



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

FINANCE AND PUBLIC ADMINISTRATION REFERENCES
COMMITTEE

Reference: Regional Partnerships Program

THURSDAY, 15 SEPTEMBER 2005

CANBERRA

BY AUTHORITY OF THE SENATE

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

To search the parliamentary database, go to:
<http://parlinfoweb.aph.gov.au>

SENATE

FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE

Thursday, 15 September 2005

Members: Senator Forshaw (*Chair*), Senator Watson (*Deputy Chair*), Senators Carol Brown, Fifield, Moore and Murray

Substitute members: Senator Barnett for Senator Watson, Senator O'Brien for Senator Moore, and Senator Johnston for Senator Fifield

Participating members: Senators Abetz, Bartlett, Bishop, Boswell, Brandis, Bob Brown, Carr, Chapman, Colbeck, Conroy, Coonan, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Fielding, Fierravanti-Wells, Fifield, Ludwig, Lundy, Sandy Macdonald, Mason, McGauran, McLucas, Milne, Moore, Murray, O'Brien, Parry, Payne, Robert Ray, Sherry, Siewert, Stephens, Trood, Watson and Webber

Senators in attendance: Senators Barnett, Carol Brown, Forshaw, Murray and O'Brien

Terms of reference for the inquiry:

To inquire into and report on:

- (1) The administration of the Regional Partnerships program and the Sustainable Regions program, with particular reference to the process by which projects are proposed, considered and approved for funding, including:
 - (a) decisions to fund or not to fund particular projects;
 - (b) the recommendations of area consultative committees;
 - (c) the recommendations of departmental officers and recommendations from any other sources including from other agencies or other levels of government;
 - (d) the nature and extent of the respective roles of the administering department, minister and parliamentary secretary, other ministers and parliamentary secretaries, other senators or members and their advisers and staff in the process of selection of successful applications;
 - (e) the criteria used to take the decision to fund projects;
 - (f) the transparency and accountability of the process and outcomes;
 - (g) the mechanism for authorising the funding of projects;
 - (h) the constitutionality, legality and propriety of any practices whereby any members of either House of Parliament are excluded from committees, boards or other bodies involved in the consideration of proposed projects, or coerced or threatened in an effort to prevent them from freely communicating with their constituents; and
 - (i) whether the operation of the program is consistent with the Auditor-General's 'Better Practice Guide for the Administration of Grants', and is subject to sufficient independent audit.
- (2) With respect to the future administration of similar programs, any safeguards or guidelines which might be put in place to ensure proper accountability for the expenditure of public money, particularly the appropriate arrangements for independent audit of the funding of projects.
- (3) Any related matters.

WITNESSES

CARMODY, Mr Joseph Thomas, Partner, Baker and McKenzie 1

KELLEY, Mr Matthew James, Director, Primary Energy..... 1

Committee met at 4.48 pm**CARMODY, Mr Joseph Thomas, Partner, Baker and McKenzie****KELLEY, Mr Matthew James, Director, Primary Energy**

CHAIR (Senator Forshaw)—I welcome witnesses to our final public hearing of what has been a fairly lengthy inquiry. As you are aware, the committee is inquiring into the administration of the Regional Partnerships program and the Sustainable Regions Program. I remind witnesses that all evidence given to the committee is protected by parliamentary privilege. This means that witnesses are given broad protection by the Senate from any action which disadvantages them on account of the evidence that they give. I also remind you that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. The committee prefers to conduct its hearing in public. However, if there are any matters which you wish to discuss with the committee in private, we will consider your request. I note that you would like to commence your opening statement in private. The committee has agreed to that course of action. I indicate that it is always possible for the committee to ultimately decide that evidence given in private be made public, but such a decision is preceded by advice being given to the witnesses.

Witnesses were then sworn or affirmed—

CHAIR—Do you have anything to add to the capacity in which you are appearing?

Mr Carmody—I appear before the committee as a witness, rather than as a legal adviser and counsel to Primary Energy.

CHAIR—I invite you to make your opening statements.

Evidence was then taken in camera but later resumed in public. The following excerpts of the in camera transcript are subsequently published with the agreement of the witnesses—

Committee met in camera at 4.52 pm

CHAIR (Senator Forshaw)—Who would like to commence?

Mr Kelley—I would like to apologise for probably letting the side down and not being here on previous occasions. I am spread very thin and I apologise. Thank you for the opportunity to present this evidence in camera. The secretary may have explained my reasons for doing so. I am very close to financial completion on this project and there are a number of commercially sensitive undertakings that are being completed at the moment. I have seen references to me as a farmer, which is correct, but I would like to briefly put my involvement in this project into perspective and then I would like to tell you where the project is up to.

CHAIR—Thank you. Do you have an idea of how long you might take?

Mr Kelley—Probably about five minutes.

CHAIR—That is fine.

Mr Kelley—Firstly, my background is as a farmer from the Liverpool Plains area. I am a civil and structural engineer. For 15 years I have been involved in civil and structural engineering and project management through my father's company of greenfield infrastructure projects. Major clients that I have had direct involvement with in my professional capacity over that time in either a civil or structural design or project management capacity include SOCOG, in our civil design work for the 2000 Olympic Games; NSW Racecourse Developments, on projects in Asia, Australia and India; Cargill, in civil and structural engineering in the grain handling side of their operations; Namoi Cotton; Auscott; Donovan Corporation—in central Asia and Uzbekistan—in project managing the civil and structural design of some of their cotton-ginning developments at Karshi and Termez and also in Australia; Collie Farms; GrainCorp; RMI Incorporated; North West Ginning; and Queensland Cotton. In the late nineties I was awarded an Australian Engineering Excellence Award by Engineers Australia in relation to the civil structural design project management of a \$25 million greenfield infrastructure development.

... ..

In closing—and we can talk about this should it be required: does the project make sense under current legislation and excise arrangements? We have here some modelling that we would like to show you that goes out to 2020, indicating the long-term sustainability of the operation.

... ..

On tradable emissions, I note the Labor Party have said that they would increase the MRET to five per cent and that they would ratify Kyoto. There would be a tremendous upside to this project, which we have audited, through being able to trade those emissions. Also, with the increase in the MRET, obviously we are generating renewable energy certificates through the generation of green power. As we know, a lot of renewable energy generation is stalling at the moment, as the RECs are becoming saturated and we are reaching two per cent of the mandatory renewable energy target. So obviously an increase in the MRET would aid in the value of the RECs to this project as well.

I will say one thing in closing—the timetable for this project. We have 12 to 18 months of build time, so that is why we are not producing ethanol now. We are aiming to financially close this project this year, which does not give us long, but it is possible and we are hoping to be in production by the first quarter of 2007. Thank you for the opportunity of giving my statement.

CHAIR—Thank you, Mr Kelley. Mr Carmody, do you wish to add some comments?

Mr Carmody—Yes, very briefly. I am not an employee of Primary Energy, but I have been an adviser to Primary Energy since August 2002. My involvement with the project has varied in that time. Sometimes it is quite intensive and hands-on; other times I may have no involvement whatsoever. I would describe my involvement as quite high at the time that Primary Energy made its application under the Namoi Valley structural adjustment package. I was not so much involved in the submission of the expression of interest in June 2003, but I did have a role in advising Matthew on the application that was submitted in June 2003. Primary Energy subsequently provided the Namoi Valley subcommittee with a range of feasibility studies,

business plans and drawings to support that application. I also jointly presented the strengths and merits of the project to the Namoi Valley subcommittee, which took place to the best of my knowledge in about August 2003 at the Gunnedah Shire Council chambers.

Something that appears to be lost in both the media scrutiny of the project and this committee, in reference to some of the *Hansard* that I have read of the progress of the committee, is that the application was for funding that was trying to take the project to financial close. I read various descriptions and discussion in relation to the funding application, and sometimes that fundamental principle is lost. In the first instance, the money sought by the project was \$1.5 million. I think the initial recommendation that came out of the ACC was for \$1.1 million. It was essentially to take a greenfield infrastructure project to financial close. This project has been project financed. To take any project that is being financed on a project finance basis to financial close is a challenging task, and for any piece of greenfield infrastructure in regional Australia where the capital cost is in the order of \$100 million it is a challenging task.

The moneys sought in the application were to try to relieve some of the cost burden from the applicant in meeting those costs to take the project to financial close. The project is not yet at that point, but it is fast approaching it. I am happy to address that in general discussions, but I have observed some confusion over what the purpose of the funding was and I just thought I would make that point clear at the outset. That concludes my opening statement.

CHAIR—Thank you. We are still in camera. Are there any questions anyone wishes to pursue in camera or are we ready to go back into the public hearing? One of the things that concerns us, gentlemen, is that questions may arise out of what we have been told in these opening statements that people might want to pursue in the public hearing, but we are not permitted at this stage to refer directly to what has been said here.

Senator O'BRIEN—I am not sure why the initial part of the evidence would be commercially sensitive. The statement that the project is close to financial close does not seem to be commercially sensitive. It is or it is not. Your history, Mr Kelley, the list of clients you have had, when you put in the 500-page feasibility, the evidence about the 2001 coalition biofuels project—

Mr Kelley—I agree.

... ..

Senator O'BRIEN—So that part is, but the other matters I recited are not?

Mr Kelley—The ones you mentioned, that is correct, but obviously the project information and so forth is sensitive.

Senator O'BRIEN—You are saying all of the other detail, production, intended areas for—

Mr Kelley—Absolutely. We are the only proponent with a proposal such as this and we see that as giving us an extremely competitive edge. A lot of those agreements we have in place that are nearing finalisation are extremely sensitive and confidential as well.

Senator O'BRIEN—Is your timetable in which to build the project sensitive?

Mr Kelley—No.

Senator O'BRIEN—And the timetable that you aim to meet to financially close?

Mr Carmody—No. I would not have thought so, because the timetable is just that.

Senator O'BRIEN—Can I suggest that subject to Mr Kelley and Mr Carmody looking at the *Hansard*—I am not sure that any of your evidence was sensitive—

Mr Carmody—No.

Senator O'BRIEN—we publish that part of the evidence that is not sensitive which at least gives part of your opening statement in public.

Mr Kelley—Yes.

CHAIR—We will endeavour to get the *Hansard* expedited and get a copy of that to you. We can take it from there.

Mr Kelley—Thank you.

Senator O'BRIEN—In other words, we can ask questions about that evidence, but you would be sensitive about the evidence about issues such as the finances, the equity partners, the debt to equity issues and the production intention and methods.

Mr Carmody—Design features, I think, would be something else that would be sensitive.

CHAIR—I think the important thing for all of us to remember is that it is not appropriate for questions to be asked which refer directly to the evidence in this hearing except those areas that you have clearly identified to which you would not have an objection. If questions are asked, the ability is always there for you to indicate your concern. I think we know how we are going to proceed.

... ..

Senator JOHNSTON—Thank you for that. Who was the applicant for the Regional Partnerships funding?

Mr Kelley—The applicant was Primary Energy Pty Ltd.

Senator JOHNSTON—And who are the beneficial owners of Primary Energy?

Mr Kelley—I am at this stage.

Senator JOHNSTON—There is one director and shareholder?

Mr Kelley—That is correct.

Senator JOHNSTON—What role does Primary Energy have in the project as equity? I take it that it is the operator.

... ..

Senator JOHNSTON—Is Primary Energy a joint venturer, a partner or what?

Mr Kelley—In the overall structure of this, Primary Energy will be an equity participant to that value in the project.

Senator JOHNSTON—We have a project. What will the project be called? You have given me percentages of equity. So what is the unit? Mr Carmody might be able to help us there. You can see where I am going; I am looking to hook up the two.

Mr Carmody—Primary Energy is currently wholly owned by Matthew Kelley. Over four years, Matthew has been developing this project. He has brought together a consortium of interested parties and advisers. Some of those parties seek to inject equity at the appropriate time where Matthew will sell down some of his interests in the company for capital.

Senator JOHNSTON—So Primary Energy Pty Ltd is the sole proprietor of the project?

Mr Carmody—That is correct at the present time.

Senator JOHNSTON—That is good. I take it that you advised the department and the ACC in your application that the applicant would grow and that the applicant would be the beneficiary of the project but the applicant would still be the ultimate equity entity in the project?

Mr Carmody—That is correct. It will not be the sole equity entity, but coming back to your original question about what is the application and what is Primary Energy it is certainly a project developer and it will be the operator of the plant. But, because of the capital requirements, both debt and equity, it is necessary to sell down some shareholding interests. The identity of those interests is what is confidential at the present time.

Senator JOHNSTON—Certainly. I do not want to know about that. But they will be under the umbrella of Primary Energy.

... ..

Senator JOHNSTON—Can you tell me the price per tonne for wheat that you anticipate? If it is commercially sensitive, don't worry.

Mr Kelley—No, I am happy to tell you that. As a farmer, our 12-year average price ex farm on the Liverpool Plains for feed grains is \$139 a tonne.

Senator JOHNSTON—For feed-quality grains?

Mr Kelley—For feed-quality grains such as sorghums and feed wheats—those lower protein and higher starch type grains. Our model value is a lot higher than that, because we are accumulating over 200,000 tonnes of grain. Given what has happened to some of the second-tier grain traders, of which we have been a victim in the past few years, we are doing these supply agreements with major accumulators that have got big balance sheets—the Cargills, the Graincorps. To get supply of that tonnage of grain, we have got a logistics and handling charge, we have got hedging and swap option fees with the NAB and we have got risk management prices built into that. I think our sorghum price is around that one, and I can find it shortly, about \$177, and the wheat portion of the plant would be about \$187. The wheat component is built into that price.

Senator JOHNSTON—So feed wheat is \$139. How many tonnes per annum of wheat do you think you are going to get?

Mr Kelley—It is approximately 240,000 tonnes per year.

... ..

Senator JOHNSTON—Excuse my ignorance, but when you are talking about ethanol do you talk in tonnes or litres?

Mr Kelley—Litres.

Senator JOHNSTON—How many litres per annum are you going to produce?

Mr Kelley—A start-up capacity of 80 million litres.

Senator JOHNSTON—Going to what?

Mr Kelley—Expandable to 120 million litres, and that is further expandable as well.

Senator JOHNSTON—Who did your modelling for you?

Mr Kelley—CIBC World Markets. In the early days, Babcock and Brown were jointly involved in doing that as well.

... ..

CHAIR—What does CIBC stand for again?

Mr Kelley—Canadian Imperial Bank of Commerce.

In camera evidence concluded at 5.26 pm

Evidence was then taken in public—

Senator O'BRIEN—Thank you for making yourselves available. I have a few questions for you which I think can be put on the public record. Let me know if there is a problem. As to your original application, isn't it true that you were required to lodge a detailed business plan when you applied for funds through the Namoi Valley Structural Adjustment Package?

Mr Kelley—Yes.

Senator O'BRIEN—What else were you required to provide as part of that application process?

Mr Kelley—A feasibility study and a business plan were supplied.

Senator O'BRIEN—Was that the 500-page feasibility study?

Mr Kelley—Yes.

Senator O'BRIEN—Did that include the business plan?

Mr Kelley—No, that was separate to the business plan.

Mr Carmody—The way the Namoi Valley Structural Adjustment Package worked was that applicants were invited to submit a very short expression of interest document, which was submitted. From that point, there was almost a collaborative role played between the officer of the Namoi Valley committee and the applicant to together work up the application form, which in this case is what took place. Section 8 on page 4 of the published application form of the Namoi Valley Structural Adjustment Package states:

The Project Officer will work with the applicants of projects that have Namoi Valley Advisory Committee support to develop EOI into formal applications. This is the purpose of this application form.

I understand, and Matthew can respond directly, that Matthew interacted with the relevant officer of the Namoi Valley Advisory Committee to do just that and that it was in consultation with the Namoi Valley Advisory Committee that the application was prepared and submitted and the supporting materials were lodged. I also understand that it was not a single lodgment process. If further information was required as the material that was lodged was considered, then there was an interaction process and further information could be sought. I am cautious in my response. Matthew can speak to that directly because he actually had those conversations. I think he even sat down with—

Mr Kelley—Alex McIntosh from the North West Area Consultative Committee. Basically, he took me through the expression of interest document. I am going on my memory here, but he probably spent an hour or so with me talking about that and the process.

Senator O'BRIEN—The original business plan—is there any reason the committee cannot see a copy of that?

Mr Kelley—I do not have a copy of it with me today, but I am certainly happy to provide it.

Senator O'BRIEN—Thank you very much.

Mr Kelley—I did have it with me when we met a couple of years ago.

Senator O'BRIEN—I do not remember in detail what you had with you but I remember you were enthusiastic.

Mr Carmody—It formed part of the papers that the department holds, I imagine.

Senator O'BRIEN—Yes. The department are not being very cooperative about what they assist this committee with, for their own reasons.

Mr Kelley—I am very happy to give you a current business plan if that can remain in confidence.

Senator O'BRIEN—The current one, or the one that you gave to the Namoi Valley?

Mr Kelley—I am very happy to give you both, because it has been modified and so forth as time has gone on.

Senator O'BRIEN—Okay—thank you for that. The guidelines for the Namoi Valley structural adjustment scheme say a number of things. Point 4 in the assessment criteria refers to 'provision of sufficient funds and other involvement by the applicant'. In February 2003, you were the only director, and you were and still are the only shareholder—it was a one dollar share.

Mr Kelley—Yes.

Senator O'BRIEN—I am making an assumption that the one dollar shareholding would not satisfy the test of sufficient funds et cetera. I am interested in what you brought forward in terms of financial backing in February 2003 that met that criterion. You nominated two partner organisations: Delta-T Corporation and Babcock and Brown. Babcock and Brown have told the *Australian Financial Review* that they were never equity partners and 'made no financial commitment'. Can you tell us what the basis was of your advice in the application that these two organisations had entered into a partnership with Primary Energy?

Mr Kelley—Firstly, Babcock and Brown were certainly privy to the application, and they approved the application before it went in. It was always their intention that they would put equity into this project at some time, and they had identified a fund that they would put this project into. I have sworn on the Bible that they approved that application, as did CIBC. They were happy with the wording in that application and, similarly, that same wording and description of Babcock and Brown's was used in the Invest Australia application. They were privy to the Invest Australia application, and they had at least two trips down here with the Invest Australia application.

Senator O'BRIEN—So what they told the *Financial Review* was not accurate?

Mr Kelley—Absolutely.

Mr Carmody—Could you state what was said to the *Financial Review*?

Senator O'BRIEN—I was presuming that Mr Kelley was intimately familiar with their comments. The passage reads:

Primary Energy's application certainly appeared to do this, listing among its investors investment bank and infrastructure financier Babcock & Brown as a "project co-developer and equity participant". But the AFR can reveal that Babcock & Brown says it was neither of those things. "That description of us is incorrect. In February 2003, we could only have been described as financial advisers," a spokesperson for Babcock & Brown says. "We were not an equity partner. We made financial commitment. And you could not describe us as a co-developer either, that usually implies you have money on the table, which we did not."

Mr Carmody—At that time, they did not have money on the table and at that time they were not an equity investor. But the context is that at that time there was a particular provision in the contract between Primary Energy and Babcock and Brown that said there would be no conflict of interest in Babcock and Brown providing a dual role to the project: one being that of an adviser and the other being that of a potential investor. That was inserted into the contract at their express request, because they wished to preserve their ability to become an equity investor, and certainly in the language and dialogue amongst the parties at that time was that that was the role they would play going forward. In relation to the question of the *Financial Review*—

Senator O'BRIEN—The *Financial Review* says Primary Energy's application certainly appeared to list among its investors investment bank and infrastructure financier Babcock and Brown as a 'project codeveloper and equity participant'. That is what the *Financial Review* said your application described them as. Do you disagree with that description?

Mr Kelley—Babcock and Brown approved that language being used in the application.

Senator O'BRIEN—But they said that at the time the application was made they were not that. That is why I am teasing this out. What you are saying appears to be in direct conflict with what they are quoted as saying in the *Financial Review*.

Mr Kelley—I am going to go back and see if we can find the emails where they sent the application back with their approved changes that were made and with that being approved.

Senator O'BRIEN—That would certainly be useful. I take it as correct to say they are no longer involved in any relationship with Primary Energy in any form?

Mr Kelley—Correct. There was—what would you say—an unpleasant parting of the ways. It was no reflection on Babcock and Brown but more of an individual issue, and I think that was reflected in the comments to the *Financial Review*.

Mr Carmody—It is a little like the situation we are currently in, in that up until the point of financial close, which we said in the earlier discussions we are fast approaching, the current equity investors that we have disclosed to you currently have not made any financial contribution as we speak today. Babcock and Brown were in that same position at the time the application was lodged. Those entities we have disclosed to you today have every intention of becoming equity investors, and at the time the application was lodged—

Senator O'BRIEN—Did they tell you that?

Mr Carmody—Babcock and Brown had the same view. So there are some subtleties in what was reported and what is accurate.

Senator O'BRIEN—I think the difference is that they are quoted as saying that the description of them in the application was incorrect and that they could only have been described as financial advisers. That is the difference—the terminology that is quoted in the *Financial Review* versus the terminology in the application. As you are here, it would be remiss of me not to put to you alternative views of the facts to allow you to deal with them. Where your application says something different to what someone says was the fact, I think it is more than appropriate that we put those questions. What about Delta-T specifically? Did they make any financial commitment?

Mr Kelley—There is some in-kind financial commitment from Delta-T, but once again they were happy with how they were presented in the application. Delta-T still remain very keen to take a small portion of equity, but that may not happen. It is yet to be decided as to whether it is appropriate to have the technology provider as an equity investor.

Mr Carmody—Regarding what was published in the application regarding Delta-T, it is my view that what was published was then and is now completely accurate, insofar as they are described as project codevelopers and equity participants.

Senator O'BRIEN—But it was not really the case for Babcock and Brown. Is that what you are saying?

Mr Carmody—It is as relevant to Delta-T as it was to Babcock and Brown. I am using Delta-T as an example. The point I am making is that they are referred to as project codeveloper. That language is used because they are a very important technology provider and they are working quite hard at the moment to codevelop the project. They are being paid for their services in doing so. They have also expressed the view that they wish to be an equity investor in the project. They have not yet made that investment, but that express view continues. I am just making the point that, as they are described in the application, which was made in June 2003—

Senator O'BRIEN—You can see why I would ask that question. The applicant is Primary Energy. Mr Kelley was then and is now the only shareholder.

Mr Carmody—Yes.

Senator O'BRIEN—So the project is a Primary Energy project and the equity would appear to be in the hands of Mr Kelley only.

Mr Carmody—Yes.

Senator MURRAY—At this time.

Senator O'BRIEN—And at the time of the application.

Senator MURRAY—So both at that time and at this time.

Mr Carmody—Correct.

Senator O'BRIEN—CIBC were referred to as project codevelopers and financial arrangers or advisers at that time.

Mr Carmody—Yes.

Senator O'BRIEN—The committee heard an account from the Department of Transport and Regional Services of funds paid to your company out of the \$1.2 million grant. Can you give us a reckoning on funds paid and the dates on which they were paid?

Mr Kelley—I have not got the—

Senator O'BRIEN—Let us just deal with the milestones that you were required to meet in order to access the funds.

Mr Kelley—I can give you approximate dates: September 2004, plus or minus; January of this year, I believe; and approximately March-April. I can come back to you with the information. The last milestone payment was received at the end of August or in early September 2005.

Senator O'BRIEN—The first milestone was simply for signing the agreement. The amount paid over, according to the information we have, was \$426,800.

Mr Kelley—I have a GST-exempt figure here. Sorry.

Senator O'BRIEN—So it is a lesser figure than that.

Mr Kelley—Yes. It is approximately \$388,000.

Senator O'BRIEN—That \$388,000 plus 10 per cent gets you up to \$426,800, by my very rough mathematical calculations. The second set of milestones included plant design and specifications. So in January 2005 there was a payment for plant design and specifications. Does that mean that the plant design and specifications have been completed?

Mr Kelley—The funding for plant design and specifications was broken down into three separate payments over three separate milestones. So they were gradual payments happening throughout that period.

Senator O'BRIEN—They were payments towards the work as it was being done.

Mr Kelley—Yes.

Senator O'BRIEN—So the three 2005 milestones were payments towards the plant design and specifications.

Mr Kelley—There was a 2004 milestone and two payments in 2005.

Senator O'BRIEN—So by April 2005 all the payments to do with plant design and specification had been made.

Mr Kelley—That is correct.

Senator O'BRIEN—Does that mean all of that work was completed?

Mr Kelley—All of the Delta-T work is completed. Additional design work is being done and funded outside of this grant.

Senator O'BRIEN—I think you have answered this question, but let me put it to you this way: I am taking from your answer that Delta-T have done the design work; they have not made a financial contribution to the project at this stage, but they have been paid, I take it, out of the Commonwealth grant for their work.

Mr Kelley—Yes, and I have paid some additional funds to them for additional work that we were looking at as well.

Senator MURRAY—One question I would add: any of these people who might become investors, have they effectively inputted in kind and that represents a contingent opportunity, if you like?

Mr Kelley—I would say no to that.

Senator MURRAY—So far all of the transactions are clean?

Mr Kelley—Yes.

Senator MURRAY—A service rendered is paid for at full cost?

Mr Kelley—Yes.

Mr Carmody—They will not get—they would have to buy in—

Mr Kelley—They would have to buy in, that is correct.

Senator O'BRIEN—Roughly, how much has been paid to Delta-T?

Mr Kelley—It is very close to \$400,000. I might add that in the very near future on—actually, there is something else I would like to say, but I would need to say it in camera with regard to that. It does step out of the funding agreement and it really adds a little bit more perspective to how things go from there with that design.

Senator O'BRIEN—Perhaps we will come back to anything you want to add for the continuity of the *Hansard*. Presumably Baker and McKenzie have been remunerated for their legal work. Roughly how much money has been paid for legal costs?

Mr Carmody—I can answer that because I looked yesterday; I can give you an exact number.

Mr Kelley—Out of the grant?

Mr Carmody—The senator's question was: how much have we been paid? In total, which is not within the four corners of the grant money, it is \$99,000 over the last three years. Part of that comes from the grant money, but much of it does not. Much of it is straight out of Primary Energy's pocket.

Senator O'BRIEN—I took it from your opening statement that you are not billing Mr Kelley for appearing here today.

Mr Carmody—That is incorrect; the clock is ticking.

Senator O'BRIEN—I thought you said you were appearing in a capacity—

Senator MURRAY—You said as a witness.

Mr Carmody—I am appearing as a witness.

Senator O'BRIEN—That is interesting.

Senator MURRAY—As a paid witness, but not by us.

Senator O'BRIEN—Who is doing the tax-structuring advice work?

Mr Kelley—We have not expended any funds on tax-structuring advice at this point in time. That is going to become apparent very shortly. The reason we have not done that is that, with the equity structure as such, there would probably be some specific direction given by those two major players in the project.

Senator O'BRIEN—Have you paid money for third party consulting engineering?

Mr Kelley—There is a small amount that has been paid to third party engineering.

Senator O'BRIEN—What other costs have been incurred to date?

Mr Kelley—There were significant costs incurred with the CSIRO. We have mentioned legal fees; we have mentioned secretarial equity debt, presentation of promotional material. Obviously we have got project management costs and travelling costs for a team of people. Unfortunately, I have to pay for all technology partners' travel when they come to Australia. It is similar with the Danish technology providers and similar with our team as well; there are significant costs there that we have to defray.

Senator O'BRIEN—Would it be possible for you to give us a breakdown of the costs that you have incurred? I know that you may not want to reveal some of the people you paid it to.

Mr Kelley—I certainly can. And we have gone the extra step and we have had each milestone payment externally audited in accordance with the agreement. I am very happy to provide that.

Senator MURRAY—Who is the auditor?

Mr Kelley—It is a German name. It sounds like 'Barton Bahn Aanholt', but do not quote me on that.

CHAIR—Can you find that out and confirm it for us?

Mr Kelley—Absolutely.

CHAIR—Then we could correct the *Hansard* record or have it added to it.

Senator O'BRIEN—Apart from the Commonwealth's funds and perhaps other moneys that you have referred to in camera, can you identify contributions to date to this project by the applicant company or others?

Mr Kelley—I can get you that information as well.

Senator O'BRIEN—The company extract for Primary Energy that I have is dated 15 August 2005. Have you changed your company profile or lodged any documents since then?

Mr Kelley—Since when?

Senator O'BRIEN—15 August 2005.

Mr Kelley—No, I do not believe so.

Senator O'BRIEN—In the ASIC documents received, there is a reference to a document under requisition. It then states, 'Annual return proprietary company'. I am advised that that reference is to an annual return for the financial year 2002-03 from Primary Energy that was rejected by ASIC as inadequate. Can you tell me why that was?

Mr Kelley—I have absolutely no idea. I would have to ring our accountant and ask. I am not aware of any abnormalities.

Senator O'BRIEN—I am happy to show you the document that I have from my searches.

Mr Kelley—Could you repeat that?

Senator O'BRIEN—This is part of the historical extract. It is dated 03/02/2003 and there is a doc. image no; it then says '**DOCUMENT UNDER REQUISITION**' and on the next line it

says ‘Annual return proprietary company AR 2002’. It does not say that it means it was rejected, but that is the advice I have been given by the Parliamentary Library.

Mr Kelley—I am happy to find out and to come back to you on that.

Mr Carmody—Are you asking for a copy of that document or an explanation of why it was rejected?

Senator O’BRIEN—I am asking for an explanation as to why it was rejected. If there is another explanation, you could let us know what it is. Since May 2002, how many annual returns has Primary Energy, or whoever does the lodging for Primary Energy, or you, Mr Kelley, lodged with ASIC?

Mr Kelley—I believe it is up to date. I know the one for 2004-05 is complete. Whether or not it has been lodged, I would have to come back to you on that.

Senator O’BRIEN—Are you are obliged to report annually?

Mr Kelley—Yes.

Senator O’BRIEN—Going back to your application in 2003, you list your referees and it is an impressive list. Again, according to the *Australian Financial Review* story on 30 August, all was not as it seems. Rather than rely on the AFR, I will ask you directly: did you contact each of the listed referees and, in each case, did they give you permission to use their names in your grant application?

Mr Kelley—No, I did not contact them.

Senator O’BRIEN—Let me ask you about individuals. Did you ask Mr Cox from the Prime Minister’s office?

Mr Kelley—No, I did not ask him. I did not ask any of those people.

Senator O’BRIEN—Did you have any dealings with anyone from the Prime Minister’s office?

Mr Kelley—Yes, Brett Cox. We travelled specifically to Canberra to give him an in-depth briefing on the project.

Senator O’BRIEN—Anybody else?

Mr Kelley—On a separate occasion, while we were involved in the ethanol working group at that time, of which Russell Higgins was the chair, Babcock and Brown, CIBC and I came down to basically go through our business plan with Russell and show him the modelling. At that stage they were obviously interested in the excise implications and so forth. He had a very good understanding of that side of the project. Similarly, we made a trip, and Josh was with me, to go through the project with Minister Kemp and his adviser. I am not sure what the date was, but I could find out.

Senator O'BRIEN—You have had a fair bit to do with the member for Gwydir, Mr Anderson, and his former chief of staff, Mr Langhorne.

Mr Kelley—We had more to do with John Anderson, being in his regional base.

Senator O'BRIEN—Did you know Mr Langhorne?

Mr Kelley—I met Mr Langhorne only in the last couple of years—in the same way that I met you down here—when talking about the project and lobbying for a viable excise regime.

Senator O'BRIEN—Did Primary Energy lodge any regional grant funding application other than the Namoi application?

Mr Kelley—No.

Senator O'BRIEN—The department has told us that there was only one application—the original application—but that additional information was sought in late July 2004 by the department from Primary Energy. What was the additional information that was provided?

Mr Kelley—We would have to discuss that amongst ourselves and probably come back to you.

Senator O'BRIEN—If you could, I would appreciate your taking that on notice.

Mr Kelley—Just so I am clear on that, it was that we provided further information?

Senator O'BRIEN—The department tell us that they asked for further information. I presume they sent you an email or a letter—I presume they did not ring you up, but tell us if that was how that information was sought.

Mr Kelley—In late July 2004?

Senator O'BRIEN—Yes. Can you also tell us whether you supplied that information to the department or to Mr Anderson's office. During the process of submitting your original application, did you supply a business plan, a balance sheet, profit and loss statements, and financial statements for the company?

Mr Kelley—I do not believe so.

CHAIR—I am sorry to break in, but the application was lodged in June 2003, wasn't it?

Mr Kelley—Yes.

CHAIR—And it seems to have been somewhat revived, or further information was requested, in late July 2004, which Senator O'Brien has asked you about. I am not sure whether this has been covered, but what happened in that period in between, particularly in regard to your contact with the department?

Senator O'BRIEN—The Namoi application was suspended in, I think, June 2003. It was carried over into Regional Partnerships. The application stayed with the department. I am not sure what happened in the interim. Can you tell us what happened in the interim?

CHAIR—Senator O'Brien has reminded me of the change in the nature of the program. Was that the reason for there being no progress with the application or was there some other reason?

Mr Carmody—From the applicant's perspective, it is a bit of an unknown. The application was submitted and there was an inordinate amount of delay. We subsequently learnt that there was this rolling over of the Namoi Valley package into a successor funding arrangement. From the applicant's perspective, to some extent it is a mystery of the machinery of government and what is going on there, so there is not a lot we could add.

CHAIR—That prompted my question. I thought you might have been able to enlighten us on the mystery.

Mr Carmody—However, as an aside, I am aware that there were issues between the New South Wales and Commonwealth governments in dealing with structural adjustment in that valley. There was a lot of to-ing and fro-ing in relation to the participation of New South Wales in the National Water Initiative: the water-sharing plan regime in that valley, where there were significant cutbacks of water allocations, and New South Wales's participation and then nonparticipation in the NWI may have impacted on what took place.

CHAIR—But that is supposition; you do not have a specific memory?

Mr Carmody—No, it is an observation of a member of the public more than anything else. There is no special knowledge.

Senator O'BRIEN—The department has given us a document that says this project was approved under the SONA procedures. When did you become aware that your project was ineligible under Regional Partnerships and that it would need to be approved under the SONA procedures?

Mr Kelley—To be honest, I do not think I ever became aware of that. As you said, there is a big period of time in there. I was not even sure until you mentioned it then that the Namoi structural package was folded into Regional Partnerships.

Mr Carmody—This is the first time I have been made aware that it was rejected under Regional Partnerships. The application was for Namoi Valley and no communication stating that it was folding into a subsequent successor funding, or its success under that funding, was ever transmitted. I had never heard of SONA until this committee was formed and then the expression seemed to arise.

CHAIR—You are not Robinson Crusoe when it comes to not having heard about SONA. It was very hard to fathom.

Mr Carmody—The point I wish to make is that the application was under the Namoi Valley package and what then took place within government—

CHAIR—Was mysterious!

Mr Carmody—very mysterious. It was not something that was ever communicated like a piece of baggage where you can tell where it is tracking through the system. There was not a ticket that could be quoted whereby you would then get some sort of assessment of: ‘This is where you are at in the system.’

Senator O’BRIEN—We have had various baggage tickets on this process and revised lists of dates, times, places and approvals, so I am not surprised. Were you made aware that the department was not supportive of your application?

Mr Carmody—I was not aware.

Mr Kelley—Certainly not.

Senator O’BRIEN—Were you made aware that Mr Langhorne had stepped in to fix a problem within the department?

Mr Kelley—No. The only thing I would say is that there is, as I said, a big black hole there. After we presented to the committee, I had a phone call from the department—and I know you are going to ask me who from and I do not remember—saying that the project was well supported, and that it would go on to the next stage. That is about the only liaison we had with the department.

Senator O’BRIEN—What contact did you have with Senator Ian Campbell regarding the project?

Mr Kelley—None.

Senator O’BRIEN—I take it then that you never asked him to seek to advance the project on your behalf?

Mr Kelley—No.

Senator O’BRIEN—What contact did you have with Mr Anderson or with his office, with Mr Langhorne, in the lead-up to the approval of the application?

Mr Kelley—We have had several meetings with John Anderson over this project from its inception, with their financial advisers and others, particularly around that excise time but, quite honestly, I do not believe we discussed this. When I was overseas I had a phone call from Peter Langhorne—it was midnight at Williamsburg in Virginia, where Delta-T are based—and at that stage I think it was more reaffirming how we would expend that funding to financial close. I think that was in early July.

Senator O’BRIEN—When did you become aware that you had the funding?

Mr Kelley—I knew that would be your next question. I think I had a phone call from someone within the department; his name would be in an email at home.

Senator O'BRIEN—It wasn't Mr Langhorne?

Mr Kelley—No.

Senator O'BRIEN—If you could supply us with that detail I would appreciate it.

Mr Kelley—Yes.

Senator O'BRIEN—Person, date and time—although the time might not be available; but if it is an email you will have the time.

Mr Kelley—It was a phone call from the department, but I am sure I have got a follow-up email on that.

Senator O'BRIEN—I want to ask some questions about the CSIRO study. Are you able to give a copy of that to the committee?

Mr Kelley—I am happy to give a copy to the committee. I know I have given it to other interested people here, on both sides of the house. The only thing is that, as I said, it is a confidential marketing document. We were criticised for not making it public but we are the only company that has embarked on a study like that, which paid dividends this morning, as we saw. So, yes, I am happy to give it to you.

Senator O'BRIEN—I am not asking you to give it to me personally.

Mr Kelley—Provided it did not go outside the committee—

Senator O'BRIEN—You want to supply it on a confidential, in camera basis?

Mr Kelley—Yes.

Senator O'BRIEN—Okay. We could have it on the same basis as the earlier, in camera evidence?

Mr Kelley—Yes.

Senator O'BRIEN—Was it funded out of the grant?

Mr Kelley—Yes, it was. It was not retrospective funding either—I saw something about that in a previous *Hansard*. We commenced this earlier in 2003 but it was suspended because we were going through that excise uncertainty at that stage and, also, it suited CSIRO because they were re-engaged by the government to do the 2003 biofuels transport report—I think that is what it was called.

CHAIR—Mr Kelley, when you provide that document could you clearly ensure that it is marked as confidential, because you will probably be providing us with a number of other documents requested earlier.

Mr Kelley—Yes.

Mr Carmody—Just to place that document in context, its significance is to provide an analysis on a project-specific basis of the greenhouse gas emission savings of the ethanol product relative to the tailpipe emissions from normal petroleum products. As you are probably aware, in recent years the environmental attributes of ethanol, particularly the greenhouse gas emission profile of ethanol, have been much in dispute within Australia. The significance of this report is that it cuts through the debate and the uncertainty and the speculation and illustrates that, as proposed to be produced, the ethanol from this plant produces quite enhanced greenhouse gas emission outcomes. That is perceived as—and has proved to be in negotiations—quite a competitive differentiator from competing suppliers. That is the significance of it, and it is the detail and the explanation of the process that we wish to remain in confidence.

Senator O'BRIEN—Okay. There are two press releases—one from Primary Energy and one from CSIRO—about the matter on the public record. CSIRO says in part:

CSIRO urges caution in extrapolating these results beyond this specific proposal without a close examination of the detailed specifications of other proposals.

That fits with what you are saying about the specificity of the CSIRO report. Would it be fair to say that the media release from Primary Energy does try to extrapolate it beyond the plant?

Mr Kelley—I do not believe so, no.

Mr Carmody—I think it is fair to say that those who have not read the report have tried to extrapolate it beyond the plant. There are even representatives in the ethanol—

Senator O'BRIEN—But you cannot read the report. How can you read the report—it is secret.

Mr Carmody—That is the very point. But there are proponents of ethanol infrastructure in this country that have not read the report and yet are asserting its benefits and attributes for their proposed projects, which is extreme. There has been a lot of media debate in relation to that report, and the media have not read the report. So not reading the report is not necessarily a preclusion from commenting on it and singing its praises or shooting down its content. We have seen quite a lot of it in the last few months.

CHAIR—That is a general proposition and I do not think that you will find much argument with us on that.

Senator O'BRIEN—Mr Kiernan's quote talks about the general concept of blending ethanol with petrol and says that it makes commonsense. I would suggest that Mr Kiernan's comments extrapolate beyond the specificity of a one-plant outcome. He says:

The study is an extremely positive result for the environment. When combined with the social and economic benefits to Australia, and particularly for Australian farmers and regional areas, blending ethanol with petrol makes commonsense.

Surely he is extrapolating beyond the outcome for the plant in talking about the general proposition of blending ethanol with petrol and the consequence for farmers and the social and economic benefits and benefits for the environment generally.

Mr Carmody—I cannot comment on what Ian Kiernan said—

Senator O'BRIEN—It is in the press release.

Mr Carmody—but the point that I would make is that he has been involved in the project. He has seen the report and I presume that his comments are made in relation to ethanol coming from this particular project.

Senator O'BRIEN—That quote is in Primary Energy's press release. It is not as if he has put out his own press release.

Mr Carmody—I think that properly manufactured, or manufactured efficiently, from a life cycle analysis of greenhouse gas perspective, that quote is 100 per cent accurate.

Senator O'BRIEN—There is a story in the *Sunday Mail* on 4 September this year, under the headline '\$100 million fuel plant', which reported that the South Australian town of Port Pirie has been earmarked for a \$100 million ethanol plant and it says that Primary Energy is behind that.

Mr Kelley—It did do, didn't it?

Senator O'BRIEN—It did.

Mr Kelley—Yes.

Senator O'BRIEN—It quotes you, Mr Kelley, as saying:

We are in a position to pull this (Port Pirie) project together quite quickly.

Is Primary Energy behind this project?

Mr Kelley—I have not actually been to Port Pirie, and neither has anyone else who has been involved with what we are doing here. It was identified as a site where there is abundant grain stock. We are looking at other projects and opportunities, renewable energy projects, not just ethanol. We have done nothing on that. Like I said, I have not even been to Port Pirie. We were involved with a director of the Australian Barley Board, which have got significant interests in South Australia and were working with us at one stage quite closely on this. Unfortunately, he was a director of the Australian Barley Board and he recently passed away, which was quite tragic. We had not done any work on that project and we have not done any further work on that project. We did also say, which they did not publish, that we have got our hands full with what we are doing at the moment and with a successful completion of what we are doing we would be in a position to do something such as the Pirie project.

Senator O'BRIEN—Let me read the paragraph:

... Mr Kelley, a grain farmer from Currabubla, NSW—

which I take it means you—

Mr Kelley—Correct.

Senator O'BRIEN—said:

"We are in a position to pull this (Port Pirie) project together quite quickly.

"There's a big opportunity for grain growers in SA to be part of this."

He said sustained high petrol prices would force consumers to demand cheaper ethanol-blended fuel from retailers and oil companies.

... ..

The proposed plant would be a state first and initially make 80 million litres of ethanol annually.

The ethanol could be supplied to oil companies and mixed with petrol before being sold.

Mr Kelley said he was still negotiating with the major oil companies—Caltex, Shell, BP and Mobil—to win their crucial support.

But there is no project proposal at the moment?

Mr Kelley—It has taken it out of context. Like I said, I have never been to Port Pirie. The contact that we were given at Port Pirie is under the understanding that there would be nothing happening there until we were finished with what we are doing. I have been taken out of context there, definitely.

Senator O'BRIEN—It says you are going to be there in two weeks for further talks with the Southern Flinders Ranges Development Board on a site for the plant.

Mr Kelley—I will not be there in two weeks. They would like me to be but, as I said, we cannot and are not in a position to look at it at the moment.

Senator O'BRIEN—Does the viability of the Gunnedah project swing on the mandating of ethanol at a level of at least 10 per cent?

Mr Kelley—We do not believe so. We do not believe that mandating as such will lead to the writing of a bankable off-take contract for the project. That has been our stance. I think we are far better off if we can mutually agree on a contract such as the proposal we have submitted this morning. I think there is enough interest out there—recognition of octane, recognition as an extender. We have seen some major oil companies say in recent times—and I take them on face value; I believe them—that Australia is short of refined product. I think the signs are there that the unfortunate start that ethanol had is behind us.

Senator O'BRIEN—Has Primary Energy applied to any other government funding programs for this ethanol project?

Mr Kelley—We had the Invest Australia submission which I mentioned previously. I know they did say that we applied for GGAP funding. We may have registered but we never formally applied.

Senator O'BRIEN—So Invest Australia funding was not forthcoming?

Mr Kelley—That is correct.

Senator O'BRIEN—Did they give reasons?

Mr Kelley—Yes, they did. They thought the project was a very strong project, but at that stage we did not have committed domestic off-take and the conditions of the grant were that that would be given per litre on domestic off-take.

Senator O'BRIEN—Do you know why the original application for \$1.5 million was reduced to \$1.1 million plus GST?

Mr Kelley—No, I do not.

Senator O'BRIEN—You were never given any reason?

Mr Kelley—No.

Senator O'BRIEN—The department has provided the committee with a copy of its funding contract with Primary Energy. At the back of that contract there are two signatures purporting to be those of representatives of Primary Energy as at 6 July. The first is yours, Mr Kelley, as chief executive officer. The second is that of Deborah Kelley as secretary. The file for the document that I referred to shows that documents filed with ASIC show that Primary Energy only had two secretaries—Susan Lang, for one day on 24 May 2002, and you, from 25 February on. It does not show anybody else as being secretary. Can you explain?

Mr Kelley—Susan Lang?

Senator O'BRIEN—Susan Lang.

Mr Kelley—I will have to contact my accountant and come back to you on that but, unless I am really losing the plot, I am not too sure about Susan Lang.

Senator O'BRIEN—Do you say that a return has been lodged which shows that Deborah Kelley was a secretary at some stage?

Mr Kelley—I will have to come back to you with that information from my accountant.

Senator O'BRIEN—Who lodges these on your behalf?

Mr Kelley—Jo Crossing, an accountant in Tamworth.

Mr Carmody—I have not got the document you are referring to in front of me, but normal execution clause requirements under corporation law require one director that is witnessed by a third party. I am not sure—

Senator O'BRIEN—That is the requirement. The reason I ask the question is that it says: 'Signed in the presence of Deborah V. Kelley. Position: secretary.' I am taking that to mean secretary of Primary Energy.

Mr Carmody—It could mean one of two things: formally the secretary of the company or someone who is performing secretarial duties for the company, or someone who is proclaiming their profession to be a secretary. If you are asking, 'Is Debbie Kelley the current corporate secretary of Primary Energy Pty Ltd?' we can find out and respond to you.

Senator O'BRIEN—Mr Kelley would know, wouldn't he?

Mr Kelley—I thought that was the case, but I do need to come back to you, because if it is not—

Senator O'BRIEN—Did you buy a shelf company?

Mr Kelley—I put that in the hands of my accountant to organise.

Senator O'BRIEN—Do you know when you took control of the company?

Mr Kelley—The specific date?

Senator O'BRIEN—Yes.

Mr Kelley—I will have to come back to you with a specific date.

Senator O'BRIEN—It may be that that explains the 'Susan Lang' and certain other names that appear. I would appreciate it if you could come back to us with that information. We will need that information quite quickly because of the timetable this committee has for reporting.

CHAIR—I should just indicate that we are due to report in about three weeks and there is a lot of work to be done to get the report together.

Senator O'BRIEN—There was one matter you said you wanted to respond to in camera.

Mr Kelley—Yes. We have probably lost the context a little bit now, but—

CHAIR—So you want to go back into an in camera hearing?

Mr Carmody—Just before we do, throughout the evidence this afternoon there have been a number of areas where we have undertaken to get material back to you. Just so that we can track that completely, can we have access to the *Hansard* as quickly as possible?

CHAIR—I was just about to say that we will ask for the *Hansard* to be made available as soon as possible. But also the secretariat has been keeping track of that.

Mr Carmody—I have tried to keep a record, but I am not sure that—

CHAIR—The secretariat will be in touch with you to follow that through. It is important that we get that as quickly as possible. We are due to table our report in about three to four weeks and there is a fair amount of work involved in writing reports and considering them and so on. There are one or two matters that the witnesses have indicated that they wish to respond to in camera.

Mr Kelley—To be honest, I have lost the track of where I was going with that. I do not know if it was even relevant.

CHAIR—Do you remember, Senator O'Brien?

Senator O'BRIEN—I am not sure where Mr Kelley was going.

CHAIR—On that basis, if there is no request to go back to an in camera hearing, I will adjourn the proceedings. Thank you for your appearance this afternoon and this evening. We appreciate your comments and also that you were very helpful in making arrangements for today. I know you were overseas when we originally contacted you. If you want to add some further comments to your evidence in relation to what we were just discussing and you wanted to have that in camera, you could also submit that to us and let us know.

Committee adjourned at 6.28 pm