

THE TRIBUNAL RESUMED ON THE 28TH APRIL, 2006, AS FOLLOWS:

MR. HEALY: What I propose doing this morning, sir, is reading into the record, not necessarily verbatim, but most of the contents of all of the relevant documents. This will avoid the need to go through those documents with individual civil servants by whom they were generated or the holders of individual files from which the documents came. And so that it won't be necessary with any of the civil servants who will be giving evidence, to go through vast volumes of material, much of which will merely involve summarising the content of documents.

The documents that I propose to refer to were extracted from Department files. I don't propose, and the Tribunal hasn't put in the Tribunal books, every document on the Department files. What is here is a selection of the documents intended to give A) a flavour of the thinking within the Department at various times in the course of this extended transaction with most of the relevant documents dealing with the more critical period towards the end of the transaction, that is to say in late 1990.

Now, there are two other things I would envisage doing today.

Firstly, with reference to the Opening Statement that was made yesterday, the Tribunal received, this morning, a copy of Mr. Sean Fitzgerald's narrative of intended evidence.

Mr. Fitzgerald, you will recall, was the Assistant Secretary at the time the transaction was conducted, and in

terms of the outline of the transaction given yesterday, I think I should refer to what Mr. Fitzgerald has informed the Tribunal of his involvement in the transaction, and more particularly, his involvement in the meeting with Mr. Johnston which took place on the 13th December of 1990.

Mr. Fitzgerald refers to his note of that meeting, the note that was put on the overhead projector yesterday at Number 112, I think. It's not 112, it's number 110, Book 76.

If we could go to the second or the bottom of the first page of that document, the first part of it has been redacted in light of the Department's claim to privilege in respect of legal advice contained in the first part, although it will be recalled that the Tribunal has obtained information from some of the officials involved which refers to the advice. But in any case, to repeat what was mentioned yesterday, Mr. Fitzgerald noted that he "saw Mr. Johnston yesterday evening," referring to the 13th December, 1990, "accompanied by Mr. Carroll. Mr. Johnston tabled two offers as attached, and a bank draft for $\text{€}1,280,000$. He refused to take back the bank draft. I told him I would place the offers before the Minister for his decision. Mr. Johnston said he wanted to be able to put his offer on the table as he had made his 'best shot' and would like an early decision. If he is unsuccessful, he accepts the situation.

"The unconditional offer of $\text{€}1,280,000$ is in line with the

advice on market value given to us, but falls well short of the Roadstone offer of $\text{€}1.25$ million. The second offer of $\text{€}1.715$ million plus $\text{€}1.435$ million subject to planning approval also falls short of the Roadstone offer without planning approval."

As I mentioned yesterday, that's arithmetically incorrect because it's, in fact, higher.

"It is in very similar terms to the original Roadstone offer which was rejected."

Now, Mr. Carroll or Mr. Fitzgerald prepared that note, as far as we can judge from the manuscript on the following page, on the 14th. Mr. Carroll made a similar note of that meeting. That note is contained at Tab 109. And in the second paragraph, Mr. Carroll records that "Mr. Johnston handed his offers in a sealed envelope. The offers were made in the name of his solicitors, McGreevys, and details are on file. Mr. Johnston indicated that he was making his 'best shot' and that the offers reflected the fact that the property was landlocked and that planning approval would be difficult to get. He said though that he was prepared to wait 10 years, if necessary, to get planning approvals.

"Mr. Fitzgerald suggested that Mr. Johnston should take back the bank draft which accompanied his unconditional offer, but he refused, stating that the draft reflected his serious intent. Mr. Johnston asked for a speedy response and said that if his was not the highest offer, he would wish the Minister luck in selling to another party."

Now, Mr. Fitzgerald has informed the Tribunal that those offers were made and that Mr. Fitzgerald recalls telling Mr. Johnston that his offer was "way off the mark."

Mr. Fitzgerald distinctly remembers Mr. Johnston's flabbergasted reaction of shock and disbelief when told that his bid was not the highest by "a long shot," to use a sporting expression. He also recalls that he did not mention this is Mr. Fitzgerald also recalls that he did not mention to Mr. Johnston exactly what offer Roadstone had made to date. At Mr. Johnston's insistence, Mr. Fitzgerald undertook to put Mr. Johnston's offer to the Minister.

And as I mentioned yesterday, that version of the events of the meeting is even more inconsistent with Mr. Johnston's version, and one of the queries that the Tribunal will have to examine is to what extent those two versions and Mr. Carroll's version can be reconciled.

Now, in the Opening Statement yesterday, reference was made to prior dealings between the Department and Roadstone in connection with State lands at Blessington, and the lands occupied by Roadstone at the time, or owned by Roadstone at the time of this transaction, what we have been calling the Glen Ding transaction, had, in fact, been sold by the Department, or by the State, to Roadstone in the 1970s.

There is a substantial amount of documentation dealing with that transaction and it's not envisaged that that documentation would be put would be examined in detail,

but the transaction as a whole is of interest, as I mentioned yesterday, for comparative purposes, and what I propose to do, before I go through the documents involved in this transaction, is to give an outline, sort of a summary of the earlier transaction. In due course, the documents will be put in evidence, but, as I said, it's not proposed to go through them in any detail, and obviously if any of the officials involved, or if the Department itself wishes to add to or in any way take issue with any part of the summary, that can be dealt with in due course.

The earlier sale took place, as I said, in the 1970s. The preliminaries to the sale occurred in the late '60s; in other words, there were discussions amongst civil servants in the late '60s on foot of inquiries from interested parties as to whether any part of the Blessington of the State lands at Blessington would be sold to third parties. A number of expressions of interest were obtained from gravel contractors in Dublin/Wicklow, from neighbouring landowners, who presumably identified the potential sand and gravel deposits in the area.

The sale in question was handled by the Department without any outside consultancy assistance. The sale was by public tender. Apart from advertising for tenders, the tender documentation was sent to all of the parties from whom expressions of interest had been received. In other words, they received not just public notice via the newspapers, but express, explicit notice in the form of correspondence

from the Department. The highest tender received, and I think that's by a long shot, I'm not going to go into the details, was from Roadstone; it was substantially in excess of any other offer. That sale to Roadstone, subject to a number of changes made in the course of negotiations with Roadstone as the highest bidder, was for the sum of £150,000. The arrangements with Roadstone were that a deposit, or a down payment of £50,000 would be made, and I think that was in 1971, with provision for the completion of the payment of the purchase price by five annual installments of £20,000, all of which were paid on, or more or less on, the due date, each subsequent year culminating with a final payment of £20,000 on the 22nd June, 1976. Although all of the consideration for the agreement to sell was paid over in accordance with the terms of the contract, there were delays in completing the conveyancing formalities. Those delays do not appear to have stemmed from any contractual issues, but I think, due to some administrative problems that developed in the Department, and it was many years afterwards before the appropriate transfers were executed and Roadstone registered as the owner of the land in question.

I think, also, it should be borne in mind that the delay in completing the conveyancing, as opposed to the contractual issues, stems, or should be calculated not from 1971, but from 1976, which was the actual completion date under the contract.

Now, one of the features of that transaction was that, as in this case, there were letters and other contacts between interested parties, and the Department from time to time, inquiring as to when, if at all, the Department would be prepared to sell the land in question. And a fact of, I suppose, some relevance, perhaps not of huge significance, is that submissions or representations were made by Mr. Charles Haughey, who was at the time a Minister, and associated submissions were, in fact, received from Mr. Desmond Traynor, at the time, coming from his offices in Haughey Boland, but these submissions were not made on behalf of Roadstone but on behalf of a competitor to Roadstone in the, if you like, purchase process.

Now, when I go through the documents relating to this transaction, it may become clear at one or two points there were overlaps between the earlier and the later transaction, which initially caused some confusion, which I hope will not now cause confusion, that I have summarised the circumstances of the earlier sale.

Now, the documents I want to mention are, firstly

CHAIRMAN: Mr. Healy, the two introductory matters you wanted to mention before dealing with the general documents relevant to the actual Glen Ding sale, just to mention the nature of Mr. Fitzgerald's statement that arrived this morning and also to indicate the broad terms of the previous transaction.

MR. HEALY: Yes. Now, if we turn to Book 75, we have the

first of the books dealing with the documents selected by the Tribunal for ventilation in the course of these hearings.

The first document is a letter from Mr. Michael Smith, TD, then Minister for State, to Mr. Sean Walsh, referring to recent referring to and acknowledging receipt of representations on behalf of Messrs Hudson Brothers, who expressed an interest in purchasing lands in the area.

The next document I don't think I'll refer to in detail; it's simply seeking the views of officials to enable the Minister to respond.

I should have mentioned that the date of the first document was the 27th July, 1987.

Document 3, or Tab 3 contains the document I mentioned yesterday, which is the Ministerial direction from the Minister for Finance to the various Government departments to devise a strategy for the sale of surplus State assets.

The next document contained in Tab 4 is a letter from Mr. Seamus Breathnach, Pit Inquiry Production Manager, Roadstone, to Mr. Enda O'Connor, Estate Section, Department of Energy, dated 28th August, 1987, containing an expression of interest from Roadstone in purchasing lands if they were available for sale. There are civil servants' notations on the letter recommending a response. The next document in Tab 5 is the response. I don't need to go through that.

Tab 6, again simply refers to arrangements made to meet

with the Roadstone representative on site.

Tab 7 is an internal memorandum dated 4th September, 1987, and gives an indication of a flavour of some of the internal departmental thinking on the proposal to sell this memorandum is, in fact, in response to the Hudson expression of interest, and the second notation is dated the 11th September, 1987, and is as follows:

"We are against this sale as we will need the site or the pit for our own use. Even if it was decided to sell, it would have to be done by tender and Roadstone would then very likely purchase it."

The next document in Tab 8 again refers to a Roadstone inquiry, which I needn't go into.

The next document in Tab 9 is a reminder from Mr. Sean Walsh, TD, to the Minister, seeking information on earlier queries from Hudson Brothers regarding departmental proposals, or a departmental interest in selling the lands.

Document 10 contains another expression of interest from Roadstone, dated the 28th August, 1987.

Document 11, again, gives a flavour of some internal departmental thinking. The author of the document or memorandum is not identified. It's headed "Note for the Minister of State's information." It may appear to be reflected in subsequent correspondence from the Minister to interested parties. It's as follows:

"1. Apart from the fact that the gravel deposit is not surplus to our own requirements, which is considered to be

sufficient reason for not selling it, there is also an amenity aspect involved. The Forest Service is currently using only a small existing gravel pit on the deposit, but the deposit itself extends beneath an adjoining intensively-used amenity area situated within a mile of Blessington town. Large scale exploitation of the gravel deposit would involve the premature felling of a 10-acre block of trees (not scheduled for felling until the year 2010 approximately) in the middle of this amenity area.

"Deputy Walsh rang Road Section of the Forest Service on the 16th July, 1987, concerning this matter and the position with regard to our own requirements and the amenity aspect was fully explained to him. On that occasion, the Deputy expressed himself as being satisfied with the information supplied."

Now, I think it's worth mentioning, although this will not appear, perhaps, until the evidence is given, that some of these expressions or all of these expressions of interest were relatively not specific, and at the time the Department were using a pit on the Blessington site for its own purposes, and it may be that, within the Department, the expressions of interest were deemed to relate solely to that small departmental pit, and that might explain departmental reluctance to sell that point.

The next document, document the document in Tab 12, a letter from Chris Flood, TD, MCC, to Mr. Michael O'Kennedy, Minister for Agriculture and Food, again on behalf of

Hudson Brothers, and it's as follows:

"Dear Minister,

"Mr. John McDonagh of the above company has contacted me in connection with a gravel deposit which is situated at Glen Ding, Blessington, County Wicklow, which I understand is under the ownership of the Forest Section.

"Hudson Brothers are a relatively small company but employ over 20 people. At the present time they are in need of obtaining further gravel deposits in the area, and I understand the above-mentioned deposit would be of significant help to them. They're prepared to purchase the use of the area and would be in a position to pay an agreed amount per month.

"Mr. McDonagh has made numerous efforts to make progress with regards to this matter and I would be grateful if you could arrange to investigate the matter urgently. As far back as January 6th, 1987, he was in touch with Mr. Philip Murphy, Higher Executive Officer, Forrestry Department in connection with the matter.

"I have known Mr. McDonagh for sometime and I would be grateful if he could be helped in every way possible as he is a good employer in the area with a strong desire to expand and develop his business."

The document in Tab 13 merely contains Mr. O' Kennedy's direction to Roadstone to the effect that this was a matter for the Minister for State at the Department of Forestry.

The next document in Tab 14 contains Mr. Michael Smith's,

the Minister for State's response to Mr. Sean Walsh, TD, or the late Mr. Sean Walsh's, TD's earlier representations on behalf of Hudson Brothers, and this was referred to yesterday in the Opening Statement. The important passage is in the second paragraph where Mr. Smith said, "I have made inquiries for you in the matter and the position is that the sand and gravel deposits are required for State afforestation purchases and, as such, are not available for lease or sale. I would like to add that even if the deposits were available for sale, the area could only be offered for sale by public tender competition in accordance with Department of Finance delegated sanction for such sales.

"I am sorry the news is not more favourable on this occasion."

And it will be seen that that letter, to some extent, reflects some of the Department thinking that I have already referred to.

The document in tab 15 is, again, an expression of interest from Roadstone in a letter of the 2nd November, 1987.

The next document is a letter of the 5th November, 1987,

it's in tab 16, from it's a letter from Mr. Michael

Smith, TD, who, at this stage, was the Minister, writing to

Mr. Flood, and the letter is effectively in the same terms

as the letter sent to addressed to Mr. Walsh earlier,

indicating that the deposit was not for sale, but that, if

it were, it would have to be sold by public tender.

The next document in Tab 17 is an expression of interest in purchasing sand or gravel from Messrs Mr. Michael Kavanagh, Sand, Gravel and Stones Contractor.

Mr. Kavanagh says, "I would require approximately 5 acres over the next 5 years and, if possible, an option for a further 5 acres.

"After viewing the site I would initially have to stone the roadway approximately 1 mile from the entrance gate, widen the bends and make 4 pull-ins to ensure safe passage of trucks. This work could cost approximately $\frac{1}{2}$ 10,000 if carried out properly. 1 acre is all that is required at one time and after this acre is worked out I will resoil for planting again or use for whatever other purpose required.

"I agree to the upkeep of the roadway at all times and to arrange security cover on all workings my insurance indemnifying the Department against any claims that might arise as a result of our workings and also to cover all possible liabilities insurance.

"I would offer the sum of $\frac{1}{2}$ 50,000 for the 5 acres on the signing of the agreement."

That's $\frac{1}{2}$ 10,000 an acre. This was, of course, in 1987.

Now, this is of interest not only as an expression of interest, but as, perhaps, an indication of, to some extent, of the value contractors were putting on the land at the time.

The next document is contained in Tab 18 and is a note,

dated the 18/11/1987, headed "Application for land Deerpark, Blessington, Roadstone. Correspondence attached refers. I met Mr. Seamus Breathnach, Production Manager, Pit and Quarries, Roadstone Limited, at Deerpark on the 17/11." This is a note prepared by Mr. Terry O'Brien, who I think was attached to the Forest Service. I don't propose to read out all of the note, but it contains a relatively detailed account of the impression Mr. O'Brien formed of what Roadstone might be interested in.

On the first page, he says, if I can go onto the next paragraph, "I would estimate that the 48.6 hectares sought is worth at least $\frac{1}{2}$ 500,000 to Roadstone Limited, and perhaps much more than that. In view of this and the present financial circumstances, I recommend that we enter into negotiations for the sale of these lands. I would suggest that the following conditions would be attached to any sale." And he deals with conditions regarding access, and so forth.

He goes on, at the completion of his note, to say, "However, unless Roadstone are prepared to pay the kind of money I suggested, either in cash or in kind, then I recommend that no sale be made."

The next document is another internal memorandum contained in Tab 19. It refers to proposed purchase of lands by Roadstone at Blessington forest. "The area which Roadstone requires is obviously very valuable to the company, as it may be to other organisations in the same business. Before

a decision is taken to sell, I go along with divisional inspectors' suggestion that the " I'm not sure what the next word means; it's either "trees" or something else "in the area be valued by Development Section and that the engineers assess the value of the gravel on the land.

"If the ultimate decision is to sell, the best way of getting the highest price may well be to invite tenders."

Underneath that, another note, it appears to be dated to 1988. It states: "Chief Inspector to see, please. Estate Section. Sale of this very valuable asset is agreed. I agree with action proposed at (a)." That means assess the value of the gravel (a) being a reference to the (a) in quotation marks at the right-hand side of the document.

"Because of Roadstone's presence in adjoining area purchased some years ago, their entitlement to first refusal must be recognised."

The next document is a memorandum, again the author of which is unclear, but it's addressed to the then Assistant Secretary. There appears to be a date of December 1987 at the bottom of the document, and I think at the time the Assistant Secretary was Mr. Fitzgerald.

It says, "Assistant Secretary, I have read these papers and my initial reaction is to be cautious.

"This is a high amenity area adjoining the public road between Blessington and Naas. It is frequented by the public and it is visible from the town of Blessington.

Part of the amenity value is the hard-wood stand, and I

don't think we want another Coolattin.

"It appears that we could dispose of 48.6 hectares, retaining 24.3 hectares, which would maintain the visual amenity of the site. However, I presume there may be some hard woods on the 48.6 hectares proposed for disposal to Roadstone. My initial advice would be to offer the 48.6 hectares for sale by tender the advertisement to stress the gravel value. Roadstone cannot really object and Department of Finance delegated sanction for the sales provides for competitive sales.

"I do not favour the Chief Inspector's recommendation we cannot impose covenants in the conveyance of a freehold interest in land. One is repugnant to the nature of the other, but we could impose conditions" I think what he seems to suggest that might limit room for manoeuvre of the purchaser.

That's my speculation about what the last few words of the document might mean.

The document in Tab 22 contains another note of an expression of interest, or another note referring to the expression of interest from Mr. Kavanagh.

The document in Tab 23 is a note from a Mr. N. O'Carroll, Chief Inspector, not to be confused with Mr. Philip Carroll, referring to "Roadstone's wishes to buy 48.6 hectares out of a total forest area of 72.9 hectares leaving 24.3 hectares" and those calculations have already been referred to.

"The District Inspector feels that this might be worth a half a million or more to Roadstone."

The document in Tab 25 refers to further expressions of interest, including Mr. Kavanagh's expression of interest.

The document at Tab 25, again, refers to expressions of interest from Roadstone.

The document at Tab 26 has already been mentioned; it's the departmental sanction of the 18th December, 1987, to sell lands identified by the Department of Energy, and while we do not have the minute identifying these lands, we know from other documents that lands at Blessington, together with other lands retained by this Department, were sanctioned for sale by the Department of Finance.

Passing onto the document in Tab 28, this is an internal memo canvassing the value of the property. It's headed "Quarry land at Blessington forest" addressed to Mr. Duggan by Mr. O'Connor. "Mr. Duggan, this area is a money-spinner. $\frac{1}{2}$ 50,000 for 5 acres. I passed earlier papers to you.

"I would favour strongly the sale by tender of the area already proposed by management. I think you are already arranging an assessment by the engineering division."

I don't think the next document need detain us.

The document in Tab 30 merely refers to Mr. Kavanagh's interest.

The document in Tab 32, again, is an internal memorandum canvassing the parameters of the project, both in terms of

quantum of and the value of the minerals. It's a document authored by Mr. Browner on the 12th February of 1988, and is addressed to Mr. Ryan.

It contains an engineering assessment and is headed "Interim Report."

It says, "Mr. Ryan,

"Enclosing a contoured map produced from aerial photographs. I visited this site with Mr. Maguire and his assistant, Mr. Dempsey. I have arranged to get some further information from aerial photographs and from surveys on the ground to enable an accurate estimation of the potential volume of gravel in this property. However, from the evidence on the ground and assuming that the depth of gravel is at least equal to that in the pits on the adjoining ground, the quantity of gravel on the 48.6 hectares being offered for sale (or at least it is suggested that it should be offered for sale) is at least 15 million cubic metres and could be as much as 25 million cubic metres depending on how deep is it possible to excavate and provided that the gravel goes down to 215 metres over datum" I think that's a reference to an engineering method of quantifying contours or the height of contours. "All the evidence in the pits adjoining indicates this, but the only way to verify the depth would be by trial pits and trial borings.

"The quality of this gravel is first class and its value in situ is in the region of .3 million to 30 pence to 50

pence per cubic metre. Taking the mean of those figures at 40 pence per cubic metre, the total value of this deposit is worth anything from $\frac{1}{2}$ million to $\frac{1}{2}$ 10 million. In view of the potential of this deposit, it might be advisable to bring in a consultant to carry out a detailed assessment or valuation or at least have trial borings carried out."

The next document in Tab 33, or 32, rather, again canvasses some of these figures.

The next document in Tab 34 is one page of a document, or one page found on the Department file of a page of an article in Magill magazine by Mr. Ronan Lyons. This article I think was published in December of 1987. A part of the article that was highlighted was the first paragraph, in which it stated, "In 1988, the then Minister of Energy, Ray Burke, wrote to the Office of Public Works suggesting Glen Ding in Blessington, County Wicklow, be developed as a quarry." The Tribunal, as a matter of interest, has endeavoured to find such a letter, and, to date, has not been able to identify any such letter, though there was correspondence in 1988 from the Department to OPW, but not from Mr. Burke. And I may refer to some of that later.

The next document is a letter to the Tribunal from Mr. Michael Smith, TD, which may obviate the need to call him as a witness, and it says, in the second paragraph, "I am able to confirm that a meeting took place with Messrs Kavanagh, Stokes and Treacy in February 1988." This is the

joint or combined approach I mentioned yesterday played by Mr. Kavanagh, on the one hand, and representatives of Treacy Enterprises, on the other, to join or to make a joint approach to purchase these lands. Referring to the meeting in 1988, Mr. Smith goes on, "I can further confirm that mention was made of an offer of $\frac{1}{2}$ million for the land under discussion at Glen Ding. I have a distinct recollection of explaining that these lands were State-owned; no sale could take place unless tenders were sought in an open and advertised fashion. To the best of my knowledge, I had no further contact in relation to this matter."

The next document in Tab 35 appears to be a contemporaneous document dealing with the meeting mentioned by Mr. Smith a moment ago in February of 1988. It's a letter from Mr. Smith addressed to Mr. Chris Flood, dated 24 February, 1988.

"Dear Chris,

"Just a note to let you know that following the meeting with you and Mr. Kavanagh last week, I am considering the offer in respect of the Blessington sale of gravel in Deerpark in Dillonstown area.

"When I have news, I will be in touch with you again."

The next document of the 24th February, 1988, is a letter from Mr. Michael Stokes, a sales director of Treacy Enterprises, Dundrum, to Mr. Chris Flood, thanking Mr. Flood for the meeting and asking him to thank the

Minister for facilitating the meeting.

The letter in Tab 37 is merely Mr. Flood's letter sending

on to the Minister the letter he had received from

Mr. Stokes, a director of Treacy Enterprises.

The next document contained in Tab 38 is a handwritten note

of a meeting held in the Assistant Secretary's office on

the 4th March, 1988. In attendance were: Mr. Rea,

Assistant Secretary if I suggested, earlier, that

Mr. Fitzgerald was the Assistant Secretary, that's

incorrect; it was Mr. Rea Mr. Rea, Assistant Secretary;

Dr. O'Carroll, Chief Inspector; Mr. Browner, engineer; and

Mr. Duggan, Assistant Principal Officer.

Paragraph 1 is as follows: "Mr. Rea advised that the

Minister was very anxious that this case be given top

priority." The Minister at that stage I think was

Mr. Smith.

Paragraph 2: "It was agreed (a) that Mr. Browner's

assessment work on the ground would be completed without

delay. Mr. Browner" there seems to be a word missing

"suggested that this work would be completed by next week.

"(b) That the VDR should be completed as a top priority."

I don't know what VDR means.

"(c) That a further meeting should take place as soon as

possible to decide on whether a consultant should be

employed to assess the gravel deposit. Mr. Browner will

investigate this possibility and come up with some names,

as will Mr. Duggan, who will talk to the Geological

Survey."

Next document, a related document, dated 7th March, addressed to Mr. Flaherty Faherty. "As a matter of top priority" in other words, jump the queue "please obtain up-to-date folio and extract to cover the lands shown hatched in red on page 259.

"Please also obtain the something file for these lands.

There appears to be some sort of ring fort on the lands which may pose a problem. I note that it appears that the original contract to sell was not completed (see letter at page 242). This needs to be followed up."

That is a reference to the point I made at the outset, sir, when I, in my introductory remarks, referred to the files dealing with the earlier sale; that notwithstanding that the sale took place in the 1970s, the completion of the conveyancing formalities appears to have spilled over even as far as 1988, and the reference to original contract to sell, which was initially, or initially caused some confusion, in fact refers to that first sale that I mentioned that took place between 1971 and 1976.

Now, the next document is, again, an internal departmental memorandum from Mr. Rea to the Secretary, from the Assistant Secretary to the then Secretary, referring to the up-to-date position concerning these lands. It's dated the 7th April, 1988, and it is as follows:

"Secretary,

"I am referring the papers to you at this time in view of

the potential scale of the value of the gravel reserves and to consider the advisability of involving the Geological Survey office in the exercise. (Paragraph 5 below). On this file below, the papers relevant to the current issue ran from page 160 (earlier papers on the file concerning an adjoining area of land (84 acres) that we sold to Roadstone Limited in 1972). The matter under review can be summarised as follows:

"1. Our total holding here is 72.9 hectares. Roadstone want to buy 48.6 hectares. Our District Inspector feels we should retain the balance (24.3 hectares) in order to preserve the existing visual amenity (the site is close to and visible from Blessington village.)

"2. Apart from Roadstone, we have been approached from Hudson Brothers, Brittas, County Dublin, and Treacy Enterprises, Dundrum (via Chris Flood, TD).

"3. Our civil engineering staff have surveyed the area. Mr. Browner's civil engineer report, dated 12th February 1988 is at page 298 and indicates that the value of the gravel is within the range of $\text{€}6$ million to $\text{€}10$ million. I chaired a meeting on the 4th March, 1988, to review progress and to decide on strategy.

"4. Things went a little off the rails since then through lack of liaison between Mr. Browner and Mr. Duggan. Mr. Browner sought tenders from four firms to do a detailed survey of the gravel deposits without reference to Mr. Duggan, who was discussing the problem with, and

seeking advice from, the GSO. Three tenders have been received. No great damage has been done, but we will, I think, have to run a fresh competition to precise specifications and include some, at least, of the firms suggested by the GSO.

"5. On the GSO, I wonder how you feel about their general competence to do this study for us? If they are competent, it seems a pity for them to opt out of such an important assignment.

"6. We have now done a complete inventory and valuation of the tree crop on the site. This throws up a value (present value based on net discounted revenue) of $\text{£}476,000$ for the full area and $\text{£}340,000$ for the pit area. Papers are in the file pocket.

"7. Questions have been raised (a) as to whether we should retain a strip of land in order to preserve the visual amenity, and (b) as to the importance of the ring fort. These can be looked at later, but my general preference would be to sell the asset and let the purchaser take on whatever obligations may be imposed by the Planning Authority and/or OPW.

"8. The immediate task is to obtain an authoritative assessment of the volume, quantity and value of the gravel deposit. To that end, I propose holding a new tender competition (as at 4 above), subject to your approval. When we have this information, we can decide how to proceed."

Now, I think it's only fair to say that the reference to a tender competition at this point is a reference to a tender competition to identify an expert to conduct a survey of the extent of the gravel deposit.

Now, there are a number of documents that weren't in the book as originally served which appear to relate to some of these matters and to which I think I should refer at this stage. They are in they are now to be found in Tab 41A.

The first of these documents is, in fact, the document I have already mentioned.

The next document is a note of a meeting on the 22nd June, 1988, between the Forest Service, on the one hand, and Wicklow County Council, on the other. It was also attended by an engineer from the Department of the Environment.

It's headed "Meeting at FIC offices, Blessington, on Wednesday, 22nd June, 1988." I take it that FIC is a reference to the office of the forester in charge.

"Present: Forest Service: Dr. O'Carroll, Chief Inspector; Mr. C. Browner, engineer; Mr. M. Carey, divisional inspector; Mr. J. Crowley, forester in charge; and Mr. P. Duggan, Assistant Principal Officer.

"Wicklow County Council: Mr. J. Forrestal, country engineer; Mr. Frank O'Gallachoir, planning department.

"Department of the Environment: Mr. Michael Cahill, engineer.

"1. The meeting was held at the request of the Forest Service to sound out the County Council Planning Department

on its attitude towards the granting of planning permission for the development of the gravel pit at Blessington, which is being put up for sale.

"2. Mr. Cahill attended as an 'intermediary' at the request of the Forrest Service because of his experience in dealing with the County Council on such matters. A general discussion took place on the various approaches might be adopted by the planning service where planning permission is concerned and the following point emerged.

"A) The Planning Department's advice was that the Forest Service might apply to it before the land is offered for sale for approval in principle, i.e. outline planning permission, for the development of the gravel pit. It should explain that the land is to be put up for sale and advice on how it is to be divided into a number of lots giving details of access, depth of pit, etc. It would be much simpler for the Planning Department if the land was offered in just one lot. However, it was accepted that a number of lots, rather than just one, might help to make tendering more competitive. Outline planning permission could take two or three months. In order to speed up matters, Mr. Forrestal suggested that the Forest Service might consider employing an engineering and planning consultant who might have experience in dealing with such applications and could advise on how best to divide the land up into lots.

"Apart from the ring fort, which will be excluded from the

development, there is another site of scientific interest on the land, namely an archaeological site shown red on the map at page 229. The Planning Department would have to seek the views of OPW and the National Monuments Advisory Council on this if it was included in the application. The Forest Service could seek such advice in advance of application, if necessary.

"The Planning Department would, as a condition of planning permission, charge a levy in respect of the increased traffic on county roads resulting from the development of the pit. This levy could come to a few hundred thousand pounds. The lands could be offered for sale with outline planning permission and tenders might be invited subject to the successful tenderer obtaining full planning permission."

Now, the next document is a letter from Mr. P.J. Duggan, Assistant Principal Officer, to Mr. Noel Lynch, Principal Officer, Conservation and Recreation branch, Office of Public Works, 51 St. Stephens Green, Dublin 2 on the 28th June, 1988. In other words, written just a week after this meeting, and it's a letter that appears to have been written on foot of the discussions that took place with Wicklow County Council and appears to relate to the matter referred to at paragraph 2, subparagraph (b) of the minute I just referred to a moment ago, i.e. the question of the presence of archaeological monuments or archaeological features of importance on the lands that might be sold.

The letter is as follows:

"Dear Mr. Lynch,

"The Forest Service proposes to offer for sale shortly the lands in the townland of Deerpark, County Wicklow shown outlined in green on attached 6 inch and 25 inch maps which contain a substantial gravel pit.

"It is understood that there are two areas on these lands which may be of archaeological importance. They're marked "X" and "Y" on the maps.

"I would be glad if you could advise, as a matter of urgency, whether these areas are of significance and whether you have any views on the sale and development of the gravel pit.

"We are anxious to put the land up for sale without delay. I would ask that you deal with this matter as quickly as possible."

Parenthetically, I should say that some of the contents of this letter appear to have been referred to in media articles dealing with this transaction, and it may be, or it has been suggested that a letter containing the words in the third paragraph of this letter dated the 28th June, 1988, purported to have been sent from Mr. Burke to the Department, that this was the only letter of in or about that date that the Tribunal could identify, and that letter is, as I have already indicated, appears to have been prompted, at least on the face of it, not by Mr. Burke, but by an internal departmental meeting that's Mr. Ray

Burke an internal departmental meeting with Wicklow County Council.

The next document is a response from Ms. Mary Lane of the National Monuments Branch, the Office of Public Works, addressed to the Secretary of the Department of Energy but marked for the attention of Mr. Duggan, and dated 21 July, 1988.

It says "Dear sir,

"I refer to your minute dated 28th June, 1988, addressed to our director, Mr. Noel Lynch, and your subsequent telephone conversation with Mr. Peter Danaher, Chief Archaeologist, regarding possible archaeological sites located on land in the townland of Deerpark which you propose offering for sale in the near future.

"I am to advise that both sites have been inspected by Mr. Danaher, and he has confirmed that the site marked "Y" on map is only a dried-up pond or small lake and is not of archaeological importance. However, the site marked "X" is an impressive ring fort, strategically located with possible Viking associations. In view of the archaeological importance of this site, which is one of the finest of its type in the country, the Commissioners are very interested in acquiring it and the surrounding area outlined in red on map. We appreciate that it is a sizable portion of the area proposed for sale, but were quarrying to proceed in the vicinity of the monument, the amenity of the ring fort would inevitably be destroyed.

"We hope that you would favourably consider our suggestion and that you will agree to vest that indicator outlined in map in the Commissioners for preservation as a national monument. If you wish, we would be most willing to meet with you to discuss the matter."

The next document, again, deals with what appears to have been a degree of tension between the two departments concerning this site, and, on the one hand, the desire of the Department of Energy to maximise the value of the land in accordance with the Government's programme for disposing of surplus assets to defray the national debt, and, on the other hand, the equally understandable desire of the National Monuments Branch of the OPW to preserve this national monument and its surrounding contextual environment.

The next document, in the same tab, 41A, refers to a meeting in the Department of Forestry between Mr. Rea, Assistant Secretary, Mr. P.J. Duggan, Assistant Principal, Mr. Enda Dunleavy, Assistant Principal OPW and Ms. Mary Lane, OPW, the author of the letter I have just read out.

The minute is as follows:

"To open the meeting, Mr. Rea explained that the Department of Forestry's decision to dispose of the area outlined in green in file pocket stemmed from a recent Government decision in line with the overall aim to reduce the national debt, to dispose of all viable State-owned properties which would realise substantial funds. He

explained that, in the 1970s, the Department of Forestry had sold lands in Blessington for quarrying purposes to Roadstone Limited. At the time, the selling price was considered substantial, it being disposed of for a higher figure than that originally paid when it was acquired for afforestation purposes. In hindsight, the Department now feel that in view of the large quantities of gravel discovered there that Roadstone Limited got a good bargain.

Mr. Rea explained that Roadstone have now expressed an interest in acquiring the area outlined in green. The Department recently commissioned a geological report to determine the quantity and quality of gravel ridge in the Deerpark site.

"The results indicate the presence of rich deposits of good quality gravel. The overall site value is estimated at i;½6,000,000.

"In view of the portion which we want to acquire as outlined in red on map, page 10, an estimated value for this area could be i;½1.5 to i;½2 million. Mr. Rea explained that his Department were interested in preserving the monument but considered this cost-prohibitive, and, in the interest of making funds, considered it impractical. He inquired as to the possibility of reducing the area. At this point, Mr. Con Manning explained the reason underlying the chief archaeologist's recommendation for choosing a larger area. It was desirable that we would keep the ring fort in the proper context and preserve its strategic

outline environment.

"Mr. M. Duggan explained that the area is very overgrown and that there is no public access to it. It was also pointed out by Mr. Dunleavy, Assistant Principal Officer"

I think in OPW "that it was important that the amenity of the ring fort should be preserved. At that point, we cited the instance of a ring fort at Garyduff, County Cork, where the amenity of the monument is destroyed, it being located on a hill with all gravel surrounding it quarried away. Ms. Lane mentioned the planning decision in that instance required the developer to keep a certain distance from the ring fort and to provide a pedestrian access for the public to be able to visit the site. It was point out that the fact that a ring fort was located on the lands for quarrying work detracts from the value. As the Department hope to sell the land with permission to quarry, Mr. Dunleavy advised that, as the site is in the Sites and Monuments Records, and as Wicklow County Council are very conscious of the planners' role in the protection of sites of archaeological importance, the planning application would be automatically sent to the NMAC for their observations. It was pointed out" I think NMAC is a reference to a National Monuments Agency. "It was pointed out that the NMAC would probably have a similar recommendation to what we are now suggesting. Messrs Rea and Duggan acknowledged this, but the former, in particular, stressed that he personally

could not condone the loss of this amount of money first to ensure the preservation of the site.

"Arising from this, we agreed that, in the absence of the chief archaeologist, on annual leave, Mr. Con Manning would visit the site with a view to possibly reducing the area, particularly in the region shaded lightly in pencil. The meeting concluded with the OPW promising that they would be in contact with the Department of Forestry again following Mr. Manning's inspection."

On the 15th August, Ms. Lane again wrote to the Department of Energy for the attention of Mr. Duggan, saying, in the second paragraph, "Following our discussion, it was agreed that we would revisit the site with the intention of possibly reducing the area considered suitable for preservation as a national monument. Arising out of our senior archaeologist, Mr. Con Manning's, recent inspection of the area and taking into consideration the points put forward by you at our recent meeting, we are willing to reduce the area we wish to acquire to that outlined in red on the enclosed map.

"We hope that this suggestion will be acceptable to you and now await your further observations in this matter."

I think that following that letter, the reduced area I am not going to go into the maps in any detail unless I am asked to do so and these maps have not been put on the file the Department of Energy and OPW agreed that the area ultimately excluded from the sale of these lands would

include the ring fort. I think, as far as I am aware, that most of the other archaeological monuments was included in the lands in sale.

I can now pass over the document in Tab 41 because it has already been mentioned.

Tab 42 contains the GSI report, dated June 1988, and I have already alluded to the conclusions of that report and some of the constrictions on the workability of the site mentioned in the report.

The next document in Leaf 43. We can also pass over that because we have already mentioned it.

The document at Leaf 44 initially caused some confusion, and I mention it at this stage only because the entry at the bottom of the page, which is as follows, dated the 12th December, 1988: "Please follow up above with Chief State Solicitor to conclude sale with Roadstone."

Obviously, finding that document on the file might lead one to conclude that a decision had been made at that stage to sell with Roadstone, and that all that needed to be done was to follow up the matter, or the Department had reached a stage where they had decided to deal with Roadstone and that they were simply going to follow it up with the Chief State Solicitor's office to put the legal formalities in place. In fact, that document, although part of this file and dated August 19 dated September 1988, refers to the earlier sale that I mentioned that took place in the 1970s, but which, for one reason or another, was not tied up

formally.

The next document in Tab 45 refers to the same matter.

The next document in Tab 46 is a note of Mr. is a note of Mr. P.J. Duggan's, dated the 6th October of 1988, and refers to a meeting attended by Mr. Rea, Assistant Secretary; Dr. O'Carroll, Chief Inspector; Mr. Browner, engineer; Mr. P. Duggan and Mr. Kieran O'Malley.

The note is as follows: "At the request of the fire service, Mr. Kieran O'Malley, planning consultant, called to headquarters on the 5th October, 1988, to discuss the question of planning permission for the Blessington quarry.

"Mr. Rea explained to Mr. O'Malley the background to the proposed sale of Blessington quarry. The assistance of Mr. O'Malley was being sought because of his experience in making applications for planning and his knowledge of the procedures and pitfalls. The Department's view was that the value of the property would be enhanced by obtaining planning permission (whether outline or full permission) in advance of the sale."

I think Mr. O'Malley had considerable experience in obtaining in processing planning applications for quarries and may have had some particular experience in the Wicklow and Kildare areas.

"The Department's view was that the value of the property would be enhanced by obtaining planning permission (whether outline or full permission) in advance of sale. In order to make for a competitive tender competition, it would be

necessary to be in a position to invite tenders for all and for portions of the quarry. If at all possible, the quarry should be split into lots, possibly three lots.

"Mr. O'Malley give a broad outline for the procedure for planning permission and the possible options that might be open to the Department. He advised that he expected that it would take at least a year before planning permission would be granted.

"It was agreed that Mr. O'Malley, accompanied by Mr. Browner, would visit the site and that Mr. O'Malley would write to the Department confirming that he was prepared to take on the work and state his charge.

"Mr. O'Malley was given Mr. Rea's copy of the Geological Survey report and advised that it was confidential. He was also given a map showing the areas which OPW wanted to exclude from the sale and advised that the Department was prepared to accept this exclusion."

The next document in Tab 47 is merely a summary of the up-to-date position at that point. Paragraph 2 is of interest in that it signifies that it was the Department's intention to seek planning permission for the site with a view to putting the land up for sale by public tender competition; that, in other words, the Department thinking at that time was that they would maximise the value of the lands by enhancing the site with a planning permission and then putting it up, with the benefit of that planning permission, for sale by public tender competition.

The next document is the Parliamentary Question I referred to yesterday, which, again, signifies the Department's intention to dispose of the sand pit by inviting public tenders to be advertised in the national press.

The next document in Tab 50 is a letter of the 14th March, 1989, from Roadstone, signifying their further interest in the site.

The next document is an internal memorandum from, I think, Mr. John Fearon, dated 15th March, 1989, addressed to the Secretary and the Minister, and this memorandum appears to have been in response to the Minister's inquiries on that day concerning progress on the sale of Blessington quarry which had been retained by the Department of Energy. That was a reference to the fact that, at that time, the forestry responsibilities of the Department had, as I mentioned yesterday, been hived off to Coillte retaining valuable surplus assets for disposal to reduce the national debt.

Mr. Fearon states, "This is one of the four major properties and some 190 smaller sites designated for retention when the balance of the Forest Service estate was vested in Coillte on the 1st January 1989.

"None of the staff with experience in this area remained with the Department and this has naturally slowed us down somewhat. However, we are getting organised to deal with these sales and, in fact, the first of the big properties, Silvermines, is with the Department of Finance for sanction

to sell directly.

"Assuming that Slivermines will be sold shortly, I see Kinnitty Castle and the Blessington quarry as the priority areas in the lands retained by us.

"The quarry is thought to be worth about $\frac{1}{3}$ million, but I have reservations about whether it will be sold and the income received this year, although we will, of course, do all we can to sell it as quickly as possible. However, a decision to rush the sale in order to ensure some income in 1989 may reduce the possible benefit to the Exchequer in the longer term.

"Particular problems are:

"1. There is no independent valuation of the site. The figures now being quoted are based on a Forest Service engineer's estimate of the value of the gravel deposits.

The only firm offer we got was one for $\frac{1}{2}$ 250,000 for 5 acres to be paid over 5 years.

"2. It is generally agreed that obtaining planning permission for the area before offering it for sale will increase the value of the area. Obtaining permission would take some time however and may encounter difficulties.

"3. The total area retained contains a national monument. Rights of way and hardwood tree and amenity value. Resolving issues which these raise may again delay final sale."

Then there is a reference to the delay that may be caused in dealing with the trees, and a reference to the fact that

the purchase price might not be paid in one lump sum.

It goes on to say, "That having been said, the present position is that we have been in touch with a consultant for advice on planning permission." That was reference to the discussions with Mr. O'Malley on how to proceed in the planning permission context.

"In the particulars, it may be sometime yet before we are in a position to offer this property for sale, although, as I said, I see this as a priority case."

the next document is the same memorandum with the I think a note of the Secretary's response, and his comment or commentary on the memorandum on its way to the Minister.

This is dated the 20th March, 1989, and it's on the second page of the document in Tab 52.

"Minister, it is essential to get the best possible price consistent with early disposal. Some of the hurdles to be jumped notably planning permission may push disposal into 1990. This may do us no harm. The pick-up in the construction business, fuelled partly by the activity funded by the structural funds should enhance the quarry's value."

The next document is a letter dated the 10th April, 1989, it's in Tab 53, and contains Mr. Johnston's first intimation of interest in buying land from the State. As I mentioned yesterday, it does not allude to this property in particular. It's addressed to Mr. Smart. It says,

"Dear Mr. Smart,

"I have been in the sand and gravel industry in England for the last 30 years. I returned home to Ireland in January 1989 and my main interests lie in anything to do with sand and gravel, etc. I have had many major contracts with public authorities in England, e.g. Thames Water Authority. Millions of tonnes of gravel were purchased at Beddington Sewage Treatment Works, Croydon, Surrey and Pennyoaks Sewage Works, Heathrow Airport, both ... contract where I credited them for the gravel material that was encountered on the site. I also handled a similar operation at Sippenham Sewerage Works," and so on. Mr. Johnston says, "I would be pleased to enter into any similar type of agreement with your Department on a basis of lump sum payment upfront plus an index linked royalty or outright purchase, whichever your Department would prefer."

Mr. Johnston notes at the bottom or Mr. Smart notes at the bottom, "Spoke with Mr. Fearon, meeting would serve no purpose."

I don't think the next document need detain us at this stage.

The next document is another expression of interest from Roadstone, dated the 6th June, 1988, and Mr. Breathnach, who wrote this letter, as well as all the other ones, finishes up saying, "I would appreciate an indication as to whether you will be putting the property on the market in the next five years. My company is currently updating its options over that time."

The next document is simply an acknowledgment of that letter.

The next document is a formal reply to that letter. It's dated 12 June, 1989, and is in Tab 57. It says,

"Dear Mr. Breathnach" it refers to the earlier letter, and goes on,

"The position is that the Department intends to sell an area of lands which contains a substantial quantity of sand and gravel at Deerpark in the next few years. It is the intention that, when the land is offered for sale, tenders will be invited by public tender competition which will be advertised in the public press."

As I mentioned yesterday, the wording of that letter, with the exception of one word, is verbatim, in accordance with the response to the Parliamentary Question at the end of 1988.

The next letter is one that obviously crossed with that letter, again indicating an expression of interest from Roadstone, and it's dated the 12th June, 1988.

The next document is a letter from Mr. Kiaran O'Malley to Mr. Frank O'Gallachoir, Wicklow County Council, and refers to Mr. O'Malley's desire to meet with Mr. O'Gallachoir to discuss some of the Department's plans in relation to planning permission.

The next document is a letter from Mr. O'Malley to Mr. Smart, it's contained in Tab 61, and it appears to be intended to convey to Mr. Smart the results of

Mr. O'Malley's discussions with Mr. O'Gallachoir. Now, the copy that the Tribunal has been able to obtain is very poor, but, doing the best I can, it says from Kieran O'Malley to Mr. Tom Smart, Higher Executive Officer, 8th September, 1989, re Blessington sand and gravel, Deerpark.

"Dear Mr. Smart,

"As arranged, I met Mr. O'Gallachoir" it seems to say that they went on to discuss Blessington.

Paragraph 2, I think, is the first paragraph that can be discerned with any confidence:

"There may be local objections due to pit traffic having to pass through Blessington en route to the city, which doesn't arise with Roadstone's adjoining pit and wouldn't arise if Roadstone's access was used to work your deposit.

"3. They will probably put a time limit on any permission that is granted. Ten years, fifteen years were casually mentioned.

"4. The problem of after-use was mentioned without a solution being evident.

"5. Phasing was mentioned (I didn't on purpose advert to the question of subdividing the deposits into say three separate parcels.)

"6. Mr. O'Gallachoir would like the maximum use being made by retaining trees to screen the workings, especially when viewed from the Blessington village direction.

"7. Apart from the antiquity identified by OPW for preservation, the area of which Mr. O'Gallachoir would, in

any event, like included within the actual red line of the planning application site, he referred me to another antiquity item, Number 11 on Ordnance sheet number 5 of OPW's Records of Sites and Monuments. This appears to fall on your deposit as well. If it cannot be disturbed it will further reduce the yield from it. It appears to be centred in the vicinity of the first letter 'E' in the word Deerpark on the Ordnance Survey map of your deposit." And that, I think, is a reference to the second of the two antiquities mentioned in the course of the discussions between OPW and the Department. It was the antiquity which OPW did not rate as highly as the ring fort, and which was left within the deposit.

"8. Mr. O'Gallachoir is going to consider when an Environmental Impact Study is required. I hope he decides it is not.

"9. I said we would apply for full and not outline permission.

"10. I said we only intended applying to extract and transport the material and that on washing or ancillary pit product manufacturing was intended.

"11. I said we'd use the existing access to the forestry. Afterwards, I inspected the access again and I feel we may have to relocate it somewhat further northwards to give better exiting traffic visibility values, especially towards the south where the bad bend is rather too close to the existing forestry access. That relocated access could

involve an application to Kildare County Council. There is an old access to a disused quarry over 100 metres north of the forestry access which might" I don't know what the remaining words are.

But what Mr. O'Malley is referring to there is selling the site on a stand-alone basis with its own access onto the Blessington Road, Blessington to Naas Road, which is to the north of the area in red on the map on the screen, and the north is at the top of the map.

The next document is another letter to Johnston Industries is another letter from Johnston Industries, sorry, to Mr. Tom Smart, signifying Mr. Brendan Johnston's interest in purchasing, in this case, specifically the Blessington lands.

It's dated the 7th December, 1989. It's contained in Leaf or Tab 61. On the 13th December, 1989, Mr. Tom Smart appears to make the following manuscript notation at the bottom of the document:

"Note: Rang Mr. Johnston, advised him that property would be sold by public tender. I promised to advise him when tenders are being invited."

Next document, on the 12th January, is, again, an expression of interest by Roadstone.

The next document in Tab 63 is a list of firms interested in the quarry, and they are identified as Kavanagh, Hudson Brothers, Roadstone and Johnston Industries.

The next document in Tab 64 is refers to a number of

properties being disposed by the Department. I had hoped to put an edited version of this document on the screen because it refers to the Deerpark property, but also refers to other properties and other purchasers, and as their transactions are not, as far as I am aware, in the public domain, I don't think it would be appropriate to refer to them.

I think what might be worth mentioning is that, in this document, which is addressed to Mr. Fearon, and is an update on the then-current position, i.e. as of January of 1990, it stated that "The consultants have indicated that a number of issues particular to the site would require careful consideration by the Planning Authority.

Objections from locals and environmentalists are also envisaged. Planning permission in this case could therefore take a long time, with no guarantee of success.

In the circumstances, the question of selling the site without planning permission may have to be considered. The successful purchase would have a better chance of getting planning permission because it is likely that he could extract the deposits in sections and would only seek planning permission for each section as required."

The next document is contained in Leaf 65, or in Tab 65.

It's from Mr. Gunne, an official in the Department, to Mr. Smart, dated 30th January, 1990, and again refers to the up-to-date position, indicating that Messrs O'Malley Consultants had been engaged to assist. It goes on to

refer to the existence of an archaeological ruin on the site.

it says, "In order to resolve the above issues, I feel it would take up to two years before a planning application could be lodged before the local authority. Roadstone Limited are the main party interested in this area of land. We have already sold them 84 acres in 1972 which is adjacent to this quarry. They have written to us on a number of occasions inquiring if and when we intend disposing of the area" and the reference to the various pages of file, containing, presumably, the expressions of interest from Roadstone.

"Three other firms have also expressed an interest in the property see list attached." That may be the list I mentioned a moment ago.

"Considering the number of obstacles that have to be encountered before a planning application can be lodged, the Department of Finance pressure to obtain the proceeds from this sale as soon as possible, and as I feel it could take up to two years to have the necessary documents ready, I submit that we offer this area for sale by public tender without planning permission."

The next document in Tab 67 is a sort of pro forma response from Mr. Smart to Roadstone.

The next document I want to refer to is at Tab 68, and is a memorandum, it appears to be a minute for maybe for the file or for his own purposes, of Mr. Carroll's, dated 20th

April, 1990. It says, "Tom Smart and the undersigned met Kiaran O'Malley and his associate, John Barnett, yesterday, to discuss the prospects for planning permission for the Blessington sand and gravel site. Following detailed discussion, it emerged that pending completion of the first-stage assessment, O'Malley will be concluding that planning permission will be difficult to achieve, particularly due to access considerations. It seems the best option is likely to be for the Department to sell the site in total by public tender/auction. It appears that, in such circumstances, Roadstone, whose existing pit is adjacent to our site, would best be able to exploit the resource.

"Mr. O'Malley will finalise and submit his report by the end April with recommendations. He was asked also to include a value on the sand and gravel deposit as a site price indicator."

The next document is Mr. Barnett's report, most of which I have already read into the record yesterday, and I don't think we need to repeat that exercise.

The next document is Mr. O'Malley's report, most of which I have also read into the record yesterday.

The next document is contained in Tab 71 and is a note of a meeting with representatives of Roadstone on the 10th May.

Mr. Gillespie, Mr. Carroll and Mr. Smart met with Mr. MacAodha and Mr. Breathnach. The meeting had been arranged at the request of Roadstone. In the third

paragraph, Mr. Smart records that "The representatives were informed that the area would be sold probably by public tender but that the method of sale was still subject to a number of considerations."

The next page in the same tab contains what seems to be Mr. Carroll's note of the meeting, and in a number of bullet points dealing either with what happened at the meeting or perhaps subject to what Mr. Carroll confirms in evidence, perhaps to some extent dealing with what he may have put together in preparation for the meeting. He refers to planning permission, national monuments, sale of standing trees, PQ, presumably a reference to the Parliamentary Question on the 20/10/1988. "Commits us to public tender, bought land in 1971," a reference to the 1971 purchase by Roadstone for $\frac{1}{2}$ 150,000 with $\frac{1}{2}$ 50,000 paid in '71 and the balance by five $\frac{1}{2}$ 20,000 installments, and so on.

Again, in the next leaf, there is a note in the following terms: "We will sell," presumably signifying the Department's willingness to sell. And underneath that, reflecting Mr. Smart's note, "Probably most likely by public tender," and went on to reference the need to consult legal people re tender documentation.

That meeting took place on the 10th May.

The next document is a letter of the 22nd May, 1990, it's in Tab 72 and it's from Mr. Brendan Johnston to Mr. Carroll, referring to his earlier letters containing

his expressions of interest, and in this letter expressing his continued interest in making an offer or engaging in a joint venture.

Mr. Carroll responded by letter of the 29th May, inviting Mr. Johnston to meet him. And in that letter, contained in Tab 73, there is a note in Mr. Smart's hand, referring to sending copies of the maps to Mr. Breathnach and Mr. Johnston; Mr. Breathnach representing Roadstone.

The next letter is a pro forma acknowledgment; it needn't concern us.

The next letter, or the next note is a note of Mr. Smart's of July 1990, recording a conversation with Mr. Breathnach in which Mr. Breathnach inquired whether there was any truth in a rumour he had heard that the Department had planning permission for the site. Mr. Smart told him the Department did not have planning permission.

The next document is a note of the meeting that I have already mentioned was being offered by the Department to Mr. Johnston, and I have read the contents of that note into the record yesterday. Mr. Johnston indicated his interest in the land, referred to his desire to acquire it provided it had full planning permission and conveying his view that, without planning permission, it would be of little value, and so on. The Department indicated that if the property was to be sold, they would be anxious to sell it on a lock, stock and barrel basis.

The next document is a record of a meeting on the 1st

August, 1990, with Roadstone, and I have already mentioned that document yesterday; it contains a note of Roadstone's indication that they were considering submitting an offer subject to planning permission, something at which the Department demurred, but it was nevertheless agreed that any offer submitted would be considered.

The next document in Tab 78 contains a letter from Mr. Carroll to Roadstone enclosing some information.

The next document in 79 is a letter of the 5th September, 1909, from Mr. Smart to Mr. Brendan Johnston, again enclosing information.

The next document is a note from Mr. Carroll to Mr. Sean Fitzgerald, then the Assistant Secretary, informing Mr. Fitzgerald of the up-to-date position with regard to the ring fort, the timber valuation, informing him that certain information had been given to Roadstone but not the valuation.

In relation to the latest position, Mr. Carroll says, "We expect Roadstone to make further contact shortly. I would be reluctant to approach them because we gave the impression of other serious interest. In fact, there was other interest but of doubtful value."

Then the next document refers to the meeting which took place on the 26th September, 1990, between Roadstone and the Department in which Roadstone put forward their conditional offer of $\text{£}400,000$ and $\text{£}700,000$ respectively.

The next two documents in tabs 82 and 83 are simply

follow-ons from the offer of 1.1 million subject to
i;½400,000 payable on planning permission.

The next document is a note of a meeting between
Mr. O'Malley and Mr. Barnett, on the one hand, and the
Department, on the other hand, in which Mr. O'Malley and
Mr. Barnett were canvassed as to their views on the
i;½1.1 million offer subject to planning permission.

The next document in Tab 85 is the memorandum to the
Minister dated the 25th October, 1990, in which Mr. Carroll
effectively seeks Ministerial approval to proceed or to
confine the negotiations to Roadstone for the time being to
see what emerged, as he put it, and in which the Department
sought the Minister's approval to conclude a deal at i;½1.25
million on the basis of an asking price of i;½1.5 million.

The next document in Tab 86 is a reconstituted copy of
Mr. Carroll's Mr. Johnston's expression of interest of
the 2nd November, 1990, in which he stated his desire to
make an unconditional offer.

A related letter from Mr. Johnston on the 5th November
seeking information to enable him to formulate his offer is
contained in Tab 87.

Tab 89 is another letter from Mr. Johnston, again pressing
the Department to deal with his proposals.

The next document I have already mentioned is in Tab 90;
it's Mr. Carroll's note of his informal discussions with
Mr. Hickey informing him of how the Department were
proposing to proceed at that time by confining their

negotiations to one party; in other words, exclusively to Roadstone.

We can pass on to Tab 92 which contains the a note of a meeting with Roadstone at which the Department indicated that they were not interested in offers subject to planning permission and in which the Department gave Roadstone their 1.5 million asking price for the land.

In Tab 94 is a letter from Mr. Johnston to Mr. Carroll seeking further information about the site and endeavouring to set up a meeting to examine the property.

Next document in Tab 95, 29th November, 1990, is Mr. Smart's response containing answers to the queries raised by Mr. Johnston and an appointment to view the site on the following Wednesday, the 5th December.

In Tab 96 is Mr. Johnston's letter to Mr. Smart taking up the offer to visit the site on the 5th December, and again seeking further information.

Next document in Tab 97 is Mr. Carroll's response in which Mr. Carroll mentioned with reference to, I think, some information he had earlier conveyed to Mr. Johnston's sister regarding the extent of gravel deposits on the land; Mr. Carroll, who was anxious to set the record straight, saying, "I should say at the outset, lest there be any confusion, that in mentioning a deposit of 8 to 10 million cubic metres of sand and gravel, I indicated quite clearly to your Secretary that this was the result of a sample survey undertaken on behalf of this Department. It is a

matter entirely for you to independently evaluate the potential volume of sand and gravel existing at the site and you should use the indicative figures I quoted as representing the actual level of the deposit. Indeed, I had indicated to you at our meeting on the 20th July that the Department would facilitate you in any proposals you might have to undertake such an evaluation.

"As regards the question of land classification" he goes on to deal with some further queries.

In Tab 98 is the note of the meeting between the Department and Roadstone at which, effectively, the price was concluded at $\frac{1}{2}$ 1.25 million.

The next document in Leaf 99 is the memorandum to the Minister seeking his formal approval at $\frac{1}{2}$ 1.25 million.

I think, sir, this might be an appropriate time to adjourn, and I should say that Book 2 will not need to be opened in full, because Book 2 contains a number of large documents which will not be which I do not intend to open, and, in fact, the amount of material required to be opened in the manner in which I have opened Book 1 is very little and I expect we will have disposed of it all within 20 or 25 minutes.

CHAIRMAN: Yes. Well, I think we still should somewhat truncate lunch in view of the intention to accommodate a witness who has travelled, and, in those circumstances, we'll make a five to two resumption. Thank you.

THE TRIBUNAL ADJOURNED FOR LUNCH.

THE TRIBUNAL RESUMED AFTER LUNCH AS FOLLOWS:

MR. HEALY: I think before the lunchtime adjournment, sir,

I had I was about to I had disposed of the documents

at tabs 101, 102, 103. They have already been mentioned.

The document at Tab 103, that may be mentioned later; it's

certainly mentioned in the statement of Mr. Carroll. It's

a letter from O'Sullivan & Associates, Solicitors, on

behalf of Mr. Brendan Johnston, written in November 1977 to

the then Minister, complaining about the way in which

Mr. Johnston had been treated, as he saw it, in connection

with his attempts to buy these lands in 1990. Mr. Carroll,

in his statement, refers to his response to that, and, in

particular, his objection to say some of the language used

by Mr. Johnston, but I think those matters are better dealt

with in the course of Mr. Carroll's evidence.

The next document in Tab 104 is a handwritten note by

Mr. Kieran Byrne of a telephone message from Mr. Brendan

Johnston on the 12th December, 1990 in which Mr. Johnston

conveys his desire to speak to the Minister, and made his

complaints about his inability to bid if, as he had been

informed, the Minister had already approved an alternative

offer.

The next document of the 12th December, 1990, is a letter

from is a contemporaneous letter from Messrs McGreevy,

Solicitors, on behalf of Mr. Johnston, to Mr. Philip

Carroll, stating as follows:

"Dear Mr. Carroll,

"We have just learned from our client, Mr. Brendan Johnston, that the meeting he had arranged with you on Thursday morning at 11.30am for the purpose of putting to you his unconditional offer for the purchase of the above land had been cancelled due to an apparent decision by the Minister yesterday afternoon to sell the land to a third party.

"We wish, on behalf of Mr. Johnston, to protest in the strongest possible terms regarding what can only be described as this extraordinary turn of event. As you are aware, our client only inspected the land in question last Wednesday" I presume that should have meant last Wednesday week "the 5th inst with your official, Mr. Cunningham, and when he pressed for an early meeting, he was told that the earliest possible date for a meeting was Thursday, the 13th, inst, due to your absence. Both you and your officials were fully aware that our client was coming to the meeting tomorrow with his solicitor to make an offer for the land.

"Our client is clearly entitled to the fullest possible explanation as to how and why the above lands have been sold without sight of his offer, when everyone concerned was fully aware that he was intending to make his offer on Thursday morning.

"Our client feels most aggrieved with the treatment he has received in this matter and fully intends to pursue his grievance until he receives a full and satisfactory

explanation of this week's events. We too are dismayed by these events which clearly raise very serious questions and we are examining all the possible legal remedies open to our client in the circumstances.

"We look forward to hearing from you."

If we pass on, then, to the document in Tab 107A. This is a letter from Mr. Johnston to Mr. Bobby Molloy, which I opened yesterday, in which, again, he repeated some of his grievances.

That was, in fact, document 107 sorry, Tab 107. The document in Tab 107A is a document used internally in Roadstone to support Roadstone's application, as it were, to its parent company, CRH, for sanction to spend what sort of money they envisaged spending. I think, ultimately, they envisaged spending 1.4 million, including expenses 1.45 million, including expenses, in purchasing the Glen Ding lands, and it is instructive in giving an insight into their thinking or the thinking on the other side of this transaction in terms of the actual purchaser in the transaction.

It's headed "Capital Expenditure Application Roadstone Dublin Ltd.

Location: Dorans Pit, Blessington, Co. Wicklow.

"Proposal to purchase additional sand and gravel reserves for the company's operation at Blessington.

"Background: Roadstone Dublin Ltd (RDL) have operated a major sand extraction and processing plant at Dorans Pit,

Blessington, Co. Wicklow for over 30 years. Sand reserves were last replenished in 1971, when 84 acres were purchased." Those are the 84 acres purchased under the 1971 transaction I mentioned earlier. "Total reserves at Blessington are now the equivalent of approximately ten years' extraction at current rates."

"The Forest Service and the Department of Energy have indicated that they are willing to sell 145 acres of land adjoining the RDL property which has excellent sand and gravel underlying.

"Purpose of purchase: Additional reserves are required to provide RDL with suitable raw material reserves for concrete and concrete products production up to the year 2015.

"Cost: 1.45 million, including expenses.

"Projected date of purchase: December 1990.

"Budget status: Budgeted at a lower cost before any details of the extent of the property being offered for sale at Blessington were available a provision of .2 million was made in the 1990 budget.

"Technical evaluation: The location of the sand pit at Blessington is ideal, being the only site of any scale within 18 miles from the city centre and 12 miles from Belgard quarry, where major concrete products and ready-mixed concrete plants are operated. (See location map.)" And there is a location map attached to the paper.

"Natural sand and gravel and is an essential requirement

for the manufacture of readymix concrete and high quality concrete products and Blessington is the best deposit in the greater Dublin region, having a particularly suitable grading and shape.

"The property has been surveyed and is estimated to contain 15 million tonnes of saleable material equivalent to 15 years' reserves at current extraction rate.

"The property will be bought without planning permission and application for same will be made as soon as possible after purchase.

"Strategic benefits: In addition to washed sand being a profitable product in its own right , controlling the only large working sand deposit in the Dublin area confers a strategic advantage, particularly in the ready-mixed concrete market, where it will enable RDL to compete effectively on quality and price.

"If this reserve is bought by one of the existing concrete or concrete product manufacturers or by a new entrant to the market, the RDL current market position and profitability would be seriously affected. It would provide an excellent entry point for a new competitor or expansion/profit improvement opportunity for an existing operator. Its value is enhanced by the fact that all of the basic raw materials are available on site to manufacture high-quality concrete and concrete products without incurring the cost of importing aggregates.

"The composition of the reserve allows very competitive

production costs as overburden levels are low and waste material quantities are small.

"Alternatives: A systematic search for suitable reserves within reach of Dublin city has been conducted and no suitable alternative has been identified.

"Financial evaluation: Historically, Dorans Pit has been a significant contractor to Roadstone (Dublin) Limited profits, and this purchase can extend its life by at least 15 years and generate a return on investment of" and the return of investment has been obscured because this, sir, is deemed to be sensitive commercial information that is irrelevant to the considerations you need to bear in mind in reaching any conclusions on the facts in this case. If they became relevant, then the Tribunal would introduce that material into the public domain, although Roadstone might obviously wish to contend that that shouldn't be done.

"Consideration for 1990 is forecast to reach blank million and the consideration in recent years has been as follows," and there is a table of the considerations from Dorans Pit to the Roadstone (Dublin) Limited profits over the years 1984 to 1990.

"A financial history is shown in Appendix 1, which is again not with the papers for the reasons I mentioned a moment ago.

"For the purpose of financial evaluation it has been assumed that the average contribution level achieved of the

last 7 years is representative of the returns that can be realised from the extraction of the new reserves commencing in ten years' time."

And, again, what you have on the next page is a table of usage volume in thousands of tonnes from 1984 to 1990, with the seven-year average in tonnage terms being 804,000 tonnes.

"The RDL board has recently decided to increase the amortisation rate for sand and to provide for future reinstatement costs. From 1991, these will cost an additional 1 pence per tonne, and this is representative of the level of amortisation and reinstatement provision required for this new reserve. Consequently, a contribution of blank pounds per tonne has been used in subsequent calculations."

"The purchase will generate an annual average return on investment of blank percent calculated as follows."

Then there is a figure giving the purchase cost plus expenses, which is estimated to be $\pounds 1.45$ million; interest at 10% per annum over the period 1990 to 2000, $\pounds 2.31$ million; projected plant written down value, $\pounds 2.97$ million; working capital, $\pounds 2.37$ million, giving a total for the year 2000, or by the year 2000, an accumulated giving a total for the year 2000 at $\pounds 5.1$ million.

"The projected annual contribution at 2001, the customer base for sand has been expanded significantly in recent

years by contributing supplies to major concrete and concrete products producers, therefore a projected annual volume of 1 million tonnes is assumed in 2001."

I don't think I need to go into some of the other technical matters, but this was the paper presented by Mr. Dempsey and Mr. MacAodha with the intention of persuading the Board of CRH to approve the purchase which they had been negotiating with the Department up to that date well, up to shortly before that date, and which, ultimately, led to the approval of the deal by the Board, something which was communicated to the Department I think sometime in late December of 1990.

The next document in Leaf 108 is the note of Mr. Fitzgerald's made on the 14th December, 1990, giving his account of his dealings with Mr. Johnston, and also of the steps taken prior to meeting Mr. Johnston with a view to working out a strategy for dealing with his meeting, and which also contained recommendations as to how his offer should be dealt with.

The next document in Tab 109 is Mr. Philip Carroll's note of the same meeting, which I have already referred to.

If you pass on to Tab 113, you'll find Mr. Carroll's letter to Mr. Hickey of the 14th December, which I have already referred to, seeking sanction to proceed with a sale to Roadstone.

The next document contained in Tab 114 is a reconstituted copy of Messrs. McGreevy's letter of the 17th December,

1990, to Mr. Robert Molloy, thanking him for his actions in making possible a meeting between their client and Mr. Carroll and Mr. Fitzgerald which had taken place on the 13th December, 1990. In that letter, they say, in the second paragraph, "Firstly, our client wishes to express his gratitude and appreciation for your actions in making possible a meeting between our client and a Mr. Carroll and a Mr. Fitzgerald which took place on Thursday afternoon last. As you will be aware, this enabled our client to make an offer to purchase the above-mentioned land. Our client informed us that he furnished the offer letter to Mr. Carroll and Mr. Fitzgerald, together with a bank draft representing a deposit in the sum of £80,000. Apparently, Mr. Fitzgerald stated at the meeting that the Department had received one other offer for the lands in question, and our client naturally presumes that the acceptance by Mr. Fitzgerald of his offer and deposit is indicative of the fact that our client's offer was indeed the larger.

"Our client is grateful for the opportunity afforded to him and acknowledges that the acceptance by your Department of his offer shows your commitment to healthy competition in private enterprise and minimises the risks of a monopoly in this particular industry.

"We look forward to receipt of formal contracts from your Department in early course."

The next document is a letter from Mr. Fitzgerald, Assistant Secretary, to Messrs McGreevy's, Solicitors, in

response to the letter of the 17th December. In the second paragraph, it says, "Your client is, of course, entitled to his presumptions, but mere receipt by me of his offer for the purpose of putting it before the minister at your client's request does not constitute 'acceptance' of his offer by the Minister or his Department or how it may compare with any other offer. The Minister is considering your client's offer as requested and has not yet made any decision.

"As regard the deposit, I noted that your client had tendered a banker's draft and told him it was not necessary at this stage and requested him on two occasions to take it back. He insisted that it should remain with his offer as 'the basis on which he does business'." These letters will obviously be of value in endeavouring to reconcile the different versions of the meeting which took place on the 13th December, 1990.

The next document is a CRH document contained in Tab 114, and it contains a certified extract from the minutes of a meeting of the acquisitions committee of the board of CRH held on the 18th December, 1990. It refers to the purchase of land at Blessington. "Mr. Barry," which is a reference to Mr. Tony Barry, then I think the Chief Executive, "introduced the proposal dated 13th December, 1990 (previously circulated), Mr. MacAodha highlighted key points. A general discussion took place covering, inter alia, the following:

" planning permission

competitive situation

downside risk.

"The proposal was unanimously approved."

The document I read into the record a moment ago containing

the paper from Mr. MacAodha is the document that is

apparently referred to as the proposal dated 13th December,

1990, previously circulated in the minutes.

The next document, Tab 115, is merely the confirmation from

Roadstone that the offer is unconditional.

The next document is a minute of Mr. Sean Fitzgerald to the

Minister, dated 19th December, 1990. It's contained in

Tab 117, addressed to the Secretary and the Minister.

Paragraph 1 says, "Roadstone have now made their offer

unconditional for the freehold of the lands. You have two

valid offers before you and it is necessary to make a

decision.

"A) Roadstone offer $\text{€}1.25$ million without planning

permission.

"B) Mr. Johnston's offer of $\text{€}2.8$ million without planning

permission or $\text{€}2.71$ million plus a further $\text{€}435,000$,

total $\text{€}1.115$ million subject to planning approval.

"The technical advice to us is that the value of the

property is less than $\text{€}2.8$ million without permission and

about $\text{€}1.3$ million with permission.

"It is recommended that the Roadstone offer be accepted.

The Chief State Solicitor's office are preparing

appropriate letters.

"3. Mr. Johnston stated at a meeting on the 13th December that his offer represented his 'best shot'. On the telephone to me on the 14th December, he did not change his position even though I left it open to him to do so saying that "if his offer was not the best that he would accept that position."

"You may also wish to see attached letter from McGreevy & Co. on behalf of Mr. Johnston, inferring that his offer had been 'accepted'.

"4. Your approval is sought for a decision."

And underneath that you have, "Recommendation at paragraph 2 above is approved," and then "R.M.", I think the initials of the Minister, Mr. Molloy, on the 20th December, 1990.

On the 20th December, 1990, Mr. Fitzgerald wrote to Messrs McGreevy's, and this document, or an office copy it was, is contained at Tab 121, in which Mr. Fitzgerald stated "Dear sir,

"I am instructed by the Minister for Energy to reply to yours of the 12inst. Subsequent receipt of your letter referred to I received by hand both of yours dated 10th idem as follows." He refers to the two offers.

"Your client's unconditional offer has been considered and was not successful. I return bank draft, value $i_{\frac{1}{2}}80,000$. I make no comment upon your conditional offer."

By letter of the 21st December, 1990, Messrs McGreevy's, Solicitors, took issue with Mr. Fitzgerald in response to

his of the 20th, stating, "We refer to the above and also to previous correspondence herein resting with your letter of the 20th inst. We have informed our client of the contents of your said letter and he has instructed us to write to you in the following terms.

"Our client is extremely surprised that his unconditional offer for the lands has been rejected. As you are aware, this offer was handed to you by our client at a meeting on the 13th inst. At that meeting, you informed our client that only one other offer for the lands had been received.

If our client's offer was not the larger of the two, we fail to see why it was accepted and forwarded to the Minister, as this would have been a futile exercise. It would appear, therefore, that his offer was the larger. If this is the case, our client finds it incredible that you now state that his unconditional offer is now unsuccessful.

On Friday the 14th instant, our client telephoned you and said that he would personally collect his bank draft that day if his offer was not accepted. Our client did not subsequently hear from you until your letter under reply bearing handwritten date of the 20th instant, and, quite naturally, assumed that his offer had been accepted.

"Regarding your statement that the matters raised in our letter of the 12th 'are not now and were not material', we must state that we take issue in the strongest possible terms" I think is what is contained in that part of the letter, "The matters raised were very material and

relevant. Our client had been informed on the morning of the 12th that the Minister had decided the previous afternoon to sell the property. This occurred despite the fact that the Department was aware that our client had arranged a meeting with the Department officials for the sole purpose of making an offer to purchase the lands." The rest of the letter, which I don't think I need to open at this stage, takes issue with the Department in relation to the circumstances contended for by Messrs McGreevey's on behalf of Mr. Johnston, that their client's offer was the highest. Its relevance at this stage is in the fact that it contains another account, a secondhand account of the meeting of the 13th December.

The next document contained in Tab 123 is the Department of Finance is a Department of Finance minute approving or giving sanction for the sale at $i\frac{1}{2}$ 1.25 million to Roadstone.

The next document in Tab 125 is a note of Mr. Philip Carroll's of the 8th January, 1981, for the Minister's information, and refers to the letter from McGreevey's of the 21st December, 1990, which is the letter from McGreevey's that I have just read out.

It says, "The letter was delivered by courier on Thursday evening, 3rd January, 1991, at 4pm. The letter was also faxed to the Minister's office on Christmas Eve.

"The undersigned met Mr. P. McMahon, principal solicitor, Chief State Solicitor's Office, on Friday, 4th January, to discuss the contents of the letter and the terms of a

reply. Mr. McMahon indicated that the faxed letter would not constitute a formal letter for reply, but merely advance notice of the contents of the letter actually delivered on the 3rd January. He doubted that McGreeveys had any real intent to pursue a legal remedy and essentially regarded their letter as 'bluster'. He agreed to draft a suitable reply which is herewith for signature for the Chief State Solicitor. This course is preferable when dealing with the implied threat of litigation.

"McGreevey's letter is based on two wrong assumptions.

They are:

"1) That agreement to bring his offer to the Minister's attention implied that it was best offer, and

"2) That his unconditional offer could only have been surpassed by a conditional offer and if so he should be allowed to improve the conditional offer he made.

"In both of these assumptions, he is incorrect. The

Roadstone unconditional offer was very substantially better

than either of Mr. Johnston's offers and was accepted by

the Minister as representing the best return to the

Exchequer. The fact that the offers were referred to the

Minister represents normal practice in property sales.

Moreover, in this case in particular, doubts had been

expressed in previous correspondence from Mr. Johnston

about his ability to rely on the Minister's staff and his

anxiety to furnish the offer direct to the Minister. In

any event, Mr. Fitzgerald's letter to Messrs McGreeveys

dated 17th January 1990 firmly rebuts the assumption at 1 above, which is simply being repeated in the letter under reply."

The remainder of this memorandum deals with contentious issues raised in the correspondence and suggests an approach which I don't think we need to open in detail at this stage.

The next document of the 8th January, 1990, contained in Tab 126, is another memorandum, again dealing with some of the issues addressed by Mr. Carroll in the last document, but which may throw light on the circumstances of the meeting on the 13th December. It's from Mr. Fitzgerald to the Minister and the Secretary. He refers to the papers, and in the second paragraph says, "Mr. Johnston, through his solicitors, once more misrepresenting facts in trying to create the illusion that his bid was accepted and therefore the highest. I took the offer without comment as advised by the Chief State Solicitor. As regards his bank draft, I made it clear that I did not require it 'at that stage' and offered it back to him. He declined to take it back." That is, presumably, a reference to the meeting of the 13th December. "When he phoned on Friday the 14th, he did not offer to collect the bank draft that day, as now alleged. Had he done so, I would have been relieved to give it to him. He did express concern about getting a decision urgently as the question of interest on the fund tied up in the bank draft arose, but my recollection is

that the matter ended there.

"I told him that I had already forwarded his offer to the Minister for his consideration. The Minister was out of the Department and the country until the 20th, when he took a decision which was immediately conveyed to Mr. Johnston's solicitor and the draft returned to them.

"Subject to legal advice, I suggest it would be better not to enter into any further detailed arguments. Draft reply now attached which Chief State Solicitor proposes to issue: It is in order."

There is two aspects of this memorandum which may be of interest. Firstly, it throws some light on the meeting of the 13th December, 1990, but also states that the Minister was out of the Department and the country until the 20th, when he took a decision which was immediately conveyed to Mr. Johnston. This may offer some explanation for the fact that the Minister's approval of the contents of the memorandum of the 14th November is not signified by his own initials, but by those of his Secretary.

If I could have that document on the overhead projector for a moment. There are various copies of it at various parts of the books. It's contained in 111 in this book. There will be no need to go to the previous book 112, sorry.

Sorry, 111, yes.

You will see that it's addressed to the Secretary and the Minister, and in Mr. Fitzgerald's hand. It says,

"Discussed with Secretary S.F.", and underneath that "Noted

by Minister," and those initials, apparently, are those of the Minister's Secretary, Seamus Molloy, dated the 14/12/90. So that while the Minister may have been out of the country, it would appear that he must have signified his approval in some way through his Secretary, whether by telephone or otherwise, on the 14th.

When Mr. Fitzgerald refers to the Minister taking a decision on the 20th, he may be referring to some further and more formal decision.

Most of the other documents, sir, may be well, most of them will be introduced in due course. Some of them are contained in the books for information purposes, including the proceedings of the Public Accounts Committee. There are also the reports of Mr. Lockwood of the firm of GVA Grimley, and a Mr. Behan, who has prepared certain maps dealing with one of the issues that may arise. It's not clear yet whether it will arise, concerning the extent to which alternative the extent to which other adjoining owners may have enjoyed some of the advantages enjoyed by Roadstone, specifically whether an adjoining sand and gravel operator enjoyed access to this potential site, and also access onto the public road similar to or not markedly dissimilar to that enjoyed by Roadstone. Of course, the question is not whether that access was, in fact, enjoyed by any such adjoining occupier, but whether the officials involved were aware of it or whether an examination of the site would have led them to become aware of it.

CHAIRMAN: So those are the documents.

MR. HEALY: Those are the main documents.

CHAIRMAN: Thanks, Mr. Healy.

MR. COUGHLAN: Mr. Fitzgerald.

SEAN FITZGERALD, PREVIOUSLY SWORN, WAS EXAMINED BY

MR. COUGHLAN AS FOLLOWS:

CHAIRMAN: Good afternoon, Mr. Fitzgerald. Thank you for coming back to the Tribunal. You are already, as you will recall, sworn, from previous unconnected business. Thank you.

Q. MR. COUGHLAN: Good afternoon, Mr. Fitzgerald. I wonder do you have your memorandum of proposed evidence with you?

A. Yes.

Q. You know the procedure, Mr. Fitzgerald; I'll take you through this first and then we'll refer to some of the documents and seek some clarification.

I think, in this memorandum, you have informed the Tribunal that you were appointed Assistant Secretary General in the Department of Finance in March 1979, and transferred to the newly-established Department of Energy, as it was then, in May of 1980; is that correct?

A. That's correct, sir.

Q. Mr. John Loughrey was the Secretary General of the Department of Energy, as it then was, and he asked you to assist the Department in the disposal of excess property, including the Glen Ding site?

A. Yes.

Q. I think he requested you, to the best of your recollection, orally, and that was in early July of 1990, shortly before the date of the documentation referred to at paragraph 3, that is the 7th August, 1990. To your recollection, it was that he was on leave from mid-July to mid-August and did not become actively involved until early September 1990. Your brief extended to dispose of the entire property portfolio and not exclusively to Glen Ding. Sometime later, you were given full responsibility for all the Forest Service activities, which continued until Forestry was transferred to the Department of Agriculture in January of 1993?

A. That is correct.

Q. I think your existing responsibilities were for managing the personnel and financial resources of the Department during a period of intensive financial and staff cutbacks and restructuring in the late eighties and early nineties, and it gave you an opportunity and incentive to quickly maximise cash from property sales and free up badly needed staff for non-core activity in the Forest Services division?

A. Yes. I should add to that, perhaps, I also dealt with planning issues, in the Department, and international relations, of which there was quite a wide remit, covering energy and nuclear matters.

Q. I think you have informed the Tribunal that Mr. Philip Carroll and Mr. John Gillespie of the Department met with

Mr. Martin MacAodha and Seamus Breathnach of Roadstone on the 1st August, 1990, and the subsequent minute of that minute prepared by Mr. Carroll dated 7th August, 1990, was forwarded to you and noted by you on the 5th September; is that correct?

A. I think that was my first involvement in this process.

Q. We'll come to that document just very briefly in due course.

You say that on the 4th October, 1990, Roadstone wrote to the Department confirming its offer of $\text{€}1.1$ million for the property, which offer was conditional upon the grant of planning permission. This offer was to consist of a $\text{€}700,000$ payment on closing and a further $\text{€}400,000$ to be paid on the successful grant of planning permission.

On the 18th October, 1990, you, along with Mr. John Gillespie and Mr. Philip Carroll, the late Mr. Thomas Smart of the Department, met with Mr. Kiaran O'Malley, a planning consultant hired by the Department, and Mr. John Barnett, who was subcontracted by O'Malley, to advise on the valuation of any mineral assets in the property. Mr. Smart recorded a minute of this meeting, which had been arranged by the Forest Service to seek further information and advice from the consultants following receipt of the Roadstone offer.

The minute of the meeting records that Mr. O'Malley stated that it would be difficult for the Department to obtain planning permission, and that was, in part, due to problems

of access to the site. Mr. O'Malley advised that Roadstone was the most likely to get planning permission because they were working in the area at the time and will probably seek planning permission to work the area on a phased basis.

Mr. O'Malley doubted if many would be interested in the site if the site was let out to public tender without planning permission.

According to the note, he went on to say that, apart from Roadstone, he could not see anyone bidding more than $\text{€}400,000$ for the area. He suggested that Roadstone might offer $\text{€}600,000$ for it. When Mr. O'Malley was told of the offer received from Roadstone, he strongly advised negotiating the sale of the reserve to that company because Roadstone had the optimum chance of getting planning permission. Furthermore, the property without the timber was valued at $\text{€}1.25$ million with planning permission, and if the Department was available to get that amount for it, lock, stock and barrel, without planning permission, the Department should take it.

Mr. O'Malley advised the Department to try to get Roadstone to drop the planning permission conditions. After some discussion, it was agreed that the Department should supply Roadstone with a figure of $\text{€}1.5$ million for the property, with a view that they would increase their then present offer to $\text{€}1.25$ million without any planning component.

The meeting of the 18th October, 1990 and you give reference to the document, and we'll come to that in due

course, Document 248 was crucial to all subsequent developments. As far as you can recollect, you asked for this meeting to be convened to get direct briefing from the consultants and then take stock of how to proceed; is that correct?

A. Yes.

Q. Your recollection of the general sense of the meeting was that "there was a consensus that Roadstone, having already made an offer at the upper end of the valuation estimate, could be tapped for more because of their unique locational and planning advantages and offered the best price prospect for all the interested parties. The others were not mentioned by name or in any detail at the meeting. You remember summing up at the end, saying that there was agreement that the Department should avoid involvement in planning, and the best course, at that stage, was to pursue Roadstone for a sale as it is, but we could not know their best offer until we went and talked to them."

You did not think it was in anybody's mind that other approaches would be rebuffed. You were also acutely aware from your involvement in personnel and budgeting functions that the Department had no resources to pursue a complicated and possibly futile planning application.

You have informed the Tribunal that, from the Department file, it appears that Mr. Carroll prepared a memorandum to Mr. Gillespie and Mr. Fitzgerald on the 25th October, 1990, based on the conclusions of the 18th October meeting. This

memo summarised the background to the proposed sale to Roadstone and sought approval for the adoption of a certain approach to the conclusion of negotiations therewith. This memo, in effect, sought the approval of the Minister for the rejection of any planning condition in connection with the sale with a view to securing a sale of the property at an eventual price of $\text{€}1.25$ million after the counter-offer of $\text{€}1.5$ million had already been made to Roadstone's conditional offer of $\text{€}1.1$ million.

You record a manuscript communication on the memorandum as follows: "I think the above terms are optimistic but are worthy trying to see if Roadstone's interest is that high."

You dated this note the 5th November, 1990. You were aware at the time you were not aware at the time of the parliamentary commitment to sell the Glen Ding site by way of public tender, nor of any written ministerial commitments to do likewise made by Mr. Michael Smith to Mr. Sean Walsh, TD, on the 8th October, 1987, or to Mr. Chris Flood, TD, on the 5th November, 1987. You also recall I beg your pardon I think you also recall that you had not known of the ministerial correspondence relating to the interest of Hudson Brothers at this time.

Had you known of these matters, you would have dealt with them appropriately in the submission.

The only explanation you have for the failure to draw this parliamentary commitment and the further ministerial commitments to the attention of the Minister, that this was

due to the sweeping changes in personnel that occurred in the Department arising from either the retirement, death or transfer of all the key people involved with the file at the time these commitments were made. However, you also state that there was no improper ethical or political influence brought to bear on the procedure followed and decisions taken.

You also state that a reconsideration of the recommendation to take account of the preceding factors would not have gone as far as recommending a public tender or auction as that would have not been, in your view, the best means of capturing the inherent value of the property and maximising the public benefit in the particular circumstances of this property.

On the 14th November, 1990, Mr. Robert Molloy recorded his approval of these recommendations.

You have informed the Tribunal

A. Sorry, Mr. Chairman, do you want me to comment on this or are you coming back to it later?

Q. I shall come back to it later. I am taking you through, as it were, your direct evidence. We'll come back to the documents, as well.

I should just clarify, for ease of everybody, ease of the public following this, the reason we are having this inquiry, I think, and you can readily understand, Mr. Fitzgerald, is this: that what appears to have happened here was that a usual procedure, either for

procurement or for the disposal of State assets, would be by way of tender or auction; tender would normally be the sort of thing. Here, there was the stated position that it would be by way of tender, stated in the Dail by a Minister and in subsequent correspondence; isn't that right?

A. Yes.

Q. I think, at the end of the day, we will find, when we come to discuss the value, that there is no great difference in relation to the value, and that reasonable value appears to have been obtained in relation to the property; that appears to be the position at the moment. But what does appear also to be the position is that the usual and stated procedure that it would be disposed of by way of tender was not followed here?

A. I am happy to discuss that at the appropriate time.

Q. I just want to identify the areas we are looking at and why we are looking at it.

A. Yes, okay.

Q. Now, the reason it's being looked at by this Tribunal is because of who got it; that was Roadstone, a subsidiary of CRH. Mr. Desmond Traynor was Chairman of CRH. He was carrying on private banking from CRH's Chairman's office and he was looking after the financial affairs of Mr. Charles Haughey. That is the reason we are looking at this particular transaction. I think you agree and understand; is that right?

A. I hope I'll be able to clarify the reasons why.

Q. And it seems to be the departure from the usual and stated procedure here?

A. But a departure that is provided for in the procedures that were in place in certain circumstances.

Q. Sorry, I'll come to that, but just the parameters, I am trying to

A. Yes, okay.

Q. to outline what we are looking at here.

Now, I think and we will discuss it. There can be departures. The reasons for the departures are matters we will discuss and I hope you can assist us in looking at.

A. All right, I am happy to proceed on that basis.

Q. I think you say that on the 5th December, 1990, you, together with Mr. Carroll and Mr. Smart from the Department, met with Mr. MacAodha and Mr. Donal Dempsey of Roadstone. Mr. Smart's minute of that meeting records that Roadstone made a revised offer of $\text{€}1.25$ million for the property which would not involve any planning permission conditions. Mr. Fitzgerald that's you agreed to submit Roadstone's revised offer to the Minister for approval.

You also told Roadstone that you would have to seek sanction for the sale from the Minister for Finance.

Mr. MacAodha said that this offer was subject to board approval. You indicated to Roadstone that the Department would be in touch with the company as soon as the Department's representatives had heard from their Minister.

I think you have informed the Tribunal that on the 7th December, 1990, Mr. MacAodha confirmed Roadstone's offer in writing to Mr. Carroll of 1.25 million for the property.

This offer was conditional on its approval by the Board of CRH plc, which was the parent company of Roadstone. You say that on the 11th December, 1990, Minister Robert Molloy signified to his officials his approval of the Roadstone offer, and you refer to a memo dated the 5th December, 1990.

You say that from April 1989, Mr. Brendan Johnston had been in frequent contact with the Department, pursuing his interest in purchasing the property. Mr. Johnston made direct contact with the Minister's office on the 12th December, 1990, complaining that he was precluded from bidding for the property as a result of the Minister's decision of the 11th December to sell to another party.

You were asked for a briefing to see the Minister. You later saw the Minister, and the Minister directed that Mr. Johnston was to be given an opportunity, with a time limit, to make an unconditional offer, and the Minister's approval of the Roadstone offer was put on hold. You are sure that the Minister's direction was conveyed to Mr. Johnston by either Mr. Carroll or Mr. Smart on your instructions. A meeting with Mr. Johnston for the morning of the 13th December was rescheduled for that afternoon with you for the purpose of receiving his bid. You say that it seems from the file that Mr. Johnston was clearly

told at early meetings that only an unconditional offer was acceptable to the Department.

You have informed the Tribunal, at paragraph 10, that you recall that on the evening of the 13th December, 1990, Mr. Carroll and yourself met with Mr. Johnston. A record of this meeting appears in Mr. Carroll's memo of the 14th December, 1990, and a separate memo of yours, also prepared on the 14th December, 1990. At this meeting, Mr. Johnston made two offers: the first contained in a letter dated 10th December, 1990, made an offer of £715,000 for the property, with a further £435,000 payable on the grant of planning permission, which made a total of £1.15 million.

You distinctly recall that the conditional offer made by Mr. Johnston at the meeting was very similar to the original conditional offer made by Roadstone.

The second, contained in a different letter but also dated 10th December, 1990, and again written by Messrs McGreevy, Solicitors, on behalf of Mr. Johnston, made an offer of £800,000 for the property without any planning permission condition. Mr. Johnston also attached a bank draft of £80,000 as a deposit with this offer. You recall telling Mr. Johnston that this offer was "way off the mark". You distinctly remember Mr. Johnston's flabbergasted reaction of shock and disbelief when told that his bid was not the highest "by a long shot," to use a sporting expression.

You also recall that he did not mention to Mr. Johnston exactly what offer Roadstone had made to date. At

Mr. Johnston's insistence, you undertook to put

Mr. Johnston's offer to the Minister for his decision
that's for the Minister's decision.

A. Yes.

Q. I think, at paragraph Number 11, you have informed the Tribunal that the Department's file contains a memorandum prepared by you dated 14th December, 1990. In that memorandum, you record that a meeting took place on the morning of the 13th December, 1990, between Mr. Carroll and you and Mr. Patrick McMahon of the Chief State Solicitor's Office to discuss the position of the Department with regard to Mr. Johnston.

You say that in his memorandum dated 14th December, 1990, you recommend the rejection by the Minister of Mr. Johnston's offer as falling far short of Roadstone's offer, but the Department should defer informing Mr. Johnston for a few days until formal board approval was received from Roadstone for its unconditional offer.

You also further recommended that if Roadstone could not secure formal board approval before the end of the following week, Mr. Johnston's offer should then be rejected.

You say that at the foot of your memo dated 14th December, 1990, you also appear to record that Mr. Johnston telephoned that morning inquiring about a decision.

On the 17th December, 1990, you wrote to Messrs. McGreevy, Solicitors, as follows:

"Dear Sirs,

"I refer to your letter of the 17th December to the Minister, a copy of which was given to me, and to paragraphs 4 and 5 in particular.

"Your client is, of course, entitled to his presumption, but mere receipt by me of his offer for the purpose of putting before the Minister at your client's request does not constitute acceptance of his offer by the Minister or his Department or how it may compare with any other offer.

The Minister is considering your client's offer as requested and he has not yet made any decision."

"As regards the deposit, I noted that your client had tendered a banker's draft and told him it was not necessary at this stage and requested him on two occasions to take it back. He insisted that it should remain with his offer as 'the basis on which he does business'.

"I hope this clarifies the situation.

"Yours sincerely,

"Sean Fitzgerald, Assistant Secretary."

And that concludes the letter.

I think you then say that, in a memo dated 19th December, 1990, and addressed to the Secretary General of the Department and the Minister, you outlined the two competing offers under consideration, and recommended Roadstone's offer. The memo reads as follows:

"Sale of site at Blessington.

"Roadstone has now made their offer unconditional for the

freehold of the lands. You have two valid offers before you, and it is necessary to make a decision:

Roadstone's offer: $\frac{1}{2}$ 1.25 million without planning permission;

B) Mr. Johnston's offer: $\frac{1}{2}$ 0.8 million without planning permission or $\frac{1}{2}$ 0.7.15 million plus a further $\frac{1}{2}$ 0.435 million.

Total: $\frac{1}{2}$ 1.115 million subject to planning permission.

"The technical advice to us is that the value of the property is less than $\frac{1}{2}$ 0.8 million without planning permission and about $\frac{1}{2}$ 1.3 million with permission.

"It is recommended that the Roadstone offer be accepted.

The Chief State Solicitor's Office are preparing appropriate letters. Mr. Johnston stated at a meeting on the 13th December that his offer represented his 'best shot'. On the telephone to me on the 14th December, he did not change his position, even though I left it open to him to do so, saying that if his offer was not the best, he would accept that position.

"You may also wish to see attached letter from Messrs. McGreevy & Co., on behalf of Mr. Johnston, inferring that his offer had been accepted. Your approval is sought for a decision at paragraph 2 above."

Signed, "Sean Fitzgerald".

On the 20th December, 1990, oral sanction was received from the Department of Finance, confirmed in writing on the 2nd January, 1991, and the Minister approved Roadstone's offer

on the Department's recommendation.

On the 20th December, 1990, you wrote to Mr. Martin MacAodha of Roadstone, accepting Roadstone's unconditional offer on behalf of Minister Robert Molloy.

I think that is the your memorandum, and we'll now look at some of the documents that you refer to and you can then deal with them.

I suppose the first thing to say, Mr. Fitzgerald, is you came into this particular transaction when it was down the line some way?

A. It was quite a long way down the line in that all the preliminary preparations had been completed in terms of securing advice on planning, securing a valuation for the property, consulting with the archaeological authorities in Duchas and settling what land was to be transferred to them and what was available for sale.

Q. And also, you were not involved in an earlier stage when various people had indicated that they might have an interest?

A. No, I had no direct involvement in forestry matters, except a global financial and personnel envelope.

Q. Yes. Now, as you say, you identify in the documents it's Tab 77, Book 75. This is your first briefing, I think; isn't that right?

A. Which documents?

Q. If you go to Tab 77, it's a report of a meeting which is copied to you it's Mr. Philip Carroll's note or

memorandum dated the 7th August, 1990.

A. I have it now, yes.

Q. That was your first involvement?

A. As far as I can reconstruct from the papers on the file, and my recollections. I think the fact that the note was copied to me indicates that I had been appointed to deal with the problem by that date.

Q. It's a reporting to you, effectively; isn't that right?

A. Yes.

Q. And what it's indicating to you is that Roadstone representatives had met with officials from the Department, and that Roadstone wanted to clarify certain issues before they took the matter up with their board; isn't that right?

A. Yes. They were on an information-gathering process at that stage.

Q. And those were the precise areas that was on the market, I suppose or would be available for sale

A. Yes.

Q. the value of the various trees, but the planning permission was a significant matter here, isn't that right?

That the note indicates that "The company indicated that they were considering submitting an offer subject to planning permission being granted. They sought the Department's view on this approach. The Department indicated, again, that any offers received at this stage be considered without prejudice to the Department's right to sell the property by public tender or auction. As regards

planning permission, the company was advised that an offer conditional on planning approval was unlikely to be acceptable to the Department because this would essentially involve the Department handing over a valuable asset to a third party to process such an application when the Department might pursue the same course itself and, if successful, hold a more valuable asset."

So, the debate was around this question of planning permission?

A. Yes, but I think a final position had not been arrived at.

Q. I understand that, I understand that, but I understand the point, Roadstone would have liked to have had planning permission or have it with planning permission, and the Department, quite correctly, were saying, why would we go down a certain road and then let you have the benefit of that?

A. Yes.

Q. But here, it seems to be an indication that you were dealing with Roadstone, notwithstanding that the Department's position was also being reserved in relation to the question of whether it would proceed by way of public tender or auction?

A. That is so. But I don't see that there was anything wrong with doing that.

Q. Mr. Fitzgerald, I am not suggesting

A. I think it was an information exchange.

Q. Yes. But I suppose, as this was the first occasion that

you had an involvement in that you were being briefed in relation to the matter, you were unaware of the commitment that had been made in response to a Parliamentary Question; isn't that right?

A. Totally unaware. I don't think I was aware very much about the background to this issue at all.

Q. And I presume you had many other responsibilities as well and this was something you had come into?

A. Yes.

Q. But the information which was available to anybody else who might have expressed an interest or who might have been interested in the property as of this time was that it would be disposed of, the property would be disposed of by way of tender; isn't that right?

A. That had caused the information that was conveyed to others, yes.

Q. That was what was in the public domain?

A. And it was also conveyed to Roadstone.

Q. Well, if we just look at this. That was being conveyed to Roadstone here, but also Roadstone were involved in a process of engagement with the Department on the basis that it might have proceeded at this stage by way of sale by private treaty to them; isn't that right? That seems to be what this indicates?

A. Well, I think Roadstone were in the process of seeking information, making it quite clear that they were very interested in acquiring the property and trying to see what

the Department's requirements might or mightn't be.

Q. All right. Now, if you go to the, I suppose, the next document, which seems to be it's another note from Mr. Carroll to you and it's at Tab 80, Mr. Fitzgerald.

A. Yes. This was in response to marginal notes I made on the document we have just looked at.

Q. Yes. And Mr. Carroll here is you made marginal notes on the first memorandum that we have discussed?

A. Yes.

Q. I see. I don't actually have those.

A. They are on another copy of it somewhere in the

Q. No, I accept that. Can you remember you were looking for, obviously, information in relation to it, that's all?

A. Yes.

Q. And this is a response. Mr. Carroll informs you of a few things: the ring fort, the timber valuation and then the latest position, "We expect Roadstone to make further contact shortly I would be reluctant to approach them because we gave the impression of other serious interest."

There is nothing wrong with that; you are involved in a commercial activity.

A. Yeah.

Q. "In fact, there was other interest but of doubtful value."

Again, you have to make your own judgement, so your officials have to make their own judgements about who they are dealing with, and they are trying to maximise the asset on behalf of the State, but

A. I think what I was primarily concerned with there was the timber valuation issue, as to whether that had been conveyed to Roadstone. It was information I didn't want conveyed to them at that stage.

Q. That it was calculated in 1989 to have a value of approximately $\frac{1}{2}$ 340,000.

A. There was no difficulty in conveying to them the areas that were afforested, the type of trees that were growing there, the ages of the trees, when they would expect to reach maturity, and so on, and I think, later, they were given the methodology that the forestry division used for valuing timber for its own purposes, but it was up to them to value it.

Q. Oh, yes

A. Of course, when deciding how much to offer.

Q. Yes, I understand. But it seems to be, or the view appears to be emerging, would you agree, from this particular note, that Roadstone were the one serious contender here?

A. There was a parallel process gone through with Mr. Johnston in that he was coming in and out of the Department looking for information, had meetings, correspondence, and so forth. Now, the other contenders did nothing since 1988. They were told the property was not for sale at that stage, which was the position, and they did not pursue the matter. Two of them might be contenders. A third one, I think a Mr. Kavanagh, was on a very small scale, and obviously, from the amount of land that he was looking for, could not

be considered a serious bidder for the property as a whole, and I would think could not be accommodated for buying part of the property which would probably undermine the value of the remainder.

Q. I suppose what I'm trying to, and what has given rise to all the controversy, I suppose, or much of the controversy surrounding this transaction, is this: Of course, people are entitled to make a judgement as to who they consider would be serious bidders in a major transaction like this; this was a substantial sum of money and a substantial property in 1990, isn't that right, that type of money was a lot of money in the Irish economy at that time?

A. Yes.

Q. Now, I suppose the view, obviously, was, and could justifiably be taken in the Department, that Roadstone were a substantial company; they were a subsidiary of CRH, this was one of the big companies of the Irish economy, and could well afford what was involved here. That would be a view that might possibly, and rightly, be taken in the Department?

A. Yes, the scale of their operations was big enough to justify a purchase of this size.

Q. Yes. Now, and a view, an assessment, could also be taken that other people who had or might have expressed an interest previously, would not be in the same category?

A. That is true. But I don't think there was a conscious decision to rule them out as not relevant.

Q. No, no, I am just trying to see how the thinking was evolving in the Department, I am just looking at this memorandum, how the thinking was evolving. Now, the others, as I might describe them, who had expressed an interest on previous occasions, however they had expressed that interest, had been informed that if the property was coming on the market, it would be sold by way of tender; isn't that right?

A. Yes.

Q. They were not in any position of engaging with the Department or being engaged by the Department?

A. They hadn't pursued the matter any further at that stage or subsequent to being told that it was not for sale, and if it was for sale, it would be by public tender.

Q. But here was a situation where there were two parties the Department did engage with, Roadstone was one and Mr. Johnston was the other; isn't that right?

A. Yes.

Q. And they were the only two parties that the Department engaged with?

A. That were actively engaged with.

Q. That were actively engaged with?

A. Yes.

Q. Do you know how that came about, or how that thinking came about in the Department, can you assist the Tribunal?

A. Well, I think the thinking in the Department at that stage was probably that this would eventually be put up to public

tender, at which case it would become public knowledge, and any interested party could seek information and then prepare a bid or a tender, and that's the way things would go. I think that, to be fair to the staff, that, I think, was their thinking at this particular point in time.

Q. You think, even at this time, the thinking was still tender?

A. Yes, I think so.

Q. All right.

A. I have no indication that

Q. That it was other than that?

A. That it was other than that.

Q. All right. And I take your point, if it went down that route, people could obtain the information, whatever tender documents were

A. Yes.

Q. Now, I think the next document I want you to look at is Tab 84. This is Mr. Smart's minute or note of the meeting of the representatives of the forestry service with Mr. Kieran O'Malley and Mr. John Barnett.

A. Could I just make one comment at this stage, Mr. Coughlan?

Q. Yes, please do.

A. I think there is an impression here that Mr. O'Malley made all the running at this meeting, and my recollection is that Mr. Barnett was quite involved also, and that there was to-ing and fro-ing between them. So I am not quite sure that all the statements in this minute, while the gist

of it I think is correct, emanated solely from

Mr. O'Malley.

Q. Yes, I think you are probably correct, you are probably correct. And they both agree and they will be giving evidence.

A. I think there was generally a round-table discussion with all of us participating from time to time.

Q. Yes, I think that seems we know generally what they're going to say when they come to give evidence, and I think that they would agree with you. But the gist of this note is correct, what's being discussed?

A. Yes.

Q. And if we just look on the planning permission.

"Mr. O'Malley said that while we had an important deposit in Blessington, the new planning legislation made it more difficult to obtain planning permission. There was an access problem to the site, and while there was no suggestion that Kildare or Wicklow County Council would not allow a way out, there was no way of finding out what An Bord Pleanála would do. From discussions he had with Kildare County Council, he got the impression that they would look favourably at the request.

"Landscaping was another matter which would have to be overcome. Mr. O'Malley envisaged objections by An Taisce in this case. However, the fact that part of the area was being given to the OPW would help. After some discussion it was agreed that it would be an advantage if Roadstone

planted the area already used by them. Mr. O'Malley advised that Roadstone were the most likely to get planning permission because they were working in the area at present and would probably seek planning permission to work the area on a phased basis."

Then Roadstone's residue, "Mr. O'Malley indicated that he had no idea what residue Roadstone had. However, there were now working pockets outside the main plant which would suggest that the residue was getting low. He estimated that, apart from the cost of travel, it would cost Roadstone about $\text{€}1$ million to relocate the plant elsewhere." Then they discussed the disposal of property, and I am just reading it you say the gist was right, but it emerged in the course of discussion.

"The question of how best to dispose of the property was then discussed. Mr. O'Malley doubted if many would be interested if it was let out to public tender without planning permission. Apart from Roadstone, he could not see anyone bidding more than $\text{€}400,000$ for the area.

Roadstone might offer $\text{€}600,000$. When told of the offer received from Roadstone, he strongly advised negotiating sale of the reserve to that company. Roadstone had the optimum chance of getting planning permission. The property, without the timber, was valued at $\text{€}1.25$ million with planning permission, and if we were able to get that amount for it, lock, stock and barrel, without planning permission, we should take it. The part of their offer

which depended on planning permission could be long drawn out, and he advised that we should try and get Roadstone to drop this component. Acceptance of this offer on a two-installments basis might be an incentive to the company. After some discussion, it was agreed that you would supply Roadstone with a figure of $\frac{1}{2}$ 1.5 million for the property, with a view that they would increase their present offer to $\frac{1}{2}$ 1.25 million without any planning component."

That was what emerged at the meeting, that type of

A. The gist of it, yes. I won't stand over all the figures as being accurate, but I presume Mr. Smart took notes at the time.

Q. Yes. Well, you would agree that $\frac{1}{2}$ 1.25 million, or thereabouts, was emerging as a kind of as a figure and a negotiating position for you of about $\frac{1}{2}$ 1.5 million as being an appropriate place to come in?

A. I think the gist of the meeting was that the property, for various reasons which I can go into, was worth substantially more to Roadstone because of advantages they had as the operators in adjoining property in terms of access, availability of plant, water and so on, and that they could make a better case for planning permission. They wouldn't have the disadvantages that a stand-alone operation would have in getting road access, in dealing with traffic issues, and so forth. Now, other issues such as the amenity and the visual appearance, and so forth,

would have been common to both Roadstone or anybody else.

Q. Would I be correct in thinking that from around the time of this meeting and the discussion that took place at this meeting, that the thinking in the Department swung around to the view that Roadstone were the ones who should be targeted.

A. Could I put this way I can only speak for myself that I had approached this with a totally open mind because I didn't know enough to form a position until that meeting. And here I was, and got the distinct impression that when I heard the planning problems and the access problems and all the rest, for a stand-alone operation, that what looked like a dead-cert valuable property, suddenly became quite dodgy, and if planning permission, for whatever reason, was not obtained, it had no value except its forestry value.

So I think that coloured my attitude. There was also a distinct difference between the position of Roadstone, for the reasons I have mentioned earlier, and anybody else, which is reflected in the relative values that might be expected. Now, I think my first priority, or main priority, was to optimise the value for the property.

Q. Of course, yes.

A. And that involved two things, I think. First of all was not taking the risk of a planning refusal, which would totally devalue it, which we would be in the go-it-alone camp if we looked for planning permission with the worst prospect, facing the worst prospect. And secondly, that I

could not ignore the higher potential value that or an advantageous position that Roadstone had, and I think it was my responsibility to devise a procedure, or to follow a procedure that would capture at least a substantial part of that. It was, I think, that thinking in my head, if you like, plus the consensus that emerged at the meeting from the experts, and all the rest, that this was, in fact, the case. Then it was, I think, an onus on the Department to look and modify its position, deviate from the normal public tendering process and see can we do a better deal in discussions with Roadstone. At that point, we had no idea whether we could or not, because, while they had tabled that offer, it was encouraging, but there was no indication as to whether they would go further, whether they'd drop their planning requirement and how far they might go, but I think it was worth exploring. There was no positive decision, if you like, that others were to be ruled out, nor was it ruled out that we might have to revert to a tendering process if we made no headway with Roadstone. So I think it was at that point, if you like, the position of the Department swung around. Now, I was unaware of the previous commitments and, therefore, did not take them into account in this. Had I been aware, of course, I would have to consider what would be done to deal with the situation, but I want to be fair to my predecessors in the job. When these commitments commitments, if you want to call them that, they weren't real commitments, they weren't legally

binding, they were taken at a very early stage in the process when it was not intended to sell the place at all and they were following the standard procedure that if the place was to be sold, it would be by public tender or public auction, and that was the norm. And out of 30 or 40 properties we had on hands at the time, I think that was the process that was used in every other one, and that was the one exception for very good reasons, and it was not intended as a favour to Roadstone; it was intended as a process to get more money out of them for the public purse.

Q. Yes, and I just want to explore that, if I can break it up bit by bit, and if I can try and summarise as I understand the situation.

Of course, a statement that the lands would be disposed of by public tender wasn't legally binding, but it had a very force for a civil servant, of course, a statement by a Minister in the Dail is a very serious matter; isn't that right?

A. Of course it is, and I accept that. Had I known about it, I would have dealt with it properly.

Q. Because the Minister would probably have had to make another statement, perhaps?

A. Yes, he would have to make another statement to the Dail or, at the very least, write to Deputy Hussey, who I think it was asked the question, and, in which case, it would have presumably been passed on to whatever interest she was looking at, or representing.

Q. Yes, but so that is of significance if you had known about it; it's something that you would have had to deal with?

A. Yes.

Q. Or advised your Minister?

A. I would have had to advise the Minister and probably make appropriate recommendations.

Q. If I could just follow on there. What you were looking at or what emerged as a result of this meeting or how your thinking evolved here was that you were new to it, you were listening to this, you felt that, for many reasons,

Roadstone's existing position in the adjacent site or the adjoining site, the greater likelihood, because of what they had there, that they would obtain planning permission easier than anyone else, or you?

A. Yes, that was the advice we were given by Mr. O'Malley.

Q. The fact that Roadstone had the pocket, or the pockets to fund this acquisition?

A. Yes, they had.

Q. And they had expressed what looked like a reasonable interest and were suggesting reasonable money on the basis of the information you were receiving?

A. Well, their opening bid, I think, was quite a reasonable bid in the circumstances. I think probably it brought this thing to a head much quicker than maybe the Department might have pursued or acted on otherwise, and that had to be dealt with. They had made a bid; what were we going

to do with it? And that was an aspect of it, also.

Q. Were you aware that there had been the Kavanagh bid?

A. Sorry?

Q. Were you aware that there had been an expression of interest or a Kavanagh bid of $\frac{1}{2}$ million?

A. No, I was not aware of the details of any other bid at the time, other than there was mention that there was some interest shown by others.

Q. Right.

A. But it hadn't been highlighted to me, whether it was serious or not, other than what's in Mr. Carroll's note. I think, in all honesty, Mr. Kavanagh's scale of operation and what he was looking for was far too small to accommodate in this case.

Q. Mr. Kavanagh and Treacy

A. Treacy's business, I gather from more recent documents I have seen, was of a substantial scale.

Q. It was a joint bid effectively, but you were unaware, anyway?

A. Yes.

Q. Do you know when, or if, you ever became aware of the Kavanagh small bid, or the Kavanagh/Treacy big bid?

A. I did not become aware of that until I saw the papers relating to that period quite recently.

Q. For this Tribunal?

A. Yes. Could I add one other point, I think, in terms of my thinking following this meeting and the information that I

then had?

Q. Yes.

A. To my mind, putting this property up for public auction would not have been a desirable course, where there was one bidder had a substantial advantage over anybody else, because the deciding factor at a public auction is not the buyer, it is the last person to drop out, and a marginal increase in that buys the property. And I think

Q. If we just go through that slowly. What you are indicating to the public is that, with all the difficulties that somebody other than Roadstone might have in relation to planning for the site, access and matters of that nature

A. Yes.

Q. that their financial interest would be so low that Roadstone might get in cheaper

A. Oh, Roadstone would get in for 10,000, more or less, and would buy the place very cheaply. A tender, I think, is

Q. So the alternative would be for you to take it off the market, but

A. What do we do with it then? We could take it off the market and Roadstone would come knocking on the door and say, 'right, we'll give you another 50,000 on a once-off, take it or leave it'.

Q. I understand an auction situation, and you could have exposed yourself. What about a tender?

A. A tendering situation would probably be better, but I think you would need a number of bidders who are in a similar

position, vis-a-vis the property, to have an effective tendering situation. Now, it may well be that Roadstone, in a tendering position, would put forward their best shot, or they might not. They might take a calculated gamble and say, okay, right, we don't have to go quite that far. The results are uncertain until you open the tenders. And there is no way of proving, one way or another, whether it is better or worse than the process we adopted.

Q. I suppose the third situation is that, of course, again, it would be a gamble, I suppose, from your point of view, was to just put it up and see if somebody else would go after it and then try and sell it on to Roadstone?

A. Well

Q. I am talking about in terms of maximising value for

A. Yeah, maximising value is there would be risks attached to it.

Q. I understand that, but that is another scenario?

A. The other risk, of course, is that once one follows that process, it becomes public knowledge, and I think given the situation that this property was in, all hell would break loose in terms of selling it at all.

Q. Oh, yes, I understand that, that you could have

A. Objections.

Q. other interests?

A. Other interests, yes. So that would have a negative effect on the value of the property as well.

Q. And you would come under political pressure

A. And there would be political pressure to withdraw.

Q. And these were all matters which

A. These were matters that went through my head at the time, I think, and still do. I'm not saying the process we followed was absolutely perfect in that, because my lack of knowledge of certain events; certainly, things should have been done that weren't, but, subject to that, I think the right idea was to target Roadstone for at least initial negotiations and see where we go, and if that did not yield a satisfactory result, then we could go back and reconsider a tendering process, in which case would be the next logical step.

Q. I think what we need just to deal with now, Mr. Fitzgerald, is the dealings with Mr. Johnston and the meeting of the 13th December.

A. Yes.

Q. Because I can understand your thinking in relation to as you have explained, your thinking in relation to and how it evolved that Roadstone were the ones that you considered the appropriate people to target, in the first instance, here.

A. If I could expand a bit on that?

Q. Yes, please do.

A. When we went to talk to Roadstone, I think there were two meetings with them. First of all, I think in going down this road, if you remember I set a target price of $\frac{1}{2}$ 1.25 million, which was 50 or 60% above the open value market

price that we were advised on, on the basis that to do this, we could only justify it as a departure from the normal procedure if we got a lot of money over and above what we might expect to get through the normal process, and this is the only way we would have convinced finance, of course, to approve of the process and to defend it afterwards.

The first meeting I had with Roadstone focused on getting them to consider a price without planning permission, and they volunteered to withdraw the planning requirement and leave the price at $\frac{1}{2}$ 1.1 million, which was a major step forward. Here, we were almost in the territory we wanted to be after one meeting, and I think that influenced the course of events; that I didn't see much point in looking around and canvassing others at that stage or having a public process if we were nearly there in terms of dealing with Roadstone. And in the next meeting on the 5th December, then it advanced to $\frac{1}{2}$ 1.25 million, and they made it clear that they were sticking at that point and I took the decision that we'd better hold the bird, now that we had it, rather than risk going sticking out for more.

We had reached the target we had set. I thought it was a pretty fair and reasonable price, given the risks of planning and given the advice we were given. So it was on that basis that I said to Roadstone that, okay, I would put the bid or the offer to the Minister and I would also have to seek the Minister for Finance's sanction for it.

Q. Now, just, because there has been controversy about the price as well, I just want to get back to value for a moment, and if I could ask you this: You undoubtedly had received advice from Mr. O'Malley and Mr. Barnett in relation to matters?

A. Yes.

Q. But had you taken any advice what I really want to ask you is: did you examine the question of any residual value in the property over and above the mineral value?

Mr. Barnett was an expert in minerals

A. Yes.

Q. and pricing, that sort of thing. Mr. O'Malley was an expert in planning. Did you take any advice from an estate agent, or anything of that nature?

A. No. I think it's a very specialised area of valuation, and Mr. Barnett was an expert in that area, and I think his valuation has stood the test scrutiny of time and this Tribunal, and he had put a very low residual value on the property after the minerals are extracted. You know, it really is in a mess, unless a lot of money is spent on reinstatement and putting top soil back and levelling the site, and so forth, which would probably exhaust most of the market value of the finished product. There wouldn't be a great deal left.

Q. I can understand your thinking, but I just want to, just to be clear; you didn't take advice from an estate agent, a chartered surveyor, or anything of that nature, in relation

to the residual value?

A. Well, most of it probably would have been suitable for forestry, which has very low land values. We were buying land at that time for maybe $\frac{1}{10}$ or $\frac{1}{15}$ an acre for forestry purposes, and that wasn't here nor there in terms of the totalling. If you want to break it down, I think of the total, $\frac{1}{2}$ 1.25 million, something like under $\frac{1}{2}$ 50,000 was attributed to the residual value of the land.

Q. Well, I have to I suppose I should ask you, it is close to a town, it's close to Blessington. Now, I know there is other land between it and Blessington?

A. Yes, there is.

Q. But in terms of developmental value, and I appreciate this was back in 1990 as well, but I just did you give consideration to that, as to whether you should put any value on it for that type of potential?

A. I think the question of developmental value did not arise. I think probably its only value would have been as a dump or a site for a dump. We have seen the controversy that has led to.

Q. Absolutely. So if we could get on then to Mr. Johnston and the dealings with Mr. Johnston. You had now found yourself in a position, having attended a meeting, they had dropped the question of the planning permission; they were prepared to go $\frac{1}{2}$ 1.1 million without it.

A. Yes.

Q. You held firm on your position, and they were now going to

probably come up, you felt

A. I felt, somewhere above that.

Q. And you didn't have a problem of planning permission, as far as you were concerned?

A. Yeah.

Q. Could you just tell us then about the position of Mr. Johnston?

A. I think the situation had changed dramatically as a result of that.

Q. Yes, I understand that. But Mr. Johnston made a complaint to the Minister, or the Minister's office, that he was being kept out of the process?

A. I think I want to put that in context. He did, because he was having, unfortunately, some difficulty in arranging a meeting at that particular time, but Mr. Johnston had been facilitated all along the line in terms of meetings, correspondence, site visits, and all of it. In fact, the day we did the deal with Roadstone, 5th December, he was inspecting the property up in Blessington.

Q. I see.

A. And he wanted to do that prior to completing a bid. Now, I wasn't aware of the difficulties he was having in meeting staff in or around the week leading up to the 12th December, or 12th, 13th December. Mr. Carroll was away, and Mr. Gillespie, I think, was away, as well, at that time, and I wasn't informed of Mr. Johnston's problems. He then approached the Minister's office, and it was at that

stage I became involved.

Q. Now, I think you know that Mr. Johnston has furnished us with a statement, or a memorandum of proposed evidence?

A. Yes.

Q. And he has informed us, and I presume he will give this evidence in due course, that, on the 13th December, he met you and Mr. Carroll of the Department. At the meeting, he recalls that he was informed by the Department officials that there was only one other buyer. He recalls that he was aware that Roadstone would be bound to be in as bidders, given their dependance on the location of the site.

A. He was informed, yes, that there was only one other bid in which we didn't mention names, but he presumed it was Roadstone.

Q. I suppose it mightn't be unreasonable for him to make that presumption?

A. No.

Q. He then recalls asking the Department officials what sort of money was being sought by the Department for the site, and it is his recollection that the Department's response to this question was an indication to him that this would be a matter for the parties bidding for the site?

A. I don't recollect any questions from him as to how much we were asking for.

Q. Would you have told him?

A. Possibly. If he had asked me after he had presented his

bids and we opened them and I knew how much he was bidding, I certainly could have told him at that stage that he was what I did tell him is that he was way off the mark, or something to that effect.

Q. If I just continue so you can comment on

A. Yes.

Q. He has informed us that he was never given an asking price at the meeting.

A. That is true. But could I put it

Q. If I just continue and then I'll put his position first and then forward you an opportunity then. He then said that he made two offers for the site, each of these offers was contained in a separate letter from Mr. McGreevy dated 10th December, the continual offer consisted of an up-front payment of $\text{€}715,000$ for the site with a further $\text{€}435,000$ being payable on the grant of planning permission, and an unconditional offer was also made of $\text{€}800,000$ and a draft for $\text{€}80,000$ was attached to the letter?

A. That's correct.

Q. You remember that. He then says that he telephoned you on the 14th December, asking whether a decision had been made in relation to his offer?

A. That's correct.

Q. Now, you think, or you have informed us that you believe you informed him at the meeting on the 13th December that his two offers, his conditional and unconditional offer were out of the ball park, or words to that effect?

A. Yes. Well, I think I would have told him we weren't interested in a conditional offer; conditional relating to planning. That was out of the out of court as well.

Q. And the unconditional?

A. The unconditional of 800,000 as against the one-and-a-quarter million that we had got from Roadstone, was way off the mark, to say the least.

Q. I appreciate that's a view you could have had, and, looking back on it now, I can understand how you could say that you had that view at the time and that I must have informed him, but do you believe that you did inform him at that time? The reason I ask you that is that if you informed him of that at the time, I just wonder why he would ring you on the 14th December, asking how his offer had been received; do you understand me?

A. I think when I told him that his offer was way off the mark, he was so taken aback, he didn't believe me, and he insisted, as was his right, that I take the offers and present them to the Minister, which I did. So he telephoned me on the 14th to see had the Minister made a decision. I told him he hadn't.

Q. My Friend, Mr. Healy, just asked me it's just coming up on the transcript, when you said his conditional offer was "out of court". What you meant was you weren't interested?

A. I wasn't interested in them.

Q. You didn't want them?

A. No. Certainly not when it was low substantially less

than what we already had.

Q. You wanted to unburden yourself of the planning problem, didn't you?

A. We did. We didn't want to be involved in planning. I had no staff to be involved in planning. It was going to be difficult and tedious, and subject to a lot of controversy and appeals.

Q. I am just wondering, could it have been on the 14th when Mr. Johnston rang you, as you accept that he did ring you

A. He did, yes.

Q. that it was on the 14th, the day after the meeting, that you told him that the money he was offering just you weren't interested in it?

A. No, I told him at the meeting on the 13th, and the phone conversation on the 14th was quite short.

Q. That's, I suppose that's the puzzling bit. If you had told me on the 13th, "Look, you are just not at the races here," why would I ring you the next day and inquire how did I get on? That's the puzzling bit.

A. I don't know why he rang me, but he had he did complain, if you like, that he had a cheque for $\frac{1}{2}$ 80,000 out there which was costing him. He insisted on leaving that with his offer. I had offered it back to him the previous day, and he didn't take it, or wouldn't take it, and that was about the extent of the conversation, as far as I can recollect or note at the time, and I do remember, insofar

as I can, that he said something to the effect, "Okay, I made my best shot," although he said that the previous day, and "If the Minister has a better offer, good luck to him."

Q. I am just wondering, you know, and again if I could just get you see, I again wonder whether your recollection relates to the 14th, because I think your own note of the meeting of the 13th doesn't record that you informed Mr. Johnston at that meeting that the money he was offering wasn't

A. Well, Mr. Carroll was at the meeting, and I would trust his recollection, probably, as well.

Q. He doesn't seem to have recorded that, either?

A. He didn't mention it in his note, but that's a very short summary note, and he mightn't have attached any great significance to it.

Q. I am just wondering why you believe that you said it to him at that meeting, rather than the next day when he rang up, is really what I'm

A. Well, when he presented the two envelopes, I think we agreed that they would be opened. I can't remember precisely how that came about, but certainly there was no objection from his part and there was no objection from my part in opening them, and they were opened. That's how I came to know how much he had bid. And it was at that stage that it was quite obvious to me that I, even though I had legal advice I was to take these bids without comment, I came to the conclusion, I can't let this man go away

thinking that he has a winning bid when he hasn't, by a long shot. So I felt under an obligation to tell him and let him know, and I still can remember the distinct reaction. So I must have told him at the meeting on the 13th. On the 14th, I spoke to him on the phone; I didn't see him.

Q. That's right. I suppose there are a number of letters then, correspondence and correspondence with Messrs McGreevey's and memoranda dealing with technical matters of offers and the amount, and none of them record your recollection of events on the 13th, insofar as it deals with informing Mr. Johnston that the type of money he was offering just wouldn't be acceptable?

A. Well, they were making allegations that I had accepted his offer, which was totally untrue.

Q. I suppose most lawyers would say that there is the perfect time to say not only did I not accept it, I told him that it wasn't acceptable. That was never said in any letter and it wasn't said in any of the memoranda at the time.

Anyway, I just want to leave it there for you for comment, if you wish?

A. That is my distinct recollection of what happened at the meeting on the 13th, and the phone call on the 14th was a simple inquiry as to whether the Minister had made a decision, and a complaint about the cost to him of delays in reaching a decision and the amount of money he had outstanding.

Q. Now, if it were to be suggested that by refusing to inform Mr. Johnston of your asking price, and by negotiating with Roadstone on the basis of an asking price, and I suppose anyone involved in negotiations would realise that the asking price would not necessarily be the finishing price, but that it might be somewhere close to it, but that put them in the position that you had conferred some sort of a commercial benefit on Roadstone over and above Mr. Johnston, how would you respond to that?

A. I wasn't interested in what benefit I might be conferring on either purchaser. I was totally neutral as to who bought the place; all I was interested in was the amount we were getting for it. I looked at Mr. Johnston's bid and, in my opinion, he had put in a very fair bid for somebody in his position; I think at the upper limit of what we were advised the place would be worth to an outsider other than Roadstone, and he showed no inclination whatsoever in discussing or looking for time or reconsidering his offer. He said it was his best shot. What was I to do then? He had made his bid, and if it wasn't anywhere within striking distance of the alternative bid, what was the point in wasting his time and my time in trying to take it any further? I would have been open to do so if he wanted to, but he didn't show any sign that he did and there is no request anywhere in the papers that he wanted more or to reconsider his bid.

Q. Would I be correct then in, I suppose, summarising your

position and your recollection of events as being like this: that you were charged with the disposal of certain State assets at a time when money was badly needed for the reduction of the national debt.

A. And for the vote for forestry, as well, which was squeezed to the bone, in common with most other public departments.

Q. I think Mr. Loughrey wanted to treat it in a different way for fear that it might cut across his budget for the following year, but that's neither here nor there.

Having taken advice, particularly the advice of Mr. O'Malley and Mr. Barnett, and in a discussion involving them and other officials from your Department who were handling this particular file, you came to the view that the best way of maximising value for the State was for you, in the first instance, to target Roadstone, bearing in mind their position, the likelihood that they had a better opportunity of obtaining planning permission, what they had on site, their deep pockets and what it might be worth to them?

A. That is broadly correct. But it was not to the exclusion of reverting to other processes if that was required.

Q. If that proved unsuccessful. But in the first instance, you wanted to target them; would that be right?

A. Yes.

Q. And the reason you did that was because you formed the view that that would probably be the best way to maximise value for the Exchequer?

A. Yes.

Q. Did you form that view without any political discussion or interference?

A. Yes. There was no political discussion, other than discussions on a couple of occasions with the Minister on foot of the various papers we sent up under my name or Mr. Carroll's name or the Secretary's. There was no other discussion outside of that. There was no pressure brought to bear on me to take any particular course in favour or disfavour of anybody.

Q. Let's be just clear; there was no pressure, suggestions?

A. Suggestions, no, there were none.

Q. Nudge, anything like that?

A. No, if there was anything irregular in that nature, I can assure you it would be well-documented.

Q. Well, I don't mean even irregular; it never even entered your mind that there was any interest or inclination on the part of any politician for you to do something in a particular way

A. No.

Q. in relation to this particular transaction?

A. If you are referring to Mr. Haughey, I have no reason to believe that he even knew about this transaction. It was within Mr. Molloy's competence to deal with it. He is, and was, a very independent-minded man and Minister, and I don't believe he would, for one minute, do anything untoward or irregular, either, and he certainly gave me no

impression whatsoever that he was under any pressure from any other quarter or had any approach made to him that was irregular or unauthorised or improper.

Q. Sorry, it's just something that's been brought to my attention here, and it's Mr. Carroll's statement. Perhaps I'll afford you an opportunity of commenting on it. This relates to the dealings with Mr. Johnston. I'll just read out what Mr. Carroll says in his statement.

"The Department's file contains a manuscript note dated 12th December, 1990, which was written by the then Minister for Energy, Mr. Robert Molloy, and which states as follows:

'Ask S Fitzgerald to discuss today, 12/12. Has letter issued to Roadstone?' That discussion led to an instruction from the Minister for officials to meet Mr. Johnston. Mr. Carroll recalls that he was uncomfortable with this instruction in circumstances where he believed that there had effectively been a commitment made to Roadstone. Furthermore, it was Mr. Carroll's belief that the Minister had agreed with the proposal to dispose of the property to Roadstone, although his ministerial consent had not been communicated to the proposed purchaser."

So I think what he was saying is that there was nothing binding, there may have been a moral obligation in his mind.

"The Department's file contained memorandum prepared by Mr. Fitzgerald and dated 14th December, 1990. In that

memorandum, Mr. Fitzgerald records that a meeting took place on the morning of the 13th December, 1990, between Mr. Carroll and Mr. Fitzgerald of the Department, and Mr. Patrick McMahon of the Chief State Solicitor's Office to discuss the position of the Department with regard to Mr. Johnston. Mr. McMahon stated that Mr. Johnston had no legal basis for the action threatened by his solicitor in his letter dated 12th December, 1990. Mr. Fitzgerald notes that Mr. McMahon recommended seeing Mr. Johnston and taking, without comment, an offer for consideration by the Minister."

That was the advice you were given and that was the note you made

A. That was Mr. Carroll's yes, I made

Q. These are notes that Mr. McMahon recommended seeing Mr. Johnston and taking, without comment, an offer for consideration by the Minister?

A. I don't know whether that part of that note is covered by privilege, or not, as being legal advice.

Q. Sorry, I am not talking about the legal aspect of the matter at all; I am talking about it's your own note?

A. My own note. We did go and see Mr. McMahon.

Q. Receive the offer without comment?

A. Yes, that was

Q. It's really bringing it back around to the question of your recollection that you did make a comment?

A. I did make a comment, despite that advice, if you like, to

the effect that the bid, when I saw the bid, was so far off the mark that I felt that Mr. Johnston ought to know, and that was the purpose of my remark.

Q. Thank you very much indeed, Mr. Fitzgerald.

CHAIRMAN: I'll just check, Mr. Fitzgerald, if some other practitioners may have a couple of questions. The usual practice, Mr. Regan, is that we'd leave you to the end, because, strictly, the witness is yours. So, Mr. Strahan, anything you wanted to raise?

MR. STRAHAN: I have no questions.

CHAIRMAN: And Ms. Leyden?

MS. LEYDEN: I have no questions.

CHAIRMAN: Very good, Mr. Regan.

MR. REGAN: I should say I will be a little bit more than five minutes.

CHAIRMAN: Well, having brought Mr. Fitzgerald up from Kerry, I think we have every intention of sitting on a while.

THE WITNESS WAS EXAMINED BY MR. REGAN AS FOLLOWS:

Q. MR. REGAN: Mr. Fitzgerald, just on the last point, picking up the last point. Assume, for a moment, you didn't tell and your consistent evidence is that you did tell Mr. Johnston at the meeting on the 12th, after opening the envelopes, that he was way off the mark, or whatever, to that effect. Is there any doubt that in relation to the that Mr. Johnston would have known the situation by your telephone call on the 14th, that his offer was way off the

mark?

A. I believe he was told at the meeting, and that he would have known that when he made the telephone call.

Q. And you reiterated that that is your evidence I understand, on the phone the following day?

A. Yes. I think I made a comment on another note, maybe a week later, to the effect that he had said that "if the Minister has a better offer, good luck to him."

Q. Now, because in Mr. Johnston's statement, his ultimate statement, at paragraph 28, Mr. Johnston maintains that, as far as he was concerned, he was totally it's on paragraph 25 the letter that was sent from Mr. McGreevey on his behalf, the second paragraph, part of that paragraph, "The letter asserted that the bid made by Mr. Johnston was presumed to be higher than the other bid referred to at the meeting on the basis the letter and cheque were accepted by Mr. Carroll."

Now, can you just comment on that presumption. Your view is that there could be no presumption in that it was you made a clear statement at that meeting and the subsequent phone call?

A. Yes. And I think I conveyed my views in a letter to McGreevys, in response to that, straightaway, that acceptance or receiving the offer, it was not to be construed as acceptance.

Q. And you were you are obviously fully aware of the legal significance of that.

Just on the start on the go to the general contention of Mr. Johnston, and I appreciate that you come into the process, as we have heard, quite late in the day, but you had a lot of dealings with Mr. Johnston. But he asserts that, as far as he was concerned, he was totally obstructed and never given a fair chance to purchase the land.

A. I don't believe that is true. I think he was facilitated all along the line in terms of information, meetings, encouragement, whatever you like. Things got a bit tight at the end because of the nonavailability of people at a point when he was in a position to make a bid, but I think he wanted to make a little bit of drama out of it, and that was part of the reason why he wasn't seen earlier, or he could have posted the bid in if he was unsure about it or dropped it in, or whatever, he could have used other means of making it known that he was about to bid.

Q. Now, we know

A. Sorry, if I could just add again; he was facilitated to the extent that the approval of the Minister on the 11th December of the Roadstone bid was put on hold to enable him to submit a bid, and I don't see how much further we could go to facilitate him than stopping the train and allowing him an opportunity to

Q. That's what I was coming to. If Mr. Johnston had a complaint up to the 12th December, at that point, given the outcome of his conversation with Mr. Carroll on that day on the phone. Through intermediaries there is contact with

the Minister. From that point on, to the extent that he didn't get an opportunity or didn't take the opportunity to lodge appeal for that point, do you believe that that was rectified by the direction from the Minister and your follow-through on that direction to meet Mr. Johnston?

A. Yes. Once he made his complaint to the Minister's office, I think immediate steps were taken to give him an opportunity to put in his bid, as I have said, to the extent of putting the Minister's decision on hold, and we met him the following day. There was no delay involved. He got a decision as soon as possible when the Roadstone's board approval was clarified, and he was let know immediately that he was not in a position he mightn't have great expectations of winning the process. I don't know what else we could have done in the circumstances.

Q. Now, there was a series of documentation and there was a letter there was a further memo to the Minister in relation to the situation and there was references Mr. Healy led the evidence this morning in the documentation there was a letter you wrote on the 17th December, and I should perhaps find that letter, where you indicated to Mr. Johnston that there was no decision made at that point, and it was suggested that perhaps that was inconsistent with the Minister having initialled, or someone initialling the memo that had been sent to him, I believe, on the 11th December, but you sent a further memo to the Minister on the 19th, and I just could you

clarify the sequence there? I think perhaps I should in the second part of that letter, just the last paragraph of the letter, you said, "I told him that I would place the offers before the Minister for his decision," etc., but it's the letter of the 17th December then that was sent out, and if you just go down you say there that the Minister second paragraph "The Minister is considering your client's offer as requested and has not yet made any decision." Now, was that the case?

A. That was the case. Could I go back, maybe, to the 11th December. The Minister did note a memorandum that originated with Mr. Carroll, I think, and approved it. Before any action could be taken to follow up on that and inform Roadstone, Mr. Johnston complained to the Minister's office on the following day, the 12th, and that led to my meeting the Minister and explaining to him that no action had been taken on the decision of the previous day, that Roadstone had not been informed, and he had directed me to facilitate Mr. Johnston and give him some time to make an offer, and I said that presumes that the approval of yesterday is not to be followed up or put into effect; in effect, it was put on hold, as I call it. So it had no effect.

Then, on the 13th, we met Mr. Johnston and received his offer, which I immediately transmitted to the Minister's office with another note

Q. And that was on the basis of that note that the final

decision was made?

A. No, because we were still awaiting the that memorandum, if you remember, was noted by the Minister, by his Private Secretary seen by the Minister or noted by the Minister and signed by his Private Secretary. That meant, in effect, the Minister was aware of it, had seen it, but it wasn't a decision, a formal decision.

Q. So when you wrote on the 17th December that the decision had not been made, that was correct?

A. That was the position, that he had, at that stage, an offer from Mr. Johnston, and we were still awaiting confirmation from Roadstone that their main board had approved their offer, which would make it totally unconditional, and that didn't occur until the 19th, I think, two days later, in which case, following that notification from Roadstone, I did another note to the Minister which he signed off on on the 20th by approving the Roadstone offer.

Q. Yes, so, in your view, there is no inconsistency between the letter

A. I don't believe that there is in the circumstances prevailing at the time.

Q. Can I just ask you about the issue of the guidelines on the the public procurement guidelines in relation to the disposal of State property. There is, at Tab 135 of the documentation, outline of Government contract procedures.

You are familiar with those?

A. Yes, I have seen them.

Q. And it has in the now, these are guidelines which are really related to the implementation of the EU Public Procurement Services Works Directive, etc.; is that correct? You are familiar with those?

A. Partly that, but also there were longstanding procedures dealing with Government contracts and purchases, and so forth, and it was an effort, I think, to consolidate and update those I think this is all explained in the preface to the document and take account of EU requirements as well.

Q. But the guidelines in relation to the disposal of property, am I right in understanding that it was, in principle, to be by competitive tendering, but there could be a deviation from that standard principle with the approval of the Department of Finance?

A. That is my understanding and that that is the basis on which we operated, where we felt that the negotiations with Roadstone had got us the result, or was likely to get us a result. I instructed Mr. Carroll, I think, or maybe he did it of his own volition, to inform Fianna Fail what was going on, and this was before, three weeks before the finance agreement, that that was the route that we proposed to go, and the reason for it, and there was no objection raised by Finance, other than to secure finance sanction for the final deal if we had reached that stage. So I think we fully complied with that requirement, in informing Finance in good time, getting their approval, and, finally,

they sanctioned the deal.

Now, there was another letter which issued from Finance later, from the Secretary General, Mr. Mullarkey, to the clerk of the Public Accounts Committee, in which he goes into some length on the reasons why Finance were quite happy with the arrangement and the outcome of it, and that we had complied with the procedure.

Q. And the view was that if you had the Department of Finance approval, that you were complying with the required guidelines, is that the situation?

A. That is a fact, I think.

Q. And in relation to the information given to Finance, because there is a memo of the 14th December, which is at Tab 112, and the position in relation to the different offers was provided, that is not only the Roadstone situation, but also the offer that had been given by Johnston Industries, isn't that so?

A. It's not on this version of it, but I am familiar with it, yes. Yes, that is the case. I think we explained the full facts to Finance at that stage.

Q. On which they approved the position?

A. And I just want to add, if you like, if Finance were not happy with it and they decided not to issue a sanction, then the agreement with Roadstone was dead in the water.

Q. So in terms of applying the private treaty procedure, did you consider that you were doing anything irregular or otherwise improper in the procedure you had adopted?

A. Not irregular in the improper sense of the word. Irregular in the sense that it wasn't the normal way to do business, but there were good reasons for justifying the approach that we adopted, and the result, I think, warranted the departure from the normal.

Q. Now, I think you have been asked about any possible hint of political interference, but no approaches were made to you.

I think you have confirmed to in the request that was put to you, you mentioned Mr. Haughey, etc., but there was no you have no evidence of any other official being approached that dealt with this file or by any political person or anybody acting on their behalf, that this should be done in a particular way?

A. No. I am totally satisfied that certainly nobody approached me in any fashion whatsoever, and I don't believe that they approached any of my staff either. If they had if I was if that was the case, I certainly would have left a trail of evidence to that effect.

Q. And are you satisfied that the documentation that has been made available is complete and that it reflects the documentation that you were familiar with at the time?

A. Yes.

Q. Just one other question. In relation to the price and the valuation of the property, you are happy that the valuation procedure and you were happy at that time that the valuation was carried out correctly and you are satisfied that you were working off the right base?

A. I read Mr. Barnett's report and asked him quite a few questions at the meeting on the 18th October. I was fully satisfied with the approach he had and I had no basis whatsoever for questioning his valuation. I would not be an expert, of course, in that area, but, nevertheless, I could see no inconsistencies in it, and I have been noted, if you like, for picking up, in other situations, something that doesn't hang together, which nobody else might have seen.

Q. Just to conclude: The Department, and you feel that you as a key player in this, got the position right in relation to the planning-permission issue and the risk of not getting planning?

A. Yes.

Q. And I think you have been proven right in the course

A. Well, with the benefit of hindsight, of course, it was a hundred percent right, but at the time we decided that this was a risk that we couldn't, or shouldn't undertake, partly because any failure there would end up in totally devaluing the property and partly because we felt that the purchasers were the best people to evaluate this risk and take it into account when determining what price they were prepared to bid.

Q. Now, you mentioned earlier, and I appreciate you didn't know about other offers, the ones that were discussed of Hudson and Treacy, etc., but you felt at all times that Roadstone were in a position to take on that risk of

planning, of going for planning, and, if they failed to get planning, the associated costs with that?

A. Roadstone had long experience, I think, in seeking planning permission for the vast number of pits they had in different parts of the country. They were quite well aware of the process. I am not sure whether they had a specialist or took advice from any other source or not, I don't know, but they were well equipped, probably the best equipped around, to deal with the planning issue. They could also do it in installments, look for because their existing pit was right up to the boundary of this property and just could be continued and they could look for 5 acres or 10 acres at a time. And from that basis, they had no problems of access, they had no traffic problems, other than what was there already, and I think if anybody could get planning permission, they should have been successful.

Q. So, on the basis of your thinking on the planning permission, the hiving off of the business risk of obtaining planning permission and the associated costs with that, obtaining the best price and your methodology of going about that, you feel that all of that was objectively based on your experience and reading of the files and the advice you had received?

A. Well, my reading of the file was limited to the more recent papers

Q. No, I am not talking about the more recent. At the time, in terms of the advice you got at the meeting from

Mr. Barnett, Mr. O'Malley?

A. They were firmly based, I think, on the advice that I had got and the risks that were associated with various courses of action and the suitability of various procedures for achieving a good result.

Q. And the other competitor for the site, of which you were involved, Mr. Johnston, you would say, or do you say, that he was treated in a fair way by you, once I am only asking you, asking the question in relation to the time that the Minister intervened you are happy that he got his opportunity to make his bid?

A. Yes.

Q. And as a restricted tender, essentially, from that point, it was a fair process?

A. He got his opportunity, he said he put his best foot forward. I thought it was an offer that was at the top of what would be reasonable from his perspective, given the advice we had, and the door was left open for him to improve on it if he wanted to. There was no indication from him that he was interested in pursuing that, and there the matter rested. He asked me to put the offer to the Minister. I complied. And the Minister took his decision based on the two offers he had.

Q. Very good. Thank you very much.

CHAIRMAN: Just two short matters, Mr. Fitzgerald. You responded to Mr. Regan that if the Department of Finance hadn't provided sanction to your arrangements with

Roadstone, then the deal was dead in the water?

A. Yes.

CHAIRMAN: When you wrote your letter of the 17th December to Mr. Johnston's solicitors indicating that, as we have heard, there was that factor, there was the sanction that was being sought by Roadstone from the CRH board and there were a number of imponderables, but when you wrote that letter indicating that the Minister was considering effectively a two-horse race, could it not, in truth, have been said that Mr. Johnston was dead in the water by that stage, as a question of factual

A. As a question of fact, yes, based on the price he had offered. But the reason it went to the Minister, I think, was because he insisted that this be done, and I saw no reason why not. I would probably have done it anyway, I am sure I would certainly have informed the Minister of the amount that we had offered and the circumstances in which it was done.

CHAIRMAN: The only other matter is perhaps a little hypothetical because of course, I accept, as you have stated, you came into the matter quite late in the day; you had a great deal on your plate, you weren't cognisant of the political background, but insofar as there was a Parliamentary Question and a response by the then Minister, it's correct, I think, that this wasn't just a bland statement for information; it was a question from a senior Fine Gael spokesperson, Ms. Hussey, and I think the form of

the question was perhaps a little bit loaded. It was to the effect that if the sand pit at Glen Ding or Deerpark, which belongs to the State, will be advertised for sale openly and bids accepted from all interested parties before any question arises of selling it off to the neighbouring concern; that obviously would refer to Roadstone.

I suppose the question I am asking you, and, of course, I accept you hadn't heard of all this background and it may have been a matter for the succeeding Minister's political office, as well as departmental advisers, but might it not have been flagged that this was potentially going to be a thorny process following that question, particularly in the context of a proximity to Roadstone that had been mentioned in the Oireachtas?

A. From reading the papers, and I can only go on that, I don't think it had any great influence one way or another on the way things evolved subsequently.

CHAIRMAN: You are emphatic in your evidence that it was a business proposition on behalf of the State?

A. I do accept that the system failed in not bringing this up at the time of the sale and flagging it to the Minister as part of the background to this, but it was done in different circumstances when there was no intention to sell the property at all, and I think the stock answer was that if we do sell it, we will follow the normal process of public tender process. And not much thought had been given to whether or not I think the basis wasn't there for

distinguishing this from the norm and taking a different course, which emerged later.

THE WITNESS WAS EXAMINED FURTHER BY MR. COUGHLAN AS FOLLOWS:

Q. MR. COUGHLAN: There is just one matter just arising, Mr. Fitzgerald. And if I might just ask you, first of all, the letter of the 17th December, 1990, addressed to Mr. Johnston, or to Mr. Johnston's solicitors, in the second paragraph, which states that "The Minister is considering your client's offer as requested and has not yet made any decision." You know that particular letter?

A. Yes.

Q. Now, I think in response to the Sole Member, you have indicated that, in reality, he was dead in the water at that time when that letter went out, Mr. Johnston was?

A. From the point of view of the price he was offering compared with the other price, yes.

Q. Well, I just ask you, if you would look at a minute of yours dated the 14th December, 1990, some of which has been edited it's 111, Book 76 and it's you are sending it up to Mr. Loughrey and the Minister?

A. Yes.

Q. And we'll just put it up. You say that "I saw Mr. Johnston yesterday evening, accompanied by Mr. Carroll.

Mr. Johnston tabled two offers as attached and a bank draft for $\frac{1}{2}$ 80,000. He refused to take back the bank draft. I told him I would place the offer before the Minister for

his decision. Mr. Johnston said he wanted to be able to put his offer on the table, he had made his 'best shot' and would like an early decision. If he is unsuccessful, he accepts the situation."

Then if you go down to the you set out, then, the unconditional offer, the conditional offer, Roadstone's position, and then the next page, the final page, it's paragraph number (vi), (vi), "I recommend rejection of Mr. Johnston's offer as falling far short of Roadstone's, but to defer informing him for a few days to give Roadstone an opportunity to clarify theirs. If Roadstone cannot secure formal board approval before the end of next week, Mr. Johnston's offer should then be rejected."

It was not that you were in a position of having you probably anticipated that Roadstone, or the Board, would approve of matters, but you did not have an unreasonable offer from Roadstone at this time when you were recommending rejection of Mr. Johnston's unconditional offer and advising that he should not be informed. That's on the question of fairness of treatment of Mr. Johnston, would you accept that?

A. Can I be clear about this? The term "conditional offer" or "unconditional" was used by us; if you like, it relates solely to a planning condition, as to whether there was a planning condition there or not. The Roadstone offer was always subject, from the 5th December on, I was told it needed their board approval, the same as I told them that I

needed my Minister's approval and the sanction of the Minister for Finance. So both the situation on both sides was conditional on that aspect of it, and that had not been clarified or reached on the day I wrote that minute, so, to that extent, a final decision couldn't be taken on the Roadstone offer because the offer only became live, shall we say, when the Roadstone board approved it.

Q. I just want to be fair to Mr. Johnston. Mr. Johnston made two offers; he made a conditional offer, and I am using 'conditional' as a term of art, as you have described it, to describe without or sorry, subject to planning permission?

A. Yeah.

Q. And he made an unconditional offer, as you have used the term, of an offer without the requirement of planning permission; isn't that right?

A. Yes.

Q. What you had from Roadstone at this stage was a conditional offer in its true legal sense of the word, that it was subject to the approval of the sanction of the board of Roadstone; isn't that correct?

A. That's correct, the Board of CRH.

Q. Well, Roadstone, in the first instance, and then I presume it went up the steps to the Board of CRH, yes, I understand that.

If I go just to the beginning of that particular memorandum, and maybe you can assist us as to the status of

something. We know that, as we have seen many documents when they are addressed to somebody's secretary, "Assistant Secretary," it looks Mr. Loughrey seems to have "1.

Secretary discussed with Secretary, Sean Fitzgerald," so there is an indication there Mr. Loughrey and yourself had some brief discussion about this?

A. We must have. I don't quite remember the context in which I discussed it with Mr. Loughrey.

Q. There mightn't have been much a discussion; it may have been just the memorandum

A. I would say it was probably okay

Q. And "Minister: Noted by Minister," then there is an initial, "14/12/90". We know the Minister was out of the country at this time. It looks

A. That was Mr. Molloy's Private Secretary, was also a Mr. Molloy.

Q. He was also a Mr. Molloy. It looks as if "Noted by Minister," that there must have been, perhaps, a telephone conversation with the Minister?

A. Either a telephone or a faxed communication between them.

Q. What's the status of "Noted by Minister"?

A. The Minister was aware of the contents of the document, but there is not a formal decision taken by him on foot of it.

Q. But it contained a strategy. Like, we have seen in the past, we have even seen matters, as you are aware, we are familiar with many documents where aide-memoires and memoranda go to Government and the Government notes a

position, sometimes; isn't that right?

A. Yes.

Q. It does have a status over and above just keeping them informed, isn't that right, or keeping a Minister informed?

A. It's an acknowledgment that they have been kept informed and that they are aware of the contents.

Q. And that they are not disagreeing with it?

A. And they are not disagreeing with, exactly.

Q. So I am just wondering why, if you had informed Mr. Johnston at the meeting of the 13th that he wasn't at the races, why you were informing the Minister or seeking or recommending to the Minister that he would defer informing him that his offer was rejected?

A. Quite clearly, in case the CRH board, as was their entitlement if they so decided, rejected the offer that they had made, in which case we had nothing else to go on except Mr. Johnston's offer. I wanted to keep it alive for a little while.

Q. I wonder could that be correct, Mr. Fitzgerald, and I hate to labour this point, but your recommendation continues that "If CRH don't come up with the goods, that Mr. Johnston's offer should then be rejected." Is there an embarrassment at the way Mr. Johnston was dealt with, Mr. Fitzgerald? An administrative embarrassment?

A. In what way?

Q. In that, from all of these documents, one could be driven to the view that perhaps he wasn't dealt with as fairly as

Roadstone were in relation to this transaction? One could be, would you agree?

A. I can tell you if he had come up with a higher price than Roadstone, he would have got the property. He might regret it now, but that would have been the decision at the time.

Q. I just want to specify

A. There was no question, sorry, of discriminating against Mr. Johnston or anybody else in favour of Roadstone.

Q. Could I put these matters for your consideration:

Mr. Johnston was not informed of your asking price; Roadstone were, isn't that right?

A. Roadstone were after they had made a bid and after they asked what was our asking price to facilitate negotiations.

Q. You said that he was informed at the meeting. He disagrees with you about that. And we have these documents to show, and what I suggested to you earlier on, you disagreed with me, but that by informing Roadstone of your asking price, you conferred, however it might be viewed, a commercial benefit on them as against Mr. Johnston?

A. A commercial benefit, in what way?

Q. They knew what they were bidding against. Mr. Johnston didn't; isn't that correct?

A. No, they did not know what they were bidding against because they were never informed of Mr. Johnston's bid or anybody else's.

Q. No, they were informed of your asking price, they knew what they had to bid against?

A. Mr. Johnston didn't ask, and I want to emphasise, until the cows come home, that Mr. Johnston never asked for an opening price or

Q. Okay, Mr. Fitzgerald. Thank you.

A. Had he done so, had he shown any inclination that he wanted to reconsider his bid and think again about it, see where he would go, it would be perfectly normal for him to ask, 'look, what are we looking for?' And he probably would have been told; I can think of no reason why he wouldn't. He tabled this offer of his own volition, and I may add that Roadstone did the same in their original bid, and it was only subsequent to that that the question of an asking price arose.

Q. Okay. Thank you very much, Mr. Fitzgerald.

CHAIRMAN: Thanks very much for your assistance and cooperation in the second visit you have had to make from Kerry, Mr. Fitzgerald. We won't be troubling you again, and thank you for your assistance. Tuesday, should I say half ten rather than eleven?

MR. COUGHLAN: Mr. Carroll has been asked to come at eleven.

CHAIRMAN: Well, we'll keep it at that. Very good. Thank you.

THE TRIBUNAL ADJOURNED UNTIL THE 2ND MAY, 2006.