my  
13 purposes. A lot of Ministers might not see it useful at all.  
14 They might say it's a waste of money. It does cost money to do  
15 evaluations. It's not free.

16 Q. But--

17 A. So somebody might say because it serves no purpose  
18 really, I'm not going to have it. But for my purposes I think  
19 it is important, too.

20 Q. Unfortunately, you're the Minister so--

21 (Overlapping speakers.)

22 A. I'm Minister--I will do it, yes.

23 Q. You guess--so--but--

24 A. I will do it.

25 Q. I mean, certainly for as long as you're Minister--

1 A. For my purposes, I will do it now, yes.

2 Q. You would want a Valuation Report.

3 A. Yes, I would want a Valuation Report.

4 Q. Both for residential and for commercial?

5 A. Yes.

6 MR RISSO-GIL: Before we leave to the question of  
7 Spooner's allocation, a quick look at page 34--361 might help.

8 COMMISSIONER HICKINBOTTOM: 3461?

9 MR RISSO-GIL: 361, I'm sorry, sir.

10 MR RAWAT: Is that a paragraphs 5 and 6?

11 MR RISSO-GIL: Exactly. Just--because that should  
12 illustrate what was borne in mind, I think, in the distribution  
13 that the Minister had in mind.

14 COMMISSIONER HICKINBOTTOM: This is the Spooner's  
15 estate distribution.

16 MR RISSO-GIL: This is the--yes, the late one where,  
17 as the Minister described, there were people--spaces became  
18 available because people hadn't paid up.

19 COMMISSIONER HICKINBOTTOM: Thank you.

20 BY MR RAWAT:

21 Q. I mean, the point is that you are--you do have a--you  
22 are using additional criteria to choose people above and above  
23 what the Spooner's Lands Committee decided.

24 A. For the new subdivision, yes.

25 Q. Well, not for the new subdivision but for this

1 Spooner's reallocation.

2 A. No. Those persons were already approved by Cabinet,  
3 but there were no parcels of land to give them, so they would  
4 have gone through the original criteria.

5 Q. They'd gone through the original criteria, and they're  
6 on a approved--they're on the reserved list?

7 A. They are on the reserved list.

8 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Rawat, to  
9 interrupt. Is this right, they, as it were, were passed the  
10 Spooner criteria to get onto the list; is that right?

11 THE WITNESS: Yes.

12 COMMISSIONER HICKINBOTTOM: So, the Spooner criteria,  
13 which are common, I think, amongst the Estates, very similar, so  
14 they passed those. So, what you ended up with are, let's say, a  
15 hundred applicants who've passed the Spooner criteria for 25  
16 plots parcels of land.

17 THE WITNESS: Yeah.

18 COMMISSIONER HICKINBOTTOM: The question is: How do  
19 you choose from the 100 the 25? I mean, in choosing 25 from a  
20 hundred, I think it says here in paragraph--

21 THE WITNESS: No, I said that's what I meant.

22 COMMISSIONER HICKINBOTTOM: Yes.

23 THE WITNESS: Right.

24 COMMISSIONER HICKINBOTTOM: But what it says here is  
25 that the applicants were streamlined based on the number of

1 dependents', access to land, and their inability to qualify for  
2 land based on income. So those are criteria outside the Spooner  
3 criteria because they've been satisfied on which 25 were  
4 selected from the hundred.

5 THE WITNESS: My understanding is they are all  
6 qualified.

7 COMMISSIONER HICKINBOTTOM: No, no, no. I'm  
8 sorry--it's been--it's me, Minister. I just need to explain  
9 this--

10 THE WITNESS: Clarify, clarify.

11 COMMISSIONER HICKINBOTTOM: --better.

12 There are criteria, the Spooner criteria, it doesn't  
13 matter what they are at the moment but they're common criteria.  
14 A hundred people satisfied those criteria but for only 25 plots.

15 THE WITNESS: Right.

16 COMMISSIONER HICKINBOTTOM: So, someone--I mean,  
17 ultimately Cabinet--had to select from the hundred, 25 people.  
18 They all satisfied the Spooner criteria but they had to select  
19 the 25 people. How was that done?

20 THE WITNESS: Well, I don't know.

21 COMMISSIONER HICKINBOTTOM: Right.

22 THE WITNESS: That--

23 COMMISSIONER HICKINBOTTOM: Where--

24 (Overlapping speakers.)

25 No, I want to hear from you on that.

1 THE WITNESS: Um-hmm.

2 COMMISSIONER HICKINBOTTOM: But before I do, in  
3 paragraph 5, where it says "the applicants were streamlined  
4 based on the number of dependents, access to land, and so on, I  
5 thought that those were criteria in which the 100 people got  
6 reduced to 25. That was the streamline.

7 THE WITNESS: I'm not sure how got--how they chose the  
8 25 out of the 100. That was before my time.

9 COMMISSIONER HICKINBOTTOM: Right. Okay. Right.

10 THE WITNESS: I have done no new subdivision,  
11 Mr Rawat.

12 MR RAWAT: No, no--

13 MR RISSO-GIL: It may be helpful to show the Minister  
14 the date. So this is--

15 BY MR RAWAT:

16 Q. If you go to page 360.

17 MR RISSO-GIL: 21st of February 2020.

18 BY MR RAWAT:I think--

19 MR RISSO-GIL: There's a confusion here--

20 BY MR RAWAT:

21 Q. We're not talking at cross purposes, what we have is  
22 we understand that your new subdivision is going to be the  
23 Copper Mine.

24 A. Right.

25 Q. But what you told us is that you were involved in, if

1 you like, a reallocation of parcels of land on Spooner's estate  
2 because you were confronted with a situation where people had  
3 not built--developed their land. So they went--you moved them  
4 from the approved list to the reserve list.

5 A. Right.

6 Q. And therefore you had 25 plots of land to reallocate.

7 A. Yes. So, how we made that decision?

8 Q. And this is what Mr Risso-Gil has taken us to--

9 A. Yeah.

10 Q. Which is how you did it. So all of those people  
11 already on the list, they passed the Spooner's test.

12 A. Right.

13 Q. So what the Commissioner's question is about--

14 A. Oh, okay.

15 Q. --5 and 6, do they show the criteria that you applied  
16 to select from the reserve list 25 people to--

17 A. My understanding was that they all qualified, so it  
18 didn't matter. You could--any random number would work there.  
19 My understanding is that they all qualified.

20 COMMISSIONER HICKINBOTTOM: They all qualified--

21 THE WITNESS: That's my understanding.

22 COMMISSIONER HICKINBOTTOM: They all satisfied  
23 the--certain criteria.

24 THE WITNESS: Right.

25 COMMISSIONER HICKINBOTTOM: We absolutely understand

1 that. But nevertheless, there were a number of ways in which  
2 the 100 got down to 25 because--

3 THE WITNESS: Yeah.

4 COMMISSIONER HICKINBOTTOM: --I mean, you could have  
5 taken them--the first 25 alphabetically but you didn't. How did  
6 you get the hundred down to the 25?

7 THE WITNESS: No, that's what I'm saying. So you're  
8 misunderstanding. When I came to the Ministry I met those 25  
9 there. Some of the 25 didn't pay, so I took them out and put in  
10 randomly the other ones from the reserve list.

11 COMMISSIONER HICKINBOTTOM: Randomly.

12 THE WITNESS: From the reserve list. Or I consulted  
13 my colleagues to see who they were.

14 COMMISSIONER HICKINBOTTOM: So--

15 THE WITNESS: To see from the result list do you know  
16 anybody here who meets the criteria for this--these vacancies,  
17 and I don't recall how many it was but to say that--

18 BY MR RAWAT:

19 Q. Which criteria did you ask your colleagues to consider  
20 them against?

21 A. That's what I'm saying. There was no need to because  
22 they already qualified to be in there. They already qualified  
23 to be in the list.

24 COMMISSIONER HICKINBOTTOM: I mean--

25 THE WITNESS: The question you are asking is how they

1 choose that 25. I'm saying I don't know. I met up some persons  
2 there. If you're going to ask me when I removed the ones who  
3 are delinquent and how I had gotten those others in there, I  
4 consulted with various persons about what they want. Okay, they  
5 all qualified to be there. I don't know how they chose the  
6 first 25.

7 BY MR RAWAT:

8 Q. No, understood.

9 A. They all qualified.

10 Q. You've created 25 spaces,

11 A. Right.

12 Q. And you've got to fill them.

13 A. So, it didn't matter with who because they all  
14 qualified to be there. All hundred qualified to be there.

15 Q. All hundred met the Spooner's list?

16 A. Right. So you're asking--

17 Q. 25 were selected.

18 A. Yeah, so consulted persons as to--

19 (Overlapping speakers.)

20 MR RISSO-GIL: Forgive me for interrupting. It may be  
21 said that the Minister could be invited to refresh his memory  
22 from paragraphs 5 and 6 because it's--

23 THE WITNESS: What page is that?

24 BY MR RAWAT:

25 Q. If you go to page 361, please, Minister.



1           A.    Yeah, there was consulted persons in these things.  
2   Some of the persons from that estate would know who they were,  
3   so depending on other person's knowledge and so forth.

4                    Oh, and as soon as the packages were in the Ministry  
5   with saying who they were in terms of what I actually saw.

6           Q.    So, you had--you had 25 spaces?

7           A.    That's not exact number. It was probably four or  
8   five. I don't recall. I'm just saying.

9           Q.    Well, we can--I think we can probably see how many you  
10   have because I think--I can certainly--there's a list at 363.

11          A.    Seven?

12          Q.    Seven.

13          A.    Okay.

14          Q.    But the--to fill--if we look at four, what happened is  
15   that because obviously you had to revoke the grants--

16          A.    Um-hmm.

17          Q.    --so four tells us that Cabinet revoked 14 grants--

18          A.    Okay.

19          Q.    --and now you had recommended seven new people. So,  
20   in terms of choosing those seven, you did that--did you do that  
21   on just taking soundings from--because you would have had a long  
22   list of people who qualified?

23          A.    Yes. From my colleagues and other persons, yes.  
24   Representatives of all who sent in recommendations.

25          Q.    I see. So, you had soundings from--

1 A. My colleagues.

2 Q. District Reps?

3 A. Yes.

4 Q. You spoke to your Cabinet colleagues?

5 A. That is correct.

6 Q. Did you speak to anybody else? Did you--

7 A. No.

8 Q. So, elected--essentially elected Members in Cabinet

9 and outside Cabinet were able to make recommendations--

10 (Overlapping speakers.)

11 A. That is correct.

12 Q. --and you just chose--

13 A. Took it to Cabinet, yeah.

14 Q. But you took seven names to Cabinet?

15 A. Yes, that's correct.

16 Q. And how did you get from the soundings to the seven  
17 names?

18 A. Through my colleagues. My colleagues would bring  
19 recommendations. I would inform my colleagues, listen, I have  
20 some spaces here. Do you know any persons who may benefit from  
21 this based on the circumstances? I don't know these persons,  
22 but I had to depend solely on any colleagues to inform me.

23 Q. To suggest someone who (unclear)--

24 (Overlapping speakers.)

25 A. To suggest someone.

1 Q. Thank you.

2 COMMISSIONER HICKINBOTTOM: It's 10 past 4:00.

3 MR RAWAT: I think it is a convenient time.

4 COMMISSIONER HICKINBOTTOM: Okay.

5 MR RAWAT: Thank you.

6 COMMISSIONER HICKINBOTTOM: Minister, you know because  
7 you've been here before, we have to have breaks every now and  
8 then for the Stenographer, so we'll have a five-minute break now  
9 for him. Thank you.

10 THE WITNESS: As a Minister for Labour, I su--

11 (Recess.)

12 COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

13 MR RAWAT: Thank you, Commissioner.

14 BY MR RAWAT:

15 Q. Honourable Wheatley, one last question before we move  
16 on to our next topic.

17 Mr Smith-Abbott spoke to the Commissioner about the  
18 progress on the Crown Land Management Plan and how various  
19 policies all set together, but he does not reference, but you  
20 do, the Land Distribution Programme, and you mentioned that as  
21 part of your response which you say that this will be part of  
22 the next budget. Could you just, in a sentence or two, just  
23 tell the Commissioner, what the Land Distribution Programme is,  
24 please.

25 A. Mr Commissioner, I think every Government to ensure

1 that all local persons get land, but again when I got to the  
2 Ministry, and I was trying to give out Crown Lands, I realised  
3 that apart from not having certain policies in place, there was  
4 no programme. It's one thing to want to do something, but there  
5 must be a mechanism by which you're going to achieve your  
6 objective, and we realised that there was no mechanism to  
7 deliver Crown Lands to persons, to answer the Premier, I got  
8 some money to cut some roads for access to lands already given  
9 to persons.

10           What this programme is going to--because it's a funded  
11 programme--what it's going to do is put in the Budget money and  
12 a programme for how Crown Lands, or to make Crown Lands  
13 available at all times. If you look at the Crown Lands  
14 distribution, it's not a regular thing. It happens periodical,  
15 maybe once every four years. Because I'm an advocate for  
16 persons owning, I think Crown Lands should be made available  
17 more regularly. It's only going to happen by having a programme  
18 that is capable of delivering Crown Lands, making sure roads are  
19 cut, surveys are done, utilities implemented, plots and parcels  
20 attached.

21           Only a deliberate programme can deliver that. We've  
22 created a programme for the first time in history I believe  
23 that's embedded in the budget to ensure that what we're trying  
24 to do, publishing a criteria and so forth, because once persons  
25 are aware of what they have to do to access Crown Land is going

1 to become--happen more frequently because they're going to get  
2 prepared to receive the Crown Land, there must be a mechanism in  
3 place now to make sure it happens regularly.

4 COMMISSIONER HICKINBOTTOM: So, there are various  
5 policy plans involving land, and the Programme, I assume, sits  
6 under the Policies.

7 THE WITNESS: Exactly.

8 COMMISSIONER HICKINBOTTOM: So the Policy is whatever  
9 the Policy is.

10 THE WITNESS: Exactly.

11 COMMISSIONER HICKINBOTTOM: The Programme is effecting  
12 the implementation--

13 THE WITNESS: The implementation. That's what the  
14 Programme, it implements that policy.

15 COMMISSIONER HICKINBOTTOM: Thank you.

16 BY MR RAWAT:

17 Q. If I could move on--

18 A. I want to add one more thing, too, because apart from  
19 Crown Lands, the Policy would also look at affordable homes. We  
20 have the first project ever in the BVI happened as we speak to  
21 become concluded in a few months' time. That idea of affordable  
22 home is something we're also going to put into the policy. Not  
23 every person can afford to buy land and develop the land. If we  
24 have a policy, the Government can get large tracts of land and  
25 through sheer volume can build homes at a reduced rate because

1 of bulk and give more persons access to owning their own homes.  
2 If you look at the Jost Van Dyke project, that is an example of  
3 what we're talking about. I would like to see that there  
4 replicated throughout the BVI, in a very uniform and elegant  
5 manner, that more persons have access to property and homes.  
6 That is in general what I'm trying to do. That is my only  
7 ambition right now. Putting homes and lands in the locals'  
8 hand. The former Governor who would cooperate and sign off on  
9 all my land things, not like the last one. Thank you.

10 Q. Just to turn to commercial use of Crown Land. And  
11 again, Mr Smith-Abbott explained that process.

12 Now, if I ask you just to turn up page 920 in the  
13 first bundle, nine-two-zero, you should get to a Cabinet Memo.  
14 Now, what the Commission had asked in the Request for Affidavit  
15 and which Mr Smith-Abbott and his team did, was to using a  
16 random sample of Crown Land disposals just to set out the  
17 process that happened in each, and he's done that. Now, one of  
18 those was this one, and we're looking at a Cabinet Memorandum  
19 from 16th of December 2020, which is headed "Lease of a Portion  
20 of Crown Land for Commercial Purposes - Zimomi Limited", I'm  
21 hoping that this will shortcut matters, Honourable Wheatley, so  
22 that I don't have to take you to the actual documents themselves  
23 but I can do if you need to see them, but effectively what  
24 happened was on the 4th of December, a company called Zimomi  
25 Limited submitted a letter to your Ministry requesting to lease

1 of portion of Crown Land opposite the Dr Orlando-Smith Hospital  
2 and it was for commercial purposes, and they wanted a 99-year  
3 term. That was acknowledged by the Ministry. It was mentioned  
4 that what was required was a detailed business plan. The  
5 Ministry then on the 15th of December received the requested  
6 business plan which was headed "Proposal for a vibrant mixed-use  
7 development in Road Town", and it was estimated, it says in the  
8 Cabinet Memo, that the estimated cost was a \$10 million  
9 development. In fact, in the business plan it gives it at 10 to  
10 \$15 million. And it had mixed use, as we say, so there was a  
11 residential component, a retail component, and an office  
12 component.

13 If we turn over, the Ministry made a survey request.

14 A. There you go.

15 Q. And if you look at the bottom of eight, it was noted  
16 that a valuation report was going to be required. And then at  
17 nine that the next steps would be that a lease agreement would  
18 be executed.

19 And so, it attached the various documents, for  
20 example, copies of the Land Registry for the parcel of the land  
21 which was Parcel 125, which was being sought, Certificates of  
22 good standing, Certificate of Incorporation, Memorandum and  
23 Articles of Association.

24 If we just quickly look at some of those documents.  
25 If you turn up to 958.

1 A. The document.

2 Q. You have it?

3 A. Um-hmm.

4 Q. That's the Certificate of Incorporation for the  
5 Company, and you'll see that it's incorporated as a BVI business  
6 company on the 15th of day of December 2020. You will see if  
7 you turn to 957, that the Certificate of Good Standing for the  
8 Company is dated the 16th of December 2020.

9 A. Um-hmm.

10 Q. And you then have if you go through to 962, the  
11 Memorandum of Association, which if you go through to 965, is  
12 also dated the 15th of December 2020.

13 Now, one of the other matters that had to be resolved  
14 and which the reason for the survey is that there was going to  
15 have to be a subdivision of the parcel of land. So, I can take  
16 you to more detail, if you need it, Honourable Wheatley, but I  
17 hope that's enough background for you just to try and--what I'd  
18 like your help with is just to understand how a commercial  
19 process works when you're dealing with Crown Land, but what we  
20 have is at the time of the December 2020, you have a number of  
21 outstanding matters. You have the need for a Valuation Report,  
22 the need for a survey, need for it to be subdivided, and  
23 reference to all this is made by the--if you look at 924--by the  
24 Attorney General's Chambers, where they say at 18 that it  
25 appears--sorry, I will let you turn the page up. But the



1 Attorney General's Chambers say that this appears premature  
2 because it's premised on a subdivision, the rent is to be  
3 calculated by reference to a valuation.

4 Now, given that, according to what we understand from  
5 Mr Abbott--Smith-Abbott, forgive me--is that the process is that  
6 the survey and the Valuation Report ought to be available prior  
7 to any recommendation being taken to Cabinet.

8 A. I'm not sure it's required for the lease for sure.  
9 I'm not sure for the recommendation to Cabinet. I could be  
10 wrong. I stand to be corrected.

11 Q. He's obviously--he and his team have set out the  
12 process in detail.

13 A. Okay. I take his word for it.

14 Q. But can you help us with, effectively, with why the  
15 rush here?

16 A. You see the date on it? Middle of the pandemic. We  
17 are trying to get the country shut down, we're trying to get  
18 economic activity in the country. If you look at the financial  
19 implication, it lays it out there. This is somebody trying to  
20 put an injection of \$10 million in an economy during a very bad  
21 time. The worst pandemic in 100 years. We're scrambling trying  
22 to figure out how we're going to get this economy moving. That  
23 is the hurry. That was the hurry to get economic activity in  
24 the country.

25 Q. And how can you get it moving when you and why take

1 these steps when you still haven't got a survey, you haven't got  
2 a Valuation Report--

3 (Overlapping speakers.)

4 A. Those things would have to happen before you get a  
5 lease, but at least this gave them permission to go ahead  
6 preparing these things. This is a permission to go ahead. This  
7 is not--this is not a lease. This is Cabinet saying, okay,  
8 based on what we have here, go ahead, and once we get these  
9 things in order, now we can prepare a lease for you to get some  
10 activity going in the country. \$10 million is a lot of money.  
11 10 to 15.

12 Q. If you turn to 925, please.

13 A. 925?

14 Q. Yeah.

15 What Cabinet is invited to decide and does  
16 decide--sorry--if you go to 981, sorry. That would be the  
17 better way to do it.

18 A. Okay. I'm there, all the parameters for the leases to  
19 look like--I'm sorry.

20 Q. Go to 981 because that gives us the date. 981 is the  
21 '20.

22 A. I still can't see if the lease was ever completed.

23 Q. Well, that was going to be one of the questions so we  
24 might get to that, but 23rd of December 2020 is when Cabinet  
25 meets to discuss the paper, and so Cabinet then decides to

1   subdivide the parcel, permission be granted to lease a portion  
2   of land with, as you say, the conditions with, for example, the  
3   rent to be determined once the valuation survey report is done,  
4   that the area to be leased is once the survey subdivisions  
5   survey is done, et cetera, et cetera.

6           But in this case, what had been asked for was a  
7   business plan.

8           A.    Um-hmm.

9           Q.    And this was from your evidence in May and from  
10   Smith-Abbott's evidence, business plans are considered by the  
11   Premier's Office, so do you know whether in this case the  
12   business plan would have gone to the Premier's Office?

13          A.    It would only go there if there was a Development  
14   Agreement.  I don't think the--I could be wrong, but I don't  
15   think there was a Development Agreement for--I could be wrong.  
16   It comes to the Premier's Office.

17          Q.    It's a building on the business plan, which is--and we  
18   could find this at 937.

19          A.    937?

20          Q.    Yes.  This is a part of the business plan.

21                937 is that proposed costs and source of funds, so you  
22   see that it's going to be funded by private funding and mortgage  
23   financing, but none of the banks or personal investors are  
24   named.

25                But what's said is that the estimated value of this

1 mixed development will be in the range of 10 to 15 million.

2 A. Um-hmm.

3 Q. A project schedule is that construction will take five  
4 years, scheduled to commence in 2021 with a time frame of two to  
5 five years to fully build out.

6 So, can you help with whether--would a registered  
7 Development Agreement be needed when you're dealing with  
8 something that has a value of 10 to \$15 million?

9 A. A Development Agreement?

10 Q. Yes.

11 A. It's not only based on value, it's also--normally a  
12 Development Agreement, when the developer is trying to secure  
13 his business, so real estate development is when you have  
14 certain demands from Government. I plan to come into your  
15 country and I plan to spend whatever in here, I plan to spend  
16 \$50 million, therefore I would like hotel aid. I promise I will  
17 hire 50 locals. I promise I will donate to whatever. In this  
18 case, this person doesn't want anything from Government, so  
19 there is no need for a Development Agreement. They are simply  
20 investing in the country, so I don't see a need for one, a  
21 Development Agreement.

22 Q. One of the matters that you spoke about in May was the  
23 situation was sometimes you have a lease granted, financing fall  
24 through, development never happens. That this was something to  
25 guard against.

1 A. Um-hmm.

2 Q. Now, here you have a situation where Cabinet has  
3 decided to grant a lease in circumstances where you don't have a  
4 Financial Statement of any kind. What you do have, if you look  
5 at 935.

6 A. 935?

7 Q. Sorry, 953, yes.

8 A. Yes, I got it.

9 Q. Which is a letter of December 14, 2020, from a bank to  
10 the principal of this company expressing an interest in the  
11 proposed commercial development referring to several meetings,  
12 further engagements towards developing a comprehensive  
13 understanding or business plan and where feasible to offer  
14 bespoke financing options. It's under concrete agreement to  
15 finance the business.

16 And the letter, as we've seen is written on the 14th  
17 of December, so it's written, in fact, before the Company has  
18 even been incorporated which is done on the following day.

19 A. Um-hmm.

20 Q. When you look at the business plan itself, it doesn't  
21 tell you who the personnel of the Company are. It does  
22 reference people whose names will be known to you. They are now  
23 known to me, but doesn't it take us back to that point of--isn't  
24 this all as the Attorney General's Chambers raised, premature?

25 A. What is premature? The bank telling them they will

1 finance this Project?

2 Q. Cabinet, between--you get a letter of application on  
3 the 14th of December, by 23rd of December, you've granted a  
4 lease?

5 A. No, no, no lease has been granted. Cabinet is  
6 saying--you are misunderstanding what the Cabinet Decision is  
7 saying. Cabinet is saying based on the requirements for a  
8 lease, Cabinet must bring these things, these things form the  
9 lease. If memory serves me right, I don't think that the lease  
10 is done yet, and to answer the question about the land being  
11 taken back if not used, that would be in the lease. I do  
12 not--this is just saying it's okay to go ahead, once I get all  
13 the requirements, a lease can now be drawn up.

14 Q. But this permission be granted, what it says is  
15 permission granted to Zimomi Limited to lease.

16 A. Yes.

17 Q. That's Cabinet Decision?

18 A. Right. But Cabinet doesn't purchase leases.

19 Q. Understood. Understood that there are Cabinet set  
20 conditions, those conditions have to be fulfilled and that will  
21 ultimately--

22 A. Should be fulfilled. Should be fulfilled.

23 Q. It's just--and there are examples of applications that  
24 take a much longer process. It's just--can you shed any light  
25 on why between--you go from the 4th of December to the 23rd--

1           A.    Yeah.

2           Q.    --appearing to give the green light to a 10 to  
3 \$15 million development in Road Town?

4           A.    I'll remind you again, it was in the middle of COVID.  
5 All the businesses were closed down. Here is an opportunity to  
6 bring some employment. Yes, we're going to jump at it. Here's  
7 somebody saying, I see you, your--all the hotels are closed,  
8 supermarkets are dwindling, there are no yachts, they are no  
9 cruise ships, how do we get money in this economy? Through  
10 construction. Construction is one where we can get some  
11 economic activity in the country.

12           COMMISSIONER HICKINBOTTOM: I understand that point.

13           THE WITNESS: So, I'm not understanding then.

14           COMMISSIONER HICKINBOTTOM: But it's a hypothetical  
15 point.

16           But in this--correct me if I'm wrong, but in this  
17 proposal, firstly, there were lots of things to do before there  
18 was even a lease.

19           THE WITNESS: I don't think there was a lease  
20 still--the lease must still be there.

21           COMMISSIONER HICKINBOTTOM: I understand that.

22           So again, why the rush for Cabinet to approve a lease  
23 which hasn't been completed yet?

24           THE WITNESS: Sorry.

25           COMMISSIONER HICKINBOTTOM: And secondly, and then you

1 can answer them all together or both of them together, there is  
2 no requirement that this development happens.

3 THE WITNESS: That's covered in the lease, the Cabinet  
4 is simply saying we agree for the Ministry to create a lease.  
5 The Ministry still has to do the lease. The lease cannot be  
6 done until all these things are met, the evaluation, the  
7 subdivisions, this is a process, so the sooner we could decide  
8 that we are willing to do this lease, the sooner they can start  
9 their work. It may take them a year to complete the process.

10 COMMISSIONER HICKINBOTTOM: I understand, but until  
11 they got a lease, they can't--they aren't able to commence the  
12 process, but there is no obligation that they do build.

13 THE WITNESS: That would be in the lease.

14 COMMISSIONER HICKINBOTTOM: But here, where it's got  
15 the conditions of the lease that the Cabinet have set out, where  
16 is the obligation to build.

17 THE WITNESS: What I would say to that is what Cabinet  
18 is saying here, these are the minimum requirements. We can  
19 add--like if you see--if you look at the one with the "TEE-YEP"  
20 (phonetic), it must build it in a certain period or the land  
21 reverts back to the Crown.

22 COMMISSIONER HICKINBOTTOM: Exactly.

23 THE WITNESS: Yeah. We could put that in the lease.  
24 But I will make sure it's in the lease when it's finally done.

25 BY MR RAWAT



1 Q. But it's again then, going back to process, what we've  
2 understood is that before the matter goes to Cabinet, you need a  
3 Valuation Report, and here you are putting the Valuation Report  
4 in at a later point in time into the process?

5 A. For the lease, yes.

6 Like I said, sometimes--I'm not sure it's a  
7 requirement that it mustn't be first, but I know for the lease  
8 it must have it for the lease to be properly executed because  
9 you use the lease in most cases to decide how much the rent is  
10 going to be.

11 Q. The Valuation Report?

12 A. The Valuation Report. And the Valuation Report is not  
13 done by the Ministry. It's done by an independent contractor.

14 Q. But again, it's taking us back to Mr Smith-Abbott's  
15 Affidavit. I mean, the tenor of that is that before you--the  
16 matter gets to Cabinet, the Valuation Report should be there.

17 A. Yes.

18 Q. That's how the system that the Ministry operates?

19 A. Under normal circumstances, what I'll take as under  
20 normal circumstances, I would guess, yes. These were not normal  
21 circumstances.

22 Q. Does that mean that during COVID you've had a policy  
23 that you would not have Valuation Reports until a later stage in  
24 the process? Did you make an exception in just this case?

25 A. That was not a policy decision.

1           When you say that the valuation must come to Cabinet  
2 first?

3           Q.    My understanding of Mr Smith-Abbott's Affidavit is  
4 that the Valuation Report is obtained before the matter gets to  
5 Cabinet.

6           A.    Only for the lease, not for the permission to create  
7 the lease.

8           Q.    But that then suggests it goes around twice?

9           A.    (Witness shrugs.)

10          Q.    So, if we take this as an example, you have Round 1 is  
11 when it just goes to Cabinet without a report or Cabinet, as we  
12 say, permission be granted to lease a portion, the lease then  
13 has to be entered into, Valuation Report, et cetera done, it  
14 then goes round back to Cabinet to sign off?

15          A.    Well, first--you see, and I understand what you're  
16 saying, but the Valuation Reports say that they are used to  
17 decide in the lease what the rent is going to be, so you must  
18 have the Valuation Report.  It's not required for Cabinet to do  
19 anything, but it is required to form the lease.

20          Q.    But what does Cabinet do with the lease?  At the end  
21 of this, and let's say that there is a lease at the end of this  
22 process, do you sign the lease, the Premier signs the lease or  
23 does it go back to Cabinet?

24          A.    I think the Premier signs the lease.

25          Q.    Does it go back to Cabinet?

1           A.    I'm not sure if it has to go back to Cabinet.  It may  
2 go back as an information paper, the lease that you asked for is  
3 now ready.  Here is the lease.  He may send it back to Cabinet.  
4 But it must have a valuation at that point in time to complete  
5 that lease.  It's not required before.

6           Q.    I see.

7                    So, your understanding is that there is no requirement  
8 that a Valuation Report--

9           A.    I'm saying I'm not sure but I know for the lease it  
10 must have it.  You're the one saying it must go to Cabinet  
11 first.

12           Q.    Yes.  I'm not the one who's saying that, it's  
13 Mr Smith-Abbott is saying it.

14           A.    I'm saying I'm not sure.  I'm not sure why Cabinet  
15 would need to see the valuation first, in a time like COVID and  
16 trying to get something moving.  It is needed for the lease, not  
17 for Cabinet.

18           Q.    How fast are things--do you get things moving if you  
19 have all of these steps to do?

20           A.    You have to ask the technocrats.  I don't know.  I'm  
21 not involved in any lease preparation.  Once Cabinet gives the  
22 parameters, I may see the finished products to look at it and  
23 say okay, is there anything we missed.

24           Q.    Because the other feature of it is that--well, can you  
25 tell me this.  Do you know how far the Project has gone?  I

1 mean, has Parcel 125 been subdivided?

2 A. I don't know.

3 Q. And you don't know whether there is, in fact, a  
4 concluded lease or not?

5 A. I don't know. I haven't seen one, so I would assume  
6 there is none. I'm sure if there is one, I would have seen it.  
7 So, it's safe to assume that there is no lease.

8 Q. Is that something that should cross your desk,  
9 Minister?

10 A. Yeah, it should, it should, so I'm saying it's safe to  
11 say there is no lease. I would be very surprised if there was a  
12 lease, so it's probably still in process. Technocrats, they  
13 take their time, and Cabinet says or the gentlemen or the  
14 Company would like to build by 2021. He has two months. The  
15 year's almost done.

16 Q. Can we turn to another example, and this is if you  
17 turn up page 1063, please.

18 A. Which bundle?

19 Q. It might be in the second bundle.

20 I'm just going to try and take this quite quickly, if  
21 I may, please, Honourable Wheatley, but it's--and I will just  
22 try and summarize it, but it concerns lease of Crown Land at  
23 Paraquita Bay for agricultural purposes, and that's for Daniel  
24 Cline Poultry Farm.

25 Essentially, if we look at paragraphs 1 to 2, and I'm

1 very quickly going to summarise, so in effect, the background  
2 information was--and this is 14th of October 2020, but there was  
3 reference to the importance of food security.

4 A. Um-hmm.

5 Q. And then the Ministry of Education which obviously  
6 captures the Department of Agriculture, submits a letter on  
7 behalf of Mr Cline's lease of parcel of land. The background is  
8 that he's operating a poultry farm in Cane Garden Bay, which was  
9 set up without the required planning permission and which has  
10 led to complaints from residents and visits from the Department  
11 of Agriculture. But what is also said is that there is a desire  
12 to increase production which would not be achievable at that  
13 location. So, the Department of Agriculture and Fisheries has  
14 supported a request to reallocate the facility to Paraquita Bay  
15 Estate. And what the Department did was to identify a parcel of  
16 land at Paraquita Bay Estate which would be suitable for the  
17 relocation of the farm.

18 A. Um-hmm.

19 Q. Now, if you go to 10, an independent appraisal of the  
20 plot was commissioned which was to determine the market rate for  
21 agricultural purposes, and the Valuation Report, that Valuation  
22 Report gave the open market value as \$75,000.

23 Now, what that means is that--and this is at 11, that  
24 the Ground Rent was determined to be \$43,000 per annum for 25  
25 years with an option to renew for a further 25. I'm sorry, at

1 11 to 13, what's cited is examples of other rents agreed with  
2 similar entities. And so, in one case at paragraphs 11 to 13 we  
3 see that--sorry, I'm going to start that all over again because  
4 the Valuation Report for Paraquita Bay gave a valuation of  
5 \$75,000 but the Decision of Cabinet was not to base the rental  
6 figure on the valuation sum but on two previous agricultural  
7 disposals in that area, and the first we see at 11 is from 2018,  
8 the valuation there was of 43,000 and took account of  
9 comparables. I can show you that. But the Company then made a  
10 counteroffer based on its own research of 200, and I think it  
11 was eventually settled that I think 2,400. There was a similar  
12 process for another company which led to an annual rent of the  
13 sum of \$800.

14 Now, I'm sorry it's a bit of a whistle-stop tour, but  
15 in this case, the rent, if we go on to 16, then refers to Ground  
16 Rents for agricultural purposes on Virgin Gorda reviewed to be  
17 assessed at 1 percent of the value of the land and such value  
18 shall only take account of the use of the land for agricultural  
19 activity, and it references a 2001 document.

20 What it also references is the Financial Secretary  
21 raising the fact that it's high time the Government review and  
22 modernise its leasing policy of Crown property. And what's also  
23 in the papers we see is that those cautioned from the Financial  
24 Secretary--and this was in relation to Infinite ECO Ltd against  
25 subsidising commercial enterprises.

1           So, the point we get to is that Cabinet decides that  
2 the rent would be not based on the valuation of 75,000 but would  
3 be based taking account of these other businesses and the  
4 1 percent valuation and adopt \$750 per annum as the rent.

5           In this case, can you help us with this, why would you  
6 not follow as Cabinet the Valuation Report?

7           MR RISSO-GIL: There may be a confusion here because  
8 if one looks at paragraph 18 of the memo, being that the value  
9 of the 750 is based on the 75,000, but it's a percentage of that  
10 figure.

11           COMMISSIONER HICKINBOTTOM: It's 1 percent.

12           MR RISSO-GIL: Exactly of that. So it does have its  
13 route in the valuation. It isn't that it isn't based on the  
14 Valuation Report or the Valuation Report is ignored but the a  
15 particular percentage of that is taken.

16           BY MR RAWAT:

17           Q. Let's take that. If we look at page 1066, then.

18           A. Page 18?

19           Q. Do you see that--

20           A. 18.

21           Q. 18. 18 is taken from 16, which refers to land for  
22 agricultural purposes on Virgin Gorda being assessed at  
23 1 percent. Now, obviously Paraquita Bay, as I understand, is  
24 not on Virgin Gorda, but if you go to 1131.

25           A. What number?

1 Q. 1131, please. This is what it's based on. So, you  
2 have--although it's stamped 2020--2001 and it's Virgin Gorda  
3 Central, it's an agreement made in 1996 between the Governor and  
4 an individual, and that's where the 1 percent comes from.

5 Now--so the question I can reword is this: Where you  
6 have a valuation of 75,000, why is it justified to take  
7 1 percent?

8 A. I'm not sure. Like I said, this is always what the  
9 pattern has been. That's what I would guess.

10 Q. Well, the pattern that seems to be--

11 A. 1 percent.

12 Q. --is 1 percent in Virgin Gorda in 1996.

13 A. Um-hmm.

14 Q. In 2018 and 2019, it's to negotiate, it seems, with,  
15 if you look at 11 which is a company called in Infinite ECO Ltd.

16 A. Which page are you on?

17 Q. Page 1065.

18 A. What was your question again?

19 Q. Let me take you through it again. So--

20 A. Why 1 percent?

21 Q. Yes.

22 A. You're asking?

23 Q. Yeah.

24 A. I guess--this is Agricultural lease, and I would guess  
25 that whatever is in this paper would have been sent to us in



1 Agriculture. I'm not a Minister for Agriculture but because  
2 Minister for Lands, we did the lease for Agriculture.

3 Q. But you take it--you--it goes to--the paper comes from  
4 your--

5 A. Yeah. Based on what they would have sent to us.

6 Q. Right.

7 So take us back to this. Go back to 1063.

8 A. Um-hmm.

9 Q. Just explain to me how that paper is produced because  
10 it's a paper from your Ministry.

11 A. Because I'm a Minister of--the Ministry for Lands and  
12 Agriculture takes place on lands, if they want to give a  
13 lease--they're trying to reform our agricultural practices with  
14 portions that are given leases to use lands and are basically  
15 squatting. Agriculture would have written to the Ministry and  
16 said we want to give this particular farmer a lease on this  
17 particular area of land. Here are the terms to produce the  
18 lease for them.

19 Q. So, the content of this--

20 A. My understanding--my Ministry should have gotten all  
21 information from the Agricultural Ministry, Agriculture  
22 Department, to produce the paper because it only can produce a  
23 lease.

24 Q. So you can't help at all with why you knew this was  
25 set at this--

1 (Overlapping speakers.)

2 A. I really can't help. I have you to the Agriculture  
3 Department as to what their going rates are for farmlands. I  
4 don't think it is set by my Ministry. I don't think so.

5 Q. So your Ministry--

6 A. But I stand to be corrected. I know we produced the  
7 leases but based on instructions from Agriculture.

8 Q. So, is this--in terms of the content of this,  
9 background information, what comparables to use, what  
10 percentages to use, that all come from the Department of  
11 Agriculture?

12 A. I--that will be my best guess that it comes--all comes  
13 from Agriculture.

14 Q. I mean, because the reason is you sign off the Cabinet  
15 Memo.

16 A. Because my Ministry taking a paper to Cabinet.

17 Q. So--but you will have no involvement in reviewing that  
18 memo?

19 A. No, no. I may review it, yes, for Cabinet but in  
20 terms of information, I wouldn't be producing that.

21 (Overlapping speakers.)

22 A. That's what I get from Agriculture.

23 Q. I'll leave it.

24 A. So all that background work and provide to my Ministry  
25 to produce the lease.

1 Q. Can I just take you, then, to the second half of  
2 your--the Written Response to the Warning Letter.

3 MR RISSO-GIL: Before we move to another topic, there  
4 is one matter which I--forgive me it took me a while to find it.  
5 On the signature--the signatory to leases, there is an example  
6 in the bundle on page 683, and it's the Governor.

7 COMMISSIONER HICKINBOTTOM: Yes. No--thank you.

8 MR RAWAT: It's always the Governor that signs on  
9 Crown Lands.

10 COMMISSIONER HICKINBOTTOM: Crown Lands, yes, fine.  
11 Thank you very much.

12 BY MR RAWAT:

13 Q. Let's go to the second half of your Written Response.  
14 Now, the detail there, Minister Wheatley, is set out a  
15 great length and it has a certain link to history. I don't want  
16 to--

17 A. What number are you on, sir?

18 Q. Are you in your Written Response?

19 A. Yes. What letter?

20 Q. Give me a moment.

21 COMMISSIONER HICKINBOTTOM: It's paragraph R on  
22 page 6.

23 THE WITNESS: Okay. I've got it. Page 6, I'm there.

24 Q. You're there.

25 So, as you will have appreciated, it's--the details

1 are quite lengthy, but--and some of the history you were not  
2 involved in because you came into this while this was still  
3 going on. But to try and summarise it, it concerns a parcel of  
4 land which is not too far from where we are speaking, which is  
5 Parcel 310, and that was leased by Government, by the Governor  
6 to an entity called "Nature's Way". The lease was never  
7 executed.

8 A. So, it was approved in Cabinet, I think is the correct  
9 term.

10 Q. Yes.

11 A. It was approved by Cabinet.

12 Q. It was approved by Cabinet but--

13 A. To produce a lease.

14 Q. Okay. Well, let--we'll take it in stages.

15 The Cabinet approved a grant of a lease.

16 A. Um-hmm.

17 Q. But it was never executed because--and the reason was  
18 that there was no easement to the property.

19 A. That was correct.

20 Q. There was, however, a long-running dispute between  
21 Delta Petroleum and the Government over its decision to grant  
22 that lease because--and what happened was that the user of the  
23 adjacent lease, 309, granted the Governor an easement over 309  
24 to 310, so that got round the problem that there was with Delta  
25 because Delta wouldn't grant an easement over its plot, so Delta

1 owned 221, somebody owned 309. Nature's Way owned 310.

2 Nature--

3 A. They remember promised this.

4 Q. Yeah, well, all right. Delta was on 221.

5 A. Um-hmm.

6 Q. 310 had Cabinet's approval to grant of lease to 310,  
7 to Nature's Way. 309 had somebody who had also been approved  
8 for a lease. Delta wouldn't grant an easement over 221 for the  
9 occupier of 310, but ultimately the occupier of 309 did grant an  
10 easement, and so that allowed the person to do that.

11 Meanwhile, Delta was occupying and using 310.

12 A. Family used it or they bought in.

13 Q. They were occupying that land without permission,  
14 weren't they?

15 A. Okay.

16 Q. But do you agree?

17 A. Well, I don't know. I'm not--

18 Q. Well, it's right, isn't it, that in 2018 they were  
19 recipient of an Expulsion Order from Plot 310?

20 A. I found that out in late December, December 17, I  
21 think. December 17th, I found that out.

22 Q. Yes, December 2020 you found out that there had been  
23 an Expulsion Order--

24 A. December 17th, I remember the date very well.

25 Q. I mean, I can show you the Expulsion Order if--

1 A. No, I've seen it.

2 Q. Yep. Now, when you came in to office, what then  
3 happened was that you negotiated with the person, with Nature's  
4 Way.

5 A. But I don't--I reached to the conclusion that a lot of  
6 things happened before that.

7 Q. Because all of the things are not matters that you  
8 were engaged with, and that's why I want to kind of focus on  
9 what you did.

10 A. No, no, before I negotiated because when I came  
11 into--this is a quick little background, because when I came  
12 into office in 2019, I was given a list of land problems  
13 that--very long-standing, some 50 years old, some 30 years old,  
14 some 20 years old, but long-standing problems and the PS said  
15 take a crack at this, and he goes, nobody has managed to get  
16 these problems solves, and they were going on and on, year after  
17 year after 50 years. This particular case was one of them.  
18 This particular case you're referring to here was one of many  
19 cases--

20 Q. Well--

21 A. --that asked me to try and resolve, so I consulted AG  
22 Chambers, and AG said basically both parties have a legitimate  
23 claim to the property. I should try and negotiate with them,  
24 and that's where--now that's where you start, where on the  
25 advice of the AG Chambers, I called the parties in to explain

1 their side of the story, and Nature's Way came in, she came, she  
2 brought her son, probably my first time meeting her, I was aware  
3 of the pro--what the issue was at the time and asked her to  
4 explain to me what this issue is all about and why do you want  
5 the property.

6 Q. Can I stop you there. I will take you back to it and  
7 so--

8 A. Um-hmm.

9 Q. --let's start back when you become involved. So  
10 you're the new Minister, you come in February 2019 or  
11 March 2019. You said you were given a list of problems?

12 A. Um-hmm.

13 Q. So, was this a written list?

14 A. Well, with--no. Files, there are files in the office.  
15 Would've been a file.

16 Q. I see.

17 So you--were you just handed the files?

18 A. Yeah.

19 Q. Because what you said in your second Written Response  
20 was that you received oral, not written briefings with respect  
21 to this disposal of land.

22 A. Yes. The PS would bring a file and top ten was in a  
23 file.

24 Q. I see.

25 A. But there were files.

1 Q. So the dispute that you had--that you inherited was a  
2 dispute between--

3 A. There were several of them.

4 Q. Well, but wasn't there--wasn't it a dispute between  
5 Delta Petroleum and the Government as to--

6 A. No.

7 Q. --who had a right to that land?

8 A. No. It was the issue of who's going to get the land,  
9 Delta or Nature's Way? It was unresolved situation. It had  
10 been going on, according to the lady, over 20 years. She had  
11 been trying to get this matter resolved.

12 Q. She had for 20 years trying to get access to her land?

13 A. That's what she told me, yes. She said over 20 years  
14 she had been trying to get this matter addressed. She wanted  
15 occupation to that land at Cabinet in 19--I think, 97--had  
16 promised her to get approved for her to go on that land. It was  
17 1997.

18 COMMISSIONER HICKINBOTTOM: 2007, I think.

19 THE WITNESS: Oh, 2007?

20 BY MR RAWAT:

21 Q. Yes.

22 A. Okay, 2007. She remembered to get my letter saying we  
23 are giving you this land in 2007. So you're looking at many  
24 years later she's saying I got this letter but I'm still not  
25 there. So I asking her--so I asked her on--well, why did you



1 want the land? So she start, and she explained to me very  
2 passionately what her dreams and aspirations were as a BVI  
3 land--as an entrepreneur, what she wanted to do. She had a  
4 business in a building that she was renting. Said I don't want  
5 to be paying any rent anymore. I want to build my own building,  
6 and I want to expand my business to include the marine sector.  
7 That was the reason for her wanting that specific waterfront  
8 property. She wanted access to the marine sector, and she  
9 wanted to be in her own building. She wanted to build her own  
10 building, and she wanted to access--that's why she wanted that  
11 particular...

12 And we had several meetings about it.

13 Q. Right.

14 So, you met with the person to whom is Nature's Way.

15 A. Um-hmm.

16 Q. I just want to use the individual's name, if that's  
17 all right, but you met with Nature's Way.

18 A. There were several meetings, actually.

19 Q. And you understood that that person--and it is in  
20 2007--

21 A. Um-hmm.

22 Q. --had been granted a lease to Parcel 310.

23 A. Cabinet approved the lease. She never got one. It  
24 was only approved in Cabinet. It was never produced. As I  
25 understand, it was never produced.

1                   COMMISSIONER HICKINBOTTOM: No, it was a Cabinet  
2 Decision.

3                   THE WITNESS: Well, it was a Cabinet Decision that she  
4 be granted a lease.

5                   BY MR RAWAT:

6                   Q. And her understanding was that she was entitled to  
7 access that piece of land.

8                   A. That's what she said to me.

9                   Q. And what was it that had stopped her accessing that  
10 piece of land?

11                  A. She never got a lease. She never got the lease for  
12 that property. Nobody executed the lease.

13                  COMMISSIONER HICKINBOTTOM: There were two problems  
14 over and above that. Firstly, no access--initially there was no  
15 access until the right-of-way was granted, and that resolved  
16 that.

17                  Secondly, Delta Petroleum were in occupation. That  
18 was another problem.

19                  THE WITNESS: Well, I don't know. I know the reason I  
20 was told from the files that the reason why the lease wasn't  
21 executed because Delta felt that they had Right of First Refusal  
22 to the waterfront property, which is a Government--a  
23 long-standing Government's policy, and Delta had  
24 threatened--it's in the Affidavit--that if they ever granted her  
25 lease, they were going to file a judicial review, that they

1 thought that they were the ones entitled to it, and that seems  
2 to be the reason why the lease was never executed. Whether  
3 Delta occupied the land, I don't know; legally I don't know. I  
4 found out afterwards that Delta did indeed occupy the land  
5 because of the eviction notice.

6 I mean, I brought it to their attention. They did  
7 vacate the property.

8 BY MR RAWAT:

9 Q. If you just look at 1168, please. I think we're in  
10 bundle 2.

11 Honourable Wheatley, this is the Cabinet Memo of 27th  
12 of June, which is slightly jumping ahead, but it's an  
13 application to lease Parcel 310 by Bevis Sylvester.

14 A. Um-hmm.

15 Q. So on the 27th of June 2019, this goes through to  
16 Cabinet. And if you look at financial implications, at 11 on  
17 page 1168, and this is paper signed off by yourself.

18 A. Um-hmm.

19 Q. But it says, the primary point that's being made by  
20 the Finance Ministry is that--or the point that's being made is  
21 the need for a business plan. But what's said is (reading):  
22 Furthermore, the draft paper says nothing about how the  
23 persistent and continuing contraventions by Delta Petroleum  
24 Caribbean Ltd is to be resolved". And that's I suggest--well,  
25 firstly, it does go to that they--the point that they were

1 occupying 310 legally, and by then I appreciate you say, you  
2 know, that you only learned of the Expulsion Order--

3 A. Um-hmm.

4 Q. --after the event, but that Expulsion Order was made  
5 by the Governor in January 2019. You can see that at 1218.

6 A. Yeah, I wasn't aware of it. That's where I--it wasn't  
7 sent to my Ministry or maybe it was sent to the Ministry, but I  
8 was not aware of any expulsion notice.

9 One comment there--

10 Q. I mean, you say that you weren't aware of the  
11 Expulsion Notice-

12 A. Um-hmm.

13 Q. --but what led up to it is that--let's take you to  
14 1214.

15 A. Where was the Expulsion Notice?

16 Q. I'm sorry.

17 A. Where was the Expulsion Notice?

18 Q. Well, let me take you through it.

19 A. What page number?

20 Q. I'm sorry?

21 A. What page number?

22 Q. If you go to--start off with 1213. This is from  
23 your--it's before you come into office--

24 A. Um-hmm.

25 Q. --so 17th of May 2018, and it's from, I think, the

1 Permanent Secretary that you have when you first arrived in  
2 office, Mr Smith-Berkeley, and he's writing to Ms Barry in the  
3 Attorney General's Chambers and asks her, having met with the  
4 principal of Nature's Way that--and you see at the end that  
5 what's written is that Assistant Secretary Penn will commence  
6 the process which will ultimately lead to the execution of a  
7 lease between the principal of Nature's Way and the Crown  
8 (reading): "While that is in progress, we ask if you can write  
9 to Delta Gas Station via their attorney asking them to cease use  
10 of the said parcel of land".

11 That's Parcel 310.

12 If you turn over to the next page.

13 A. That's interesting.

14 Q. You have a letter from the AG's Chambers re:  
15 Parcel 310, essentially telling Delta Petroleum to vacate,  
16 "ceases and desists utilising property for either storing  
17 chattels or docking marine vessels. If Delta shall fail to  
18 adhere to our demand herein, Government will be forced to take  
19 such further action as is deemed expedient without any further  
20 reference or notice to Delta".

21 And that's from Ms Barry, principal Crown Counsel.

22 What then happens is that, on the 11th of July--this  
23 is 1215, Delta writes back to seek an extension of time and says  
24 (reading): "As you may be aware, our client owns adjoining  
25 property"--that's Parcel 221--"which they current use for

1 various purposes. They have "been unable to fully comply with"  
2 the "request", and they minded to extend the compliance time to  
3 15th of August 2018.

4           Then if we go through to 1217, on the 1st of  
5 October 2018, Ms Barry, for the Attorney General's Chambers',  
6 writes to Delta Petroleum's lawyers and say (reading):  
7 "Instructed to demand that Delta ceases use of the property no  
8 later than 1 of December 2018". And what she writes is that it  
9 had an opportunity to take full instructions on the matters, now  
10 able to advise that Government is not in a position to discuss a  
11 lease of the subject parcel, which is something that Delta had  
12 raised in their letter. "In fact, a decision to lease the said  
13 parcel to other persons was taken by Cabinet in 2007 but never  
14 actually not finalised for various reasons". "Steps had  
15 continuously been taken since that time in order to finalise,  
16 and both parties are now ready and able to do so. It is in this  
17 vein that we were instructed to demand that Delta Petroleum Ltd  
18 remove its chattels and cease otherwise utilising the property  
19 in July 2018. In light of the foregoing, I'm instructed to  
20 demand Delta ceases use of the property no later than  
21 1 November 2018".

22           And then what followed is at 1218 that, on the 18th of  
23 January 2019, the Governor signed an Expulsion Notice to  
24 Trespasser Occupying Crown Land Parcel 310, and that was  
25 directed at Delta Petroleum.

1           A.    Um-hmm.

2           Q.    So that--

3                    COMMISSIONER HICKINBOTTOM:  You said you had a file  
4 given to you in relation to the dispute.  One would imagine that  
5 this correspondence should have found its way on to there, but  
6 did you not see it?

7                    THE WITNESS:  No, I didn't see it.  I didn't see it.

8                    COMMISSIONER HICKINBOTTOM:  Okay.

9                    THE WITNESS:  I can't say it was on the file.

10                   COMMISSIONER HICKINBOTTOM:  Sorry?

11                   THE WITNESS:  I can't say it was on the file.

12                   COMMISSIONER HICKINBOTTOM:  You can't say it was on  
13 the file.  No, okay.

14                   THE WITNESS:  I mean, at that time.  I was more  
15 focused on resolving the problem between the two parties,  
16 between who occupied land as opposed to going through the all  
17 the back and forth.

18                   BY MR RAWAT:

19           Q.    It may help, just again, to give context, if we turn  
20 over, please, Minister, to 1221.  Because this is a draft  
21 Cabinet Paper 2019.  It's in relation to the parcels of land  
22 that we're discussing.  At one point they were called lots 1 and  
23 2, but you'll see that at (c) there's reference to the person  
24 who is the lessee of Parcel 309 granting an easement to  
25 Parcel 310.

1 A. Um-hmm.

2 Q. If you turn over, please, to 1222, and it just helps  
3 us to look at the background information, and let's run through  
4 that.

5 So, in terms of background, and I appreciate, you  
6 know, you will have inherited this background, Minister--

7 A. Um-hmm.

8 Q. --but firstly that in 1997, the Executive Council  
9 agrees a portion of reclaimed land be awarded to Egypt  
10 Construction Limited. That is what became eventually 309/310.

11 Then, in 2007, that decision was taken to revoke that  
12 grant because Egyptian Construction Limited was no longer in  
13 existence, and, in fact, the principal of Nature's Way had  
14 connections to Egypt.

15 A. I'm sorry, but, Sir Gary, that last part of the first  
16 paragraph is very important.

17 Q. The very first paragraph?

18 A. Yeah, paragraph 1.

19 Q. Yeah.

20 A. They agreed that "a portion of reclaimed land be  
21 awarded to Egypt Construction Limited in exchange for land given  
22 by the company during the dual carriageway construction". It is  
23 very important that that be understood, why the Governor at the  
24 date thought it important to break their own policy and give her  
25 the seaside property in front of somebody else. It's something



1 that the Government very rarely ever does, which is give one  
2 person seaside property in front of somebody else. But it felt  
3 obligated because it took her land to build a highway.

4 Q. I mean, that's a point you make in your response, and  
5 I can--if I don't do it, tell me, and I'll finish with this  
6 document--

7 A. Okay.

8 Q. --and I'll take you to where you say that, all right?  
9 But let's finish this document.

10 So, 2007, Egypt Construction Limited no longer in  
11 existence. What then happens is that Cabinet further agreed to  
12 award Nature's Way a lease for a parcel of land which is now  
13 identified as Parcel 310.

14 A. Um-hmm.

15 Q. All right?

16 What's noted at 4. is (reading): Members are asked to  
17 note that the directive of Cabinet was communicated to the  
18 applicant by a letter dated August 1, 2007". I can take you to  
19 that if you need to see it.

20 A. Um-hmm.

21 Q. "Members are further asked to note that due to the  
22 issue of right of way to service Parcel 310 "the property could  
23 not be transferred to the awardee".

24 So the reason the principal of Nature's Way couldn't  
25 get it was because there was no right of way, and that may be

1 linked to the point you make that you're giving someone seafront  
2 property in front of someone else.

3 A. Um-hmm.

4 Q. If we then go to 5. (reading): By Instrument 2017, a  
5 grant of easement was given in favor of the Crown providing  
6 access to the parcel.

7 So that's the person who's 309 giving the easement to  
8 the Crown.

9 A. That's correct.

10 Q. So, in effect, whereas before, the principal of  
11 Nature's Way couldn't access 310 from 221 because Delta wouldn't  
12 give an easement over their land, could now do it via 309 as  
13 from 2017.

14 But what's said at 5. is: "After that hurdle was  
15 solved, the other issue to be rectified was to have Delta remove  
16 all equipment belonging to them and to cease using the property  
17 for docking".

18 And it then sets out the background, and we looked at  
19 this letter, this--the letter, themselves, in exchange of  
20 correspondence and go to 7.: Delta did not comply with the  
21 request of the Government, so the Chambers was further  
22 structured to prepare an Expulsion Notice for execution by the  
23 Governor to be served on Delta".

24 And this was served and it says: "To date the company  
25 continues to occupy the property".

1           So, we can date this--

2           A.    January.

3           Q.    --this after January and, in fact, I think when we get  
4 to the end of the document, we'll see where we are.

5                    And then (reading):  By a letter dated 31 of  
6 May 2011"--

7           A.    Um-hmm.

8           Q.    --"a request was made by Mr Bevis Sylvester requesting  
9 the opportunity to lease the same property identified as Parcel  
10 310"... "upon submission of that request, no decision was made  
11 as it was recognized that the land was already awarded".

12                    What is then said at 9., and this is draft, so the  
13 details are not added, but effectively Delta "submitted a  
14 request to lease Parcel 310" "to continue the operation of their  
15 business".  And "in exchange for this leasehold interest, Delta  
16 has entered into an agreement with the Government to reduce the  
17 debt owed to them..."

18                    And then what's said at 10. is the point is made that  
19 the principal of Nature's Way through no fault of--or the  
20 Ministry--it's no fault of the Ministry or the principal matters  
21 have not been resolved in a timely a way as anticipated.

22           A.    What?  9?  9?

23           Q.    That I--

24           A.    11?

25           Q.    That I can't help you with.

1 A. Oh.

2 Q. But--because this is a draft memo.

3 A. Okay, I've never seen it before.

4 Q. Well, it's just because at the bottom it carries your  
5 name as a draft.

6 A. Oh, a draft, okay.

7 Q. Yeah.

8 A. Yeah, I don't know drafts.

9 Q. I'm sorry, you don't see drafts.

10 A. No, very rarely do I see drafts.

11 Q. Okay. But there clearly must have been some  
12 discussions between the Government and Delta about that.

13 A. That would have been somebody else, not my Ministry.  
14 I'm not saying, but it's probably somebody else.

15 Q. But it--where it's concerning a lease, would it have  
16 involved your Ministry?

17 A. A lease, yes, but in terms of negotiating it--what is?

18 Q. Well, it's--

19 (Overlapping speakers.)

20 Q. 9. refers to a request to lease the parcel from Delta.

21 A. Yeah, I can understand that, but I'm saying to  
22 negotiate we can't do that. That would be the Premier's Office.

23 Q. You can't--

24 A. Negotiate with somebody directly.

25 Q. I see. All right. I think I understand.

1           A.    As a Minister of Finance.

2           Q.    So, that's the sort of background.  So where we then  
3 are is the steps you then take.  The steps you take is to--a  
4 moment, please.

5                   (Pause.)

6           Q.    You, as you've said, negotiate with the person  
7 whose--with whom the Cabinet has decided to--previously decided  
8 to grant the lease.  And the effect of the negotiation is that  
9 person agrees to move to another commercial location.

10          A.    Let me add some clarity to that.  After I met with her  
11 first few times and she explained to me what her aspirations and  
12 ambitions were, which I have to respect that as a  
13 businessperson, we came to one conclusion, that she could not  
14 afford to do the things she wanted to do at that location.  It  
15 involved a reclamation.  It involved building a marina.  It  
16 involved building a building.  She said to me at her age she  
17 don't think essentially she can afford that, so I said I may  
18 have an option for you.  We can achieve your dreams and  
19 aspirations without the expense, and that's when the idea came  
20 up with kiosk at Pier Park.  It gives her the marine access that  
21 she wants for her business.  It's already built.  You simply  
22 move in.

23                   I tell her to think about these things is an option to  
24 exactly what you want to achieve without the headache, and we  
25 will see if we find another piece of land for you because the

1 Government did take your land, so it owe you a piece of property  
2 as a BVIlander. I think we owed it to her to do. And I said I  
3 was trying to find a piece of land to compensate you, and she  
4 agreed. And that's when we could now move forward to talk to  
5 Delta about leasing that land. She relinquished her rights to  
6 that property.

7 Q. Pause there for a moment. I said and, I forgot to do  
8 it. If you go--I think you've got the bundle of documents that  
9 accompanied your supplemental response.

10 A. Which one is that?

11 Q. I hope it's the--

12 A. The Response?

13 Q. The second response, the October response.

14 A. Yeah, October 2021.

15 Q. If you go to 44 in that, you should, I hope, be at a  
16 memorandum that's dated the 4th of July 2011.

17 A. I'm there.

18 Q. Now, we don't need to go into the detail of this, but  
19 it's from the Permanent Secretary, then-Permanent Secretary to  
20 the AG in 2011, and there's reference to the fact that when  
21 Egypt Construction Limited went into liquidation, parcels of  
22 land that they owned, particularly 221, were bought by Delta  
23 Petroleum at auction.

24 A. At auction, yes, that's correct.

25 Q. But then what's noted is that the person who became

1 the principal of Nature's Way had been a past Director of Egypt  
2 Construction and gave permission to the Government to place the  
3 new highway through it.

4 A. That's correct.

5 Q. And then it continues, it appears as though the  
6 Government wanted to give her an opportunity to start over,  
7 although we are not under any obligations to do so.

8 So is that sort of what you are referring to when--

9 A. Yeah.

10 Q. --you say that the Government owned this parcel?

11 A. They had no further obligation--they took her land for  
12 a road. You have some obligation to her. I don't think she's  
13 paid for it.

14 Q. We don't know the circumstances.

15 A. I don't know.

16 Q. We don't have any evidence about that, but if, if we  
17 drill it down to this, in terms of the steps that you took--

18 A. Uh-huh.

19 Q. If the effect was--a moment, please.

20 If you turn up--I mean, the effect was that you, by  
21 negotiating, were able to--was in place a situation whereby  
22 Nature's Way moved to a different location, and if we go to  
23 1138. So again, it's Cabinet Memorandum that gives us the  
24 background. But if you go to 1141, what the outcome in terms of  
25 Nature's Way was that the grant of the lease by Cabinet was

1 revoked.

2 A. Yes.

3 Q. And that was a 99-year lease.

4 A. I don't recall what it was.

5 Q. I can find the document for you, if we need to see it.

6 What cabinet then approved was that Nature's Way could  
7 purchase a portion of Parcel 251 for a sum of \$1 plus a  
8 statutory fee of \$200. And there were various--various sort of  
9 conditions put in.

10 What you had also obtained was a Resolution, and we  
11 can see that at 1152, that--we get some explanation if we go to  
12 1151, Minister. You liaised with the CEO of Tortola Pier Park  
13 Limited to effectively obtain a subsidized rate for the kiosk;  
14 is that right?

15 A. That's correct.

16 Q. And that led, as 1152, to a Resolution by the--it's  
17 actually the BVI Ports Authorities--

18 A. Yes.

19 Q. --agreed that essentially for Tortola Pier Park, but  
20 that there should be essentially a subsidized rent for the  
21 person.

22 So, that was done, so they moved from a 99-year lease  
23 on 310 to a freehold on the Tortola Pier Park at a subsidized  
24 rent for a fee of \$1.

25 A. The land here. The land was not paid back--the kiosk



1 was a payback, so the kiosk provided her with this water front  
2 access that she wanted and the land for the commercial building  
3 that she wanted.

4 COMMISSIONER HICKINBOTTOM: They were two separate--

5 THE WITNESS: Two separate pots.

6 COMMISSIONER HICKINBOTTOM: So, instead of 310, she  
7 got the kiosk at Pier Park.

8 THE WITNESS: Which gave her the water front access  
9 that she wanted for her business.

10 COMMISSIONER HICKINBOTTOM: For initially a reduced  
11 rent but the reduction itself reducing over time.

12 THE WITNESS: Yes.

13 COMMISSIONER HICKINBOTTOM: And secondly and  
14 separately, some commercial land--

15 THE WITNESS: That's correct.

16 COMMISSIONER HICKINBOTTOM: --for a dollar.

17 THE WITNESS: That's correct. Compensation for all  
18 the years and headache.

19 You see, Commissioner, I know what you would say, but  
20 our ambition here was to help somebody to get her foot in there.  
21 She lost a lot of time. She told me it was 20 years waiting to  
22 do this. We--you can't put a value on somebody's time. You  
23 cannot value somebody's time. She should have had that building  
24 built probably 20 years ago. So, she lost 20 years of her life,  
25 so it's only fair that we compensate her properly. So, we did

1 our best to make up--to right a wrong.

2 Q. The parallel with this, and this is happening in  
3 August 2019, you have obviously discussed that in terms of the  
4 Expulsion Order, Delta Petroleum ignored that and carried on  
5 occupying plot Parcel 310.

6 But if we go to--

7 A. Were they punished for doing that?

8 Q. You're the man to ask.

9 A. No, I don't execute expulsion notices.

10 Q. Who does an execution expulsion notice?

11 A. I guess the Governor. I don't know.

12 Q. I mean, the driver for this, as we have seen from the  
13 correspondence, was your Ministry.

14 A. No, that came from the Governor.

15 Q. The Governor signed it, but preceding that was  
16 correspondence that we looked at from the AG Chambers but it's  
17 in instigation of your Ministry.

18 A. It could be. That was before my time anyway.

19 Q. Well, but it would all have been in the file, but it  
20 leads up to the Expulsion Order.

21 A. Okay.

22 Q. I can't help you with who did that. You if end up  
23 with a particular hands-on Governor, maybe they do it  
24 themselves, but if we go back to what's happening parallel to  
25 this because if you go to 1180, what you have on the 12th of

1 June, is Bevis Sylvester writing to you in respect of those  
2 plots, those parcels of land, and he referred to him in his  
3 letter as Lots 1 and 2 but then Block 309 and 310, requesting to  
4 apply to lease the said Crown Land for a period of 99 years.  
5 There then follows on the 27th of June at 1166, a Cabinet Paper  
6 concerning that application, so it's now become an application  
7 from Bevis Sylvester to lease Parcel 310, and it notes it all  
8 through, takes us through, this is the one we looked at where  
9 the Financial Secretary raised what Delta Petroleum was doing.  
10 So, in June 2019, we've got continued contravention, so  
11 reference to continued contravention which suggests that they're  
12 still in occupation of the land, but what's decided is that  
13 parcel 310 will be granted to Bevis Sylvester for commercial  
14 purposes. And it's initially said to be for a term of 50 years  
15 with a rent of \$800.

16 A. Um-hmm.

17 Q. Now, one of the documents you have provided to the  
18 Commission which was something we haven't seen before, is the  
19 last page of that--do you know the supplementary bundle you  
20 have, Minister, that you brought along? We were looking at, the  
21 October one, which carries the?

22 A. The Response?

23 Q. Yes.

24 So, you found an e-mail, it's at the very last two  
25 pages but it's an e-mail from Smith-Berkeley, the then-Permanent

1 Secretary to you, saying please note the legal and financial  
2 implications, so these are the ones that are in that Cabinet  
3 Memo we looked at. We may want to conclude our discussions with  
4 the principal of Nature's Way so we can make notations in the  
5 paper. Files were sent to the Chambers for their perusal,  
6 that's the Attorney General's Chambers, and then we make the  
7 necessary adjustment. Please note that the FS is requiring a  
8 business plan as well before the matter goes to Cabinet. The  
9 office will therefore write to Mr Sylvester and request the  
10 same.

11 And the office did do that, I can take you to it, but  
12 if you'll take it from me, it was on 20th of July 2019.

13 So, what we then have--we've slightly gone back but we  
14 then have the process that we've gone through where you speak to  
15 the principal of Nature's Way. You speak to Tortola Pier Park,  
16 the kiosk arrangement has come up, and she ends up in that  
17 situation.

18 And then there is the Cabinet Paper made, and if we go  
19 to 1181.

20 A. One quick note here, when it comes to a business plan,  
21 because it's not a properly defined concept, it may take many  
22 forms. The other person may take up a business plan as they  
23 particular described them. It may take many forms, so I'm not  
24 sure which form this one took.

25 Q. Sorry, you're voice dropped, Minister.

1           A.    I'm saying I'm not sure which form this one took.

2           Q.    At the moment, on the evidence, it took no form  
3 because there wasn't one.

4           A.    No form? I'm sure I saw a document where they said--  
5                COMMISSIONER HICKINBOTTOM: Mr Risso-Gil, as he has  
6 been, might be able to help us.

7           THE WITNESS: --record what intended use of the  
8 property was.

9           COMMISSIONER HICKINBOTTOM: It was to be the  
10 headquarters of Delta.

11          THE WITNESS: That may have sufficed at the time.

12          COMMISSIONER HICKINBOTTOM: But knowing that it was  
13 going to be the headquarters of Delta is not any form of  
14 business plan.

15          THE WITNESS: We know what the intention is.

16          MR RISSO-GIL: Yes, page 38, I think, sir, of the 7th  
17 of October supplementary bundle is what I think The Honourable  
18 Minister is referring to.

19          THE WITNESS: And that's on the 27th of May 2011.

20          BY MR RAWAT:

21          Q.    And--

22          A.    Intention was for this property.

23          Q.    But that's sent on behalf of Delta Petroleum.

24          COMMISSIONER HICKINBOTTOM: In 2011?

25          THE WITNESS: Um-hmm.

1           COMMISSIONER HICKINBOTTOM: And it--well, yes, and it  
2 refers to the easement, which is now not necessary because the  
3 easement--

4           THE WITNESS: I must say a business plan can take many  
5 forms, and this will sometimes suffice in many circumstances, so  
6 to be something else, sir.

7           BY MR RAWAT:

8           Q. Just help us with this, sir, and I appreciate,  
9 Honourable Wheatley, that there is some history to this.

10          A. A lot.

11          Q. But in 2011, and we've looked at some of the--looked  
12 at correspondence from an earlier point before you become  
13 Minister where Delta Petroleum was expressing an interest in  
14 seeing this land, Parcel 310 at a time when Government has  
15 already agreed that it should go to somebody else?

16          A. Hmm.

17          Q. That is an expression of that intent?

18          A. Um-hmm.

19          Q. In May 2011 by Delta Petroleum. How does that  
20 constitute the business plan that is required from Bevis  
21 Sylvester applying in his own name from his own address--

22          A. It's the same land.

23          Q. In 2019?

24          A. It's the same property. He works for Delta Petroleum  
25 as a Regional Manager.

1 COMMISSIONER HICKINBOTTOM: I'm sorry, Minister, I'm  
2 sort of lost.

3 THE WITNESS: It's the same person.

4 COMMISSIONER HICKINBOTTOM: Mr Sylvester and Delta  
5 Petroleum are different people.

6 THE WITNESS: He works for Delta Petroleum as a  
7 Regional Manager. They're two different entities, yes.

8 COMMISSIONER HICKINBOTTOM: He's a general manager,  
9 but they're different entities.

10 THE WITNESS: Correct.

11 COMMISSIONER HICKINBOTTOM: And a lease has been  
12 granted to Mr Sylvester for £800 a year for a headquarters  
13 building for a regional company.

14 THE WITNESS: He's a Regional Manager.

15 COMMISSIONER HICKINBOTTOM: No, no, I absolutely  
16 understand that.

17 THE WITNESS: Okay.

18 COMMISSIONER HICKINBOTTOM: But I'm still lost as to  
19 why the lease was given to Mr Sylvester who is an individual,  
20 not to Delta Petroleum, which is the Company that wrote in in  
21 2011, and why it was granted for £800 a year when it was for a  
22 Regional Headquarters.

23 THE WITNESS: Okay, those are the records requests by  
24 Delta that the lease be put in his name. Also the records  
25 requests from Delta that the lease be placed in Bevis

1 Sylvester's name.

2 BY MR RAWAT:

3 Q. Where, which document records that?

4 MR RISSO-GIL: Page 36.

5 COMMISSIONER HICKINBOTTOM: Hold on a minute. I'm  
6 sorry. Thank you. I'm sure that's the document.

7 This is a document from 2010. Delta Petroleum is  
8 obviously a company, and it's a regional company. It would  
9 require a Non-Belonger licence?

10 THE WITNESS: A Non-Belonger licence.

11 COMMISSIONER HICKINBOTTOM: So, when the Director of  
12 Delta says he would like the land to be leased to a BVI citizen  
13 in the form of Bevis Sylvester, what was going on there?

14 THE WITNESS: I don't know, sir. That was 2010. I  
15 don't know. I can't answer that question.

16 COMMISSIONER HICKINBOTTOM: But--and I respect that  
17 answer because you were not Minister for another 10 years.

18 THE WITNESS: Yes.

19 COMMISSIONER HICKINBOTTOM: But on the face of it,  
20 it's a request by a Non-Belonger to put a lease in the name of a  
21 Belonger because that is beneficial, advantageous, although the  
22 real person behind this was the Non-Belonger. It doesn't seem  
23 to me to be quite right.

24 THE WITNESS: Remember--we can all speculate here. It  
25 was based on Delta feeling they have the Right of First Refusal



1 to the front.

2 COMMISSIONER HICKINBOTTOM: But it wasn't Delta who  
3 got the lease.

4 THE WITNESS: Because they requested it.

5 Remember, they had said if the land is to go in  
6 anybody's name, they would have a judicial review except  
7 Bevis Sylvester.

8 COMMISSIONER HICKINBOTTOM: Forget about that.

9 I'm sorry.

10 THE WITNESS: I can't answer otherwise.

11 COMMISSIONER HICKINBOTTOM: You may not be able to  
12 answer. I understand that. But this is a Non-Belonger asking  
13 for a lease to be put into a Belonger's name presumably because  
14 of the benefits in terms of land transactions that a Belonger  
15 has.

16 THE WITNESS: Could--could be.

17 COMMISSIONER HICKINBOTTOM: But when--when you were  
18 negotiating with Delta, they presumably again asked for the  
19 lease to be put in Mr Sylvester's name.

20 THE WITNESS: It's on the value.

21 COMMISSIONER HICKINBOTTOM: Yes, but the same issue  
22 arises, doesn't it, that you have a Non-Belonger who can trade  
23 in land, who can purchase land on one basis, under one system,  
24 who asks for you to put a lease into the name of a Belonger who  
25 can purchase land in a different system at highly advantageous

1 term, although the real beneficiary is Delta, they wanted it for  
2 their headquarters. It looks very peculiar.

3 THE WITNESS: I cannot say.

4 COMMISSIONER HICKINBOTTOM: For example, you were the  
5 Minister at the time of the lease to Mr Sylvester.

6 THE WITNESS: Yes, um-hmm.

7 COMMISSIONER HICKINBOTTOM: But Mr Sylvester would, I  
8 assume, but correct me if I'm wrong, obtain the land on  
9 beneficial terms, he's a Belonger.

10 THE WITNESS: I think we used the same terms as  
11 Cabinet as I'm giving this form.

12 COMMISSIONER HICKINBOTTOM: I'm sorry, I missed that.

13 MR RAWAT: You used the same terms as Cabinet had  
14 given it in 2007 to Nature's Way.

15 THE WITNESS: That is correct, sir.

16 BY MR RAWAT

17 Q. But can we break this down. You have referred the  
18 Commissioner to correspondence in 2010 and 2011 about the  
19 intentions of Delta, so to complete the picture, and while  
20 staying in the same bundle, let's go to 29.

21 A. What number?

22 Q. It's in your bundle, please, page 29.

23 This is all additional disclose that you've provided,  
24 Honourable Wheatley.

25 So, in 29, this is a Memorandum from the Attorney

1 General to the Permanent Secretary of an earlier version of your  
2 Ministry, then I think called Natural Resources and Labour. So,  
3 it's 9th of August 2021, and it's if you look at the bottom  
4 there, it just says, in relation to Parcel 310, it's clear that  
5 this parcel is to be leased to Delta Petroleum Limited. It is  
6 imperative that the lease be made between Delta Petroleum  
7 Limited and the Government of the Virgin Islands and not in the  
8 name of Bevis Sylvester, although he may sign the lease on  
9 behalf of Delta Petroleum Limited. It's patent that the lease  
10 to Delta Petroleum is some form of consideration for the  
11 easement being granted by Delta Petroleum of its land to  
12 facilitate access to Parcels 309 and 310. It's advised that in  
13 order to avoid any legal implications which may arise from the  
14 lease being executed in the name of Bevis Sylvester on behalf of  
15 Delta Petroleum, that the lease be executed in the name of Delta  
16 Petroleum Limited.

17 So, when this was canvassed--

18 A. I'm sorry, what year was this?

19 Q. 2011.

20 A. And the other one?

21 Q. The other one?

22 A. Where Delta Petroleum said I hear you but put it in  
23 Bevis Sylvester's name.

24 Q. That's the letter that you took us to earlier.

25 COMMISSIONER HICKINBOTTOM: 2010.

1 THE WITNESS: 2010, yeah.

2 COMMISSIONER HICKINBOTTOM: The bottom of page 36 of  
3 that document.

4 MR RISSO-GIL: Yes.

5 THE WITNESS: 2010, so they made their intentions  
6 clear how they wanted this to go forward for whatever reason.

7 BY MR RAWAT:

8 Q. Understood, but the point is that what you've got is a  
9 situation in 2010-2011 where Mr Sylvester is writing saying I  
10 want to lease this land, and the Managing Director or a director  
11 of Delta Petroleum also writes on the same day and says I would  
12 like to see that this said lot or portion, which is owned by the  
13 Crown, leased to a BVI citizen in the person of Bevis Sylvester.  
14 That is 2010-2011. We've looked at the memorandum of the AG in  
15 2011 which cautions against that and says if you're going  
16 to--this is going to go to Delta Petroleum, the lease had to be  
17 with Delta Petroleum.

18 Now, just keeping that in mind, and just taking you  
19 back to when you are Minister in 2019, did you have direct  
20 negotiations with Delta Petroleum that led to an agreement that  
21 the lease would be in the name of Bevis Sylvester?

22 A. No, I used--

23 Q. Or did you look back to what had happened and decide  
24 for yourself?

25 A. The final.

1 Q. I'm going to recommend this lease goes to Bevis  
2 Sylvester?

3 A. That is correct, sir.

4 Q. In the knowledge that it is actually intended to be  
5 for Delta Petroleum?

6 A. That is correct, sir.

7 Q. Did you have any discussions with Mr Sylvester about  
8 that?

9 A. He wrote--he wrote the request.

10 Q. What he wrote is a request was that he wanted to lease  
11 the land.

12 A. Yeah.

13 Q. But did you--and he wanted to do it so for commercial  
14 purposes.

15 A. Yeah.

16 Q. Did you bring him up or speak to him or get the Public  
17 Officers to speak to him as say well, Mr Sylvester, what  
18 commercial purposes?

19 A. I just used the final note that it was going to be  
20 used for Delta, Delta headquarters. There was no discussion to  
21 be had.

22 Q. Can I sort of separate the two events that we need to  
23 put to you. One side you have, as Minister, have put in place a  
24 situation where Nature's Way no longer will have Parcel 310.  
25 That's going to be revoked by Cabinet?

1 A. Um-hmm.

2 Q. They will go to Parcel 251.

3 A. Hum.

4 Q. And they will have a kiosk there.

5 A. At Pier Park there.

6 Q. Nature's Way will have a kiosk at Pier Park at reduced  
7 rent for a certain period.

8 A. Right.

9 Q. They will also have a freehold of some land--

10 A. A small portion of land.

11 Q. A small portion of land which is for a nominal fee of  
12 \$1.

13 A. Yes.

14 Q. That's what you did.

15 Now, Mr Smith-Abbott who set out the chronology of the  
16 disposal of land--of this piece of land to Mr Sylvester,  
17 includes his summary, which is based on the work of his team in  
18 this way. I can add that following Cabinet's decision at the  
19 behest of the former Governor, His Excellency Augustus Jaspert,  
20 a valuation of parcel of 251 was Commissioned and the valuation  
21 in October 2020 concluded that the market value for Parcel 251,  
22 now called Parcel 290, was \$600,000.

23 So, the result of your negotiation was that the  
24 principal of--

25 A. Nature's Way.

1 Q. --of Nature's Way moved from having a piece of land on  
2 a 99-year lease to a piece of land on a freehold which required  
3 payment of \$1 but which was valued at 600,00.

4 A. She lost a lot. A 99-year lease.

5 Q. But she lost that because Delta Petroleum were  
6 occupying her land.

7 A. No.

8 Q. So, how did you come, then, to value her loss?

9 A. She should have been over on 310 for the last 20  
10 years. She had not had a chance to develop her dreams. You had  
11 to compensate her for the time loss.

12 We said thank you for resolving this over 20 years,  
13 for 20 years her life was now in a holding pattern for 20 years.  
14 Can you value somebody's 20 years of not being able to live your  
15 dream of having your property for 99 years. A 99-year lease?  
16 She could have sold that lease for millions of dollars? That  
17 99-year lease would have had a value that she could have re-sold  
18 for millions of dollars. She lost an opportunity to have that  
19 seafront that she could have subsequently sell, if she wanted  
20 to. It would have cost a lot more than \$600. A lot more than  
21 \$600,000.

22 Q. I think your voice dropped a bit.

23 A. Had she moved over to the lot which she was promised  
24 by Cabinet a 99-year lease, that 99-year lease would have valued  
25 a lot more than \$600,000 that she was deprived of.

1           COMMISSIONER HICKINBOTTOM: Okay. That's helpful,  
2 Minister.

3           In relation to that Lot 310, the lot that she didn't  
4 have that opportunity for, it is really not particularly asking  
5 you, Minister, but because Mr Rawat or Mr Risso-Gil might know  
6 this, is there a valuation of that property?

7           THE WITNESS: I think both were done, the valuations.

8           COMMISSIONER HICKINBOTTOM: A valuation of Lot 310?

9           MR RAWAT: I don't know there wasn't.

10          COMMISSIONER HICKINBOTTOM: What the Minister says is  
11 that a 99-year lease would have been worth millions, so on that  
12 basis, it was worth a lot of money.

13          THE WITNESS: Yes.

14          COMMISSIONER HICKINBOTTOM: And Mr Rawat may be going  
15 here next, but this lease which was worth million was--

16          THE WITNESS: I said might have. I don't know. But  
17 it has value. It has a value to it.

18          COMMISSIONER HICKINBOTTOM: Obviously a value, but  
19 it's worth a lot of money.

20          THE WITNESS: Yes.

21          COMMISSIONER HICKINBOTTOM: But that was given to  
22 Mr Sylvester for \$800.

23          THE WITNESS: That was a Cabinet Decision.

24          COMMISSIONER HICKINBOTTOM: Well, a Cabinet Decision  
25 was to give it 20 years ago to this--to Nature's Way.



1 THE WITNESS: Um-hmm.

2 COMMISSIONER HICKINBOTTOM: When this was done in  
3 2019, Nature's Way had moved out so, the 310 was clear,  
4 absolutely clear. Why didn't you go back to Cabinet and say,  
5 well, the rent of this shouldn't be \$800 a year. It should be  
6 hundreds of thousands a year.

7 THE WITNESS: I think, as I'm not sure they did a  
8 valuation or not. I want to think it was done. I don't recall  
9 seeing it, but that is not something that cannot be done.

10 COMMISSIONER HICKINBOTTOM: But in any event, what you  
11 said is I know you used the word millions but you meant--

12 THE WITNESS: A lot.

13 COMMISSIONER HICKINBOTTOM: It's a lot of money. We  
14 all know--

15 THE WITNESS: Had she developed it 20 years ago.

16 COMMISSIONER HICKINBOTTOM: But this was leased to  
17 Mr Sylvester, not to Delta, but to Mr Sylvester for \$800.

18 Now, if--I mean, again, we don't know what's happened.  
19 We don't know what's happened, and this is just speculation, but  
20 if you lease any land to--commercial land to somebody for \$800,  
21 there is nothing to stop him or her or it, whoever you lease it  
22 to, leasing that at market value, is there?

23 THE WITNESS: I guess not. If you have a lease, I  
24 guess you can sublease unless the lease says you can't sublease,  
25 which some leases do say you can't sublease.

1           COMMISSIONER HICKINBOTTOM: But this one can't because  
2 we know that this was for Delta's headquarters not for  
3 Mr Sylvester to live there. So, we know that.

4           THE WITNESS: But that's why we have lease reviews  
5 because it's unapproved land right now. So, there is a lease  
6 review.

7           COMMISSIONER HICKINBOTTOM: The lease review was  
8 5 percent on the--

9           THE WITNESS: Improved.

10          COMMISSIONER HICKINBOTTOM: On the unimproved land.

11          THE WITNESS: Unimproved.

12          COMMISSIONER HICKINBOTTOM: I think.

13          THE WITNESS: If we have the lease reviews, so we will  
14 get to real value at some point in time.

15          COMMISSIONER HICKINBOTTOM: But on the unimproved  
16 land, 5 percent, we will need to look at the--

17          THE WITNESS: Yeah.

18          COMMISSIONER HICKINBOTTOM: But on the unimproved  
19 land, 5 percent, we will need to look at the--

20          THE WITNESS: Yeah.

21          BY MR RAWAT:

22          Q. But the point you're making, Minister, is that when  
23 you recommended to Cabinet and when you knew that by giving a  
24 lease to Mr Sylvester in his own name for the same price as had  
25 been given to Nature's Way in 2007, so some 12 years before,

1 that the purpose was so that Delta Petroleum could access it?

2 A. Um-hmm.

3 Q. And did Cabinet know that?

4 A. Yes.

5 Q. And so, there was no mystery about it?

6 A. No, I don't think--it's all in the file.

7 Q. Because you had taken it from--this was the intent  
8 back in 2010 and 2011?

9 A. Yeah. It's not a lot of talk around this for a very  
10 long time. Everybody was knowing what this was all about. I'm  
11 surprised if anybody didn't know what this was about.

12 Q. And so, you did not then--and there is no evidence  
13 that a business plan was presented?

14 A. Not to my knowledge.

15 Q. Even though Mr Sylvester was written to. There is no  
16 evidence that there was a valuation of the property before the  
17 lease was done?

18 A. Yeah--I'm not sure. I'm not sure.

19 Q. I will put it this way. No evidence has been provided  
20 to the Commissioner that any of the steps than Mr Joseph  
21 Smith-Abbott says would normally be taken in dealing with a  
22 commercial transfer of Crown Land appear to have occurred in  
23 this instance?

24 A. Yeah, but you have to admit this was not a normal  
25 situation. This was a long-running situation here. It wasn't

1 like somebody just showed up and said okay, I want to lease this  
2 land. This's different. This is a long--we tried to resolve a  
3 long-standing dispute.

4 COMMISSIONER HICKINBOTTOM: I'm sorry, I may have  
5 interrupted both of you, and I apologize. But the dispute had  
6 been resolved. Nature's Way had got a deal that they were happy  
7 with, so that resolves the dispute, that frees up a Plot 310.  
8 And Plot 310, firstly, there is some policy which suggests that  
9 where land has been reclaimed that the person who owns the land  
10 behind it--

11 THE WITNESS: It's a long-standing policy, that's  
12 correct.

13 COMMISSIONER HICKINBOTTOM: It's one criterion. There  
14 are other criterion, but that is an important criterion.

15 And secondly, of course, this land was of unique value  
16 to Delta because they owned the backing land, but we're  
17 not--we're not--we haven't seen a valuation, a market valuation  
18 of the land.

19 And can I ask this. I don't want a valuation to be  
20 done, if there is a valuation, I would quite like to see it.

21 THE WITNESS: I'm not sure.

22 COMMISSIONER HICKINBOTTOM: Otherwise, I'll assume  
23 that there is no valuation. But the market value of the lease  
24 would have been worth a lot of money. And there was absolutely  
25 nothing to stop you asking for a market value from Delta.

1 THE WITNESS: I would guess a consideration there  
2 might have been because it was taking so long to resolve, the  
3 opportunity--think about it. If Delta had acquired this land  
4 when they wanted it, 15 years ago, and had built their  
5 headquarters then, versus building the headquarters now, it is a  
6 significant difference in building a building 15 years ago and  
7 building a building now.

8 COMMISSIONER HICKINBOTTOM: But they haven't got the  
9 land. They had absolutely--

10 THE WITNESS: That's what I'm saying but because of  
11 this--because of this situation, the Government created.

12 BY MR RAWAT:

13 Q. But Government didn't tell Delta to legally occupy  
14 310?

15 A. I'm not talking about that--the Government policy has  
16 always been if you own the land site you have the first right of  
17 refusal to the seaside. That was made very clear from the  
18 onset. She was initially awarded this land against Delta's  
19 Right of First Refusal. Had the Government filed its own policy  
20 and given Delta that land when they acquired the back piece,  
21 they would have built the headquarters 15 years ago. They're  
22 now going to build their headquarters 15 years later, which is  
23 going to cost millions of dollars now because of this situation.  
24 I hear everyone saying but you have to also consider that part  
25 and that may have been a consideration where maybe let us go

1 back to the original thing.

2 COMMISSIONER HICKINBOTTOM: All of these might have  
3 been considerations, but in 2019 when you put this paper to  
4 Cabinet, as I understand it, your thinking was just that this  
5 had been--the Cabinet made a decision in 2007 to lease this land  
6 for £800 a year, and that's what it should be leased--that was  
7 the rental value.

8 THE WITNESS: Back then. I'm not sure, I'm saying, is  
9 what it should be now. The consideration might have been but  
10 all the time lost.

11 COMMISSIONER HICKINBOTTOM: But this is your--what I  
12 would like to know, Minister, is what was in your mind when you  
13 put this paper forward? Not what might have been in anybody  
14 else's mind but what was in your mind? You put the paper--

15 THE WITNESS: I was so happy to finally get this  
16 matter resolved because this lady who was trying to just get her  
17 dream on. I was so happy. I wasn't focusing so much on Delta,  
18 I was focusing on Nature's Way. My focus really was not on  
19 Delta.

20 MR RISSO-GIL: So, with respect to Delta's grievances,  
21 it may be helpful, there is a summary of those at page 2 of the  
22 7th of October bundle.

23 COMMISSIONER HICKINBOTTOM: Yes, thank you very much.

24 MR RISSO-GIL: You can review the application. It's  
25 not long, but it summarises their grievances in respect of

1 Parcel 221. In particular at paragraphs 3 and 4.

2 COMMISSIONER HICKINBOTTOM: Yes. They lost sea  
3 access.

4 MR RISSO-GIL: Yes, having invested a good deal in the  
5 plot, I think that's what they say.

6 THE WITNESS: The \$1.1 million to acquire that  
7 property is to have sea access. That they were denied, they  
8 were denied that access. How do you quantify that? These are  
9 things we have to consider sometimes.

10 I understand we could have gone the other route and do  
11 a model valuation and say Delta, okay, you're denied this sea  
12 access 15 years ago but now I want to punish you a second time--

13 COMMISSIONER HICKINBOTTOM: By charging you a market  
14 rent.

15 THE WITNESS: Yeah, so we are a little lenient with  
16 him and say we will give you a little break for now but we give  
17 a rent review, and we say okay.

18 BY MR RAWAT:

19 Q. But that's on the unimproved land?

20 A. Yes.

21 Q. For which you haven't got a Valuation Report?

22 A. I'm not aware of any. Maybe there is one. I don't  
23 know.

24 Q. If there is--I mean, just to be clear, Minister, the  
25 position is, I mean, firstly, that Mr Smith-Abbott's team have

1 trolled the files to pull together the papers.

2 A. Yes.

3 Q. Secondly, the second stage of it is that you have  
4 produced additional disclosure not once but twice, and putting  
5 all together--I mean, what there is absent from Mr Sylvester's  
6 application for a lease is any of the sort of documents on  
7 Mr Smith-Abbott's Affidavit any applicant for a lease for  
8 commercial purposes is required to produce and critical is no  
9 business plan, critical is no Valuation Report.

10 But as I understand it, you see yourself as having  
11 acted in these Transactions to right what you perceive to be a  
12 wrong.

13 So, in relation to Nature's Way, because the principal  
14 of Nature's Way was denied by Delta's refusal to grant her an  
15 access to 310, you put in place a situation whereby she has, as  
16 we've discussed, got 600,000 pounds--dollars property for \$1.  
17 And then in relation to Delta Petroleum, because they were--had  
18 started to complain that they had bought 221 in order to get sea  
19 access and then they had illegally occupied 310 giving them sea  
20 access, you decided that because of an exchange of  
21 correspondence in 2010 and 2011 that it was appropriate to give  
22 Mr Sylvester a lease at 2007 rates to again put Delta back into  
23 a situation they would have been back in 1990 or 2007 whenever  
24 they bought 221?

25 A. Well, I wouldn't quite put it so, but I was just



1 saying these are the kind of considerations you have to do when  
2 you come to these old land disputes, there are things you have  
3 to take into consideration. You look at Delta, Delta  
4 headquarters, the construction and the economy, job creation.  
5 There are a lot of things we have to consider with these very  
6 old land disputes. They're not very easy to resolve, number  
7 one.

8           Hopefully we find no more like this.

9           COMMISSIONER HICKINBOTTOM: I think we probably  
10 completed this, and I appreciate that--I appreciate that some of  
11 these land disputes are very old, they're very intractable, and  
12 they are often difficult to resolve.

13           But, in this case, one of the parties was given the  
14 freehold of land worth \$600,000, and the other was given a lease  
15 on a hugely reduced--a hugely reduced rent from market rent, and  
16 as a Belonger although, it was in fact going to a company that  
17 would otherwise have to have a Non-Belonger licence. And in  
18 those circumstances, one can understand why the parties accepted  
19 the deals they were offered?

20           THE WITNESS: Well, it wasn't easy because the  
21 Governor took a long time to explain it.

22           COMMISSIONER HICKINBOTTOM: Yes, but there it is.  
23 You've explained. You've explained what happened.

24           Are there any other questions?

25           MR RAWAT: Can I ask two questions, please, Honourable

1 Wheatley.

2 BY MR RAWAT:

3 Q. And we have sort of moved around this topic slightly  
4 in a non-chronological way and I do like chronologies. But just  
5 picking up two points, because what I should say to you is that  
6 you've obviously gone into some detail in your Written Responses  
7 and what I'd like to assure you is that is something, as you  
8 will appreciate, the Commissioner has already considered and  
9 will consider again, so the fact that I've not taken to you some  
10 of that detail doesn't mean that it's not going to be  
11 considered.

12 A. Okay, good.

13 Q. And I hope you'll appreciate that.

14 But can I just ask you just two points, please.

15 Now, you've explained that, firstly, you had a  
16 briefing in that when you arrived--here's a file--

17 (Overlapping speakers.)

18 A. These little matters.

19 Q. Yes.

20 A. Several of them. Several land matters.

21 Q. So--which were you--were placed on your desk, and that  
22 also that you didn't speak directly to Mr Sylvester but you  
23 looked back at the correspondence.

24 A. Well, we did speak. I'm saying I didn't ask him that  
25 particular question because I knew what it was.

1 Q. I see.

2 So you discussed the grant of the lease to him.

3 A. Yeah.

4 Q. And what was the tone of your discussion? What was  
5 the outcome?

6 A. Does this still stand? Is the list still go in your  
7 name or do we put it in the other name? And he confirmed yes,  
8 we're still go as--on file.

9 Q. I see. So you had looked at the file. You'd seen  
10 that there was--had been this exchange of correspondence where  
11 he--essentially Delta had wanted it in his name--

12 A. Yes.

13 Q. In 2011.

14 A. I was familiar with that. My question was: Does it  
15 still go in your name or do we put it in Delta's name?

16 Q. And did you get--did his application that came in to  
17 you as Minister, was that something that you were--was  
18 unsolicited? Were you--did it just suddenly arrive and you  
19 thought or had he approached you in any way to discuss it  
20 beforehand?

21 A. No. I don't think we necessarily had a discussion,  
22 but I did tell him if you want the land, you now have to again  
23 apply for it, which he did. That's more or less what happened.

24 Q. I see. So, the best you can tell the Commissioner is  
25 that you may have had an approach from Mr Sylvester.

1 A. About the land.

2 Q. About the--

3 A. It's a small place. He would know it happened. And I  
4 said, you'll have to apply. If it's going to go in your name,  
5 then you will have to apply, which was on the record.

6 COMMISSIONER HICKINBOTTOM: And that's, I think, it's  
7 the 12th of June letter.

8 THE WITNESS: 12th of June.

9 BY MR RAWAT:

10 Q. And then you--

11 A. And we started from there.

12 Q. You then spoke to him and said, right, can I just be  
13 clear, I've seen the files, it looks like, you know, this is  
14 necessary for Delta, is it going in your name and he confirmed  
15 that?

16 A. Because I would have started discussions with Nature's  
17 Way from April, so several months of discussion where before we  
18 got to the point where I could say okay, well, it's now  
19 available. If you want it, then whose name should it go in.

20 Q. I see. Right.

21 But did you can contact him to say it's now available  
22 or did he contact you?

23 A. I don't recall.

24 More than likely, he would have been calling the  
25 office all the time anyway. More than likely. I don't recall.

1 Q. What would make him more than likely that he'd be  
2 calling the office?

3 A. He would have known what was going on. He would have  
4 known that we're negotiating. He would have known that. He  
5 would probably have called the office, saying, what are you all  
6 doing. Somebody might have told him that we are negotiating  
7 right now, wait until we get a clear signal that we can move  
8 forward with a lease because he couldn't move forward before.  
9 The interest was really in question from Nature's Way. We could  
10 not move forward before that was done. And who is to say when  
11 it's going to happen? So he might have been checking and saying  
12 is it finished yet? Can we start now? Is it finished yet? Can  
13 we start now?

14 Knowing him, he probably been calling my office every  
15 day.

16 Q. So, taking you back to the problem you had to solve,  
17 the problem you had to solve was Nature's Way being able to use  
18 that land.

19 A. The problem of solving was having Nature's Way be able  
20 to live her business dream.

21 Q. I see.

22 A. Of having a building and seafront access for her  
23 business, her own building and seafront access. That was the  
24 driving force behind all the negotiation. How do I satisfy this  
25 situation for this lady?

1 Q. But given that you went through the files and you'd  
2 looked at the file from 2011, how did you--how did you--why did  
3 you or how did you not come to see the Expulsion Notice?

4 A. I don't recall that at all. I really didn't see it.  
5 And maybe it's not in the file but maybe I don't know.  
6 Maybe that wasn't in the file at first, but I knew about that  
7 Expulsion Notice when the Governor mentioned it to me.

8 Q. But did you see the preceding correspondence which was  
9 at the instigation of your Ministry telling AG Chambers get  
10 Delta off this land?

11 A. I never saw it. I looked at the file a lot or not.  
12 I'll have to go but I don't recall seeing it in the file. The  
13 first when I knew about it--and I was quite surprised because  
14 the Governor was quite excited about it for some reason, and I  
15 was--because he--see all these questions you're asking me here?  
16 I went through a million times with the Governor. My PS did it.  
17 The Lands Officer did. These various questions here. I had to  
18 ask them a million times before about this situation.

19 This didn't take--it took a long time to get the  
20 Governor, to convince the Governor to sign a document. I think  
21 he signed the document the day before he was going on vacation  
22 in December, I think it was, whenever it was, a long, long,  
23 time.

24 Q. Would you mind, Honourable Wheatley, just asking that  
25 the file be reviewed to see if that correspondence is there?

1           A.    Well, the challenge is, since we moved office since  
2 then, and we had a difficult time trying to locate that file, so  
3 we had submissions late, so I hadn't seen that file in maybe a  
4 year or two, so I couldn't recall. I haven't seen that  
5 particular Delta file, so I don't--I'm not sure that those  
6 things are in that file. We found--that file must have been a  
7 few days ago. That's why we was late to submission.

8           Q.    The Expulsion Notice and the things have--

9           A.    Well, it's in my office now. I can go back and look  
10 at that file and see this, but I don't ever recall seeing it on  
11 that file.

12          Q.    Whatever efforts you can make--

13          A.    Yeah.

14          Q.    --would be helpful?

15          A.    Yeah, I will look at the file again.

16          Q.    Just one last thing. We've seen that Crown Counsel is  
17 Barry, Maya Barry, was involved in dealing with the Expulsion  
18 Notice.

19          A.    She's a lawyer assigned to my Ministry.

20          Q.    Yeah. And she is the one that gave you advice in  
21 relation to the negotiations you were doing on this issue.

22                   And you have explained that, as I understand it, you  
23 had meetings in the Attorney General's Chambers, but there were  
24 no notes of those meetings.

25          A.    In my office.

1 Q. In your office. But there--

2 A. Sometimes over the phone, yeah.

3 Q. There are no notes of these meetings.

4 A. Well, I checked my diary and there are none, and she  
5 checked Thursday and she can't find any either.

6 Q. And--but--

7 A. I doubt that my PS at the time might have notes. I  
8 don't know if he--

9 Q. Did anyone mention the fact that there was an  
10 Expulsion Notice to you?

11 A. First I heard about it was December 17th when the  
12 Governor called me for the millionth time to explain why he  
13 should give a lease, and then he mentioned all about the  
14 Expulsion Notice. I don't know why anyone miss it, even if  
15 the--prior FS was aware of it. He alluded to in his document,  
16 but he never produced it and said this is what I'm talking  
17 about. He just said something about Delta. I have no clue what  
18 he was talking about.

19 Q. We've seen that the reference to Delta's  
20 contraventions--

21 (Overlapping speakers.)

22 A. Exactly, but he didn't say what it was. I didn't know  
23 what it was.

24 Q. But did--but that's in a draft memo that's got--it's  
25 in a memorandum that's got your name on it. I mean--



1           A.    That is--it's in a Cabinet Paper.  Yeah, they made  
2 their comments and all these things, but he never said what it  
3 was.  I mean if it's so serious, he should have put it in an  
4 appendix:  This is what I'm referring to here.

5           Q.    But did you ever ask?

6           A.    No, I didn't even think to ask.  If that's so serious,  
7 it would have been brought to my attention.  I was quite  
8 surprised.

9           Q.    I mean, it--I mean, perhaps if you can enlighten us  
10 with this because we've got a situation where 2018-19, as this  
11 correspondence--efforts to get Delta off the land.

12          A.    2017, yeah.

13          Q.    No, it starts in 2018, the Expulsion Notice in  
14 January 2019, obviously before you come into office.  But it's  
15 all--must be fairly fresh in people's memories after you come  
16 into office.  But as you start dealing with these problems,  
17 neither your Permanent Secretary who asked for Delta to be  
18 removed from the land nor the counsel in--assigned to your  
19 Ministry who dealt with that nor the Financial Secretary who  
20 wrote about it in a memorandum--

21          A.    It was--

22          Q.    --nobody said to you, Minister--

23          A.    It was--

24          Q.    --do you know some of this history?

25          A.    It was never brought to my attention, which one other

1 thing it was not on the file. I would have seen that asked them  
2 about it.

3 Q. But when they referred to Delta's continued  
4 contravention, did it occur to you to go, look, what do you mean  
5 by contraventions? What's going on?

6 A. No, I didn't think to ask them anything because this  
7 was brought to my attention. It was the Governor who brought it  
8 to my attention. He mentioned it to me, and I asked afterwards  
9 about it. I saw it for the first time--it must have been last  
10 week--the actual document. I was not made aware of it.

11 MR RAWAT: If I could have a moment, please,  
12 Commissioner.

13 COMMISSIONER HICKINBOTTOM: Certainly.

14 (Pause.)

15 MR RAWAT: Commissioner, that's the end of the  
16 questions.

17 COMMISSIONER HICKINBOTTOM: We'll need to give the  
18 Stenographer a break.

19 MR RAWAT: Yes.

20 COMMISSIONER HICKINBOTTOM: So, thank you for your  
21 patience, Minister, and thank you for your evidence. What we'll  
22 do now is to have a five-minute break for the Stenographer and  
23 come back and complete. Thank you very much.

24 MR RAWAT: Thank you.

25 (Recess.)

1           COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat. We are  
2 ready to resume.

3           MR RAWAT: Thank you, Commissioner.

4           BY MR RAWAT:

5           Q. Honourable Wheatley, thank you very much for sticking  
6 with the Commission, but the--what I would like to do now is  
7 just to return to the topic of Belongership with you, and  
8 particularly just to ask you some questions about the fast-track  
9 programme. I don't know whether you heard any of the evidence  
10 of the Honorable Premier.

11          A. I don't recall.

12          Q. When describing the fast-track programme, he described  
13 himself as the face of the fast-track programme but you as the  
14 body and organs, and that if there were any questions about the  
15 fast-track programme was operated, it was--you were the person  
16 to speak to.

17                 Now, just give me a moment. What we have handed you  
18 is some additional material that was disclosed to the Commission  
19 following the evidence that you gave on Belongership on the last  
20 occasion you were here. Could I--could ask you just to turn  
21 up--there is a bundle which is headed "Disclosure Request of  
22 Honourable Wheatley" dated 29th of September.

23                 Do you have that?

24          A. What page is that?

25          Q. There are--you have two separate bundles, I hope. One

1 is a bundle of e-mail correspondence, and the other one is--yes,  
2 do you have that?

3 A. Yes.

4 Q. If you turn up, please, Honourable Wheatley, just the  
5 first page.

6 This is an example of a number of Cabinet Papers  
7 prepared, and you will have seen those as the fast-track  
8 programme went through. This one is on the 19th of November  
9 2019, and what it's headed "Applications for Certificates of  
10 Residence and Belonger Status". And as we understand the  
11 process--

12 A. Um-hmm.

13 COMMISSIONER HICKINBOTTOM: Hold on one moment,  
14 Mr Rawat.

15 Mr Risso-Gil wants--

16 MR RISSO-GIL: I do apologize. I mislaid my bundle of  
17 the correspondence.

18 COMMISSIONER HICKINBOTTOM: That's all right. You  
19 should have it. If we could find it.

20 MR RISSO-GIL: Forgive me, sir. I do now.

21 COMMISSIONER HICKINBOTTOM: As long as you've got it.  
22 Okay. Thank you.

23 Yes.

24 BY MR RAWAT:

25 Q. And these memos would have come from your Ministry to

1 Cabinet setting out the--in batches various applicants for  
2 Belongership under the fast-track programme.

3 A. Um-hmm.

4 Q. Now, if I just take you to that programme, and it was  
5 called--properly called it's called "The Clear Path to  
6 Regularization, Residency and Belonger Status", and I will take  
7 you through paragraphs 1 to 3. So, in summary, 3rd of June  
8 2019, the Immigration and Passport Amendment Act (2019) is  
9 passed, and it amends the Immigration and Passport Act, and I  
10 can take you to the amendments that are made, if you need to see  
11 them, but the effect was that you had a special fast-track  
12 process developed for those residing in the Territory for a  
13 period of 20 years or more without gaining status to be able to  
14 do so; and persons could apply for Residence and Belonger Status  
15 or Belonger Status only, and that was explained to us on the  
16 last occasion.

17 But it was intended to be an expedited process with a  
18 timeline of three weeks for persons to submit the required form  
19 and documents, and the scheme or the Programme was intended to  
20 end in August 2019. As I think we knew it was extended.

21 A. Yes, a little bit.

22 Q. But applicants were required to pay, upon submission,  
23 a fee of \$1,510.

24 A. That's correct.

25 Q. Now, this is the bit I put this to the Honorable

1 Premier, and this is where he pointed to you, as I said, the  
2 body and the organs. It says: The clear path to  
3 Regularization, Residency and Belonger Status Programme was a  
4 special project initiated and driven by The Honorable Premier  
5 does not require deliberation of the Board of Immigration for  
6 applications received but is approved by Cabinet pursuant to the  
7 Act. The process specifically required applicants to submit  
8 their application and make payments up front, complete a written  
9 exam, and submit all of the same documentation that persons  
10 which have originally submitted through the normal process of  
11 the Immigration Department. Following the receipt of completed  
12 forms, documents and payments, persons were profiled for  
13 submission to Cabinet, a profile of each applicant which  
14 summarized the application of each applicant is attached for  
15 Cabinet's deliberation. It should be noted full applications  
16 are available at the Department of Immigration if Cabinet wishes  
17 to gather further application on each Cabinet.

18 So, in terms of the design of the scheme, this idea of  
19 having payment up front, a written exam, you had to put in  
20 certain documentation, was that--was that your brainchild?

21 A. No. That was the technocrats. That was the  
22 technocrats.

23 Q. What did you ask the technocrats to do?

24 A. As right there, to fast-track persons who have been  
25 living here for a while. Their job was to figure out how to do

1 it. We were told there was a huge backlog, we were trying to  
2 reduce the backlog, we told them we wanted to fast-track  
3 process. "You, technocrats, design a programme for how it's  
4 going to work."

5 So, it was implemented by the Immigration Department  
6 with help of additional staff, so they would receive all the  
7 applications--persons understand how that happens--they would  
8 receive all the applications. They're loaded into the computer  
9 into something called the ExcoTrack, which the Cabinet and  
10 Minister would be sent to me to take to Cabinet. And say there  
11 were several hundred, so they came in in batches of varying  
12 sizes and so forth.

13 And also sometimes the batches do--because there is a  
14 fast-track, batches are often arrived late--they often arrive  
15 late.

16 Q. For the Cabinet Meeting?

17 A. Yeah. In terms of the timing for Cabinet.

18 COMMISSIONER HICKINBOTTOM: You don't mean literally  
19 late in the sense of after the Cabinet Meeting?

20 THE WITNESS: No, no, no. Ideally--ideally once  
21 papers at least three or four days.

22 COMMISSIONER HICKINBOTTOM: This was sometimes shortly  
23 before the meeting?

24 THE WITNESS: Yes.

25 COMMISSIONER HICKINBOTTOM: I understand.

1 BY MR RAWAT:

2 Q. Cabinet Handbook, from memory, requires that papers  
3 are there at least two days before Cabinet?

4 A. Yes, always the case, unfortunately.

5 Q. So, in these instances, how close to Cabinet Meeting  
6 were you getting these papers?

7 A. Maybe a day before, the night before--something like  
8 that.

9 Q. So, the night before you would have to sit there and  
10 look through them?

11 A. It was not the only subject, but that's the intention,  
12 that you got a chance to look through them before they advance  
13 to Cabinet.

14 Q. So--

15 A. It doesn't always happen, I have to admit, because of  
16 circumstances.

17 Q. That actually prompts an important question,  
18 Honourable Wheatley, because the process, where it differed  
19 fundamentally--

20 A. With the Board.

21 Q. --was taking the Board out of the equation, so Cabinet  
22 made all the decisions. And the question that then leads is:  
23 Did Cabinet make the decisions together, or did you decide  
24 beforehand and bring your decision to Cabinet?

25 A. No. Cabinet Decisions. Cabinet is collective



1 decision-making.

2 Q. So, all you could do--

3 A. Is bring something to Cabinet.

4 Q. --the night before was to just to make sure you read  
5 your papers?

6 A. Yeah.

7 Q. And that's actually what applies across the board  
8 irrespective of the subject matter. All you can do as Cabinet  
9 Minister and Cabinet Member--

10 A. Read paper.

11 Q. --read the papers.

12 A. Present to Cabinet, and Cabinet makes the Decision.

13 Q. But if you're not present in Cabinet, you try and read  
14 the other material that's sent to you?

15 A. Yeah, you want to read your information, but I can't  
16 decide anything. I bring paper to Cabinet. Cabinet makes the  
17 Decision, collective Decision.

18 Q. Now, if you turn through, please, Honourable Wheatley,  
19 what you will see--I think this is--it's sort of an example of  
20 one of these papers, so you will see what's annexed is also the  
21 amended Act, which tells us what is common or appears to be  
22 quite common in terms of these memoranda, is that the purpose is  
23 always given to allow for persons who have resided within the  
24 Territory for a period exceeding 20 years to be granted  
25 Residence and Belonger Status.

1           A.     That was the intention.

2           Q.     And then so, if we turn through to page 12--page 11  
3 first, if we look at it--

4           A.     Um-hmm.

5           Q.     --what was introduced in terms of the changes to the  
6 Act for a time-limited period was a new 16(4) where it says:  
7 "Whereas in the exceptional circumstances of any case or for any  
8 other reason Cabinet considers it fit to do so, it may in its  
9 own discretion grant a Certificate referred to in subsection (1)  
10 to any person who applies for same in the prescribed manner and  
11 who is person (a) of good character, (b) is at the date of  
12 making the application for such a Certificate ordinary resident  
13 in the Territory, and (c) has been so ordinary resident for a  
14 period of not less than seven years immediately prior to his or  
15 application."

16                     But the second change that was made we see at page 12,  
17 and that this seems to be the provision under which the 20-year  
18 rule is operating: "Where in the exceptional circumstances of  
19 any case Cabinet considers it fit to do so, it may in its own  
20 discretion grant a Certificate referred to in subsection (1),  
21 Certificate of Belongership, to any person who applies for same  
22 in the prescribed manner and who, in its opinion, has made  
23 significant"--sorry, that's what there was. What we see at (c)  
24 is what was inserted, "where Cabinet considers it fit to do so,  
25 it may in its own discretion grant a Certificate referred to in

1 subsection (1)," so I've got--I'm completely confusing you,  
2 Honourable Wheatley, so I'm going to stop there and just take  
3 you actually to where--

4 MR RAWAT: If I could have a moment, please,  
5 Commissioner.

6 (Pause.)

7 BY MR RAWAT:

8 Q. Yes. Sorry, the change that was brought in, we've  
9 looked at 16.4. 16.5 was: "Where in only exception  
10 circumstances in any case Cabinet considers it fit to do so, it  
11 may in its own discretion grant a Certificate referred to in  
12 subsection (1) to any person who applies for same in the  
13 prescribed manner and who, in its opinion, has made significant  
14 and consistent contributions to the economic and social  
15 development of the Territory, or has been ordinarily resident in  
16 the Territory for a period of at least 20 years".

17 So, Cabinet, if there were exceptional circumstances,  
18 could have a discretion that if someone had been ordinary  
19 resident for 20 years, it could grant Belongership, and that  
20 seemed to be the basis on which these memoranda were being put.

21 MR RISSO-GIL: Forgive me, sir, as a short way into  
22 this, there is a "track changes" version showing--

23 MR RAWAT: Page 1248.

24 MR RISSO-GIL: You're quite right.

25 MR RAWAT: That's what I just read from.

1 MR RISSO-GIL: Forgive me.

2 BY MR RAWAT:

3 Q. If we go through, then, you're provided as Cabinet  
4 with a memorandum that provided with the Act, you're then  
5 provided with some more details, but carry running through, you  
6 will see at page 23, please, Honourable Wheatley. And it's been  
7 redacted, but it's--essentially, this is the profile that's  
8 prepared by the Immigration Department, isn't it?

9 A. Um-hmm, yes, sir.

10 Q. And what--and again, just--you're Minister for  
11 Immigration--

12 A. Yes, I am.

13 Q. --but you had no involvement in signing off the detail  
14 of any of this?

15 A. Oh, no.

16 Q. Or what this would look like?

17 A. This was presented to me a finished product.

18 Q. So, the technocrats designed the whole process for  
19 you?

20 A. Designed the whole process, yes.

21 Q. I see.

22 A. They collect the information, they package it, and  
23 it's sent to us--sent to me to take to Cabinet.

24 Q. Now, there are various details that are put in, so you  
25 are given, for example, application date; you're given the date

1 of residence in the Territory, employment status, occupation,  
2 Immigration status, whether Police record is clear or not, marks  
3 on the cultural test, and then absence from the Territory and  
4 the reason for it because I think when we went through with  
5 Mr Smith-Abbott--and we may have done the same with you--there  
6 were specified reasons under this--

7 A. Yes.

8 Q. --usual legislation whereby someone can be  
9 ordinary--still maintain ordinary residence but--and not lose  
10 time.

11 So, this--this would be what you, as Cabinet, would  
12 then make your Decision on?

13 A. That is correct.

14 Q. And going through the documents that we received in  
15 terms of this--

16 A. Yes, this would have been an appendix, so this would  
17 be what you would see up front, the appendix to a list.

18 Q. Yes. I think if we look at--we don't have to read out  
19 any names, but if you look at page 4--or beginning of page 3.

20 A. I have the paper.

21 Q. So, you have a memorandum that would tell you the  
22 background, the purpose, 20 years. It would then essentially,  
23 under "Decision Sought", ask Cabinet to review and approve the  
24 grants of Certificates of Residence to the following, and in  
25 this case it's 100 people.

1           A.    Um-hmm.

2           Q.    And we have seen with memoranda that 100 seemed to be  
3 the common size of the list of people--

4           A.    Nice round number.

5           Q.    Well, I think we have 11 of these, and with the  
6 exception of two, it's always a hundred. I think you have two  
7 where there were 46 and 48, but the--you're given their names,  
8 and then the appendix--one of the appendices is this profile.

9           A.    Yes, that's correct.

10          Q.    Now, if you go through the profile and go through to  
11 page 32, you will see that at page 32 there is one individual  
12 who hasn't been redacted.

13                   Do you have that?

14          A.    Yes.

15          Q.    That is someone that I asked you about on the last  
16 occasion which you gave evidence, and you will see that there  
17 are details there, but the details that are given is that--you  
18 will see the date. You don't have to read it out, but you will  
19 see the date in which the person--that person came to reside in  
20 the Territory.

21                   Do you have that?

22          A.    Yes. I remember application itself.

23          Q.    It's the last one, but--the last-but-one profile.

24          A.    Sorry?

25          Q.    Do you have page 32?

1 A. Yeah, I'm seeing the dates.

2 Oh, yes.

3 Q. Now, the way--just trying to understand the way  
4 Cabinet would work, so you would get these memos with multiple  
5 names on them. You would have--I mean, the profiles went up to  
6 many pages, and you would--you would read those and then make  
7 your Decision in Cabinet.

8 A. That is correct, sir.

9 Q. So, in relation to this individual, you will see that,  
10 in terms of cultural tests, that's written as "unavailable"; and  
11 in terms of Police record, that's written as "clear"; and in  
12 terms of absence from the Territory, nothing is recorded.

13 Now, would you accept that some of those details on  
14 what you know about this person must be inaccurate?

15 A. I don't know this person, so I can't really say.

16 Q. This is the person that I put to you--

17 A. And as family. I don't know him. I don't know the  
18 person.

19 Q. But do you know his circumstances?

20 A. Yeah. He made it very clear.

21 Q. Right. But--well, if you look at where it's written  
22 as Police record "clear", do you think that is an accurate  
23 record?

24 A. Based on what I've heard, based on your testimony, no,  
25 it can't--it can't be correct.

1 Q. The reason for asking you about it is it's about the  
2 process.

3 A. Oh.

4 Q. Because as we looked on the last occasion, a query was  
5 raised by the Attorney General who referred specifically to  
6 details.

7 A. Yeah.

8 Q. And you're aware of those, and I can show you them  
9 again if you need to see them.

10 A. Um-hmm.

11 Q. But on this, on the information in this profile, would  
12 you agree that this individual would have met the threshold?

13 A. Not from what I'm seeing here.

14 Q. What detail would you have required?

15 A. Well, it all need to be filled out. All--I know all  
16 the fields need to be filled. As far as I know, all the fields  
17 need to be filled by the persons collecting the data.

18 Q. Well, can you explain how, if the fields are not  
19 filled in, it reached Cabinet?

20 A. These technocrats collect all information, they are  
21 batched, and they are given to me to take to Cabinet. When we  
22 go through them, if something is not right, they are removed.  
23 The person's not or should not be granted status. I think in  
24 this case the person was not granted status because these things  
25 were not filled. I would assume.



1 Q. Honourable Wheatley, you may remember the Cabinet  
2 Minute that I took you to--

3 A. Yeah.

4 Q. --because his application was deferred for reasons  
5 because of the concerns raised.

6 A. Yes, probably flagged this, I know this person, I  
7 don't think this is correct. I don't recall the discussion.

8 Q. Well, do you want to see it again?

9 COMMISSIONER HICKINBOTTOM: I think that would be fair  
10 to the Minister.

11 THE WITNESS: What I was thinking about was the man  
12 granted status or not. Was he granted status? I don't think  
13 they were.

14 BY MR RAWAT:

15 Q. Can we take it in stages?

16 A. Sure.

17 Q. What I'm trying to understand, Minister, is the  
18 process of how it works. So, where you have taken us to now is  
19 Cabinet gets these documents--

20 A. Um-hmm.

21 Q. --and decides on these profiles.

22 A. Yes.

23 Q. And we've got one profile where it raised a question.  
24 If you look at the other bundle that you've got, which is--that  
25 one, yes. If you turn to page 27, please.

1 A. Um-hmm.

2 Q. Now, that's what we went through on the last occasion.  
3 I won't bother reading it out again, but if I draw your  
4 attention to point 36.

5 A. Um-hmm.

6 Q. That's the information the Attorney General gave you?

7 A. Um-hmm.

8 Q. And the decision was made to defer the matter for  
9 three weeks.

10 What isn't apparent on the Decision is that Cabinet  
11 doesn't at that meeting say, "Well, we're not granting this  
12 individual Residence or Belonger Status because the profile is  
13 incomplete." In fact, it's deferred.

14 A. If I'm not mistaken, I think in Cabinet, once  
15 something is deferred and it's not brought back, it is a dead  
16 issue.

17 Q. But how does that work because, under the fast-track  
18 process, Cabinet was deciding--

19 A. Right.

20 Q. --so, if I apply under the fast-track process, Cabinet  
21 has to make a decision?

22 A. Correct.

23 Q. The Immigration Department can't make a decision, the  
24 Immigration Board doesn't exist for this purpose.

25 A. Okay.

1 Q. So, it's Cabinet that has to.

2 A. Um-hmm.

3 Q. So, any application has to come back to Cabinet--

4 A. Right.

5 Q. --to decide.

6 A. That's correct.

7 Q. But taking it in stages, here you have someone who you  
8 say--firstly, there is two difficulties, aren't there? The  
9 first one is that it's incomplete.

10 A. Right.

11 COMMISSIONER HICKINBOTTOM: I'm sorry again to  
12 interrupt.

13 When you say "incomplete", what do you mean by  
14 "incomplete"?

15 THE WITNESS: All the fields that were accounted, all  
16 the fields aren't filled in. Absence for Territory reason.  
17 That's not--

18 COMMISSIONER HICKINBOTTOM: Absence from Territory.

19 THE WITNESS: That's not filled in.

20 COMMISSIONER HICKINBOTTOM: It's not filled in.

21 THE WITNESS: No.

22 COMMISSIONER HICKINBOTTOM: I haven't been through the  
23 whole of this, but I think that everyone else has put in some  
24 absence from Territory.

25 THE WITNESS: Yeah, because--all of them have it.

1 They should all have it.

2 COMMISSIONER HICKINBOTTOM: Yes.

3 THE WITNESS: Okay.

4 COMMISSIONER HICKINBOTTOM: But this doesn't have  
5 anything.

6 THE WITNESS: Right. That's why the person wasn't  
7 granted because it says "incomplete".

8 COMMISSIONER HICKINBOTTOM: Well, we will come on to  
9 that, but when it's got absence from Territory, it's just got a  
10 blank. Is that incomplete or--

11 THE WITNESS: In my mind, it's incomplete. I'm not  
12 sure--because I'm not sure what technocrats are processing.

13 COMMISSIONER HICKINBOTTOM: No, no, no. This is what  
14 you're thinking about this.

15 So, you would expect, if it was "none", you would  
16 expect the word "none" to be put in there, as it is with some of  
17 the other fields.

18 THE WITNESS: Yes.

19 COMMISSIONER HICKINBOTTOM: Okay. That's helpful.  
20 Thank you.

21 BY MR RAWAT:

22 Q. But on the information that the Attorney General  
23 to--so, the first thing is that the--despite it being  
24 incomplete, there isn't a Decision taken at that Cabinet meeting  
25 to refuse the application?

1           A.    Okay.

2                    COMMISSIONER HICKINBOTTOM:  And just to add to that,  
3 we've looked at the minutes, and it's the Attorney General who  
4 raises this particular--

5                    THE WITNESS:  Exactly.

6                    COMMISSIONER HICKINBOTTOM:  And the Attorney raises  
7 the individual because he raises the fact that when it says  
8 Police record "clear", that is not correct.

9                    THE WITNESS:  That's correct.

10                   COMMISSIONER HICKINBOTTOM:  Something is incomplete.

11                   THE WITNESS:  Something to do--to deny applications.

12                   BY MR RAWAT:

13           Q.    Does it--I mean, as the Commissioner has pointed out,  
14 there is--it's inaccurate.  Does that or did that raise any  
15 concerns for you about the other applications?

16           A.    Naturally it would.  Are there any errors in here?

17           Q.    And did you take that step?

18           A.    Of course.  I would ask them to make sure--I think I  
19 do--if memory serves me, I think I found one or two others, not  
20 like this, but based on what we had expected, I think I found  
21 one or two others after I saw the same.

22           Q.    Take it in stages, please.  I mean, after this, did  
23 you go back to your technocrats and say, "We need to review  
24 this"?

25           A.    Oh, absolutely.  If memory serves me right, I would

1 have said, we need to do a better job of scrutinizing what  
2 you're sending because I found this error.

3 Q. Well, I mean, to be fair to the technocrats, their job  
4 is just to compile and send it.

5 A. Yeah, but it wasn't finished. It wasn't completed, is  
6 what I'm saying.

7 Q. But the--it's the job of Cabinet in this instance in  
8 the fast-track programme to do the reviewing, isn't it?

9 A. And make the Decision about it, yeah.

10 Q. But in this case, where you got somebody who is  
11 incomplete, why didn't you just refuse it straightaway?

12 A. It was refused.

13 Q. It was deferred.

14 A. I'm not sure where it was deferred, but was it ever  
15 confirmed? I think the answer would be no, it was never  
16 confirmed. And I'm not really sure what the thinking was there.  
17 I don't recall. I see the minutes.

18 COMMISSIONER HICKINBOTTOM: The minutes at  
19 paragraph 41 might help, Minister. It says that the Premier and  
20 his Ministers conferred on the matter and agreed that the  
21 applicant would be deferred, so we don't know and don't need to  
22 know--there was a discussion, and it was agreed to defer the  
23 applicant, although on the basis of what the Attorney had said,  
24 not on the basis of any part being incomplete or whatever, but  
25 on the basis of what the Attorney said, this record was wrong.

1 THE WITNESS: Yeah. It must have been a shocking  
2 revelation.

3 COMMISSIONER HICKINBOTTOM: But just to pick up one  
4 point Mr Rawat made, you say that, after this, you went back to  
5 the Department.

6 THE WITNESS: My key person, yes.

7 COMMISSIONER HICKINBOTTOM: To say--I don't want to  
8 put words into your mouth, but make sure that these are filled  
9 in correctly.

10 THE WITNESS: Well, no, it wasn't necessarily a matter  
11 of being filled in correctly, but everything we're doing here  
12 fits with amendments we made.

13 COMMISSIONER HICKINBOTTOM: So, after this, what did  
14 you say? You went to the head of the Department. You went to  
15 someone anyway.

16 THE WITNESS: Yes.

17 COMMISSIONER HICKINBOTTOM: And said what?

18 THE WITNESS: I said we had to make sure when we are  
19 sending these things forward we have to be complying with what  
20 we have here.

21 I found several errors, if you go through, hundreds of  
22 them, I know this person and so-and-so's situation, please  
23 double-check for me, oh, a lot we were doing, it was a mistake.  
24 I said, no, we have to slow down a little bit, slow down, make  
25 sure we're giving Cabinet accurate information.

1           So, this wasn't the only one thrown out. There were  
2 others that thrown out of default or because of information not  
3 quite accurate.

4           COMMISSIONER HICKINBOTTOM: But these errors were  
5 found, as I understand it, on the basis of pure happenstance  
6 that one of the people looking at them, the Cabinet Members,  
7 knew of a person and just happened to know that some information  
8 was incorrect. I mean, in terms of a process, that's not the  
9 ideal way of dealing with a process where the Cabinet is the  
10 assessor and the decision-maker because there is no Board.

11          THE WITNESS: Um-hmm. That was the danger of this.  
12 And we did, as we say, find others.

13          Remember, after Cabinet decides, so we have this draft  
14 sent to Cabinet, we may look at it and approve something, but it  
15 has to be awarded, so if you find something even after you  
16 approve it, you just finish the process there. You can finish  
17 the--if you approve somebody, you cannot implement because they  
18 found some other information afterwards.

19          COMMISSIONER HICKINBOTTOM: If that information came  
20 to light to an appropriate person?

21          THE WITNESS: Yes.

22          COMMISSIONER HICKINBOTTOM: But in terms--

23          THE WITNESS: If you're asking me if they made other  
24 errors, there may be other errors. I can't say. There may be  
25 other errors. I can't say.



1 MR RAWAT: Commissioner, could I just--

2 THE WITNESS: I wouldn't put my neck on the block for  
3 this.

4 MR RAWAT: Sorry to interrupt you, Honourable  
5 Wheatley, but can I ask for a short, two-minute break? I just  
6 need to verify one detail.

7 COMMISSIONER HICKINBOTTOM: We will have a short  
8 break, Minister. Thank you very much.

9 THE WITNESS: Sure.

10 (Recess.)

11 COMMISSIONER HICKINBOTTOM: Thank you, Mr Rawat. Are  
12 we ready to proceed?

13 MR RAWAT: Yes.

14 BY MR RAWAT:

15 Q. I think, Honourable Wheatley, I think the point we've  
16 got to, and if I could just summarise what I understand to be,  
17 you tell me whether you agree, but firstly these profiles what  
18 we're looking at is what Cabinet had made its Decision on. As I  
19 understand the fast-track process--and we saw that when we  
20 looked at the memo, but documents would be submitted--the  
21 Immigration Department had the job of scrutinizing those  
22 documents and calculating information and putting it in the  
23 profile for Cabinet.

24 A. That is correct, sir.

25 Q. So, wouldn't automatically get all of the paper?

1           A.    No, no, no. I would see it here. I wouldn't get the  
2 physical copy, no.

3           Q.    You would see what's in this profile?

4           A.    Exactly.

5           Q.    And that's what you would have as a Cabinet to make  
6 your Decision?

7           A.    Unless you knew something outside of what is here.

8           Q.    Yeah.

9                    So, if looking through, let's say, for example--and  
10 I'm making a complete hypothetical, but let's say someone said,  
11 "I'm ordinary resident, and I have only been absent because I  
12 have been studying," and studying is permitted, or "I have been  
13 working on Government service, and you knew that actually they  
14 hadn't been on Government service, then that's an error that,  
15 from your own knowledge, you could spot and you could take back  
16 to the Immigration Department.

17          A.    Yes, sir.

18          Q.    But you are--you're dependent on the Immigration  
19 Department being accurate in the information they summarise for  
20 you?

21          A.    That is correct.

22                   And raises a very--the Commissioner said it earlier,  
23 raises a very important point about this here because where it  
24 says Police record "clear", I want to know where they got that  
25 record from that says "clear". Do you know where the record

1 came from that says "clear"? This record is supposed to come  
2 from the Police, so why is the Police record saying "unclear" if  
3 you're telling me it is not so?

4 Q. Well, we're not the ones telling you. The Attorney  
5 General was the person who told you.

6 A. It raised the question why is the Police record saying  
7 "clear" if the Attorney General is saying it's not so?

8 Q. Yes, I mean, that's a fair question for you to raise.  
9 A question I can properly ask you is whether, as a result of  
10 that--and you say you spotted other errors as you went  
11 through--what steps did you take to, as Minister, to deal with  
12 those issues?

13 A. I simply asked them to be a little more careful  
14 and--there is a lot of persons you got in a short period of  
15 time, but you have to make sure you're not sending Cabinet any  
16 bad information.

17 We are relying on technocrats to give us reliable  
18 information. We depend on the Police Force to give us accurate  
19 records. You're telling me the record is not clear, you're  
20 telling me it's not correct. Well, the AG says it's not correct  
21 and raises a serious question for me, where this Police record  
22 come from that saying it is clear according to Immigration when  
23 somebody is saying it is not so.

24 Q. Because the risk, isn't it, is that Cabinet can make a  
25 decision on an erroneous basis?

1 A. Yeah.

2 Q. Because you're dependent on the profile, aren't you?

3 A. Yeah, unless--unless you have another person, you  
4 really have to go by the profile.

5 Q. Yeah.

6 A. And it would depend on the technocrats to make sure  
7 these things are accurate.

8 Nothing erroneous should really come to Cabinet. That  
9 is unacceptable.

10 Q. But, given that you have spotted errors, did you ask  
11 for an audit to be done of the application?

12 A. No, I didn't.

13 COMMISSIONER HICKINBOTTOM: And in respect of these  
14 100 applicants, we know about this individual, we've dealt with  
15 him, and he was deferred. The other 19--the other 99 were  
16 approved on that day.

17 THE WITNESS: Um-hmm.

18 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

19 BY MR RAWAT:

20 Q. If we go to page 55, please, in that same bundle you  
21 have there.

22 A. I think you need to bring in the Police to answer some  
23 of these questions, if you like.

24 Q. The difficulty we have is that we have asked for the  
25 underlying documents, but it's not something that the Attorney

1 General considers appropriate to give to the Commissioner, so we  
2 have to go with what we have, Honourable Wheatley.

3           If I take you to 55--and please don't read out any  
4 names, but this is the letter that was written to that  
5 individual explaining why the application was not successful, so  
6 it's written some considerable time after it came before Cabinet  
7 because, as we saw, I think it came before Cabinet in 2019. I  
8 can give you the date, November 2019, so some considerable time  
9 later in December 2020. The person's written to and told that  
10 the reason is that they have not met the 20 years residing  
11 period in the Territory that is specified in the 2004  
12 Immigration Policy.

13           Now, one question that we've raised with the Attorney  
14 General is: Did the Decision come back to Cabinet? Because you  
15 have--you have--on the Cabinet Decision--

16           A.   Deferred.

17           Q.   You defer it.

18           Under the fast-track scheme, it's the Cabinet that  
19 makes the Decision.

20           A.   Um-hmm.

21           Q.   So, logically, it ought to come back to Cabinet, even  
22 if the upshot of Cabinet says, "No, you ought to come back".  
23 It's a puzzle we haven't been able to solve.

24           A.   I meant to double-check that. And I may have, in  
25 Cabinet you have a paper that's deferred and you don't bring it

1 back, it automatically dies. I want to--medically falls off.

2 COMMISSIONER HICKINBOTTOM: That may be right in terms  
3 of the paper, but here the Cabinet have to make the Decision.  
4 There is nobody else who can make the Decision.

5 THE WITNESS: It's automatic denial.

6 I have to--I think I did ask the Cabinet Secretary if  
7 it's something that this was deferred because people were  
8 shocked of the situation. If it automatically dies, it is not  
9 brought back. If it is before, and I think the answer is "yes".  
10 I don't know what period of time.

11 BY MR RAWAT:

12 Q. Before just to help you, I should have drawn it to  
13 your attention because we have asked for this clarification  
14 because it seemed a bit strange to the Commission even to be  
15 rejected it didn't go back to Cabinet because under the files,  
16 you said, you make the Decision.

17 What we have been told is this: Once the length of  
18 time since the end of the fast-track scheme in relation to  
19 Belongership, due to the length of time since the end of the  
20 fast-track scheme in relation to Belongership, the Department of  
21 Immigration determined that the letter should be issued and the  
22 application fee returned. This procedure was followed with  
23 other unsuccessful applicants.

24 A. Okay.

25 Q. And so, it seemed that if you were just--if your

1 application hadn't been determined or was otherwise  
2 unsuccessful, the Immigration Department took a decision and  
3 issued letters like this. But--

4 A. I was not aware of that.

5 Q. Are you aware on what basis the Immigration Department  
6 could make that decision?

7 A. It may have been a Cabinet didn't accept the  
8 particular one and sent it back. I'm really not sure, but it  
9 may have actually been Cabinet did not approve it.

10 Q. Well, we know in this case that Cabinet didn't make a  
11 decision.

12 A. Right.

13 Q. It deferred.

14 A. Right.

15 Q. We don't know if there were deferrals in others, but--

16 A. It may have been just rejections outright.

17 Q. I can--

18 A. Let me help you. The process works the Immigration  
19 collects information, they collate it, it's presented to  
20 Cabinet. Once Cabinet makes a decision, it is then sent back to  
21 them to implement the Decision.

22 Q. I would agree with you because on the evidence of Ian  
23 Penn, he explained that the letters would be issued saying your  
24 application is successful or your application is unsuccessful,  
25 under the normal scheme. And we know from the papers that we

1 got there is a Cabinet Decision where four people are not  
2 approved, for example, and so that's Cabinet making a decision  
3 one way or the other.

4 But in this case, all that we know is Cabinet defers,  
5 and then the reason we have been given for why it doesn't go  
6 back to Cabinet and Immigration Department refused it is it was  
7 still there after the end of the fast-track scheme.

8 A. I just suspect this was Cabinet procedure thing,  
9 certain period passes, and it's not brought back, it's  
10 automatically removed from Cabinet making a decision. That's  
11 what I suspect.

12 Q. But if you can't help, please say so.

13 A. That's my best guess. I don't know. That's my best  
14 guess.

15 Q. Much as your best guess is welcome, we want you to try  
16 to avoid you guessing.

17 A. Yes.

18 Q. What we are also were given--and it may be that you  
19 might not be able to help with, but what we have been provided  
20 with is that, of the--I think it's probably over a thousand  
21 people that passed through the fast-track programme.

22 A. Yes.

23 Q. There were 46 people who did not qualify under the  
24 2019 programme.

25 Now, on the papers that the Commission has received--



1           A.    Question:  When you say didn't qualify, meaning it  
2 didn't get past Immigration to get to Cabinet, or Cabinet did  
3 not approve them?

4           Q.    Well, the best people to ask that question to are the  
5 IRU.

6           A.    Oh.  I thought you had information.

7           Q.    What I'm reading is--the Commission has been sent a  
8 table prepared by the IRU which is headed "Persons who did not  
9 qualify under the 2019 fast-track scheme".  The basis on which  
10 they didn't qualify I can't help you with.

11          A.    Okay.

12          Q.    But the point of my question is that I have--

13               MR RISSO-GIL:  Excuse me, sir.  I think there is an  
14 answer to that.

15               MR RAWAT:  Well, there we go.

16               MR RISSO-GIL:  It did not meet the 20-year residency  
17 requirement.

18               MR RAWAT:  Thank you for that.

19               THE WITNESS:  First time--

20               BY MR RAWAT:

21          Q.    But the point I was getting to, that you have--on the  
22 information that's been provided to the Commission, we cannot  
23 confirm that there were 46 refusals.  We can confirm there were  
24 four.

25               Are you aware whether all the batch memoranda have

1 been disclosed to us?

2 A. I don't know.

3 Q. It may be something we then have to ask again, but I  
4 don't want to waste time taking you through it.

5 A. What are you asking, the form for rejections?

6 Q. Yes.

7 A. It could be they never even made it to Cabinet.  
8 That's--I don't know.

9 Q. Well, with the helpful assistance of Mr Risso-Gil and  
10 with the fact that Immigration Department cannot make a  
11 decision, they must have made it to Cabinet and been refused on  
12 the basis they didn't make 20 years.

13 A. I--I don't recall.

14 Q. What you can't explain is the discrepancy between the  
15 fact that on the papers provided to Commissioner we can--we only  
16 have examples of four people being rejected.

17 A. By Cabinet?

18 Q. At all. If they're rejected by Cabinet because  
19 Cabinet can only make the Decision, but we can't explain where  
20 the other 42 have come from.

21 Well, I will leave it there.

22 Can I deal with one last matter, please.

23 A. Sure.

24 Q. We need to go to the bundle, and it's Part 2  
25 Belongership bundle, please. We went through with Mr

1 Smith-Abbott and, indeed, yourself on the last occasion,  
2 Honourable Wheatley, about the importance of good character, and  
3 good character is a feature of Belongership applications in the  
4 normal sense.

5 Now, this is a document. If you look at 1270, please.

6 COMMISSIONER HICKINBOTTOM: Thank you.

7 THE WITNESS: 1270?

8 BY MR RAWAT:

9 Q. Yeah.

10 Now, this is--we are obviously in May 2021. We're  
11 looking at a Cabinet Memo. It is after the fast-track programme  
12 has ended, and this deals not with Belongership but Certificates  
13 of Residence Status January-March-April 2021.

14 If you look at paragraph--so, what you have is, that,  
15 in terms of background information, the Board of Immigration is  
16 now back involved in the process, and they at paragraph 2  
17 express concern in relation to numbers of persons meeting the  
18 qualifying years for Residence Status, referring to pro effort  
19 made to clear a backlog, reduce the backlog, and you have spoken  
20 to the Commissioner about backlogs, and they process a total of  
21 in this case it's actually 188 people--applications.

22 But it's when we get to 3 I would like to draw your  
23 attention to something because there was specific mention of one  
24 applicant who was not recommended. There is a reference to that  
25 applicant having a criminal record. The detail of the offenses

1 were redacted by the IRU.

2 But what's said, because it's residence that we're  
3 discussing, is, as stipulated in section 18(1)(a), a person  
4 receiving a Certificate of Residence should be of good character  
5 and, therefore, these persons should not hold any criminal  
6 record within the Territory. And you have there documents  
7 provided to you.

8 Now, if you turn in the bundle first to 1441, it's  
9 section 18 of the Immigration Passport Act which deals with  
10 Certificates of Residence and says: "Subject to provisions of  
11 this section, the Cabinet may, after consultation with the  
12 Board, grant a Certificate of Residence to any person who  
13 applies the same in the prescribed manner and is (a) of good  
14 character, and (b) in his or her application stated intention to  
15 reside permanently in the Territory".

16 Now, that's section 18, so what the Board is  
17 recommending is that this person is not of good character. You  
18 cannot--therefore, we can't make a positive recommendation.

19 If you go through, please, Honourable Wheatley, to  
20 page 1298, we have mentioned 188 names, so you have 188 names  
21 which Cabinet does approve, but then at (c) it records:  
22 "Cabinet decided not to accept the recommendation of the Board  
23 of Immigration not to grant a Certificate of Residence to", and  
24 then the name is redacted, "in accordance with section 18(1) of  
25 the Immigration and Passport Act".



1 questioning. It's the answering.

2 MR RISSO-GIL: Is there a way we can deal with that  
3 before the three minutes?

4 COMMISSIONER HICKINBOTTOM: Yes. What I suggest is we  
5 simply stop the live stream now--

6 MR RISSO-GIL: Yes, please.

7 COMMISSIONER HICKINBOTTOM: --within the three  
8 minutes, and then we can discuss how best to deal with it.

9 MR RISSO-GIL: I'm most grateful, sir.

10

11

12 COMMISSIONER HICKINBOTTOM: Thank you, that's dealt  
13 with that very well, thank you.

14 So, I think we're ready, Mr Peters.

15 Good, thank you, everybody.

16 Just to explain to those people who are not here, we  
17 just had a short session in private, which has dealt with the  
18 particulars of one individual applicant, and what I will do now  
19 is I will ask Mr Rawat briefly to summarise the question that  
20 was put, and then Mr Risso-Gil who is appearing on behalf of the  
21 Attorney General for The Honourable Vincent Wheatley will read  
22 out the gist of his evidence that we can read out because it  
23 contains no particulars that can result in the identification of  
24 the individual.

25 Mr Rawat.

1 MR RAWAT: Thank you, Commissioner.

2 BY MR RAWAT:

3 Q. Honourable Wheatley, I have taken you to a memorandum  
4 to Cabinet from May 2021 and drawn your attention to one  
5 applicant who was not recommended for Residence Status. The  
6 reason was because that application was being made under  
7 section 18, and section 18 stipulates--or section 18(1) (a)  
8 stipulates as a precondition that someone must be a person of  
9 good character. In this case, this individual was not a good  
10 character.

11 A. The person had a Police record.

12 Q. And I think if I could just ask Mr Risso-Gil just to  
13 put on the record the circumstances in which the Decision was  
14 made.

15 MR RISSO-GIL: Yes.

16 The Minister and Members of Cabinet were aware of the  
17 individual circumstances of the offending and considered it was  
18 nevertheless appropriate to grant a Certificate of Residence.

19 COMMISSIONER HICKINBOTTOM: Thank you, Mr Rawat.  
20 Thank you, Mr Risso-Gil, and thank you, Minister.

21 Any other questions, Mr Rawat?

22 MR RAWAT: No. I have reached the end.

23 Can I first of all thank Honourable Wheatley. I think  
24 he probably, when he turned up at 2:30, he did not expect to be  
25 here--

1 THE WITNESS: No, definitely not.

2 MR RAWAT: I hope it's not too late for dinner, but  
3 can I thank him for making himself available and for his  
4 patience, but also for the way in which he has given his  
5 evidence.

6 COMMISSIONER HICKINBOTTOM: Yes, and can I please echo  
7 that, Minister. Thank you for your patience and/or time which  
8 is longer than any of us expected. It was very helpful, and  
9 thank you for the way in which the courteous and helpful way you  
10 have given your evidence. We much appreciate it. Thank you  
11 very much.

12 THE WITNESS: Thank you.

13 (Witness steps down.)

14 COMMISSIONER HICKINBOTTOM: Mr Rawat?

15 MR RAWAT: We resume tomorrow at 9:30.

16 COMMISSIONER HICKINBOTTOM: Good. Thank you very  
17 much.

18 (End at 7:56 p.m.)



## CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, reading "David A. Kasdan", is written above a solid horizontal line.

DAVID A. KASDAN