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TRANSCRIPT OF PROCEEDINGS

THE HON MICHAEL F ADAMS KC, COMMISSIONER

THE ACT INTEGRITY COMMISSION – OPERATION KINGFISHER

PUBLIC HEARING

DAY 7

THURSDAY, 28 SEPTEMBER 2023 AT 10.14 AM

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MR DOWLING SC, Counsel for Zachary Smith
MS KATE MORGAN SC, Counsel for Katy Haire
MR PHILLIP WALKER SC, Counsel for Mark Bauer
MR MATTHEW McAULIFFE, Counsel for Jason O’Mara
MR JOHN BIRD, Counsel for Duncan Edghill
MR KIERAN GINGES, Counsel for Yvette Berry
MR ATHOL OPAS, Counsel for John Green
MR JAMES WALKER, Counsel for Joshua Ceramidas
MS CLAIRE CARTON, Counsel for Dylan Blom
MR SARID MILNE, Counsel for Rebecca Cross

COMMISSIONER: Yes, Mr O'Neill.

MR O'NEILL: Thank you, Commissioner. A few housekeeping matters, firstly. You will recall in the last session of public hearings there was a document that was referred to by Ms Cross and we were awaiting a redacted version of it for tender. May I hand up a copy of that document. We are currently - this would be exhibit 3.

COMMISSIONER: This is a communication between Ms Lee, Head of Service, and Ms Cross, together with an action - executive action request.

<EXHIBIT 3 - REDACTED COMMUNICATION BETWEEN MS LEE AND MS CROSS, TOGETHER WITH EXECUTIVE ACTION REQUEST

MR O'NEILL: Thank you, Commissioner.

COMMISSIONER: Yes.

MR O'NEILL: The second document and third document that I wish to tender this morning are relevant to the resumption of Mr Bauer, who is about to give evidence shortly. These two documents are - the first is a bundle of documents that were provided by Manteena to the Commission in relation to the setting up of and then the undertaking of the debrief with Ms Haire in June 2022. So that's the bundle of correspondence and the meeting notes from the witness.

Overnight, the Commission received another set of documents, this time from the Directorate itself, which are the meeting agenda and then a draft set of minutes and then a - what looks to be or is said to be a polished version of minutes from that meeting from the person, Ms Laurent, who was taking notes at the meeting contemporaneously. If I can seek to tender those documents, that will be exhibit 4 and exhibit 5.

COMMISSIONER: Thank you. Yes.

<EXHIBIT 4 - BUNDLE OF DOCUMENTS PROVIDED BY MANTEENA IN RELATION TO DEBRIEF WITH MS HAIRE IN JUNE 2022

<EXHIBIT 5 - SET OF DOCUMENTS FROM THE EDUCATION DIRECTORATE, INCLUDING MEETING AGENDA, DRAFT SET OF MINUTES, AND POLISHED VERSION OF MINUTES TAKEN BY MS LAURENT

MR O'NEILL: Thank you, Commissioner. I have no further questions for Mr Bauer, but he's made himself available. We have interposed him quickly while Mr Blom will then resume his evidence after Mr Bauer. I understand my learned friend Ms Morgan has an application.

MS MORGAN: Commissioner, my application is to ask Mr Bauer very - thank you - some brief questions in relation to the 22 June 2022 meeting.

COMMISSIONER: Yes, that leave is granted.

MS MORGAN: Thank you, Commissioner.

<MARK ERNEST ROBERT BAUER, ON FORMER OATH

<CROSS-EXAMINATION BY MS MORGAN

MS MORGAN: Mr Bauer, my name is Morgan, and I am appearing for Ms Haire, the Director-General of the Directorate of Education.

MR BAUER: Yes.

MS MORGAN: It's true, isn't it, that on 24 June 2020, you spoke to Kelly Young, and she told you that the Director-General would be making the decision in relation to Campbell.

MR BAUER: Can I check my notes of 24 June?

MS MORGAN: Of course. Those notes are at 2.1764.

MR BAUER: Yes, that accords with the notes that I've written, yes.

MS MORGAN: And do you recall now that on 24 June 2020 you understood the Director-General was making the decision in relation to Campbell?

MR BAUER: Well, the notes I have recorded there would indicate that the Director-General is involved in the decision. That's - that's what I've written down.

MS MORGAN: So you don't recall now what you understood on 24 June 2020?

MR BAUER: With respect, it's three and a half years ago.

MS MORGAN: That's fine.

MR BAUER: But that was written at the time because I would have made the notes in my diary as I took the phone call. So I believe that would be my recollection of the conversation, yes.

MS MORGAN: And do you recall that on 6 August 2020, you sent a letter to Mr Green in relation to the Campbell project?

MR BAUER: Yes, I do.

MS MORGAN: And that's at 2.1936.

MR BAUER: Yes.

MS MORGAN: And that was your letter; that's right?

MR BAUER: That's correct.

MS MORGAN: And in that letter you say about four lines down:

Specifically, we understand that while Manteena had the preferred D & C solution and may have, in fact, been recommended as the preferred contractor by the Tender Evaluation Team, the Director-General took into account company long-term factors as the core elements in the tender to select another preferred tenderer.

You wrote that in the letter; that's right?

MR BAUER: I did.

MS MORGAN: And so you understood, as at 6 August 2020, that the Director-General had made the final decision in relation to the Campbell Modernisation Project.

MR BAUER: That's correct.

MS MORGAN: And on 28 August 2020, you followed up that letter with an email, and we will see that at 2.1939.

MR BAUER: Yes.

MS MORGAN: And you are asking there for a meeting - or you had asked for - sorry, I will take a step back. In relation to the 6 August letter, in that letter, you asked to meet with the Director-General; that's correct?

MR BAUER: That's correct.

MS MORGAN: And the reason you asked that is because you knew at that time that she had made the final decision in relation to Campbell; is that correct?

MR BAUER: Well, there had been a number of comments and I had articulated that in the letter, so, yes, as the decision-maker, I wanted to be able to speak to that person, yes.

MS MORGAN: And you followed that up in this email on 28 August 2020; that's correct?

MR BAUER: That's correct.

MS MORGAN: And then you made two FOI requests in November 2020, one to the Education Directorate and one to Major Projects Canberra; is that correct.

MR BAUER: That's correct.

MS MORGAN: And then on 21 December 2021, the Auditor-General released his report in relation to the Campbell Primary School Modernisation Project; is that right?

MR BAUER: That's right.

MS MORGAN: And at around that time you read that report; that's right?

MR BAUER: Yes.

MS MORGAN: We can get that up. That's at 1.003, and if we can go to 1.007. So, from that report, is this right, that you knew as one point - if we could go to - sorry about this, 1.009, some of the summary of the findings. 2.51, you knew, reading this report, that the reference to "the delegate", in that second paragraph there was to Mr Green. Is that right?

MR BAUER: Yes, that's right.

MS MORGAN: And that he was the acting executive group manager, Business Services Division in the Education Directorate?

MR BAUER: Yes.

MS MORGAN: And you knew, having read this report, that he had engaged in the procurement process prior to the TET having the opportunity to conclude its evaluation of the tenders and make a recommendation. Is that right?

MR BAUER: Well, that's what the Auditor-General has written, so, yes, I can - I read that, yes.

MS MORGAN: So that's what I'm asking you. At around the time you read this, you accepted the summary that was in the Auditor-General report. Is that right? As the Auditor-General's findings?

MR BAUER: Yes. With respect, I'm just - I'm a construction contractor. I was just reading the information that was provided.

MS MORGAN: And what I'm trying to identify is what you knew in around December and - December 2021 and January 2022.

MR BAUER: Well, I would have read the information that was in this document and assumed that that was true, I suspect. I'm not sure - I may be misunderstanding the question.

MS MORGAN: No. That's - I'm asking you whether you appreciated when you read this question that what the Auditor-General had identified is that Mr Green had engaged in the procurement process prior to the TET having the opportunity to conclude its evaluation of the tenders and make a recommendation.

MR BAUER: Yes, based on what I'm reading, yes.

MS MORGAN: And then, similarly, if we pull out 2.82, that you would have seen there that the draft TER, Tender Evaluation Report, recommended that a value management process be entered into with your firm, Manteena. That's correct?

MR BAUER: Yes.

MS MORGAN: And that Mr Green, as the delegate for the procurement, changed the course of the procurement decision and requested consideration of a BAFO. That's correct?

MR BAUER: Yes.

MS MORGAN: And then an amended version - if you will pull out 2.94, an amended version of the tender evaluation was produced but not signed or endorsed by Mr Green? 2.94, thank you.

MR BAUER: Sorry, the question was that it was not endorsed?

MS MORGAN: At 2.94, you can see that at about five lines from the bottom that although the Tender Evaluation Report was prepared it wasn't signed or endorsed by Mr Green as the delegate?

MR BAUER: Yes.

MS MORGAN: And if we pull out 2.107, you can see that Mr Green agreed to a second Tender Evaluation Team. Do you see that?

MR BAUER: Yes.

MS MORGAN: And then at 2.141, at the very last sentence of that paragraph, is the final step where Mr Green, rather than signing or endorsing the Tender Evaluation Report that had been prepared he provided an executive brief to the Director-General of the Education Directorate that sought approval to enter into a contract for phase one of the project with Lendlease. So you understood that was the process; is that right?

MR BAUER: Yes.

MS MORGAN: That, ultimately, a written recommendation was provided by the person called the delegate or Mr Green was identified by his title, and that recommendation went to the Director-General.

MR BAUER: Yes.

MS MORGAN: And that's how you understood the process had occurred? From the Auditor-General -

MR BAUER: From the Auditor-General's report, yes.

MS MORGAN: Thank you. So do you know that - or do you remember that on or around 22 February 2022, there was a press release of this Integrity Commission in relation to the Campbell Modernisation Project?

MR BAUER: Not specifically. So perhaps you could show it to me, if you would like me to comment on it. But I'm sure there was some media surrounding the release of that report.

MS MORGAN: All I need from you is whether you remember it happening before the 22 June 2022 meeting with Ms Haire.

MR BAUER: The media release?

MS MORGAN: The fact the Integrity Commission was looking at this issue.

MR BAUER: Look, I can't recall without kind of looking at - going back -

COMMISSIONER: I think, however - and perhaps it doesn't matter, because you might ask a question that goes to the bottom line. I think the press release did not actually announce we were investigating. It announced that we were considering investigating because of the matters exposed by the Auditor-General report. And perhaps I might shortcut it by this question - object to it if you wish, Ms Morgan: One way or another, however it was, when you went to the meeting with Ms Haire, did you understand that there was then an investigation being conducted by the Integrity Commission. That's your real question, is it not?

MS MORGAN: I was trying to be careful, noting that your press release was not specific.

COMMISSIONER: Yes, quite. But what's important is what he believed or understood at the time of the meeting; correct?

MS MORGAN: Yes, thank you, Commissioner.

COMMISSIONER: Did you at that time appreciate that there was, in fact, an investigation being undertaken?

MR BAUER: I think what I can recall from that time is - and if I can look at my notes to actually look -

COMMISSIONER: By all means.

MR BAUER: - at the letter that I sent to the Director-General -

MS MORGAN: I think you are referring to your 26 May letter where you refer to "further investigations". Is that what you've got in mind, Mr Bauer?

MR BAUER: That's correct.

MS MORGAN: Yes. So exhibit 4 - the first page in exhibit 4 is the 26 May 2022 letter. In your opening paragraph, you say:

As you are aware, there have been a number of inquiries and investigations into the procurement of the Campbell School Modernisation Project, some of which have been made public over the last six months.

Is that what you were referring to?

MR BAUER: That's right.

MS MORGAN: So does that assist your recollection that as at 22 June 2022 meeting, you understood that this Commission had shown interest in the Campbell procurement - Campbell procurement process?

MR BAUER: What I can say, I mean -

COMMISSIONER: So far as media reports went?

MR BAUER: Look, I can't - I - without looking at all the media reports, I'm not sure I could -

COMMISSIONER: You don't know as you sit there.

MR BAUER: - confidently say that I was aware of media reports that were there. This primarily was drafted off the back of the Auditor-General's report, which we had read, and we were still unclear as to the real reasons for why Manteena was not awarded the project.

COMMISSIONER: Yes.

MS MORGAN: And would you agree with me, Mr Bauer, that as at 22 June 2022, that as between yourself and the Education Directorate, there was no issue that the Director-General had made the final decision about Campbell?

MR BAUER: Can I just get you to rephrase - I'm sorry, to restate that. So no issue -

MS MORGAN: So you understood the Director-General had made the final decision?

MR BAUER: Yes, based on the Auditor-General's report that we just saw, yes.

MS MORGAN: Well, back on 6 August 2020, you had also said that in your letter to Mr Green; that's right?

MR BAUER: Yes.

MS MORGAN: And so you had communicated to the Education Directorate that on the basis the Director-General had made the final decision.

MR BAUER: Yes.

MS MORGAN: And so both you and the Directorate were approaching the 22 June 2022 meeting on the basis of the Auditor-General's summary, that a delegate - the delegate had made a recommendation to Ms Haire, and she had accepted that recommendation and made the final decision.

MR BAUER: Yes.

MS MORGAN: Thank you. Now, I've just got a couple of questions about your note from yesterday that we saw. I'm not sure if we had a number for that. We don't have a number, so it's the 22 June 2022 notes that you made, Mr Bauer.

COMMISSIONER: Of the meeting. This is the note of the meeting, is it?

MS MORGAN: Yes, Mr Bauer's notes of the meeting.

COMMISSIONER: Do you have a copy in front of you?

MR BAUER: I do.

COMMISSIONER: Are you going to ask him about it?

MS MORGAN: Yes.

COMMISSIONER: Then perhaps he should have a copy in front of him, do you think?

MR BAUER: I do, Commissioner.

MS MORGAN: He does have a copy.

COMMISSIONER: You do?

MR BAUER: I do.

MS MORGAN: Yes. Now, in relation to this note, you reviewed this note in preparing to give evidence yesterday. Is that right?

MR BAUER: I did, yes.

MS MORGAN: And these were the notes that you took as a result of that meeting; is that right?

MR BAUER: That's correct.

MS MORGAN: And you weren't trying to take verbatim account of the meeting; is that right?

MR BAUER: I - I took notes during the meeting and then I checked my notes after the meeting. But there - they are not minutes of the meeting. They are my - my notes - my recollections -

COMMISSIONER: I think the question, though, really is, were you quoting actual language. Is that what are you asking?

MS MORGAN: I was getting to what I was asking, Commissioner. I was just doing it step-by-step.

COMMISSIONER: Right. Do you mind if I ask that question?

MS MORGAN: You may.

COMMISSIONER: Were you attempting to take down actual words used, or was it a summary of what you heard as you - as the meeting proceeded?

MR BAUER: While there might be some things that I recollected as being said, I think it probably will be more appropriate to say they were a summary of my understanding of the meeting.

COMMISSIONER: All right.

MS MORGAN: And you can see that, can't you, even if you just look at the first few dot point. There is an impressionistic dot point, dot point 4, about the continual referral to the delegate. Do you see that?

MR BAUER: Yes, I do.

MS MORGAN: So that's a summary of your impression of the take away of the meeting. Would that be right?

MR BAUER: Yes.

MS MORGAN: Ms Laurent was at the meeting. Did you understand that she was there as a note taker?

MR BAUER: Yes, and I have noted that at the top of my record of the meeting, yes.

MS MORGAN: So, for example, when you were speaking, you weren't taking notes of when you were speaking?

MR BAUER: No - no. And I didn't speak all the time because my fellow director Rod Mitton was in the room as well. So we both checked the notes that I had taken.

COMMISSIONER: I think what you are being asked is, when you were speaking, at that time, you were not also typing what you were saying.

MR BAUER: No.

COMMISSIONER: Is that right?

MR BAUER: Correct.

MS MORGAN: Thank you, Commissioner. And do you recall Mr Bauer saying to Ms Haire that the delegate transferred the decision to Ms Haire and what was the basis for her final decision? Do you remember saying those words?

COMMISSIONER: You mean those precise words, or do you mean words with that effect or substance?

MS MORGAN: Either. Do you remember saying those precise words or something to the effect?

MR BAUER: Can you repeat those for me, please?

MS MORGAN: Of course. That the delegate transferred the decision to Ms Haire and what was the basis for Ms Haire's decision?

MR BAUER: Yes, I believe I would have essentially asked that. Whether with they were exactly my words, I can't recall, but, yes, that - we would have even asked that question, yes.

MS MORGAN: And what you meant when you said "delegate" in that context was Mr Green. Is that right?

MR BAUER: Yes.

MS MORGAN: Because you understood the way the process occurred was Mr Green was a delegate. He had made certain decisions like in relation to the BAFO; that's right?

MR BAUER: Yes.

MS MORGAN: And then he had made a final recommendation to Ms Haire, and she had made the final decision; is that right?

MR BAUER: Yes.

MS MORGAN: Now, could you just have a look at the fourth dot point of your note, where you talk about - in the last sentence there you talk about "EDU (David)" - that's David Matthews. That's right?

MR BAUER: Yes.

MS MORGAN:

...made several references to not knowing what was in Mr Green's head at the time.

Do you see that?

MR BAUER: Yes.

MS MORGAN: Now, I want to put a couple of propositions to you about the context in which a reference like that might have arisen. I know it's a long time ago, so if you don't recall, don't hesitate to indicate that.

MR BAUER: Yes.

MS MORGAN: So after there was an introduction by Mr Matthews talking about the future, the changes they were making in the Education Department Directorate as a result of the Auditor-General's report, you then did your own introduction. Do you recall that?

MR BAUER: Yes, and I've noted that at dot point 3. Yes.

MS MORGAN: And in that you referred to:

The Auditor-General report identifying why Manteena hadn't been selected, but the reasons hadn't been articulated in detail.

Does that sound familiar?

MR BAUER: I can't recall those exact words, but the concept that you are describing sounds logical and what we would have been wanting to understand. Yes.

MS MORGAN: And you would - and you also referred to Mr Green in the quasi debrief, and you were asking for the basis of the comments about long-term factors.

MR BAUER: Yes.

MS MORGAN: And in response to that, Mr Matthews said he can't speak for the delegate, but that was the view formed. Do you recall that?

MR BAUER: I don't recall those specific words, but I have noted in the highlighted section there now that that would, I think, have the inference of what you have just described.

MS MORGAN: So what you're - you will accept that what your dot point suggests is that Mr Matthews and Ms Haire were not accepting that Ms Haire made the final decision, and what I'm suggesting to you is, in the context of the meeting, what Mr Matthews was referring to, for example, was he couldn't speak for Mr Green because he hadn't - Mr Green had made the recommendation. You would agree with that?

MR BAUER: Yes, I agree with the second part of your statement, yes.

MS MORGAN: And Mr Green - and he couldn't speak for Mr Green to the extent that Mr Green had spoken to you in the debrief. That's what -

MR BAUER: I don't think the reference there was he couldn't speak to the - he wasn't in the debrief. It was that - my words there are not knowing what was in Mr Green's head at the time. That - I'm very confident I can recall that statement very clearly.

MS MORGAN: And that was in his shoes at the time of the recommendation to Ms Haire?

MR BAUER: I think it was a reference to not necessarily a singular moment. But, again, it was statement that I documented down that I was - quite clearly can recollect it, I don't think it would be possible for me to say was that a one instance or, you know, over a multiple of periods.

MS MORGAN: I think we might be at cross-purposes.

MR BAUER: Right.

MS MORGAN: So I might take to you the second page of your note, which might help.

MR BAUER: Sure.

MS MORGAN: So if you look at the second page, if you look at those, if I could ask you to look at not your - not the first dot point, but the second and third dot point.

MR BAUER: Yes.

MS MORGAN: And you will see there Mr Mitton. Do you recall, either independently or from your note that Mr Mitton was asking about a formalisation of the explanation of the reasons for decision. Do you see that?

MR BAUER: Yes.

MS MORGAN: And what you have got in brackets there is:

(what the delegate was thinking at the time.)

Now, you used delegate in your note meaning Mr Green; is that right?

MR BAUER: Yes, that's correct.

MS MORGAN: And that Mr Green there says, on your note, that he took the above point on board; it would be difficult for him to go back and recall what was being thought at the time.

COMMISSIONER: Sorry (crosstalk).

MR BAUER: It wasn't Mr Green; it was Mr Matthews.

COMMISSIONER. That's a reference to Mr Matthews, I think.

MS MORGAN: It is. That's my mistake.

COMMISSIONER: Sorry, okay.

MS MORGAN: I note that's -

COMMISSIONER: Perhaps you might recast the question.

MS MORGAN: I will. So from those two dot points, you can see the interaction between Mr Mitton and Mr Matthews. Do you see that?

MR BAUER: Yes.

MS MORGAN: And do you recall that interaction?

MR BAUER: Yes. Based on the notes that I'm reading now, yes.

MS MORGAN: And that reflects what you said a moment ago, with - that both yourself and Mr Mitton had identified concerns about the process adopted by Mr Green and seeking an explanation. Is that right? The process generally.

MR BAUER: The process generally, and I think, if I can clarify, the comment "ie, what the delegate was thinking at the time" was in direct reference to the earlier note on the prior page of Mr Matthews saying that he couldn't know what was in Mr Green's head at the time. So it wasn't in relation to a more broader issue. It was directly in response to the information we were provided at the time in the meeting.

MS MORGAN: In this 22 June 2022 meeting?

MR BAUER: In that meeting, yes.

MS MORGAN: Thank you. And then finally could I ask you a question about the first dot point, where you say that -

COMMISSIONER: Sorry, the first dot point on page one on or this page?

MS MORGAN: Page 2, please.

COMMISSIONER: Page 2. Right.

MS MORGAN: So that's you stating:

There didn't seem to be any accountability on the failings in the actions of the delegate.

Do you see that?

MR BAUER: Yes, I do.

MS MORGAN: And the delegate there is Mr Green? Is that right?

MR BAUER: Yes.

MS MORGAN: And the failings that you're identifying here include the - Mr Green manipulating the BAFO process. Is that right?

MR BAUER: I think it would be describing our disappointment with the overall process. Again, these are my notes from a meeting, as the Commissioner has identified. They are not a transcript. So when I use the word "delegate" there, yes, I've used the word delegate elsewhere in these notes and that's referred to Mr Green. But I think I'm clearly saying that Manteena feels this process hadn't been played - hadn't been played with a straight bat. We weren't getting clear answers from anyone - the Director-General, Mr Green or anyone in the process, and we were seeking answers so we could do something about it. It was as simple as that.

MS MORGAN: Thank you Mr Bauer. No further questions, Commissioner.

COMMISSIONER: Right. Thank you. Anything arising, Mr Walker?

MR WALKER: No, Commissioner.

COMMISSIONER: Mr O'Neill?

MR O'NEILL: Nothing. Thank you, Commissioner.

COMMISSIONER: Thank you. I think I now can release - well, I can't release you. I can release you for the present. It may be you need to be recalled. I doubt it, but I can't say you won't be recalled.

MR BAUER: I understand.

<THE WITNESS STANDS DOWN

COMMISSIONER: Thank you very much for coming this morning. Thank you, Mr Bauer. So we now - do you need a little time to -

MR O'NEILL: We need just a five-minute adjournment, if that's okay with you, Commissioner, to resume Mr Blom.

COMMISSIONER: Certainly, yes.

<THE HEARING ADJOURNED AT 10.43 AM

<THE HEARING RESUMED AT 10.52 AM

MR O'NEILL: Thank you, Commissioner.

COMMISSIONER: Sorry to keep you waiting, but we just needed to finish Mr Bauer. Yes.

<DYLAN MATTHEW BLOM, ON FORMER AFFIRMATION

<EXAMINATION BY MR O'NEILL

MR O'NEILL: Mr Blom, just to assist you, yesterday in the chronology, it's just prior to the point which you become involved in the Tender Evaluation Team. Now, you gave some evidence that you had heard a rumour and you couldn't distinguish where that rumour had come from.

You had heard it - maybe you had heard it from multiple sources, probably Ms Young, maybe Mr Moreton and probably Mr Green. Is that a fair summation of what you think happened?

MR BLOM: Yes.

MR O'NEILL: And to the best of your recollection, doing the very best you could, what was the specifics of the rumour as you remember it then?

MR BLOM: The specifics were that within this process that the - that the union via the Minister's office were unhappy with Manteena being recommended.

MR O'NEILL: Now, that contains in it an assumption that Manteena were to be recommended, and you're happy with that being part of your recollection. You think that that must have been known at that stage?

MR BLOM: Yes.

MR O'NEILL: So that must date the rumour after the time at which the Tender Evaluation Team had arrived at least at its draft view.

MR BLOM: Yes, yes.

MR O'NEILL: Now, had you ever seen - prior to the second Tender Evaluation Team being stood up, had you seen the - firstly, a draft Tender Evaluation Report that had been prepared by that team?

MR BLOM: I believe I saw the draft that had the BAFO recommended.

MR O'NEILL: All right. I'm just going to show you a document, then, and I just want to confirm that it's this document. It's at volume 1.280. That piece of paper is not going to assist you at all, because it's fairly nondescript, but if I can just scroll through to the recommendation page, 1.285. Does this assist you with this is likely with the version of the report that you saw?

MR BLOM: I believe so, yes.

MR O'NEILL: And it was signed by the various members of the team?

MR BLOM: Yes.

MR O'NEILL: Now, at the time you saw it, can you just explain when you saw it and why?

MR BLOM: I guess it's difficult for me to pinpoint. I would have been - in my role as senior director, I would have seen every - pretty much every recommendation that my team was making at the time to do - it was the process within Education. It went through a hierarchical structure of a review prior to going to the branch manager before going to the delegate, whoever that was, be it group manager or someone else. So I would have seen all of these things. So I definitely know I got this in an email. And I'm pretty sure I did forward this email on, so I must have reviewed it.

COMMISSIONER: When you refer to "my team" -

MR BLOM: Yes.

COMMISSIONER: - were any of these individuals on your team?

MR BLOM: Yes, Mr Jacobi and Mr Morton are both.

COMMISSIONER: When you say "your team" were they coordinate or subordinate to you?

MR BLOM: So within the Major Projects Team, there me as the senior director. There were two directors, Mr Patel and Mr Player. And then below them was a series of project officers, all of whom were at the assistant director level. So they reported through Pal and Ben, but we didn't really have that linear structure. We were all in a team, essentially.

COMMISSIONER: No, I understood. But I'm really - you were essentially responsible for the teams. Is that -

MR BLOM: Correct. I'm the manager of that group, yes.

COMMISSIONER: Right. Of whom these two, Morton and Jacobi, were part.

MR BLOM: Correct, yes.

MR O'NEILL: Now, were you aware that prior to reaching this recommendation, that team had sought probity advice from the Government Solicitor's Office?

MR BLOM: Yes.

MR O'NEILL: Had you had any involvement in that process?

MR BLOM: I believe I got sent via a CC from Mr Morton a copy of Ms Young's advice or something like that around the BAFO process. I can't remember if that was before this or after this.

MR O'NEILL: I see. And the reason you have mentioned that to the Commission is because that was Ms Young's - having received the advice, her providing her comments that nevertheless it was still her view that Manteena was to be the preferred tenderer, and that BAFO was not required.

MR BLOM: I haven't read that email in a long, long time.

MR O'NEILL: No, it's okay.

MR BLOM: But I believe - yes, the part of that is Ms Young was trying to say, "I still don't see why we need to push on with a BAFO process."

COMMISSIONER: And gave reasons.

MR BLOM: That's a fair representation, yes. Which is part of the reason why I believe she then wanted to no longer proceed -

COMMISSIONER: Step out.

MR BLOM: - down this path, yes. So I believe I understood that at the time.

MR O'NEILL: Right. And so you had that context?

MR BLOM: Yes.

MR O'NEILL: This Tender Evaluation Team had made a recommendation to proceed to best and final offer. In the ordinary course, what should have happened?

MR BLOM: What's recommended.

MR O'NEILL: And yet -

COMMISSIONER: Can I just ask you this, as a matter of history, you've told us that you had been involved one way or another in hundreds of projects.

MR BLOM: Possibly, yes.

COMMISSIONER: Possibly. But a large number, anyway.

MR BLOM: Yes.

COMMISSIONER: Have you ever had a situation where the chair of an Evaluation Team refused to participate in any process that otherwise should have been undertaken?

MR BLOM: Not that I can recall. I've certainly had teams change in the past for reasons of leave or illness or stress or something else.

COMMISSIONER: But not difference of opinion.

MR BLOM: No. No, never encountered that, no.

MR O'NEILL: Thank you. And when team members change, does that mean that the whole process needs to be undertaken again?

MR BLOM: No.

MR O'NEILL: It's a time-consuming process?

MR BLOM: Yes.

MR O'NEILL: It involves lots of people or at least three people going through a significant suite of documents?

MR BLOM: Correct.

MR O'NEILL: And providing an analysis in respect of those documents?

MR BLOM: Yes.

MR O'NEILL: In respect of this tender, it required engagement, I think as you told us yesterday, of design - in design elements.

MR BLOM: The first process - so the process that Mr Morton, Mr Jacobi and Ms Young had undertaken was an interactive process, yes.

MR O'NEILL: So it was time-consuming?

MR BLOM: Very, yes, and expensive.

MR O'NEILL: And it involved the application of their expertise to a complicated suite of documents -

MR BLOM: Yes.

MR O'NEILL: - that required their review in order to reach a recommendation.

MR BLOM: Correct.

MR O'NEILL: It had taken them a significant length of time to do so.

MR BLOM: Because of its interactive nature, they do run much longer than just a on-paper tender assessment, if you like.

MR O'NEILL: Yes. And you were still in the room yesterday when you heard Mr Bauer talk about having - receiving some 75 or so different requisitions involving - just showing the in-depth nature of that interactive process.

MR BLOM: I mean, that's the case in a paper assessment or an interactive, but, yes. That's correct.

MR O'NEILL: And so when your Tender Evaluation Team was stood up, was it explained to you why it was that Ms Young was simply not being replaced with someone firstly?

MR BLOM: I don't recall there being a great explanation being provided. And I didn't have a conversation with Ms Young at the time about why. So one of my things that I regret in this process is not investigating the background into those aspects. I - again, I was aware of - of the pressures or whatever, the rumours, at the time, but I feel like Ms Young had more insight into that, being more involved earlier. And I guess it's important for me to say, at and around this time, I was also raising issue with those rumours with my management and with Major Project's Canberra's management, raising concern around that aspect and my concern with, I guess, what the delegate's motives were in regards to the reassessment piece.

That all being said, I was briefed by the delegate, as the delegate was very concerned around the fact that both were over budget and, as far as the delegate was concerned, the BAFO was - had been supported by the GSO and he refuted, I guess, Kelly's - sorry, Ms Young's view that it wasn't necessary and he - he felt very strongly - in fact, I think he has said as much, that he was adamant that the BAFO was to proceed.

MR O'NEILL: Right. That's a big answer. So I'm going to press you on it - on a number of components of it.

MR BLOM: Sure.

MR O'NEILL: If I may.

MR BLOM: Go for it.

MR O'NEILL: The first is, I just want to firstly unpack what it was that the instruction that was given to you by the delegate for establishing the second Tender Evaluation Team.

MR BLOM: Well, the fact that - the fact that one member was pulling out, and I think then at the point that Ms Young didn't want to proceed, I think Mr Morton then also said - I think we had a conversation in our office around, is everyone comfortable proceeding with this? And I think Mr Morton, when Ms Young had pulled out said, "I'm out as well."

MR O'NEILL: Now, that - just pausing there and I'm going to come back to your answer, so just hold that with you. When you were - when you were given that information, was that concerning to you, that -

MR BLOM: Yes.

MR O'NEILL: And what was your concern specifically at the time?

MR BLOM: My concerns at this time - and I was raising these concerns - was that people were being asked to do things that they weren't comfortable doing.

MR O'NEILL: Now, you're the person that the now going to be tasked with doing things that some people are uncomfortable doing. Fair?

MR BLOM: Yes, very fair.

MR O'NEILL: You had concerns.

MR BLOM: Yes, I raised those concerns.

MR O'NEILL: And I think in your answer just to the Commission earlier, you said you raised your concerns with people within - above you within the Directorate?

MR BLOM: Yes.

MR O'NEILL: Who were they?

MR BLOM: Mr Nakkan. He was my direct report. So he was the person that was appropriate for me to raise my concerns with.

MR O'NEILL: And what did he say to you in response to you raising that concern?

MR BLOM: It was a phone call conversation. I believe he said he was somewhat aware of what was going on, and he said proceed, obviously, with the process and ensure that you follow due process.

MR O'NEILL: Right. And what was it that was the subject of that? What was going on, as best you -

MR BLOM: I took it - I took it - I understood it as he - he was aware that - well, possibly he had been told, I don't know, that there was pressure being put on the delegate from union Minister's office.

MR O'NEILL: Right. This was pressure being put on the delegate. That's Mr Green?

MR BLOM: On Mr Green, yes. He was the delegate. He -

MR O'NEILL: And Mr Nakkan understood that?

MR BLOM: I - I believe so.

MR O'NEILL: Now, you also said, I think, that you provided your feedback on this issue to people within Major Projects. Who was that?

MR BLOM: It was Ms Power.

MR O'NEILL: Right. What did Ms Power say?

MR BLOM: I think something similar. I think she said - I don't know whether she said she was aware of what was going on, but I just said, like - I guess I had concerns that raising it within the Directorate was not going to go anywhere, given where the rumours were coming from. So I wanted to speak to someone. Again, I've come - I had come from Major Projects Canberra. I knew Ms Power before this time. So I just wanted to have a conversation with her. I'm pretty sure also Ms Wright, who was a member of the new Tender Evaluation Team, was also speaking to her at the time around, is this all okay. Are we okay to proceed down this path. Is this going to - is this something we should stop doing? And, again, I think the advice was something around the lines of - just keep your records, do the process, document everything that you can.

MR O'NEILL: Right. So, the Tender Evaluation Team before you had had some months to undertake the task.

MR BLOM: Yes.

MR O'NEILL: Your Tender Evaluation Team was stood up on 27 March.

MR BLOM: Mmm.

MR O'NEILL: 2020. And you provided your recommendations on 6 April 2020.

MR BLOM: Yes.

MR O'NEILL: So that's seven days. Two of those days were a weekend, because it was stood up on a Friday. So do recall that the Tender Evaluation Team worked on that weekend?

MR BLOM: I can't - I can't recall at this time. I recall we had at least two sessions together running through the re-evaluation criteria.

MR O'NEILL: And just explain to the Commission what it is that you were doing as you went through the re-evaluation?

MR BLOM: So there's some context, I guess, that I need to provide before that. So in - in establishing that second team, delegate - the delegate had pointed out beyond just the BAFO was a desired outcome of the review that he, as the delegate, had some concerns with the fact that the first Tender Evaluation Team had been swayed by a stronger design submission and that that had skewed their views in the scores of other criteria. So that - that was kind of presented to us as a concern. There was obviously also some industrial aspects that wanted to be looked at by the delegate again, so I do think in this whole process, and I think the Auditor-General said as much, that the delegate very much inserted himself into this re-evaluation process with quite a lot of input.

COMMISSIONER: Can you recall now what he said about the industrial aspects that you mentioned?

MR BLOM: I think in general the feedback was that he - he didn't believe - and, to an extent, I agreed with this aspect - that a tier 1 building company such as Lendlease, who build significantly complex projects and have a long history of delivering projects for the Territory and beyond across the globe would be scored so harshly in what is a relatively simple build. So their capacity of their organisation, the capacity of their team - I think they had scored, at this point in time, a 52 which is barely a passing - barely a passing grade. So it was the view of the delegate that this - the scoring was too harsh.

COMMISSIONER: I understand that. The - of course, whilst, no doubt, one is entitled to consider the status of the company, nevertheless, when it boils down to it, the design is the design, and it has to be evaluated in accordance with what it actually shows.

MR BLOM: Yes.

COMMISSIONER: Sorry, do you agree with that?

MR BLOM: Yes.

COMMISSIONER: I mean, a design is -

MR BLOM: There's a secondary issue to this, though. So in an interactive bidding process, there is interaction between the tenderers and the tender assessment team. So, again, it was the view of the delegate, that there were some - possibly suggested that there was some

failure - and it is a joint process; right? The design is very much not just a hand over a piece of paper, and they design to this; there is interaction between the two bids.

So the fact that one tenderer had come out with a very strong design, and another tenderer at the outcome of this process had a - had a what was deemed a very weak design was deemed an issue by the delegate, because it was an interactive process. There should be correction or some guidance provided so that you don't come out of a process with one tenderer miles in front on design and another tenderer miles below, if you understand. There is a feedback process.

COMMISSIONER: I understand that. I must confess, I'm somewhat baffled. So I will just explore this a little.

MR BLOM: Sure.

COMMISSIONER: At the end of the day, although it's true reasonable people can reasonably differ over whether a design is excellent or merely good or certain preferences and certain other matters. But designs of schools were the subject of, I think, a government standard, were they not?

MR BLOM: Yes.

COMMISSIONER: You were dealing with an evaluation team well aware of those questions.

MR BLOM: Yes.

COMMISSIONER: Yes. And the - you have read that report.

MR BLOM: Yes.

COMMISSIONER: As a layperson, two things struck me about it. The first one was the commendation of the Manteena solution. But you could say - one might have thought - oh, well, being a tier 1 company, Lendlease is good, but Manteena is better.

MR BLOM: Yes.

COMMISSIONER: But they didn't do that. They said Manteena is better and Lendlease's is bad - is positively inadequate.

MR BLOM: And that was the delegate's concern, is that it was an -

COMMISSIONER: Right.

MR BLOM: So this is my point. The point of the delegate was that in an interactive process where there is feedback provided to those two design teams, it's not just a, "Do your design and come back and we score them". It's a, "Meet with us constantly" - this is

why the process took so many months, the first version took so many months, is because they have a series of meetings where the government, the Tender Evaluation Team, is providing feedback to those design consultants, to make sure that they do comply with the brief, to ensure they are meeting the needs of the Directorate.

COMMISSIONER: So are you saying this process should have produced at least an acceptable design from Lendlease?

MR BLOM: That was the - yes. That was what the delegate's point was, is that we shouldn't arrive at this situation.

COMMISSIONER: Right.

MR BLOM: And I guess - can I - I will add one extra caveat to all of this - not a caveat but an actual issue at the time. So when I - when I commenced within the Directorate, one of the parts of my role was to look at our infrastructure specifications. So there was essentially an unfinished brief that we had been - sorry, that the Directorate had been using to build a lot of these schools. So we were aware that there were deficiencies within our document suite. Late in 2019 and early in 2020, we were in the process of bringing a school principal in to review and update all of those documents. And so that was around this same time, we were aware that there were deficiencies in our documents, and we were getting feedback from some consultant teams in other interactive bidding sessions that they failed to understand exactly what we were asking for because of issues with our briefing documents.

COMMISSIONER: Sure.

MR BLOM: So that was also important, in terms of the context of the delegate having issues with the scoring and people's understanding. So it's also important that Manteena's design consultant had significantly more ACT government schools exposure than the Lendlease consultant.

COMMISSIONER: It's one thing, however, to question - that is to say, this - to say on the one hand, "This is an unexpected outcome that you have these assessments" - let's talk about design.

MR BLOM: Sure.

COMMISSIONER: In relation to design. One can understand that. But it seems to me that, logically, you would not draw the conclusion, therefore, the assessment is mistaken. What you would do would be, perhaps, to interrogate the team and say, "Well, what was it in particular? Why didn't they get it better? Did you raise this, or did you raise that?" In other words, you would drill down to the process. And, of course, if you have drilled down to the process, you might find that there's a completely adequate explanation for their view. So although I can quite understand why it might raise the question, I do not understand how it could remotely answer the question. Do you see the point that I'm making? Now, I'm an outside, but can you help with that?

MR BLOM: You've just described what the process should have been. It very much should have been the delegate seeking to work with the original Tender Evaluation Team to address what he saw as deficiencies. Yes.

MR O'NEILL: But, instead, what's occurring is the standing up of a new team to arrive at the very same recommendation but to bring the scores closer together. Fair?

MR BLOM: Yes.

MR O'NEILL: So doing that, then, and to do so in a week.

MR BLOM: Mmm.

MR O'NEILL: I just want to show you a document. It's at 1.393A.

COMMISSIONER: While that's being brought up, can I ask you this: The interactive component, is that recorded, usually, one way or another?

MR BLOM: I don't recall seeing that documentation. It's possible there's minutes of feedback provided but I don't -

COMMISSIONER: Is there a process -

MR BLOM: There should be.

COMMISSIONER: You, of course, had their report and their commentary.

MR BLOM: Correct.

COMMISSIONER: Did you have access to the interactions?

MR BLOM: I don't recall seeing it. We - we - on this point - and it will - I'm sure we will get there when we go past this stage, but in the second - in the subsequent evaluation process, we brought Ms Young back into the process to provide - to fill that gap.

COMMISSIONER: Right.

MR BLOM: We could not - we needed that information from Ms Young, being part of that interactive process. We could not do the next level of the BAFO assessment without her. So we - we were consulting with Ms Young to ensure that we were addressing those -

COMMISSIONER: Well informed.

MR BLOM: Addressing those issues properly and making sure we weren't making assumptions.

COMMISSIONER: Right, okay.

MR O'NEILL: Right. Now, Mr Blom, you are familiar with what this document is?

MR BLOM: Yes.

MR O'NEILL: It's the worksheet that - as I understand it, it's the worksheet that your team used to undertake an assessment or the reassessment that your Tender Evaluation Team was required to do. Do you see that? It's very small. And this one is for Manteena at the top.

MR BLOM: Yes, okay. Yes. Yes.

MR O'NEILL: I am going to draw your attention to -

MR BLOM: There is lots of versions of - there is lots of versions of this, so I will take it it's the most current one.

MR O'NEILL: I understand it to be the most current one.

MR BLOM: Yes.

MR O'NEILL: But if there is anything that you are uncomfortable with, please draw it to our attention.

MR BLOM: I can't read it all in -

MR O'NEILL: Yes. Now, I'm just going to draw out in the first - so from the first criteria, we know the first criteria is past performance. That is, the criteria that the tenderer is to confirm or update required the allocation availability of percentage of resources, etcetera. You are familiar with that criteria?

MR BLOM: Yes, yes.

MR O'NEILL: If we can take that down. And then if we can just pull out the next columns all the way to the end of the page. So that is the original TET comments all the way through to the new - now, the Commission understands what, in fact, occurred was that your team got the original worksheet so that it what the original Tender Evaluation Team had done and then added the additional column on the right -

MR BLOM: Correct.

MR O'NEILL: - to add your commentary on what had happened and then modified the scores. That is, really, just the first - the first score because it's the score out of 10. That's the middle column in the light green which then has a mathematical total score, which is just an application of how it matters.

MR BLOM: Yes, understand.

MR O'NEILL: Past performance: Was that something that the delegate, Mr Green, had told you had been incorrectly assessed by the first Tender Evaluation Team?

MR BLOM: I think it's fair to say Mr Green wanted us to look at all of the criteria.

MR O'NEILL: Right. Right. And so did that then lend itself to a process by which Manteena's scores were going to be drawn down and Lendlease's scores were going to be drawn up?

MR BLOM: I believe that's what happened. So, yes.

MR O'NEILL: Was that by design, though? Was that how people were actually approaching the task?

MR BLOM: Not necessarily. Like I said, I think there is other context at play. I think very much our views were directed to looking at bringing those scores together by the delegate, yes.

COMMISSIONER: Part of the difficulty is the relation between a score and an assessment of capacity. It's clear there's no direct or arithmetical or calculable way of doing it.

MR BLOM: That's very much the challenge, Commissioner.

COMMISSIONER: That's always the difficulty.

MR BLOM: It's not an equation.

COMMISSIONER: No. And so reasonable people might well score differently.

MR BLOM: (Crosstalk) yes.

COMMISSIONER: Looking at the same data.

MR BLOM: Correct.

COMMISSIONER: And here what you had was the delegate saying, "I think Lendlease's capacity is better than this score" in effect, and that being an open view - not necessarily unreasonable, that being taken into account by the team. Now, I may be oversimplifying it, but, in substance, is that the kind of thing that happened?

MR BLOM: The context was that the delegate believed that the first Tender Evaluation Team, by virtue of the interactive process, had landed on very favourable views of Manteena and very - and because of the good design. And because of the poor design of Lendlease, was then scoring them down. So that is what we were tasked with looking at and reviewing and seeing whether there was some balance that could be struck to ensure

that it was a fair process. I guess it's also important to point out in all of this we were under incredible time pressure to get this done very quickly because we were very aware that the clock was ticking, the project was already significantly behind program, and we were - and we were going into what would become COVID. I believe while we were doing this assessment, we were actually kicked out of the office. Possibly the moment we got stood up, I think, was the last day we were in the office and then we were working from home.

COMMISSIONER: Perhaps more difficult environment for a team to work together.

MR BLOM: Correct. We were learning how to do things in a new way, yes.

MR O'NEILL: Well, we do know, though, that the scores came in considerably closer. They managed to now be narrowed down to within - within a point. So -

MR BLOM: With Manteena still in front.

MR O'NEILL: With Manteena still in front. I accept that. But now within a point of each other rather than, as they had been, with a significant advantage and, in fact, Lendlease being scored as a medium risk to the Territory.

MR BLOM: Yes, correct.

COMMISSIONER: Was the question, though, the team was being asked was not who you would recommend to undertake this contract -

MR BLOM: No.

COMMISSIONER: You were being asked a very different question, namely, on the analysis we have done - sorry, whether on the analysis we've done a BAFO was justified.

MR BLOM: Correct.

COMMISSIONER: So you were not in a sense, though you were looking for the same criteria.

MR BLOM: We weren't looking for a winner.

COMMISSIONER: You weren't looking for a winner.

MR BLOM: Which is different to - which is different to what the first team - the first team's lens was, let's find a winner. The second team's lens was -

COMMISSIONER: Is there a basis for a BAFO?

MR BLOM: Correct.

COMMISSIONER: In a situation where the delegate had strongly indicated that's what he wanted.

MR BLOM: The delegate had indicated that nothing else was going to be accepted. The process was going to either be cancelled and start again or who knows what.

MR O'NEILL: Right.

MR BLOM: In many ways, I wish -

MR OPAS: Commissioner, Opas for Mr Green.

COMMISSIONER: Yes, Mr Opas.

MR OPAS: Yes, again, I assume I have leave. I've tried to exercise some restraint in objecting.

COMMISSIONER: Excellent, if I may say so. Well done.

MR OPAS: Thank you, Commissioner. Evidence has been given as to belief and I think instructions or intent of the delegate, but there's an awful lot of specifics not being given, including what was said by whom and when. Now, I appreciate these things are difficult to recall post-event, and that there may be some specifics not to be - that may need to be glossed over for the sake of time, but it would be helpful, I submit, that if the witness is being asked to recall beliefs or instructions from Mr Green, if he could be taken to the basis for those.

COMMISSIONER: I do have in mind the evidence we have already got from Mr Green, and the fact that he is going to be recalled and so any other questions can be - any issues can be revisited with him. But -

MR OPAS: I accept, Commissioner - sorry, I beg your pardon.

COMMISSIONER: I was going to say, I - I have not thought that entering into the minutiae of each of these calculations is useful for my purposes. Mr Green has given evidence as to what his objectives were, what he wanted to bring about, if I may say that, in general terms, and the reasons for it. Whether accepted or not is another question, but that has been the substance of his evidence.

And the - what we are now doing is touching on the practical way in which those - that expression of undertaking carried through in terms of the process. And you will no doubt be well aware of the criticism of the Auditor-General that it's precisely this kind of intervention which needed process clarification and - because third parties participating in what should have been an independent team, or what was expected to be an independent team has procurement issues at a wider level than this particular procurement.

So I do understand your point, if I may say so. I think it's well taken. And I would allow you to ask questions on matters if they are a real issue, but my present feeling is I do not think that the particular details of communications are significant for my purposes.

MR OPAS: Yes.

COMMISSIONER: Does that answer your objection?

MR OPAS: Well, I don't want to delay the matter more than I already have, Commissioner.

COMMISSIONER: Look, in an ordinary case, what you say is well put. But I think given the substantive issues that we are investigating here, I do not think more detail adds to it. We've got a massive amount of documents, of course, but -

MR OPAS: The point is simple -

COMMISSIONER: And what I will do is, if you think that there's some matter that you would like to question about in fairness to your client, then, providing you do so within a reasonable basis, I will permit that.

MR OPAS: Yes. Thank you, Commissioner.

MR O'NEILL: Thank you, Commissioner. Can I just remind my learned friend, though, that Mr Green's evidence was that he didn't descend into the detail of these decisions and so, therefore, that is why Mr Blom has in fact being called to explain how it is that one gets to the narrowing of the scores.

COMMISSIONER: Right.

MR O'NEILL: In any event, sorry, Mr Blom. So you will see here - just returning, then, to criteria 1. I'm not going to go through all the criteria, but the previous team had scored, relevantly, this criteria 1 as an 8 rather than a 7.

MR BLOM: Sure.

MR O'NEILL: Nothing had changed as between your evaluation and theirs. It seems to be that criteria 1 is a pretty vanilla assessment. It's not really one that requires a whole lot of interpretation or a whole lot of reflection. Fair?

MR BLOM: Yes.

MR O'NEILL: And so - and then team 1 provides its analysis which you see in the box above.

MR BLOM: Yes.

MR O'NEILL: And then your team provided the analysis underneath which is reflective of what it did but doesn't really explain why it is that there's been a change in the scoring for that criteria. Do you see that?

MR BLOM: Yes.

MR O'NEILL: Was that deliberate?

MR BLOM: No, I think it was an outcome of doing this very quickly and - and just, again, reviewing. This wasn't - this wasn't a comprehensive tender evaluation. This was a week of balancing and looking at - at aligning things as per the delegate.

MR O'NEILL: And do you think, in light of that, it was a fair process in terms of what you - what you were being asked? Fair on you is the first question. Is it fair on the team to have been asked this?

MR BLOM: Now, no. I wish I had never been involved in this. Then -

COMMISSIONER: More than one, I think, has that -

MR BLOM: Then, look, again, my - my role within the Directorate was to get projects being delivered. So I felt at the time, if I wasn't doing this, we were doing a disservice to the school that I serve in getting them a project. Because I knew how desperate they were for new infrastructure. So I felt if - if we didn't get involved and didn't participate - I mean, maybe, maybe they just would have changed the decision earlier and then, at least, we would go have got on with things, but I don't know. Hindsight is a beautiful thing.

Yeah, look, I was very uncomfortable with this process, but I do think there was some - some balancing and some merit to - which is why we put comments there. This wasn't just a run-through of their process without any documentation. And, again, these aren't just my views. This was me and two other people who were having discussions and looking at these tenders and, again, coming up with what we hoped would be a balanced outcome.

We certainly didn't do this process knowing what would happen. And if I had known that this whole process, and particularly this process would be utilised as part of the justification for an overturn, I would have 100 per cent refused to be involved.

MR O'NEILL: Can I just do - I just want to do two more, if that's okay with you.

MR BLOM: Yes.

MR O'NEILL: Can I just do - the same analysis I would like to do with criteria number 3. Criteria number 3 is a demonstration the project will be completed - sorry, I withdraw that. I want to do it with criteria number 4. A clear understanding of the project. Now, this is the big ticket item. This is the one that gets the most significant weighting.

MR BLOM: Yes. It's the design.

MR O'NEILL: Just wait for it to be pulled up in the same fashion it's been pulled up here.

MR BLOM: Mmm.

MR O'NEILL: All of those boxes. Yes. So - excuse me. So you will see the previous answers you had been given - you have given dwell on the concept that design was something that the first Tender Evaluation Team had become enamoured with.

MR BLOM: Yes. That was the delegate's view.

MR O'NEILL: That was the delegate's view. And now your task was reflecting upon that. Would it surprise you to know that the two evaluation teams only arrived at a difference in respect of this category by .2?

MR BLOM: Would it surprise me?

MR O'NEILL: Yes.

MR BLOM: No, their design was very good.

MR O'NEILL: So when it came down to undertaking the re-evaluation task, you couldn't fault the position that the first Tender Evaluation Team had arrived at into score Manteena as it did.

MR BLOM: No.

MR O'NEILL: And so does that then - is the - is the Commission - would the Commission be correct in accepting the proposition that it had - it had actually performed its task appropriately?

MR BLOM: Yes. I think so.

MR O'NEILL: And that was a view that even your Tender Evaluation Team had arrived at?

MR BLOM: I mean, I think it shows that we were doing this as reasonably as we possibly could, given the circumstances.

MR O'NEILL: The last one that I want to take you to is criteria 5, which is the financial offer.

MR BLOM: I think it's important, sorry, before you move on from this one, I think again, though, the only point that we make in this is the context of the VM option. So the fact that the BAFO is the desired outcome, we were very much looking at this in the lens of where

are there - we have got two over-budget submissions. Where are there opportunities in both of these submissions to bring that cost back under budget?

MR O'NEILL: Certainly.

MR BLOM: So, sorry, you can move on.

MR O'NEILL: Well, let's get to the point of that - the nub of that point and that is the financial offer. So it will come up now. Financial offer is, in normal parlance, the money.

MR BLOM: Yes, the costs.

MR O'NEILL: There are other components to it, of course, because it's to do with stage 1 delivery and stage 2 delivery, etcetera. But, in general terms, that's right, isn't it?

MR BLOM: Mmm.

MR O'NEILL: Now, the first Tender Evaluation Team had assessed the Manteena response as a 7, noting what it does in the top box, that is, that it was complied, it was over:

There would need to be a value engineering undertaken in consultation with EDU and IDP to bring the project in line with the available budget.

So that was consistent with their understanding of what could be achieved?

MR BLOM: Yes.

MR O'NEILL: In relation to the analysis that your team did, it's simply a matter, well, it's not compliant, so it gets a 5.

MR BLOM: Yes.

MR O'NEILL: Was it any more complicated than that?

MR BLOM: No, I think a 7 is too high if they are significantly over budget. I think in the first Tender Evaluation Team, they didn't necessarily see that as a problem because the - both teams had not been given a target budget. Again, this was pointed out as a bit of an issue with the interactive process insofar that the Territory should do something around managing the designs to the budget that we've got and hopefully you should never achieve, in an interactive tender, two tenders that come in over budget. Again, it's very difficult - like, to be fair to that first Evaluation Team, that's incredibly difficult to manage in a probity and procurement process.

COMMISSIONER: Because you have to be fair and equal to each participant. It's a complicating feature.

MR BLOM: Correct. It is very difficult - anything interactive is fraught with risk in a procurement setting, yes.

COMMISSIONER: Sure. Because it can give rise to allegations of favouritism and -

MR BLOM: Correct, yes. It's a very difficult process to run, and it does lead to challenges such as that, yes. So, yes, I guess if you look at the actual scoring criteria, if you scroll down on this page, I think there is actually the scoring lists.

MR O'NEILL: Yes, we can do that.

MR BLOM: Or what they categorise as a 5 or a 7 or whatever.

MR O'NEILL: No, it's the next page.

MR BLOM: It will be on the bottom of that page. I think a 7 is something above very good. Excellent, maybe.

MR O'NEILL: Yes.

MR BLOM: Very good. So 7 is very good and 5 is adequate. So, in my experience, if someone is over budget, you would not score them better than adequate. There are problems that need to be solved. And, again, I think the first tender assessment, I don't think their score was wrong in a 7. They were looking at it in a context of let's go preferred with Manteena, and let's VM - value manage - the process. So therefore they saw it as - as very good. Our lens, again, was around we need to get these two under budget via a BAFO. They can't be scoring very good because that is a significant problem for the project to move forward.

MR O'NEILL: Of course, the problem being that the first Tender Evaluation Team had scored Lendlease a 5 because it was over budget significantly, and over budget even in excess of where Manteena were. And you - your Tender Evaluation Team simply maintain that score. It didn't -

MR BLOM: There was more to that in our assessment. I think we found - there was a cost planner's report that was issued as part of the documentation suite. The - and I think we make note of that on the Lendlease scoring on this category. The Turner Townsend report noted that Lendlease's design had approximately \$1.8 million worth of excess area beyond the spec, whereas Manteena's was roughly on spec. So that did play into our value for money assessment insofar that Lendlease presented a significant value management opportunity, therefore, balancing that price differential.

MR O'NEILL: Okay. Thank you. If you take that down. If we could just bring up - I will do it from this one.

MR BLOM: So you can see there, we are concurring on a number of spots with the original team as well, in terms of assessment.

MR O'NEILL: Yes, except for score. Is that fair?

MR BLOM: On some areas, yes.

COMMISSIONER: One of the issues is here, isn't it, that the whole scoring protocol was aimed or directed at identifying a recommended contractor. It was not designed to determine whether or not you should have a BAFO or an ordinary competitive evaluation. It was designed for a totally different purpose. If one were looking at this process from the very beginning afresh, you might say, well, what do we actually need to know whether it should be a BAFO or not and confine oneself to those particular issues and how you calculate them and what the judgment call should be.

And that was the problem. It was an ill-fitting process for the purpose of to which it was directed, namely, should there be a BAFO here. But, in a way, you were stuck with what you had, and this was it. And also because a whole lot of work had been done, it meant you didn't have to start afresh and put yourself in the position as though no earlier work had been done. So I - one can understand the balancing process here, but, ultimately, it was an ill fit, wasn't it?

MR BLOM: I think the Auditor-General made that pretty clear, yes.

MR O'NEILL: Thank you, Commissioner. Can I just take to you 2.1649. Can you accept from me that this is a version of the Tender Evaluation Team report from your Tender Evaluation Team, which was signed only by Ms Wright but not by you and not by Mr Patel. So it's an earlier draft.

MR BLOM: Okay. Yes. Sure.

MR O'NEILL: See here in the purpose, if you just draw that out for me, please, it says:

To seek approval to enter into a best and final offer request.

So its actual purpose was just to seek approval for that - so it's got that as its design function. Agree?

MR BLOM: Yes. I mean, that's the recommendation, so, yes.

MR O'NEILL: Yes. Although the actual version that was executed, if I can take you, then, to 1.366, changed that to:

To advise on assessment of the tender responses -

So those words were added -

for the modernisation and to seek approval...

So now, it looked like, well, what your Tender Evaluation Team had done was actually to advise on the assessment of the tender responses and, after undertaking that assessment, to seek approval. Do you know how those words ended up being added?

MR BLOM: I don't recall. I'm hoping you have some documents somewhere, but I don't recall, no.

MR O'NEILL: All right. We might get to it. I note the time.

COMMISSIONER: Could I just - it does rather pre-empt the outcome, doesn't it? I mean, I could understand it if it said, "To advise on assessment of the tender responses and to consider whether to enter into a best and final offer", but it's rather pre-empted. The purpose of it is "to seek approval" for the best and final offer. That's the aim of it. Now, that may just be awkward language, but do you see my reading of it? Or is that unfair?

MR BLOM: I am not catching your concerns, but -

COMMISSIONER: Well, there, are two purposes:

To advise on assessment of the tender responses -

One:

...and to seek approval to enter into a best and final offer.

I can understand if instead of saying "and to seek approval", "to consider whether a best and final offer request should be entered." That's the only point. It appears to -

MR BLOM: That would be correct, I guess.

COMMISSIONER: It appears to pre-empt the outcome. That's -

MR BLOM: Yes. Quite often these recommendations are written in a pretty direct way.

COMMISSIONER: Right.

MR BLOM: I think there was -

COMMISSIONER: Well, you are not responsible for the language anyway, are you?

MR BLOM: I don't - I can't recall. I - they generally are direct and quite often you can get yourself in trouble with the delegate if you leave these too open to interpretation. They are generally looking for a strong recommendation in the language of these recommendations.

COMMISSIONER: All right.

MR BLOM: They are not looking for it to be left open-ended for them to come back - because if they come back and say - again, there's a whole lot of process, potentially, that needs to be done as a result. I think - I think in this - at the top, the language about advising on the assessment of tender responses, I think that's because - because the delegate - in the view of the delegate, they would have said that they had never signed off on the original recommendations; therefore, this is, as far as they are concerned, the - the first recommendation or the accepted recommendation.

COMMISSIONER: Right. All right, then. 12 o'clock?

<THE HEARING ADJOURNED AT 11.46 AM

<THE HEARING RESUMED AT 12.11 PM

COMMISSIONER: Thank you, Mr O'Neill.

MR O'NEILL: Thank you, Commissioner. Mr Blom, the second Evaluation Team returned a report that recommended best and final offer. That's no news to anybody now. That - just orientating you in time, the request was issued a day later, that is, on 7 April 2020. That process closed on 5 May 2020. Okay. So now I want to move to that time period, that is, the time between 5 May 2020 and the time in which you arrive at a recommendation, which is 5 June 2020. Do you understand the time period?

MR BLOM: Yes, yes.

MR O'NEILL: So the best and final offer landed and what's the first step that is undertaken once the tender - the new best and final offer bids are received?

MR BLOM: Once they are - once we have got the tenders back, the BAFO responses back?

MR O'NEILL: Yes, yes.

MR BLOM: So we established or re-touched base with the Evaluation Team, and it was around this time - possibly got documentation, but it was around this time that we - the BAFO took some development, and so before - I guess, going backwards, the BAFO took some development on what the terms of the BAFO would actually be, and then, obviously, we agreed on that and that got issued, BAFO closed. We, I think, very early in the piece got some RFIs through the evaluation phase and we actually did adjust the BAFO criteria through that phase -

COMMISSIONER: RFI?

MR BLOM: Request for information. It's the formal process that tenderers will ask further questions.

COMMISSIONER: That's right. The BAFO provides for a process.

MR BLOM: Correct. And, in this instance, both tenderers actually came forward with similar - similar requests for information which were they wanted more direct information around the design element, what they wanted to - what we wanted changed, what we wanted kept. So we had to navigate that process. Because there was such emphasis on the design aspects, I think pre-close of the BAFO we started engaging with Ms Young and - and Mr Jacobi from the original Tender Evaluation Team to ensure that we were assessing and providing fair and equitable - a lot of this was done with the GSO as well, which was all managed by Major Projects Canberra, and I think Ms Young had a role in helping us through that BAFO process.

COMMISSIONER: Was that done in writing or -

MR BLOM: I believe there's documentation for all of that.

COMMISSIONER: There should be documentation for all of that.

MR BLOM: Yes. If you haven't got it, I can certainly provide those emails.

COMMISSIONER: We might need - we have got an enormous tranche of material, but, of course, you - you search for what you -

MR BLOM: What you are looking for.

COMMISSIONER: What you think you know and then you realise that those searching criteria are inadequate. So we might come back to you after -

MR BLOM: That's perfectly fine. Commissioner, we were well aware of the sensitivities around this process, so we were documenting things carefully. Sorry, I didn't answer your question. I think you were talking more post-BAFO, and I went backwards.

MR O'NEILL: You did. I think you were going backwards in order to explain something to me about why it is - how you were going to commence the process.

MR BLOM: Sure. I believe we held some meetings, very early days, with Ms Young and Mr Jacobi for them to help us to do what was the most resource-intensive part of the review, which was then looking at the post-BAFO design submissions. So it was really important to have their involvement for consistency and understanding. They had been involved in the interactive process, which we talked about earlier. They had also been involved through the REOI. There was a lot of information and context that that second group didn't have that we needed to fairly assess these tenders properly. So, essentially, we started working through the assessment and had a series of meetings and came up with our recommendation.

MR O'NEILL: Is that the - so when the best and final offer process was established -

COMMISSIONER: I'm sorry, Mr O'Neill, there's been a question niggling away at (indistinct) Mr Green was unable to explain. And I just want to go back quite a bit. In the end, for all practical purposes at Mr Green's direction, the first team recommended a BAFO, and the difficulty is why, then, wasn't the BAFO issued? And if you needed to set up a new team to assess that BAFO, that could just have been done. Why was there your intermediate team set up to do exactly what the earlier team seems to have already done? Do you see?

MR BLOM: I see the problem with it, yes.

COMMISSIONER: It doesn't seem to make sense.

MR BLOM: I think the only reason that occurred was because Ms Young said she didn't want to be involved in -

COMMISSIONER: Right.

MR BLOM: Or - and, again, I regret not having a conversation with Ms Young at the time to find out her reasoning. And our team needed to be established - I guess, the delegate wasn't comfortable proceeding without a team in place. I think you need a team to deliver whatever was wanting to be delivered. So that's - that's the case. Yes. It's very hard to justify.

COMMISSIONER: Yes. All right. Thank you. That probably is the best we are going to get.

MR O'NEILL: Seemingly so, Commissioner. The BAFO had only sought to re-evaluate three criteria. That was criteria 3, project completed in period; criteria 4, clear understanding of project; and criteria 5, financial offer.

MR BLOM: Yes.

MR O'NEILL: They were the more significantly weighted criteria. Agree?

MR BLOM: Yes. The reason for that is because we weren't asking those other - we weren't asking for a resubmission of the team. We weren't asking for a resubmission of those other aspects. Whereas we were asking them to change their design and resubmit their costs.

MR O'NEILL: Yes. But when you came to do your tender evaluation, you still utilised the scores that had been awarded in criteria 1, criteria 2 and criteria 6?

MR BLOM: Yes, they are still relevant to the overall assessment; correct.

MR O'NEILL: They are. Except that you use the scores that your Tender Evaluation Team had given those criteria, not the ones that the original Tender Evaluation Team had given that criteria. You agree with me?

MR BLOM: Yes, the delegate - the scores that the delegate accepted and signed on that recommendation, yes.

MR O'NEILL: Yes. But they were scores that had been, in effect, changed in order to bring the two tenderers closer together.

MR BLOM: Correct.

MR O'NEILL: So, the second tender - the BAFO evaluation -

COMMISSIONER: Also they were directed to a different question, which was not to identify a contractor, but to - to elucidate whether or not a BAFO was appropriate.

MR BLOM: Correct.

MR O'NEILL: That was my question, but it's been taken by the Commissioner. The follow-up question is - the follow-up question is, though, there was no consideration of trying to untangle that process from the new best and final offer evaluation process, was there?

MR BLOM: Can you rephrase?

MR O'NEILL: Certainly. So if there's been a process by which those scores have been manipulated to bring them closer together, that's then not undone when you come to perform the best and final offer evaluation?

MR BLOM: No, but an overall - so, again, the recommendation was to undertake the BAFO process and then provide the delegate with a further recommendation utilising - again, the BAFO process, as I understood it, was detailed by the GSO, was that you would fix certain aspects. They've passed through that process and the re-assessed post-BAFO scores - then you still write - have to write another recommendations, unless the delegate has told you to go straight to contract with whoever gets the best score and best value and the lowest risk.

MR O'NEILL: Right. In any event, there was already a starting - a starting block which was not where the first Tender Evaluation Team had started.

MR BLOM: In hindsight - I know where you are going with this. In hindsight, this is incredibly disappointing. But the BAFO reassessment was used as justification for the overturn.

MR O'NEILL: All right. Thank you. I won't torture the point any further, then. And so you then undertake the assessment of what's been reassessed. The two tenderers had now - sorry, Manteena had now brought its budget - brought its tender within budget.

MR BLOM: Yes, correct.

MR O'NEILL: Lendlease was in striking distance of budget. It was slightly over, but -

MR BLOM: They misunderstood the target budget. They understood the target budget to only be the phase 2 component, not the phase 1 plus phase 2. So they were over.

MR O'NEILL: But, in any event, they were close?

MR BLOM: They were still over.

MR O'NEILL: They were still over. And so - and there had been refinement to the various designs and other parts of it as requested by the best and final offer -

MR BLOM: Quite significant changes to the designs, yes.

MR O'NEILL: And ultimately we know that your Tender Evaluation Team then undertook an assessment and recommended that Manteena be the preferred contractor.

MR BLOM: Correct. By a significant margin.

MR O'NEILL: That process - by a significant margin. A margin which is almost reflective of the way in which the first Tender Evaluation Team had arrived at its decision all those months prior.

MR BLOM: Yes.

MR O'NEILL: There were communications between you and, firstly, Mr Green on 28 May 2020, and I'm just going to take you to them. This is at 2.1787.

MR BLOM: Yes, I'm aware of it before you even show it to me.

MR O'NEILL: Yes. We have got to assist people playing along at home. You see here that you are talking to Mr Green about having everything ready in a presentable draft format. This is - this is at 28 May.

MR BLOM: Mmm.

MR O'NEILL:

Happy to meet with you or Katy -

That's Ms Haire -

any time.

MR BLOM: Yes.

MR O'NEILL: Why?

MR BLOM: I believe at some point along - I mean, Mr Green was - there was a lot going on at this time. I think we had - I think in the week before this - or possibly just days before this we had met - I had been called to Campbell Primary School to meet with the board and P & C, and they - so I was still actively trying to manage expectations with the school. So there was a lot of pressure. And I think -

COMMISSIONER: They were anxious to move ahead, of course.

MR BLOM: They wanted this project to start, yes, absolutely. So - and that's part of my role, is managing that interface with the school. So I'm incredibly under pressure to get things happening. So I think at some point - at some point - I can't recall when I was aware that Ms Haire would be the decision-maker, but I must have been aware of it at this point. So I think it - I won't try to pin a date because I can't, but - so I was aware that we were pretty much in the final steps of preparing the recommendation, and I think I was aware because of conversations with Mr Green that I made him aware - he was asking me daily -

COMMISSIONER: What's happening.

MR BLOM: What's going on. Where are we up to. Where are we getting to.

MR O'NEILL: Had you communicated to Mr Green what was going to be the likely recommendation?

MR BLOM: I think he would have been aware, yes. He would have been - he would have asked.

MR O'NEILL: What's the basis for your understanding of that? So when you say "I think" -

MR BLOM: I'm pretty sure he knew relatively early after the BAFOs closed and we had started the scoring that we were - we were going towards Manteena.

MR O'NEILL: And what did he, if anything - did he say anything about that?

MR BLOM: I don't recall, but I do recall the meeting that this is referring to, which wasn't with Ms Haire. It was only with Mr Green. I think it was in this meeting - I remember that it was in this meeting that he outlined to me his - his planned approach with Ms Haire.

MR O'NEILL: All right. Now, this is important. So I want you to do the very best you can and recount to the very best you can what was said.

MR BLOM: My recollection was that he proposed to utilise, I guess, what would be described as a - as a space within the evaluation plan that could be used for an overturn of a Tender Evaluation Team's decision.

MR O'NEILL: Did he explain to you why?

MR BLOM: Not in any great detail, no. I mean, I think I - I don't think he needed to say it. I think I understood at this time -

MR O'NEILL: What did understand?

MR BLOM: That he was under pressure of someone. Again, I never had - I never had definitive evidence or anything like this, and, again, I don't think that came up since right at the start when with that all happened, but when anything like this was happening where he was then speaking around, "We are going to overturn" that was the first time that I really realised that no matter what we had probably done, the outcome was -

COMMISSIONER: Determined.

MR BLOM: Irrelevant, yes. Which was very disappointing for me because I didn't think that was the case until - until the conversation after this meeting - after these (indistinct).

COMMISSIONER: I - this may be difficult now and if it's - if it's unclear, please explain that it is.

MR BLOM: Sure.

COMMISSIONER: Did he say, "We are going overturn", "I am going to overturn" or, "It is going to be overturned"? Do you see the distinction?

MR BLOM: Yes, I understand. I honestly don't recall. I was obviously aware -

COMMISSIONER: If you don't recall, don't guess. You, of course, had some -

MR BLOM: The fact that I've included -

COMMISSIONER: Just one moment.

MR BLOM: Yes, sorry.

COMMISSIONER: You, of course, did have some context. You are not coming to this without having had earlier information.

MR BLOM: Correct.

COMMISSIONER: But at this meeting, you don't recall him identifying "we" or "I" or -

MR BLOM: I recall Mr Green being relieved that Ms Haire would - was the decision-maker. But I don't remember him going through the logistics of how the brief - like, what - obviously, I'm aware of what happened. I don't recall that in great detail of that being part of the conversation. I think at this point he was just aware of what the

recommendation was going to come out as and he had started to describe what was then his next process.

COMMISSIONER: For overturning it.

MR BLOM: Yes.

COMMISSIONER: Yes, Mr O'Neill.

MR O'NEILL: In that meeting, did you go through the analysis that your team had performed to arrive at its scoring?

MR BLOM: I - it's possible, but I don't recall. I think it was more of a conversation around where things are going to land. I do recall - again, similar to the pre-BAFO rescoring, I recall Mr Green having some kind of justifications already set in his mind around things that would end up in that brief. You know, the design is only one factor, the design - the weighting of the design, trying to discredit some of those aspects that were in the higher weighted criteria and then emphasising the other things. But it wasn't until - I don't think I fully understood the brief until I actually saw it after it had been signed. That was the first time I saw what the justification was. But I think in this meeting I saw possibly the early thoughts of what then became that brief.

MR O'NEILL: Did Mr Green explain to you why it was that that process was going to be undertaken?

MR BLOM: I don't - I don't recall, no.

MR O'NEILL: Had you - after the meeting you had with Mr Green, did you have a discussion with your team about that meeting?

MR BLOM: Yes.

MR O'NEILL: What did you say to them?

MR BLOM: I don't think I had a meeting with my broader team. I think I had a conversation with the other TET members, and I called the meeting - I called a meeting - this might have been at the end of the week, and then the following - early the following week, I called a meeting with Ms Power and Mr Nakkan to discuss what Mr Green had told me in this meeting and my concerns around the fact that they were - that I understood there was a plan to overturn our procurement.

MR O'NEILL: And what was discussed at that meeting, in detail?

MR BLOM: Basically, I wanted to have a discussion with Mr Nakkan and Ms Power around ways that we could, within appropriate steps, strengthen the recommendation to defend it against being overturned.

MR O'NEILL: Did you express any dissatisfaction to either Mr Nakkan or Ms Power about what was occurring?

MR BLOM: I don't think I would have been calling the meeting if I wasn't -

MR O'NEILL: Right. How did you say that to them?

MR BLOM: - worried. I would have told them that Mr Green's told me they are planning on overturning this. I want to - I want to make it as robust as possible.

MR O'NEILL: Right.

MR BLOM: I want to stop it from happening.

MR O'NEILL: So you're -

MR BLOM: I'm uncomfortable that I've been involved in this process all along, being asked to be involved in a process that then was just for - for no good and particularly that - particularly the first process. It was at this stage I realised there was some link between that first rescoring and that was being leveraged to overturn what I had undertaken in good faith and in the best interests of the Territory.

MR O'NEILL: Did you discuss with Mr Nakkan or Ms Power what you understood to be the reason for why this was occurring?

MR BLOM: I don't think so. We were more focused on how do we stop the overturn from - how do we best protect the overturn from happening, based on what Mr Green had told me were his ideas. There's a reason in that final report that we focused so strongly on the value of the designs. There's a reason why that's so stretched out in that report.

MR O'NEILL: That is, that the analysis that you provide is -

MR BLOM: Square metre comparisons, a number of other little things that you wouldn't normally see in a recommendation. You normally don't dive into that level. We did in this instance.

MR O'NEILL: And what was the desired outcome for doing that? Was that something whereby, now knowing that Ms Haire was going to be the decision-maker, that she would read that and say, well -

MR BLOM: It was the hope. Again, I didn't have - I didn't have any understanding of how the mechanisms were going to work. I only understood that Mr Green and Ms Haire had been speaking. That's why I think in this - in the text message in front of me I wanted to get the opportunity to brief both of them so that I could be sure. Because I wasn't - I never understood - there was a lot of stuff happening. I'm aware of a lot of stuff that was happening in the background now that I wasn't aware of at the time, and I wasn't sure who knew what, who was making what decisions. I wanted to get the chance to - to stand in

front of whoever was going to sign the paper and make sure that they understood that I strongly believe the recommendation that we were making, post-BAFO, was very robust and that we had looked at it in great detail.

MR O'NEILL: And did you ever have opportunity to speak to Ms Haire about this?

MR BLOM: No.

MR O'NEILL: Did you - you obviously spoke to Mr Nakkan and Ms Power about this?

MR BLOM: Yes.

MR O'NEILL: Did you speak to anybody else?

MR BLOM: The TET members, yes.

MR O'NEILL: And was there any other idea or concept floated as to how this could be brought to the attention of persons higher up in the Directorate?

MR BLOM: That's why I was raising it with Mr Nakkan and Ms Power. I - as executives, I expected if they had means to resolve that issue, that they were the right-placed people as far as I - as far as where I sit in the organisation.

MR O'NEILL: Did you have probity concerns at that point? Or governance concerns at that point?

MR BLOM: Yes, absolutely. That's why I was doing what I was doing.

MR O'NEILL: And so your - your mechanism of protecting your team and yourself was to document precisely how it is that you arrived - and transparently how it is you arrived at the decision.

MR BLOM: Yes.

MR O'NEILL: You were aware at that time that the decision-maker had shifted, though, to Ms Haire?

MR BLOM: Yes, I must have been.

MR O'NEILL: Did you - did you know - were you given a reason for why that had occurred?

MR BLOM: I wasn't given a reason, other than that it appeared that Mr Green didn't want to be in that position where he was signing off on - on an overturn. Again, in hindsight - and this is very disappointing. In hindsight, it felt like we were put in the situation where we were hoped to do the wrong thing or hoped to get a different outcome

that would have avoided the need for any of that process and they would have said Tender Evaluation Team have recommended Lendlease. Tick. You know, all on you.

MR O'NEILL: That's not inconsistent with what Mr Green has told the Commission. And so it doesn't surprise you?

MR BLOM: No. No, because, in hindsight, when I saw the overturn and all of this, it was incredibly disappointing that -

COMMISSIONER: And your experience of what was happening then fell into place, I take it?

MR BLOM: Yes, yes. I took it on - I mean, this is the thing. I've got a lot of experience dealing with - dealing with proper process. When it comes to dealing with something like this, I was not experienced.

COMMISSIONER: You were a bit at sea.

MR BLOM: Yes. Very much so.

MR O'NEILL: You were a close colleague of Mr Green's. Fair?

MR BLOM: I worked with him. I wouldn't regard myself -

MR O'NEILL: Okay.

MR BLOM: A professional relationship.

MR O'NEILL: Did you have a relationship sufficient enough to be able to express your disappointment at what was happening, to him?

MR BLOM: If - if the rumours were true, I felt a degree of sympathy towards him. He was put, I think, in a very difficult situation. So I was not comfortable to have conversations with him because I did not know - I never knew exactly what his intentions were or where he - whether he was - again, this whole thing was very confusing in terms of who was doing what, who was saying what, who was directing things. That was part of the challenge. I had raised issue with - with what was going on and seen nothing change. You know, the process wasn't stopped, even though I had raised it within two different Directorates. So I felt pretty helpless in terms of being able to speak to anyone because I didn't know what was going on beyond what I was being allowed to see.

MR O'NEILL: Did you raise - now, that is, at this time, you know, as you are finalising the report, did you raise the rumours with Mr Nakkan?

MR BLOM: He was aware.

MR O'NEILL: Sorry. My question, though, is did you raise it with him and say is this why this is occurring?

MR BLOM: Another thing that - well, I can't recall. It's highly likely that we would - that that was part of the conversation. But I can't - I can't - I can't put hand on heart and say, yes, we did.

MR O'NEILL: And you can't recall whether Mr Nakkan had a response to that?

MR BLOM: I can't recall, no, sorry.

MR O'NEILL: And same question now with Ms Power. You can't recall whether she had a response or whether you had spoken about that topic?

MR BLOM: No, I can't recall the exact conversation, but I do - I mean, I've re-read an email that I sent back to the Tender Evaluation Team that recalls my meeting and talks about - I can't remember the language I used, but I talked about highlighting the risks of proceeding with Lendlease.

MR O'NEILL: I will bring that up for you. 2.1791. Is this the email you are talking about?

MR BLOM: Yes, that's the one.

MR O'NEILL: And what was it that you were drawing the Commission's attention to in that email?

MR BLOM: It's blanked out Lendlease, but just that that was my - that was obviously what the - I guess that's just a demonstration of what that meeting was about, with - the fact that I had met with John and Rebecca, Mr Nakkan and Ms Power because of that meeting that happened on the 29th.

MR O'NEILL: Yes. And so, realistically, this is an email that the Commission reads as you pushing back against the - as you understand it, what's going to happen. Because you are saying, well, I'm going to highlight the risk with proceeding with what's going to happen.

MR BLOM: Yes, correct.

MR O'NEILL: Okay. Commissioner, I'm going to move forward in the timeline, if that's - I now want to move to the topic of debrief.

MR BLOM: Sure.

MR O'NEILL: So, by this stage, you know that you've made your recommendation. Mr Green had provided - had prepared a minute. Were you aware at the time that he was preparing the minute, or you only since became aware of that?

MR BLOM: It's possible that I was aware that he was the one writing it. I - again, I didn't fully understand the mechanisms of how the overturn and everything was set to happen. I think that was agreed between Ms Haire and Mr Green.

MR O'NEILL: There's then a - at online meeting with Mr Bauer, Mr Mitton, you and Mr Green -

MR BLOM: Yes.

MR O'NEILL: - on 28 July 2020. Do you recall that?

MR BLOM: Yes. Very well.

MR O'NEILL: Now, what do you recall of that?

MR BLOM: I recall it being incredibly uncomfortable for me, because of the recommendation that I had made.

MR O'NEILL: Now, the -

COMMISSIONER: Mr O'Neill may wish to take you to the details, but my impression was that you were very anxious to convey to Mr Bauer that Manteena had done a good job and that their proposal was highly regarded by the team. Is that fairly -

MR BLOM: As I have outlined here already, my reputation within government is someone who takes procurement very seriously. So I did not want it known by anyone, any contractor, that I would have been involved in any way in an un-proper process. So I did want Mr Bauer - and I had worked previously with Manteena, not Mr Bauer directly - he is obviously a general manager, but I had delivered projects with Manteena, and I would have - I would hate for them to think that I was in any way involved in an overturn or anything that had lost them a job that they deserved to win. Yes.

MR O'NEILL: Now, what did you perceive of the way in which Mr Green was handling the debrief with them?

MR BLOM: My recollection of how it actually happened was that it had been agreed that the delegate, Mr Green, would - would do the debrief because Major Projects Canberra at this point was just refusing to have any involvement. I was of a mind to do the same thing, but, again, I don't know, sucker for punishment. So got a last-minute invite, I think, to the session and agreed to - agreed to attend and listen in. But I think when it started, Mr Green pretty much threw to me and said, you know, off you go, you're on the TET, give them the debrief.

MR O'NEILL: Right. And during the debrief, you revealed, did you not, the disparity in scoring?

MR BLOM: I think I tried to.

MR O'NEILL: Yes. Not expressly, but it was clear that Manteena had -

MR BLOM: I wanted them to know they had scored very well. I didn't want them to - normally, in a debrief, you are given information to strengthen future proposals. That's the extent of intent of a debrief. You're not coming for a pat on the back. You are coming for - to make meaningful changes so that you can work in the future. You can get that feedback you want from the Territory, the people who assess the tender, and better your business practices or change design approach, learn from that process.

MR O'NEILL: This debrief was very much different in that Manteena left with more answers - more questions than answers.

MR BLOM: Yes. I don't blame them.

MR O'NEILL: And then after the next series of months, there was follow-up. And then there was a second debrief. Now -

MR BLOM: No, I don't think that was a debrief, to be honest.

COMMISSIONER: A second meeting.

MR BLOM: Yes, that's more my recollection.

MR O'NEILL: You more accurately describe it - don't let me mischaracterise it. You tell me what you thought it was.

MR BLOM: Again, I think I got a text message from Mr Green, saying that he - possibly through the Director-General that there had been a meeting request. He again didn't want to go alone. There's me again. I'm the logical person, the most senior in my team involved in the process. He wanted me at the meeting.

MR O'NEILL: Were you concerned that the Director-General was not at the meeting, given she was the person that had made the decision?

MR BLOM: I don't - I mean, I don't think - it didn't feel strange to me at the time that the - I mean, the Director-General generally delegates some of those matters to people - ICW generally would be the ones responsible for dealing with project-related matters.

MR O'NEILL: And that's Infrastructure Capital Works.

MR BLOM: Yes, sorry.

MR O'NEILL: And so the meeting took place at the Bittersweet Café here in Kingston?

MR BLOM: Yes.

MR O'NEILL: And then what was your perception of what went on at that meeting?

MR BLOM: My recollection was that it was a pretty candid conversation, and, for me, I think it was the first time that I started - that I had actually heard really detailed talk around rumours that I had been aware of for many months now. So I think it was the first time that Mr Green sat down and basically laid out a whole lot of information that I was not aware of.

MR O'NEILL: Right.

COMMISSIONER: Information about?

MR BLOM: About unions, about opinions, about not wanting to give them work. A whole number of things.

MR O'NEILL: And you had not heard that from Mr Green previously?

MR BLOM: Not in that level of detail, no.

MR O'NEILL: But it was consistent with the rumours that you had heard?

MR BLOM: Yes.

COMMISSIONER: And what he had earlier told you?

MR BLOM: Again, I had only ever heard a very narrow -

COMMISSIONER: No, quite.

MR BLOM: Narrow view of this. This was now laid out in a lot more context that I was definitely not aware of. I was aware of very short statements in much bigger conversations, not a detailed conversation around, you know, letters and meetings and all of this stuff that I was not involved in.

MR O'NEILL: Did you and Mr Green debrief after that meeting?

MR BLOM: I don't think so. I remember going back - I think I remember walking back to my car and driving home. I don't recall us having a separate sit down or catch-up after that remember no.

MR O'NEILL: Did you remember - do you remember if you ever spoke to anybody else about what you had now learned at the Bittersweet Café meeting?

MR BLOM: It's possible that I had conversations with my team, but not - nothing that I can recall. I was obviously very troubled by it. But, at this stage, I just - you know, I was incredibly uncomfortable being invited to these meetings where I, you know, I had not

been aware of the conversations or any of this stuff, and, again, I felt uncomfortable because of the decision that I had made and recommended and still stand by today and didn't want, again, my reputation being associated with - with any of this stuff.

MR O'NEILL: Excuse me one moment. Commissioner, they are all the questions I have for this witness at the moment.

COMMISSIONER: Yes, do you mind just coming up to the bench, Mr O'Neill. Mr O'Neill, would you mind just coming up? Now, have you finished for the present, Mr O'Neill?

MR O'NEILL: I have.

COMMISSIONER: Are there any questions? No. Sorry, Mr Opas?

MR OPAS: Commissioner, I may have questions for Mr Blom but it's a matter I would like to take instructions and discuss with my instructing solicitor. I wonder if - if it is convenient to the Commission and to others, including Mr Blom, could I - could I reserve my rights and provide an indication after the lunch adjournment? It's something I think I need to discuss with my instructing solicitor.

COMMISSIONER: Mr Green is available to you? To get instructions, I mean?

MR OPAS: Yes, well, in the first instance, I would like to speak with my instructing solicitor, who is with me, Mr Santucci of Sneddon, Hall & Gallop. I think I would like to have that discussion first, Commissioner, before I say whether or not I wish to ask any questions.

COMMISSIONER: All right. Very well. So I think what we will do is, we will adjourn until 2 o'clock, which should give you enough time, Mr Opas?

MR OPAS: Yes. I will advise Mr O'Neill.

MR O'NEILL: Could I suggest quarter to 2? I just want to make sure that we are keeping matters on track.

COMMISSIONER: Does that give you enough time, Mr Opas?

MR OPAS: That should be sufficient.

COMMISSIONER: We will adjourn until 1.45. I won't release you at the moment, but it seems you are close to the end of your evidence one way or another.

MR BLOM: Thank you, Commissioner.

COMMISSIONER: Yes. Very well.

<THE HEARING ADJOURNED AT 12.50 PM

<THE HEARING RESUMED AT 1.49 PM

MR O'NEILL: Thank you, Commissioner. I understand that Mr Opas has considered his client's position and does not wish to ask any questions. Can I, though, ask some further limited questions.

COMMISSIONER: Certainly.

MR O'NEILL: Thank you, Commissioner. Mr Blom, you were aware that a briefing note was provided by Mr Green to Ms Haire which explained, it said, the reasons for overturning the recommendation that your Tender Evaluation Team had arrived at?

MR BLOM: Yes, counsel.

MR O'NEILL: Have you had a chance to review that note either in the preparation for today and/or recently?

MR BLOM: Yes, counsel.

MR O'NEILL: Can I ask you to turn your attention to it. It appears at - I'm going to do this from the public - where it appears in the public book, Commissioner. If it does. I will get a reference in a moment. 1.461. And then if we can just go to the next page, please. Now, you recognise this document as the minute?

MR BLOM: Yes.

MR O'NEILL: The front page of it is fairly uncontroversial. It's indicating what recommendations were being made and what the decision-maker has decided. And you can see that that's Ms Haire's signature on the bottom of the page dated 25 June 2020.

MR BLOM: Yes.

MR O'NEILL: If you go to the - can you just see in the box it's got executive feedback.

MR BLOM: Mmm.

MR O'NEILL:

Approved, noting the reasons identified at paragraphs 12 to 15, in particular, the importance of long-term factors.

MR BLOM: Yes, I see that.

MR O'NEILL: Can I now draw your attention to those, so that is paragraphs 12 to 15. The next ones will be brought up alongside them, I think. But dealing first with paragraph 12 while we can see it. The sentiment expressed there is that:

Those criteria are reliable long-term indicators of a company's ability to deliver quality projects.

Do you have anything you would say about that analysis?

MR BLOM: I think, firstly, I think on point 10 it talks around the reasons the - the reason this brief can be written in the first place, and I think it talks around - if you can highlight that section for me, the bottom of that section.

MR O'NEILL: Yes, I will draw that out for you. Paragraph 10.

MR BLOM: In terms of being reliable -

COMMISSIONER: Just hold on. We will just get that -

MR BLOM: Sure, no worries. I can answer the question while that comes up, if you like.

MR O'NEILL: That's okay.

MR BLOM: So I guess, 10 refers to why, I guess, an overturn brief can be - well, I guess this is a suggestion of why this is allowed:

Preferred tenderer will be the tenderer offering the best value for money, having regard to all relevant factors and may not necessarily being the tenderer with the highest score.

And then I guess these are then trying to allocate why the highest score is irrelevant and not the factors. In terms of reliable long-term indicators, past performance, yes, that is presumably normally in a tender process. That will be a presentation of relevant projects, breadth of and depth of experience delivering similar type projects. So that is - that is a reasonable long-term indicator. I would say, in this instance, both of them demonstrated very good long-term prospects. I believe both tenderers, there was no indication of a great separation between that factor.

Skills and resources, generally is the team that is being applied to that project. So it's not necessarily a long-term indicator. In fact, on most projects that I've delivered in my time in government, almost, you know, 15 years now, it's pretty rare that you have a stable team through an entire project across two years of - you know, development, building, all of those things. It's quite often that you will change those - change some of the staff. People will rotate. So, again, I wouldn't necessary -

COMMISSIONER: Not only that. That's within one project, but from one project to the next project, you would easily get different teams.

MR BLOM: Correct, Commissioner. So it's not necessarily a long-term indicator. It's a point-in-time reference and you are scoring the team that they present. It's not unheard of for contractors to change that team very early into the - into the process once you award them the job. And then, lastly, Secure Local Jobs Code. So that is a - that is a long-term indicator, potentially, based on performance and safety record and a couple of other factors, again. Yes. That makes sense to be there.

MR O'NEILL: Was there - was there a distinction in your mind in respect of that final category between the two tenderers. That is, on the Secure Local Jobs Code?

MR BLOM: No. Again, based on - I haven't re-reviewed or assessment in great detail, I haven't gone back and read the submissions, but I don't recall the scores being very far apart. Both of them provided quite strong responses and there was nothing of concern in either.

MR O'NEILL: I can help you, that the scores, which were part of the BAFO assessment, as you now -

MR BLOM: Sure.

MR O'NEILL: - understand were 7.1 versus 7.9.

MR BLOM: Yes. Very little.

MR O'NEILL: Okay. Then moving, then, to the second basis - sorry, before we move from the first basis, would that have been enough - is there actually anything in that paragraph which indicates there's a distinction between the two tenderers at all? To your mind?

MR BLOM: Not -

COMMISSIONER: I think we are not talking about a distinction. There is obviously a distinction. The real point is whether there's a distinction without a difference. I mean, in other words, was it consequential or inconsequential?

MR O'NEILL: Thank you, Commissioner.

MR BLOM: Not to the level that would justify an overturn of that procurement outcome.

MR O'NEILL: All right. I move to the second - second substantive paragraph, that is, paragraph 13. And on your review of that paragraph, it's talking about design. This was squarely something that was considered in detail by your Tender Evaluation Team.

MR BLOM: Yes.

MR O'NEILL: What do you make of that paragraph?

MR BLOM: I think it's glossing over - it's glossing over a large number of things. Firstly - I will just read it quickly. Yes, the project - the contract - the contract that we use has provision for the IP payments to be made and for aspects of design to be utilised. By virtue of doing an interactive process, paying for some of that work, you get the benefit of possibly taking some of the good aspects of the unsuccessful tenderer to use if - if you so choose. It's very, very rare that I've seen that done. I think on one school project I can think of where one - one idea was taken, not - certainly not the intent to redesign in the phase 1 contract. That is - it is glossing over a number of issues with that approach, namely, the time risk of doing so. It will take you a significant amount of time to hand over one consultant's design to another consultant team who had not developed that design and ask them to take responsibility for that design.

COMMISSIONER: And when Manteena would, in relation to that design - or without Manteena, just think of the matter in principle, it's already had communications with subcontractors how that design would be fulfilled, what the costs would be, what the timetable is appropriate.

MR BLOM: Correct, they've priced -

COMMISSIONER: If you are going to the end price, and then if you are going to move that on - they have got to do all that work and they may or may not be able to do it for the price.

MR BLOM: Correct.

COMMISSIONER: That is speculative.

MR BLOM: It brings a whole new degree of risk to a project. Ideally, you do not want to be changing your design in this structured approach. Again, there are different procurement approaches where you do a design and price things in a post-tender environment. This one where you've already done a significant amount of design - there is a development phase. So the contract is staged in two parts, being phase 1 is - is detailed design.

So it's essentially structured to take the concept design that should be very well resolved because of the scoring and everything that you are assessing that as part of the tender. You are then just taking that and immediately sending that to your consultants, maybe with a few little changes and tweaks based on feedback from the client that you are able to receive in a preferred status.

COMMISSIONER: Right.

MR BLOM: That is the intent.

MR O'NEILL: You then see in the next paragraph:

In my consideration, the stronger proven track record -

Which doesn't appear to be referred to of anything but could possibly be a reference to the paragraph 12.

MR BLOM: Yes.

MR O'NEILL:

...outweighs the weaker design submission.

Is that a statement that you could have possibly agree with?

MR BLOM: It's not - for one, it's not how tenders work. You don't - you don't - you don't get to pick certain criteria and discredit others. It is an overall score on the basis of all criteria relevant to the procurement.

COMMISSIONER: Which is precisely the point made by the Auditor-General, that this, in effect, reordered the priorities stated in the -

MR BLOM: Yes. The weighting. All of those aspects are fixed at the start for a reason. And if you want to change them, there is a process to do that which may involve having to terminate the procurement and start again.

COMMISSIONER: There's another fundamental problem, as it seems to me, with "stronger proven track record". Proven where, how? I mean, is it suggested Manteena couldn't do the work? Capacity was one of the issues. So the - the very generality of it defies precision. It defies correction. It defies analysis, doesn't it?

MR BLOM: I don't know how that's - how that's come upon.

MR O'NEILL: So is that a - is that an expression of you don't understand how it is that someone could arrive at that conclusion based upon the analysis that you did?

MR BLOM: Based on the analysis we did, yes, I do not understand how you could come to that conclusion. But based on the rumours we were hearing, possibly is why that is in there.

MR O'NEILL: So - the final paragraph that was referred to in the executive approval was 15. It notes the correct comment made in your tender evaluation, that is, they represent low risk.

MR BLOM: Yes.

MR O'NEILL: And given the opportunity - sorry, before stating:

The additional cost of the Lendlease proposal presents increased risk.

MR BLOM: Yes.

MR O'NEILL: And then it says:

Given the opportunity in phase 1 to refine the design and costs before proceeding with phase 2, that risk can be mitigated.

Is that linked to what - the evidence you just gave about how that is just not a correct analysis as to -

MR BLOM: Yes.

MR O'NEILL: - design?

MR BLOM: The time it takes to then adjust the design and make the changes necessary to get it to the point where Manteena's design was, adds time which, as a result, adds cost. So it's not low risk. It is - it is adding more risk because you're changing things. You're delaying the project. You're changing a design in a non-competitive environment. You're opening the door to the contractor, who does get an opportunity in phase 2 to confirm their price. So any changes you make in a phase 1 environment, the contractors are within their rights to charge you for.

COMMISSIONER: So what it doesn't point out is that you are increasing the risk -

MR BLOM: Very much so, yes.

COMMISSIONER: Yes.

MR O'NEILL: Having the benefit of review, reviewing the note, is there anything else that you think the Commission needs to understand as to the analysis contained within this note?

MR BLOM: No, just that I don't think it aligns with the intent of what we had written in the recommendation.

MR O'NEILL: In that its reasoning doesn't -

MR BLOM: Is flawed.

MR O'NEILL: Is flawed. Thank you, Commissioner.

COMMISSIONER: Thank you. Sorry, any questions arising out of that additional information? No. Thank you. Mr Blom, I think it's unlikely you will be recalled, but it is not impossible. And so I can't release you at this moment, but we will give you adequate notice. Please remember what I said about being able to consult some help if you feel you need it.

MR BLOM: Thank you.

COMMISSIONER: If it's not professional help, then I need know who you are talking to. I can't imagine there will be a problem with it. We just need to approve it.

MR BLOM: Sure. Thank you, Commissioner.

COMMISSIONER: Thank you and thank you for your assistance.

<THE WITNESS STANDS DOWN

COMMISSIONER: Yes.

MR O'NEILL: The next witness I intend to call is Mr Edghill. We will just need a very quick adjournment, please, Commissioner.

COMMISSIONER: Very well.

<THE HEARING ADJOURNED AT 2.05 PM

<THE HEARING RESUMED AT 2.12 PM

COMMISSIONER: Apologies for the delay. I regret to say this isn't the only matter on my desk. Yes, Mr O'Neill.

MR O'NEILL: I call Mr Edghill.

COMMISSIONER: Mr Edghill. Yes, you already know, I think, the formalities and I expect they have anyway been explained to you by your lawyer yet again, so I won't repeat them. All I will repeat is that should you feel stress or anxiety as a result of your interaction with the Commission, you should seek professional help. It is available through government arrangements. And if you don't want to do that far, but you want to have someone who you can just talk with as a friend or a support person, in principle, I'm quite content with that, but I just need to know who it is before I give approval, because I just have to ensure they've got nothing to do with the investigation. If that's the case, then I won't have any problem with anyone, but just need to ask. Do you understand that?

MR EDGHILL: Yes, thank you, Commissioner.

COMMISSIONER: All right. Yes, now, Mr O'Neill.

MR O'NEILL: I understand the witness will take an oath or affirmation?

MR EDGHILL: The one with the Bible, I'm happy to do. The oath.

<DUNCAN PETER EDGHILL, SWORN

<EXAMINATION BY MR O'NEILL

COMMISSIONER: Yes, Mr O'Neill.

MR O'NEILL: Mr Edghill, can you please provide the Commission your full name?

MR EDGHILL: My full name is Duncan Peter Edghill.

MR O'NEILL: What is your current occupation?

MR EDGHILL: I'm an executive in the public transport field in the private sector.

MR O'NEILL: In the private sector in New South Wales.

MR EDGHILL: In Sydney.

MR O'NEILL: And prior to that, what was your occupation?

MR EDGHILL: I worked for the ACT Government between April 2014 and January of this year in a number of different roles, the last one of which was as Director-General, also known as Chief Projects Officer, of Major Projects Canberra between 1 July 2019 and the end of my employment.

MR O'NEILL: As at - well, excuse me, I will go back a little bit further. Do you hold any tertiary education?

MR EDGHILL: Yes, I do.

MR O'NEILL: What is that?

MR EDGHILL: I have a Bachelor of Commerce with major in Finance. I have a Bachelor of Laws and I have a Masters in International Security Studies.

MR O'NEILL: And prior to working for the Territory, had you been employed elsewhere?

MR EDGHILL: Yes. Yes, I had.

MR O'NEILL: Where was that?

MR EDGHILL: So immediately prior to the ACT Government in water utility, and then immediately prior to that an investment bank.

MR O'NEILL: So fairly broad, both - fairly broad experience both in the tertiary sense and also in an experiential sense. Is that fair?

MR EDGHILL: I think that's fair.

MR O'NEILL: Now, 1 July 2019, you started at Major Projects. At that time, had you become aware of anything known as the Campbell Modernisation Project?

MR EDGHILL: Not to my recollection, no.

MR O'NEILL: You then -

COMMISSIONER: From a Major Projects point of view, it was not - it was far from large.

MR EDGHILL: From a Major Projects perspective, there were the major projects part of Major Projects which occupied a although lot of my time, and then there was the segment of the organisation that dealt with providing contract management, procurement services across a range of other capital works projects across government, of which there were many. So the Campbell School procurement fell into that bucket.

COMMISSIONER: Smaller scale.

MR EDGHILL: Very, very small. In terms of the amount of time it took at that point.

COMMISSIONER: Right.

MR O'NEILL: And just so that people can be aware, who do you report to as the Director-General?

MR EDGHILL: So, at the time, I reported through to the head of service, in the sense the person that did my performance reviews and so forth was the head of service. But then for individual major projects, I had different Ministerial accountability, depending upon the project.

MR O'NEILL: And when you say, "depending upon the project", that's depending within what other directorates the projects are or the procurements are being undertaken. Is that fair?

MR EDGHILL: No, depending upon the administrative arrangements. So from the perspective of Light Rail, I had direct accountability to the Transport Minister; the CIT Woden project, to the Minister for Tertiary Education at the time; the Canberra Hospital expansion project, to the Minister for Health. My ministerial reporting line in terms of that part of the organisation, that provided services for other Directorates, was the Treasurer.

MR O'NEILL: When was the first time, to the best of your recollection, that you became aware of the Campbell Modernisation Project?

MR EDGHILL: To the best of my recollection, it was on 25 March 2020, which is not to say that it may not have been in reports that I received but the first it came on to my radar was on 25 March 2020.

MR O'NEILL: And why was it that it came on to your radar?

MR EDGHILL: There was an industry call at the time in which it was - it was - it was raised or took a little while to figure out which projects were being discussed. But it was raised by one of the industry participants on that - on that industry call.

MR O'NEILL: And who was that?

MR EDGHILL: So that was Michael Hopkins, who is the CEO of the Master Builders Association here in Canberra.

MR O'NEILL: And what was the context in which it was raised?

MR EDGHILL: So the context in which it was raised, and the context of the industry calls is at 25 March, we were at the beginning of the pandemic here in Canberra. So I think by that point in time the public health emergency had been declared and a few days before the 25th, that's, to the best of my recollection, when other restrictions had been placed by the ACT Government upon certain businesses being able to open and movement of people and so forth. And we were, also, I think, at that point in time sent home from the offices and working from - from home.

So with the - with the pandemic setting in, I had initiated an industry call involving various members of ACT Government, as well as various industry members, which was a daily call which would give us the forum to talk about in real time what was happening out in the real world from a construction industry perspective. So it was in the context of me hearing the concerns of the industry, but also conveying the things that we as government were doing to try and keep liquidity in the construction market and keep businesses afloat and so forth that Mr Hopkins raised that he had been approached by one or more of his members to say that there were a couple of projects that were going slower than they thought reasonable.

MR O'NEILL: Right. And did Mr Hopkins mention to you by name what those projects were?

MR EDGHILL: To the best of my recollection on the call, Mr Hopkins had mentioned that there were three Education project, but he didn't know on the call which specifically they were.

MR O'NEILL: Right. Now, I'm going to show you your diary note for that day. So it starts at 2.1572, but I think relevantly the part that will be of interest to this topic is at 2.1574. It will come up on the screen in front of you.

MR EDGHILL: Thank you.

MR O'NEILL: Do you recognise that handwriting?

MR EDGHILL: That's my messy handwriting, yes.

MR O'NEILL: It's not too bad compared to some that I've seen in front of me after I've written it. So you - you see there, there's discussion about:

Need to get tenders out the door.

Do you see that?

MR EDGHILL: Correct.

MR O'NEILL: Do you think that's a reference to what Mr Hopkins was telling you?

MR EDGHILL: Indeed, I do.

MR O'NEILL: Now, you see there there's a black box with a name John Green. Do you know who that person is - who that pseudonym represents?

MR EDGHILL: I do.

MR O'NEILL: Okay. Now, had you had any previous dealings with Mr Green?

MR EDGHILL: I knew of Mr Green and had spoken to Mr Green before. It's a reasonably small public service. But I had never worked with him on any projects or in the same Directorate as Mr Green.

MR O'NEILL: Had you come across him in his role as the Secure Local Jobs Code Registrar?

MR EDGHILL: Not - not to my recollection.

MR O'NEILL: In any event, it says here there's a note - so it says underneath "need to get the tenders out the door":

Education, education, education.

That must be a note they were in the Educational Directorate, although the names were not known to Mr Hopkins; fair?

MR EDGHILL: I interpret the way I have written those down, you will see next to the name John Green is written, there's a stroke across. In my diaries, that's typically how I show that I have moved from kind of one conversation to the next. So the "education, education, education", I think, is a reference to what Mr Hop kin was tells me on the industry call.

MR O'NEILL: Yes. And three separate schools. That's come from Mr Hopkins.

MR EDGHILL: I believe so.

MR O'NEILL: Inverted commas:

Manage my cashflow.

MR EDGHILL: And, unfortunately, I've got no recollection what I was referring to there.

MR O'NEILL: Right. And then the stroke on the left-hand side, new conversation, "Mr Green." Happening on the same day, you think?

MR EDGHILL: Given it's immediately after my previous notes - I don't have a recollection of the conversation with Mr Green, but based upon it being immediately after my notes, I would say that it was a call that happened straight after the industry call.

MR O'NEILL: There it says:

2 - Campbell - a challenge - two crap tenders.

Is that right?

MR EDGHILL: Correct.

MR O'NEILL: Can recall what that was a reference to?

MR EDGHILL: I - I don't recall the conversation with Mr Green. It was a - to my mind, an unremarkable conversation. But I don't typically write swear words in my notebook. So my interpretation of this is that this was essentially a verbatim quote from Mr Green firstly telling me what the projects were that he thought Mr Hopkins was referring to, and the status of those projects.

MR O'NEILL: You had understood that Mr Green had been in the conference with you and Mr Hopkins because it was a - I think it was an industry-facing -

MR EDGHILL: Correct.

MR O'NEILL: And then:

3 million over 20 million.

Do you see that, far right?

MR EDGHILL: Correct.

MR O'NEILL: And what did you understand - what do you understand that note to be referring to?

MR EDGHILL: I understand that to mean that Mr Green was telling me that the tenders that had been received were approximately \$3 million over their \$20 million budget.

MR O'NEILL: And then underneath that, asterisk in a circle. Has that got some special meaning? That's over on the left.

MR EDGHILL: When I write an asterisk or an asterisk in a circle, that's typically, in my notes, a reminder to myself to follow up on something.

MR O'NEILL: I see:

Throsby - closed last Thursday. Evaluation barely started.

Then in capitals:

GET IT DONE.

MR EDGHILL: Correct.

MR O'NEILL: The capital letters, is that you issuing an instruction or a hope of what should happen?

MR EDGHILL: Given it's in capitals, and given the asterisk there, I interpret this as being a note to myself to speak with somebody in my team to get a wiggle on in that project.

COMMISSIONER: "Closed" suggests the tender has closed and now the evaluations are on, but it's only barely started.

MR EDGHILL: Correct, Commissioner.

COMMISSIONER: That appears to be the message.

MR EDGHILL: Correct, Commissioner.

MR O'NEILL: So having received this information about the two crap tenders, do you recall whether you thought to yourself you had to do anything with that information or, at that point in time, it was simply let it see how it plays out.

MR EDGHILL: In terms of the - assessing the tenders itself, nothing to do with me. There's another note which I'm sure we are about to come on to, but I did take an action item away from the conversation with Mr Green.

MR O'NEILL: Can we just go across to the next page. Do you see here at the top there's a phone number for Mr – for a phone number?

MR EDGHILL: Yes.

MR O'NEILL: Do you think this is the same day?

MR EDGHILL: Either – I can't exactly remember the calls, but I keep my note book sequentially so (crosstalk)

MR O'NEILL: And underneath that –

MR EDGHILL: - the next day.

MR O'NEILL: See underneath that line, "CFMEU".

MR EDGHILL: Mmm.

MR O'NEILL: hyphen – I don't know what that word is.

MR EDGHILL: Potentially "Greg".

MR O'NEILL: Yes, "- construction industry".

MR EDGHILL: Mmm.

MR O'NEILL: And then underneath that "construction rules".

MR EDGHILL: Mmm.

MR O'NEILL: And underneath that "Jason".

MR EDGHILL: Mmm.

MR O'NEILL: Do you recall what that note is about?

MR EDGHILL: I'm sorry, I don't have –

COMMISSIONER: The "Jason" has to be Jason O'Mara, doesn't it?

MR EDGHILL: I couldn't be definitive because I just don't have any recollection –

COMMISSIONER: You are even uncertain about that. Right. The first person, we don't need to know their number, the first person, is that David Ferguson?

MR EDGHILL: I believe so. Yes.

COMMISSIONER: And at that time he was –

MR EDGHILL: I believe he was chief of staff to the procurement minister. Again -

COMMISSIONER: Right. And who was the procurement minister at the time?

MR EDGHILL: I believe it was Ms Cheyne, but I'm -

COMMISSIONER: Well, this would have been the time, because of the issues you had pointed out, there would be frequent Ministerial back and forwards because of the crisis?

MR EDGHILL: There was a lot - absolutely, Commissioner. There was a lot going on at this time and lots of conversations at all hours with different people, and my focus was on what was happening in the construction industry.

COMMISSIONER: Right.

MR O'NEILL: Now, I'm going to come back to the rest of that note shortly, but so that I'm not out of timeline, can I then go to 2.1581. Now, this is the note that I think you were foreshadowing that I was going to take you to, quite correctly. Is this your - the way that you were intending to action what you saw as getting it done?

MR EDGHILL: Correct. So the action item which I had taken from the conversation with Mr Green would be reflected in this note.

MR O'NEILL: And here you were keen, in the second paragraph, where you discussed Campbell - I will just draw that out for you. You were keen to do - you had a suggestion was to - rather than reopen the bid or go seek extra funding was just simply identify a preferred tenderer and bring the price down as much as possible and just get cracking.

MR EDGHILL: Correct.

MR O'NEILL: So it was definitely your view that it was more important to have the project commence than to worry about all sorts of other bits and pieces. It was critically important for industry to have this commence.

MR EDGHILL: In -

MR O'NEILL: At that time.

MR EDGHILL: In the context of the very - very unusual situation there, yes, that was my - my view that I - on balance, it would be more consistent with what we were trying to do in the industry more broadly if the project got into construction as quickly as possible.

MR O'NEILL: You then shared - after -

COMMISSIONER: Just before you move on -

MR O'NEILL: Certainly.

COMMISSIONER: Can I just take to you the first two sentences. The first one is:

There are two bids that came in over budget

So problem one:

I also understand -

So problem two -

there are some other sensitivities there.

Do you now recall what those other sensitivities were? They are obviously not budget, but -

MR EDGHILL: Other than - I don't have any recollection of the conversation itself. As I mentioned, it was an unremarkable conversation. The way I interpret this is it wasn't just a budgetary issue that Mr Green had conveyed to me. Further, the scribbles in my diary, he said to me actually he thought both of them were crap tenders for reasons other than budget. Perhaps a little unseemly for me to write that in an email to another Director-General, so, yes, as best as I can interpret my note, the point I was trying to make there is that I understand it's not just a budgetary issue, but other problems with both of the tenders which had been conveyed to me.

COMMISSIONER: Right, okay. Yes, thank you.

MR O'NEILL: You then - if I can just show you this at 2.1582, you then - sorry, I withdraw that. 2.1584. You then forwarded your email to Ms Haire, that is the email between the two of you, to Mr Green and Mr Piani some 40 minutes after it was sent. Why?

MR EDGHILL: I - to the best of my recollection, it would have been for two reasons. One is as a professional courtesy, particularly to Mr Green if I was corresponding with his boss, but also I'm sure there was an element of me not having any intention of getting into the weeds of the individual procurement.

MR O'NEILL: And that's why you are - you're copying in Mr Piani because he sits below you. Is that fair.

MR EDGHILL: Correct. He reports directly to me.

MR O'NEILL: And then, so you received an email at 2.1585 back from Mr Green saying:

Katy and I have had a positive conversation about this.

What did you understand that message was?

MR EDGHILL: I would have taken it at face value, to mean that they were inclined to take up my recommendation.

MR O'NEILL: Ms Haire also provided a response, 2.1592. The following morning, very early. And you see here that it's got:

I've discussed your ideas with John -

Being Mr Green -

and the MO -

Which is the Minister's office -

and we are keen to work with you on them.

Do you see that?

MR EDGHILL: I do.

MR O'NEILL: And so, again, you understood that something was happening over there and that that was -

MR EDGHILL: Again, I would have taken it at face value to mean that they were inclined to adopt my recommendation.

COMMISSIONER: In fairness, from your perspective, it would make sense to refer to the Minister's office if you were thinking you might need to get some more money. If you were going to need some additional budget, which was implicit in your earlier suggestion, it would make sense to go to the Minister's office. So, from your perspective, this would be completely innocuous and make sense in the context. Is that fairly put?

MR EDGHILL: I would agree with that, Commissioner. It's - if - if there's a potential here that more money would be needed to get on with the project -

COMMISSIONER: You want to go to the Minister's office.

MR EDGHILL: - then you have to go through the Minister's office.

COMMISSIONER: Yes.

MR O'NEILL: Now, returning, then, back to your diary - so this is being, again, on the - 26 March, as we best understand it. Do you see there's a industry meeting that occurs at 2.1575?

MR EDGHILL: The reference about two-thirds of the way down?

MR O'NEILL: Yes. And it says Education Procurement Examples.

MR EDGHILL: Mmm.

MR O'NEILL: What's that a reference to?

MR EDGHILL: I cannot recall exactly what this is a reference to, but reading it now, I would suggest that it's me preparing notes to tell somebody else what had happened on the industry meeting call, if this 26 March, the day before. And this would be reference to the examples that Mr Hopkins noted of some Education projects that were going slowly when we were trying to make projects go quickly.

MR O'NEILL: Had anyone explained to you at this point in time that in relation to Campbell there had been a request made of the government's solicitor's office in respect of this process known as best and final offer?

MR EDGHILL: Not to my recollection.

MR O'NEILL: So you were just not across the detail of what was happening during the procurement?

MR EDGHILL: Correct.

MR O'NEILL: Assessment.

COMMISSIONER: I suppose you had other things on your desk.

MR EDGHILL: Correct.

MR O'NEILL: On 27 March 2020 at 2.1549, Mr Piani sent an email to Mr Green copying Ms Power, chasing up a decision on Campbell. And the aim was to be able to advise the successful tenderer today. Did you speak to Mr Piani about any expectation that your Directorate had about the timing for the Campbell decision?

MR EDGHILL: I can't recall the specific conversations, but I would have conveyed to Adrian my expectation that if they are going to pick a - adopt my recommendation and pick a preferred that they should hurry up and I'm sure I would have set my expectations that I was expecting it to be done ASAP.

MR O'NEILL: We understand there was a meeting between you and Mr Bauer. Do you know who he is?

MR EDGHILL: He is the CEO of Manteena.

MR O'NEILL: Yes. That occurred on 9 April.

MR EDGHILL: Mmm.

MR O'NEILL: Do recall a meeting occurring on or about that date?

MR EDGHILL: I don't recall the specifics of any meeting with Mr Bauer, but at that point in time - I think it was early April through to mid-April - we were preparing to undertake what became known as the Garran Surge Centre Project and in correspondence that I had put out to my executives, I made it clear this was the single most important thing that we were doing within Major Projects Canberra at the time. Manteena was a subcontractor to Aspen Medical, who had the contract with the ACT Government to deliver the Garran Surge Centre, so I had, no doubt, a number of conversations with - or at least one conversation with Mr Bauer in that period. I just can't remember the specifics of any particular conversation.

COMMISSIONER: In fact it would just be everyday business, as it were, getting on with it?

MR EDGHILL: That would have been in relation to the Garran - primarily in relation to the Garran Surge Centre.

MR O'NEILL: In that context, was the CFMEU mentioned to the best of your recollection?

MR EDGHILL: At - at some point in that period in the beginning of April - and again, I unfortunately can't remember the specifics, but I became aware that there was some sort of issue or tension that existed between the CFMEU and Manteena. I'm not sure if it was as a consequence of one or both of them telling me in conversations. But I have a recollection that I would have said something along the lines to both of them that the Garran Surge Centre is incredibly important for Canberra, and I would have been - I'm sure the government would have been disappointed, had any of those - any of those tensions manifested themselves in a way that were at all slowed in delivering the Garran Surge Centre. So it's quite - I have a recollection - I don't remember the specifics - but of asking them to meet and talk together. I wasn't involved in, but that was the background to that.

MR O'NEILL: Were you aware of what the dispute was?

MR EDGHILL: Not that I can recall.

MR O'NEILL: Right. No idea at all?

MR EDGHILL: Not that I - not that I can recall. And not that it was at the time something I was particularly concerned to understand that - the details of it. That's not to say that perhaps one or other of them didn't tell me, but there's - I can't recall the specifics.

MR O'NEILL: All right.

COMMISSIONER: Anyway, you weren't interested in adjudicating. You just wanted to make sure that it wasn't going to lead to a delay.

MR EDGHILL: Correct, Commissioner. I just wanted the Garran Surge Centre built without any impediments.

MR O'NEILL: At 2.1638, you were copied to an email from Mr Green to Mr Hopkins which was updating Mr Hopkins as to what was happening on Throsby but, relevantly, he says that he needed to have a conversation with the Campbell tenderers about next step as it's a challenge. This is only about a week after you are being - firstly Mr Piani has been asking when the decision is going to be made and, secondly, you've been given a positive indication that a preferred tenderer is simply going to be accepted - is being considered to just accept a tenderer and move on. Did this come as some kind of shock to you that it there was some kind of complication, and it looks like it wasn't going to be accepted?

MR EDGHILL: So I'm not sure from this email it's clear that they weren't going to a preferred - in this document. I think this email itself is just referring to challenges with the Campbell tender and that was consistent with what Mr Green had told me previously, that there was a challenge there and that both had come in over budget.

MR O'NEILL: Right.

COMMISSIONER: What is "LL will get a call"? Who is LL?

MR EDGHILL: I would suggest it's Lendlease in this context, Commissioner.

COMMISSIONER: Right.

MR O'NEILL: On or about the same date, Mr Bauer informs us that he had another conversation with you where he spoke to you about challenges that Manteena were facing. In relation to that, he notes that - that you said you believe the status of the current Education projects were as follows: That Campbell was with Education and had budget issues. Had you communicated that to Mr Bauer at that time?

MR EDGHILL: I don't recall the specifics of any particular conversation with Mr Bauer, but if that's Mr Bauer's recollection I'm not inclined to dispute it because I think that's consistent with my understanding at the time.

MR O'NEILL: Right. Now, ultimately what had happened was that the first Tender Evaluation Team that had been initiated arrive recommendation that it was going to - firstly, that it was going to prefer Manteena. It was then - that recommendation was then changed to recommend the best and final offer. Ms Young, who was the chair of that, decided that she was having no part of it and so another Tender Evaluation Team was stood up. That Tender Evaluation Team again arrived at the best and final offer. Were you aware of that process taking place at or about the time of these communications?

MR EDGHILL: No. Based upon the previous email that we were looking at, I was obviously aware that somewhere in the process the best and final offer was being contemplated. Hence my note to Ms Haire. But the finer grain detail of what was happening in terms of exactly how the process was running, to best of my recollection I don't think I was in that level of detail.

MR O'NEILL: Right. Having that knowledge now, it seems that it's cutting directly across what you've thought might have been something that might have been being implemented at the time. Is that fair?

MR EDGHILL: It was - it was different, to my understanding, as to what was happening at the time where there was a tender evaluation panel that was doing its work. There was, as I mentioned some - obviously some contemplation as to whether a best and final offer might be the optimal next step. But I wasn't across the equal details of it. And then when we get to the point where the decision has been made to go to a best and final offer then it's a new - a Tender Evaluation Panel needs to be stood up for that process. But I wasn't aware of the detail that you're referring to there at the time.

MR O'NEILL: Had Ms Young made you aware of what was going on, given she had expressed a view that she didn't want to be a part of what was occurring?

MR EDGHILL: No. And two points of context. I'm not sure at the time whether I could have put a name to the face with Ms Young, given it was fairly early days still with Major Projects Canberra.

MR O'NEILL: She's in your Directorate, though.

MR EDGHILL: She is in my Directorate. But, secondly, by this point in time, we were - well, I was working from my basement in my house, and everybody else was working from their kitchen table. So there weren't those kind of round the water cooler or bump into somebody in the office conversations. The conversations that we're having were over video conference and quite structured. Primarily when I'm talking to staff with my direct reports.

MR O'NEILL: At 2.1885 - sorry, just before I get there, 2.1638, what occurred after this was that a best and final offer process was stood up. Did you have anything to say to anybody about that process or did this fall off your radar at that point, once the best and final offer process was underway?

MR EDGHILL: I think - to the best of my recollection, once the decision had been made to go to best and final offer, there's not much I could do until wait until that process had run its course. It wasn't a Major Projects - it wasn't a project for which I had accountability or any decision-making authority, so at that point once I was informed of that, it didn't - I wouldn't say it completely dropped off my radar, but it was just one of the projects that was happening in the - in the background while everything else was moving forward.

MR O'NEILL: Were you dissatisfied how it had progressed at that point?

MR EDGHILL: In terms of the decision to go to best and final offer? I think it's fair to categorise. I would have had some sort of disappointment with it in the sense that I had pretty clearly made a recommendation to do something else and it wasn't adopted. So whenever somebody doesn't adopt a recommendation of yours there's - you know, some

feeling of frustration with it. But not - just given that the project as a whole formed a very minor part of my overall, I wouldn't say it was a huge emotion for me.

MR O'NEILL: All right. Now going to the document at 2.1885, do you see here that this is - at the top is an email from Ms Power to you which attaches a brief. And as one walks through the brief, it is the memo executed by Ms Haire. So that's at 2.1887. Do you recall why it was that this was sent to you?

MR EDGHILL: As best I can recall, this was Ms Power is a courtesy informing me that the - the decision had now been made on the project. It's not something I recall asking for, but it came in her possession, and she sent it through to me.

MR O'NEILL: Do recall reading it?

MR EDGHILL: I - perhaps not in any - with any huge degree of forensic analysis but I would have opened it and read it at the time.

MR O'NEILL: Would you have considered the issues addressed in with any detail? Or simply, because you had been asking for this project to commence since February, you were now getting something happening in June, well, let's get on with it?

MR EDGHILL: Yes, it's been - I can't exactly remember the contents of it. It's been a while since I looked at it. But my initial reaction would have been (1) that, okay, we finally got that part of the process done. We can begin thinking about moving into contract and moving into construction. Because by this - by this point in time the - certainly, in my mind, the issue was the time available left to open the schools. The schools are interesting construction projects in that if it needs to be opened by day 1, term 1 and a school is taking enrolments for day 1, term 1, you can't just be two weeks late or three weeks late.

So to the extent that the procurement process is going longer than anticipated and my opening date isn't moving, that's just increasing my construction risks and the amount of time that I have to deliver the school. And I use that in the I in the royal sense, the team does. So I - one of my initial reactions undoubtedly would have been, okay, great, we can start thinking about moving into contract terms and into construction.

MR O'NEILL: Had you seen this kind of process, that is, where a recommendation had been put up by a Tender Evaluation Team being not accepted by a decision-maker?

MR EDGHILL: At that point in time, I - to the best of my knowledge, I hadn't.

MR O'NEILL: Did that cause you any concerns when you learnt about in?

MR EDGHILL: At that point in time, I - I didn't have a great deal to benchmark against. This is a year into Major Projects Canberra. The fact that a decision-maker had made a decision that was different to a recommendation wasn't by itself something I considered something that was illegitimate under the procurement process. The decision-maker has

the ability to make a decision which is contrary to the recommendation which has been made to them.

MR O'NEILL: Certainly. Now, you're a decision-maker. What would it require for you to be able to form a decision to -

COMMISSIONER: I don't think that's quite useful, Mr O'Neill. But let me put it like this: You - procurement is closely organised, closely governed because of the corruption risks which are endemic in this area; do you agree?

MR EDGHILL: Amongst other risks, I would agree.

COMMISSIONER: Amongst other risks, yes. So it's capable or an area that has been capable of inappropriate political pressure, for example, do you agree? It's open to those kinds or can be open to those kinds of pressures?

MR EDGHILL: As a general statement, I wouldn't disagree.

COMMISSIONER: Right. And so what you've got is a process that, to a greater or lesser extent, is designed to ensure transparency and independence of decision-making. Is that a fair comment?

MR EDGHILL: And defensibility in decision-making.

COMMISSIONER: Quite. That's another way of saying transparency. You can see the reasons for a decision, and you can see that they make sense or are acceptable. Agreed?

MR EDGHILL: I would agree.

COMMISSIONER: Now, where you have - and part of that process in the procurement space is that you have public competitive tendering processes, the request for tender set out the process that's going to be followed, the criteria that are going to be applied to bids that are made, even the weighting of the various elements making up the package of considerations. Do you agree? So there's a high degree of formality. Now, of course, there's always an escape clause because things can be exceptional, and you can't always predict what's going to happen. But would you agree with me that any substantial or significant departure must be clearly identified and clearly transparently explained?

MR EDGHILL: I - with the general proposition, I would agree that there should be proper articulation of the reasons for departing from a recommendation.

COMMISSIONER: Right. So in this particular case where you have a recommendation from a Tender Evaluation Team, and one starts out by assuming they have been selected because they are competent, and you know more or less that they have been through a significant process of analysis and backwards and forwards about the details of the bids. They make a recommendation and then a question arises whether the recommendation should be accepted or not.

Now, one can think there may be reasons for not accepting the recommendation. The only point I wish to make after this perhaps somewhat lengthy preamble, is as a matter of sound public administration, do you agree that the reasons for not accepting a recommendation in that context must be strong ones: Clear, justifiable and transparent?

MR EDGHILL: I would agree with that general statement, yes.

COMMISSIONER: All right. Thank you. Yes, Mr O'Neill.

MR O'NEILL: Thank you, Commissioner. Now, can I show you another document at 2.1783. Prior to the decision being made, Ms Young wrote to you copying Ms Pilgrim-Day, Ms Power and I think it's Ms Basic?

MR EDGHILL: Mmm.

MR O'NEILL: And a rather lengthy note putting out timeline. Do you see this?

MR EDGHILL: I do.

MR O'NEILL: Now, do you recall receiving this email?

MR EDGHILL: Not specifically, but I think it's clear that I did receive this email.

MR O'NEILL: Well, it sets out a checkered history of what had happened with the Campbell procurement. Do you see that?

MR EDGHILL: I do.

MR O'NEILL: It then deals with the Tender Evaluation Team being changed on 27 March 2020. Do you see that? That's about two-thirds of the way down.

MR EDGHILL: I see that.

MR O'NEILL: And talking about best and final, and so what was actually underway. It looks like it's something that you've requested.

MR EDGHILL: Yes. So the context to this - and this ties into what I was talking about a little earlier on, that there were a whole suite of measures that we were looking to put in place to keep procurement processes moving quickly, or with a view to putting as much liquidity and support into the construction market as possible.

So one of the - the things that I had done internally was I had - and not just relation to this project but all projects, I had issued an instruction to all Major Projects staff that if we - if they were involved in a project where the period of time between tenders closing and a decision being made as to preferred had stretched beyond kind of two or three weeks - I forget exactly what the timeframe was - then, from the project manager directly involved

in the project, I wanted to be receiving a personal email from them telling me that the project was - that the procurement evaluation process was extending beyond the two or three weeks; whatever timeframe it was that I set, and giving me an idea as to when it was going to close out.

And this was, from my perspective, serving a couple of purposes. One was to make me personally aware of projects where the procurement process was dragging, so that if I needed to gently nudge any of my colleagues to hurry up that I was in a position - was in a position to do so. So that was the context in which I received this email from Ms Young. I would - given the length of it - and this isn't meant to be disrespectful to Ms Young - I kind of highly doubt I sat there and read all of it, but the purpose was to let me know that we had projects where the procurement process was going longer than what I wanted to. And there might be legitimate reasons for that happening, but that was the context.

MR O'NEILL: Did you read that and think that there was a legitimate reason for why that was happening?

MR EDGHILL: So by 8 May, I would have - as we've discussed a little earlier, I would have been aware that Campbell was in a best and final offer process, so it's not surprising to me that it was in that delayed category.

MR O'NEILL: Way back in, March Ms Young had made a file note that read - and is at 2.1448:

Phone conversation with Phil Morton this morning that the Minister for Education may have been approached by the unions and asked why Manteena is getting all the jobs and this may be why John Green is pushing for a BAFO where Manteena should be the obvious preferred tenderer over Lendlease.

Do you see that?

MR EDGHILL: I do.

MR O'NEILL: Had Ms Young informed you of that rumour?

MR EDGHILL: Not Ms Young. I don't recall any direct conversations with Ms Young.

MR O'NEILL: Right. And when you say not Ms Young, had you heard it elsewhere?

MR EDGHILL: At some point - and I can't remember the exact date, but at some point between the BAFO decision being made and the outcome of the BAFO decision, my direct report, being Adrian Piani, had mentioned to me that he had heard from members of his team something similar to what Ms Young has written here.

MR O'NEILL: And when you say "something similar" what do you say had actually been communicated to you?

MR EDGHILL: So to the best of my recollection, it was mentioned to me something along the lines of that the unions had been into speak with either Mr Green or the Minister's office. I can't remember which. And as a follow-on from that, there was a thought that Mr Green's ultimate decision would be shaped by that.

MR O'NEILL: Now, you were aware that Mr Green was not the decision-maker in respect of Campbell, weren't you?

MR EDGHILL: I'm not sure if it was clear to me if he was or he - if he wasn't. I know that I had had correspondence with Ms Haire, but I'm not sure if it was clear to me at the time whether that was because he was consulting with her or because she was the decision-maker. I wasn't in that level, to be 100 per cent, which of the two of them was the decision-maker.

MR O'NEILL: Right. So you had confusion as to who the decision-maker was - or no clarity, rather, is probably a fairer way of describing that. Fair?

MR EDGHILL: At that time, exactly.

MR O'NEILL: But there's a rumour coming through that, that if - that it's Mr Green is the decision-maker and he's under pressure from the Minister's office - something that's got into the Minister's office. Is that fair?

MR EDGHILL: Something along those lines.

MR O'NEILL: All right. Possessed of that information, was there something that you thought you should do with it?

MR EDGHILL: So given the way it was informally mentioned to me, I did take a step, which was to inform, or to instruct Adrian, who was my direct report, to remind his team and the Major Projects Canberra people involved in the procurement process that they shouldn't be trying to engineer any procurement outcomes because they thought that that is what Mr Green may have wanted the outcome to be. It was very in the case that they should do their job as they ordinarily do their job.

MR O'NEILL: Had you had any interaction with Ms Power?

MR EDGHILL: Not that I recall.

MR O'NEILL: Right.

COMMISSIONER: Mr Edghill, just looking at this from the outside, first of all, what you were told by Mr Piani was more than mere gossip, wasn't it? It was not sourced but it was, how should I put it - language is a - trying to be careful - it was intelligence. It was information capable of being problematic.

MR EDGHILL: I would categorise it the way that Mr Piani noted it to me, as best as I can recall. It was something which was in the nature of - or it felt like, at the time, it was in the nature of gossip or hearsay, or I think "rumour" was the word that you used. As I was sitting at the time with the bare facts I knew about the project, they were in the middle of a BAFO process. The way I was interpreting things at the time was that what Education was doing was very proper and conservative.

They had two bids that had come over budget. There were apparently other issues with both of the bids. They had rejected my suggestion, which was to move along the risk curve and get into preferred negotiations. They were running what seemed to me to be a very conservative BAFO process at the time. So when this, you know, scuttlebutt had been mentioned to me, it didn't gel with what I was actually seeing and perceiving at the time, which was actually -

COMMISSIONER: Did you make that point to Mr Piani?

MR EDGHILL: The point I made to Mr - to the extent I had a concern, it was a concern that my - my staff would tie themselves into knots trying to come up with a procurement outcome because they thought that's what Mr Green want. So the point I made to Mr Piani at the time was to speak to his staff, speak to the Major Projects people involved in the contract and remind them that they shouldn't be trying to come up with a procurement outcome because they think that's what Mr Green wants. They should do their job as they ordinarily do it, and that's what they did.

COMMISSIONER: Let's just go back a step. The assertion is not so much - or the allegation is not so much it's what Mr Green wants to do. It's that the unions have attempted to get - or seems to be that's the suggestion, the rumour, is that the unions want Mr Green to take particular action in relation to this particular bid. Do you agree? It's not so much Mr Green has a personal interest. It's that pressure is coming on him - it is suggested from the unions - to achieve a certain outcome.

MR EDGHILL: I apologise, Commissioner, but the first part of the - could you repeat the first part of the question?

COMMISSIONER: Yes. What I mean is, so far as this rumour went, it was not so much that Mr Green had any personal motivation, but that he was being pushed or attempts were being made to him by unions to achieve a certain outcome in this process. That was the connection.

MR EDGHILL: That was the connection.

COMMISSIONER: Yes. Now, it didn't occur to you and I'm not meaning by this anything - you don't read anything into it, but it didn't occur to you to ring your colleague Ms Haire and say, listen, you should understand these rumours are going about and I'm just letting you know so that you can just take precautions to make sure everything is done in a way you are happy with, or something like that.

MR EDGHILL: It didn't pass - the way it was communicated to me, it didn't pass - I didn't even think of doing that at the time.

COMMISSIONER: It wasn't a sufficiently seriously based for you to take that action. Is that what you are saying?

MR EDGHILL: The way it was communicated to me, and from my vantage point, looking at it from the perspective that they are in, again, what I thought was a very conservative and (indistinct) process -

COMMISSIONER: Everything that you saw seemed to be proper.

MR EDGHILL: And at that point in time the way I was looking at it was that no decision had actually been made. So at that point in time, everything was in order, and when this scuttlebutt had been mentioned to me, to the extent I had a concern, it was a concern to ensure that my staff within Major Projects Canberra ignored the scuttlebutt and just did their job as they meant to do their job.

COMMISSIONER: That's your evidence. I understand that's what you said. But I think you're saying that the basis for this rumour was so insubstantial and so contrary to what you understood the process was actually - that was actually being undertaken that it didn't occur to you that, other than telling your staff just get on with your job, you didn't think that any other further action was necessary. Does that fairly put the position?

MR EDGHILL: I think so, Commissioner. The way it was communicated to me, it just didn't even occur to me at the time to do anything other than what I had done.

COMMISSIONER: Right. Okay.

MR O'NEILL: Thank you. But now in June, so back to the document that I showed you before, and this is the one at 2.1885. You have now got the minute and it's changing a decision that had been recommended. So it's making a decision contrary to that recommendation. And you've still got that information about the rumour with you. Is this not starting to ring alarm bells as to the process that had been undertaken?

MR EDGHILL: The two points I would make there is, firstly, without having read the evaluation plan, the RFT, the tender responses, the evaluation report, in terms of the substance of the tenders, I just was not in a position to have any informed judgment as to whether what Mr Green was saying may have - may have merit or otherwise.

COMMISSIONER: I don't think Mr O'Neill was asking you - was suggesting that you had enough information to form a judgment.

MR O'NEILL: No.

MR EDGHILL: No.

COMMISSIONER: What he was suggesting was that this gave some currency, possibly, to the rumour that you had heard because it was an unusual feature rather than the conventional process which you understood was being undertaken. That's his point, I think.

MR EDGHILL: Yes. And that brings me to my second point, which was that being offset by the fact that there was a written memo setting out rationale for the recommendation that had been made to the other Director-General, to the best of my recollection, there had been no mention of Ms Haire previously. So the fact that Mr Green had made a recommendation which, at face value, looked like it had been considered by the most senior person in the Directorate, who is separate from Mr Green, would have at the time given me comfort that whatever Mr Green's recommendation was, it had the support of the Director-General through the - through the memo and whatever conversations that they might have had at the time.

MR O'NEILL: Okay. Now, at 2.1881 is an extract from your notebook on 14 July 2020. Do you see there it looks like it's an industry/Manteena feedback on different tenders and project. Does that help you remember what this is about?

MR EDGHILL: Do you have the previous page? Do I say who I'm talking with here? I assume I'm talking with Mr Bauer.

MR O'NEILL: We will go there. Let me just double-check. You do, yes. If I can take to you the previous page, 2.1880.

MR EDGHILL: Yes, so this is a meeting with Mr Bauer.

MR O'NEILL: Yes. Do you need to review that note for the context? Or you know now it's a meeting with Mr Bauer?

MR EDGHILL: I can be sure that's with Mr Bauer, yes.

MR O'NEILL: And then on the next page, he's still trying to get feedback from Education. Do you know what he's talking about there?

MR EDGHILL: To the best of my recollection, or interpreting my notes, this would be Mr Bauer conveying to me that the Education projects have concluded, and he hasn't been provided with a debrief at that point.

MR EDGHILL: Yes. And then at the bottom of the page there's a little one of your asterisks with a square around it, which as I understand your earlier evidence is an action item for you:

You went through all this effort. Didn't meet the brief.

Or:

...didn't meet them brief?

MR EDGHILL: I interpret this to mean that this is Mr Bauer telling me in the - sorry?

COMMISSIONER: He's complaining.

MR EDGHILL: In a polite - in a polite way, but effectively the point he's trying to make is, they went through all of this effort in responding to the tender and they have, for whatever reason, been wide off the mark and they don't know why they are wide off the mark.

MR O'NEILL: Did you do anything about this? It does have one of your asterisks?

MR EDGHILL: Yes, it does. I - perhaps we might take me to some notes that will kind of clarify dates and time, but I believe I would have, as a courtesy to Mr Bauer and as a follow-up to this, chased where the debrief was up to.

COMMISSIONER: Usually Major Projects would do the debrief, wouldn't it?

MR EDGHILL: Ordinarily, it would be the Evaluation Panel, which would have both Major Projects people on and it the relevant Directorate.

COMMISSIONER: Quite - well, they are the ones with the information.

MR EDGHILL: They are the ones who assess the tenders so can explain the decision that was reached.

MR O'NEILL: Right. I'm just going to take you to a document. Now, I'm going to start at the back of this document, if I can, please. The next page. There we go. So at the bottom, 8 May, there's the first email from Ms Young. Do you see that? That's the 8 May email I've already taken to you.

MR EDGHILL: Mmm.

MR O'NEILL: You say.

Thank you. I appreciate the update.

On the following day. The chain continues. 10 May, next page. Then you will see there that it continues up. She gives you another update on the 12th. You say "thank you" on the same day. Another update on the 18th. Next page. The bottom of the page:

Mr Piani is going to give Mr Green a call. 26 June -

Middle of the page:

a sign off from the DG. Note this is contrary to the recommendation of both TETs.

So you are being informed by Ms Young of that fact.

MR EDGHILL: Mmm.

MR O'NEILL:

We are just seeking the final approvals.

And then you say

Kelly, thank you. Based on the brief I had seen from the DG, I would have thought we could inform tenderers Monday, please. It would be useful to have all the papers you need back from Education before then.

I think in fairness to you, that's not an expression about the veracity of the brief, you agree with me.

MR EDGHILL: No, I think this is consistent with my answers previously, that my prime concern at this point in time was just trying to get the project done to enter a contract as quickly as possible.

MR O'NEILL: The next page. Mr Piani intercedes on 26 June. He says:

I had a chat with Rebecca about this.

That must be Ms Power:

The tenderers will be informed and debriefed by EDU. MPC staff are not taking that role, and will be responding to any inquiries by directing them to EDU.

Do you know why that decision had been made?

MR EDGHILL: At this point in time, I - I can't recall. But given it was an Education decision, it would seem logical that Education would provide the debrief.

MR O'NEILL: Although that is not the normal way it would be done, is it?

MR EDGHILL: Correct.

MR O'NEILL: Is it the fact that Major Project staff were seeking to distance themselves from a recommendation that they had not made?

MR EDGHILL: I can't speak for other Major Projects staff. Certainly I had confusion, which I'm happy to talk about, but I had confusion as to who was doing the debrief, if the debrief had happened and when the debrief was supposed to happen.

MR O'NEILL: All right. And then you see Ms Young's - the bottom of an email from Ms Young. It goes over - it's sent on 21 July 2020. So if we just pull up both of those pages together:

Update on Campbell as we are still not in contract following sign-off by DG on Friday, almost a month ago.

There's a list of candidate, etcetera. And you will see that she's then filled out all of the things that had gone on. Consistent with those updates that she provides you previously.

MR EDGHILL: Mmm.

MR O'NEILL: She advises at or about point 3 on the page:

The alternative is to revert to the recommended tenderer, Manteena, who had no conditions and designed under budget. Direction requested from EDU.

And then on the 20th:

Met with EDU. MPC advised to engage cost planner to undertake costing exposure. Also I have been advised that the TET are debriefing the unsuccessful tenderer on the tender process but the delegate is debriefing on the outcome. Manteena aren't permitted to be debriefed or receive a copyright assignment amount until Lendlease are in contract, in the event that a DG decision is reversed, given the additional information.

Do you see that?

MR EDGHILL: Down the bottom, I see that.

MR O'NEILL: Do you recall being aware of this potential, that things could be reversed or that -

MR EDGHILL: No, other than there was, from memories, some debate around the indemnity language in the contract. So potentially there's a reference to that not being able to be resolved with Lendlease. But, otherwise, I - I couldn't be certain what that's a reference to.

MR O'NEILL: And then returning then to the first page of the document, the middle of the page, 22 July, 2020:

May we discuss this when we next speak. Is the delegate the DG?

Right?

MR EDGHILL: I think this goes to the point I was making before. It wasn't clear to me -

MR O'NEILL: It was unclear to you:

Did MPC staff meet with the DG? And if so which staff? I think we need to speak first before our staff brief other DGs, please. It's unclear to me what the debrief process is. I thought Education will be doing that.

You are asking a series of questions. And you see at the top of the page, 22 July, Ms Power responded to Mr Piani. Do you remember seeing these answers?

MR EDGHILL: Unless Mr Piani has forwarded it to me, I - I don't recall seeing -

MR O'NEILL: Do you remember Mr Piani telling you these things. That is:

(1) The delegate is the DG?

MR EDGHILL: He - I can't recall.

MR O'NEILL:

(2) That MPC staff did not meet with the DG. The TET provided a recommendation to the delegate.

Do you see that?

MR EDGHILL: I do.

MR O'NEILL: Do you remember receiving that information?

MR EDGHILL: I don't recall it. But if I have got notes or something else where - then it may well have happened. I just don't recall.

MR O'NEILL: Debrief process:

MPC will provide a debrief on the tender assessment.

Do you see that?

MR EDGHILL: Mmm.

MR O'NEILL: And do you remember Mr Piani communicating to you anything about that?

MR EDGHILL: I don't have any specific recollection.

MR O'NEILL: You met with Ms Haire on or around 14 September. Do you recall that?

MR EDGHILL: Not specifically.

MR O'NEILL: No?

MR EDGHILL: Well, sorry, let me - to provide a little bit of context to that, I can't remember exactly the dates but there were other projects on foot, so we were both on the steering committee for the East Gunghalin High School Project. I can't remember when exactly that happened. We were on what we call DG hook-up calls every morning. So I would have been in other meetings with Ms Haire, but I - the 14 September, nothing immediately springs to mind.

MR O'NEILL: All right. Do you recall discussing Campbell with Ms Haire?

MR EDGHILL: I - no, I don't recall.

MR O'NEILL: Not at this time or any other time other than the emails that we've seen earlier?

MR EDGHILL: There was the - there was the one email that we spoke about earlier, and then at some later point in the process - and I can't remember if it was while the AGs process was on foot or after the AGs report had come out - certainly then. I just don't have any recollection of discussing Campbell with Ms Haire after the procurement decision had been made - in proximity to the procurement.

MR O'NEILL: So there was a - I think, to assist you, there was definitely a - some communication between you in June the next year. That is, after the probity report had been handed down from Spark Helmore. I'm not interested in that. I'm interested more around the proximity around the Campbell decision.

MR EDGHILL: There's nothing that immediately springs to mind.

MR O'NEILL: Right. One moment.

COMMISSIONER: I think part of the problem that Mr (Indistinct) was bringing to your attention in that note was to say, "Well, look, in effect, the request for tender set out kinds of things - conventional things that we have to supervise. So he ticked off all those boxes and ticked them off well, and then all of a sudden we get other boxes we didn't know about, which we weren't invited to tick and naturally we couldn't deal with." That's what he is - "And so we don't know why we lost." That's the substance of his complaint, isn't it?

MR EDGHILL: I wouldn't nuance that a little bit, Commissioner. The - I think the point was a little bit more kind of basic to that, that he was making to me at that point in time, to best of my recollection, is he just didn't - he didn't know why he had lost.

COMMISSIONER: No, quite.

MR EDGHILL: (Crosstalk).

COMMISSIONER: But this was in the context where they understood they had ticked all the boxes sufficiently to have scored the highest -

MR EDGHILL: From his perspective, undoubtedly, he would have thought that they put forward a compliant bid that would have ticked all the boxes.

COMMISSIONER: No, quite.

MR EDGHILL: I can't speak to his state of mind and how he would have thought he compared against the competitor.

COMMISSIONER: Very well.

MR EDGHILL: But I think the point he was making was that he just didn't - he hadn't been told why he had lost or why Manteena had lost.

MR O'NEILL: Thank you, Commissioner. They are the questions I have for this witness at this moment in time.

COMMISSIONER: Is there any application?

MS MORGAN: Commissioner, Ms Morgan for Ms Haire. We have only just seen some of these documents that are coming up on the screen. We haven't had access to them. For this afternoon, could I have leave to ask a couple of questions in relation to the email chain with Ms Kelly Young and Mr Piani on 26 June 2020?

COMMISSIONER: Very well.

MS MORGAN: Thank you, Commissioner.

<CROSS-EXAMINATION BY MS MORGAN

MS MORGAN: Can I ask for that to be brought up on the screen. It doesn't have a Doc ID. The first one is the 22 July 2020, page 1. It's the email from Mr Piani to Ms Power. That's it. Could I ask you to go to page 3. You will see in the middle of the page there, Mr Edghill, Ms Young sends you an update about the delayed resolution of Campbell, and this is where you were taken before by Mr O'Neill:

Note that this is contrary to the recommendation of both TETs.

Do you see that?

MR EDGHILL: I do.

MS MORGAN: And that was on 26 June at about half past 4. And then you respond just past that time thanking her and telling her that she could - that you could inform the tenderers on Monday. Do you see that?

MR EDGHILL: I do.

MS MORGAN: Now, would it surprise you to learn that Ms Young, on 22 June at about 7 pm, called Mr Bauer of Manteena and informed him or intimated to him that the wrong decision had been made? Would that surprise you?

MR EDGHILL: I would find it unusual for a - one of my staff to phone a contractor like that, but I might need to just orientate myself to the dates again. If I could be -

MS MORGAN: So she's done that three hours after - two and a half hours receiving your instruction that the tenderers could be informed on Monday.

MR EDGHILL: Okay. So Ms Kelly has made that on the Friday after I've sent -

MS MORGAN: That's right, at 7 o'clock.

MR EDGHILL: Okay. It feels a little late in the day on a Friday. I think I would have said Monday as a kind of courtesy to everybody rather than doing it on Friday night.

MS MORGAN: And do you take it from your email that you have told her that it was appropriate to her - for her to tell Manteena that it was the wrong decision?

MR EDGHILL: No, I - sorry, let me try and explain my note. I wouldn't have been, at least in my mind, suggesting that we do anything other than what is the ordinary course of businesses for informing tenderers that they have won or lost.

MS MORGAN: And you would be surprised to hear that she told them that Manteena had been preferred and the Tender Evaluation Report had been overturned?

MR EDGHILL: That would strike me as unusual.

MS MORGAN: And not consistent with governance - the governance practices of -

COMMISSIONER: I won't allow -

MS MORGAN: Pardon me?

COMMISSIONER: I won't allow that question.

MS MORGAN: And would it surprise you to hear that Ms Young told Mr Bauer that he might wish to consider the FOI process?

MR EDGHILL: The way that I would have expected the process to run is that somebody - each bidder is told whether they have won or lost and then the details happen in a structured debrief when whoever's conducting the debrief sits down and answers the question in that form. I wouldn't have expected that there would be a quasi-debrief happening before the actual debrief.

MS MORGAN: Thank you, Mr Edghill. No further questions, Commissioner.

COMMISSIONER: Yes, thank you. In fact, I'm not sure that I considered any application for leave, at least formally. Perhaps you might -

MR BIRD: Yes, Commissioner. Bird is my name. I understood you granted myself and -

COMMISSIONER: Look, I did in general terms, but we are doing it as each witness comes -

MR BIRD: As it pleases.

COMMISSIONER: - simply - it just helps as when we read the transcript to know who we are talking to.

MR BIRD: Yes. Well, my name is Bird, B-i-r-d. I am instructed by Ms Law. I believe that leave is granted already.

COMMISSIONER: That leave is granted. Do you wish to ask any questions?

MR BIRD: Yes.

COMMISSIONER: Very well.

<CROSS-EXAMINATION BY MR BIRD

MR BIRD: One question. Mr Edghill, you recall that you were taken to a file note of Kelly Young dated 13 March 2020. Do you recall that question? I don't know what document number that is.

MR EDGHILL: I know what you are referring to.

MR BIRD: Yes. When was the first time that you saw that file note?

MR EDGHILL: When the FOI documents were released or pending release.

MR BIRD: Was that before or after the procurement processes?

MR EDGHILL: Well after the procurement processes.

MR BIRD: Well after. Thank you. I've got no other questions.

COMMISSIONER: No other questions.

MR O'NEILL: No other questions.

COMMISSIONER: Very well. As I've said to other witness, Mr Edghill, while I expect your evidence is finished, it's not impossible that we might need you again. So I can't release you from your summons at this point, but we will let you know. And please remember what I said about being able to consult some professional assistance, if you feel the need, or some friend, if you wish, but then you need to let us know who it is. Subject to that, you can go for the present.

<THE WITNESS STANDS DOWN

COMMISSIONER: Yes, Mr O'Neill.

MR O'NEILL: Thank you, Commissioner. The next witness I intend to call is Ms Haire, but we will need a short adjournment, if that's okay.

COMMISSIONER: Very well.

<THE HEARING ADJOURNED AT 3.33 PM

<THE HEARING RESUMED AT 3.39 PM

MS MORGAN: Commissioner, should I formally seek leave?

COMMISSIONER: Yes, I think it's best for the transcript.

MS MORGAN: Yes. So Ms Morgan with my learned junior Ms Kearney, K-e-a-r-n-e-y, instructed by David Blenco from Clayton Utz.

COMMISSIONER: Yes, leave is granted.

MS MORGAN: Thank you, Commissioner.

COMMISSIONER: Ms Haire, I think you are already aware of the legal issues of the inquiry, that is, as to the requirement that YOU answer all the questions that you are asked.

MS HAIRE: Yes.

COMMISSIONER: You are protected from disclosing any matter of legal privilege. So if it looks if a question is going to stray into that area, you need to point it out so we can deal with it in accordance of the Act or, of course, your counsel can make an objection and we will deal with it in the same way.

As I have said to other witness, I understand this is not a pleasant experience and it may give rise to anxiety and stress. I say this to all witnesses, not personally directed at you. And if you feel the need to seek professional help, you are perfectly at liberty to do so. If you wish to get the help of some other person who is not a professional, as it happens, I'm sympathetic to you being able to do that, but you just need to let us know so that I can ensure that it is not someone who might be connected or who may be connected with the

investigation. And if you could your lawyers perhaps talk to the solicitors here at the Commission and we can resolve (indistinct) very quickly.

So - and I should mention, if you have any complaint about the way you have been treated by the Commission, of course that can be made to the inspector, and the details are on the website. I must say, I don't recall, did you give evidence on oath or affirmation?

MS HAIRE: Affirmation, Commissioner.

COMMISSIONER: Very well.

<KATHERINE ELYSE HAIRE, AFFIRMED

<EXAMINATION BY MR O'NEILL

COMMISSIONER: Yes, Mr O'Neill.

MR O'NEILL: Thank you, Commissioner. Ms Haire, could you please provide the Commission your full name?

MS HAIRE: Katherine Elyse Haire.

MR O'NEILL: What is your occupation?

MS HAIRE: I am the Director-General of the Education Directorate in the ACT Government.

MR O'NEILL: How long you have held that role for?

MS HAIRE: Since 1 December 2019.

MR O'NEILL: And prior to coming to that role, what was your position?

MS HAIRE: I was a deputy secretary in the Department of Education in the Victorian Government.

MR O'NEILL: How long had you held that role for?

MS HAIRE: I had that role for four years.

MR O'NEILL: Four?

MS HAIRE: Yes.

MR O'NEILL: And without going through a curriculum vitae, it's fair to say - and correct me if I am wrong - you have an extensive background in the public sector?

MS HAIRE: Yes, Mr O'Neill.

MR O'NEILL: You have tertiary qualifications. Is that right?

MS HAIRE: Yes, I do.

MR O'NEILL: What are they?

MS HAIRE: I have a Bachelor of Arts (Honours), a Master of Arts, and an Executive Masters in Public Administration.

MR O'NEILL: And when did you first start - what year did you first start working in policy and governance?

MS HAIRE: My first public service job was in the Commonwealth Statutory Authority, the Northern Land Council, under the Aboriginal Land Rights Act of the Commonwealth, that I commenced in 1994.

MR O'NEILL: In your current role, what is your remit?

MS HAIRE: I'm responsible for the provision of public education in the ACT, and also for the regulation of early childhood and non-government education and for the overall policy settings such as the Education Act and advising the Minister on those matters.

MR O'NEILL: Thank you. Can - for the benefit of those looking on, can you just explain how the Directorate is structured internally with - obviously, you are at the head of it, but how it then filters down?

MS HAIRE: Yes, there is a Deputy Director-General who is responsible for all of the provision of public education, so the management of the 90 public schools and also -

COMMISSIONER: Who is that at present?

MS HAIRE: Ms Jane Simmons. And the direct services - direct educational services to support schools. So she is my direct report. My other two direct reports, one is the executive general manager, Business Services which is responsible for the enabling and corporate functions, including finance, HR, governance, legal, infrastructure and capital works. The management of the cleaning service and a range of other - finance. So that - that sort of set of enabling functions. And the Deputy Director-General for Strategic Policy and Reform, who is responsible for the two regulators. The regulators of early childhood, the regulators of non-government school, for enrolments, policy, evaluation and for strategic policy.

MR O'NEILL: And so -

MS HAIRE: So I have three direct reports. And then a range of executives report to those people - those three people.

MR O'NEILL: So to summarise the three silos, if I can - and if I get this wrong, please correct me - there's really a - the first silo which is about the delivery of education.

MS HAIRE: Of public education, yes.

MR O'NEILL: Of public education, thank you. The second silo which is about the business of making sure that the first silo is operating as it should.

MS HAIRE: Yes. Yes, that's a good way to put it.

MR O'NEILL: And then the third silo which is about policy and governance in the education.

MS HAIRE: Policy, planning and the stewardship and regulation, yes.

MR O'NEILL: Yes. And then those three functions feed up to you, and you've got to then deliver that information through to your Minister, which is the Minister for Education, whoever that be at any relevant time?

MS HAIRE: Yes.

MR O'NEILL: And you're accountable to that Minister.

MS HAIRE: Yes.

MR O'NEILL: And also from time to time you may have to liaise with the other Director-Generals from other parts of government in order to facilitate what it is that those three silos need to provide the very distinct different parts of the Education portfolio?

MS HAIRE: Yes.

MR O'NEILL: Have I got that wrong? You hesitated. I don't want to -

MS HAIRE: It's certainly true that I engage with the other directors general on common matters, for example, provision of services to children under 5, because we do some of that and other Directorates do that, and on common policy issues that relate to children or young people or education, and also obviously matters such as finance.

MR O'NEILL: Thank you. So the focus, then, of this inquiry is really about the second silo in relation to the procurement at Campbell.

MS HAIRE: Yes.

MR O'NEILL: Although, of course, it has, no doubt, some impact upon the other two silos because they are not completely unrelated. Is that fair?

MS HAIRE: Yes, it's about a public school as well. Yes.

MR O'NEILL: Now, on 1 December 2019, you commenced your role. Can you just explain to the Commission how that - how that, in a practical sense, worked? Was there a handover? What goes on when someone at your significant seniority comes in to such a significant role?

MS HAIRE: Yes. The person who was acting in the job provided me with two in-person handover sessions prior to my arrival.

MR O'NEILL: And who was that?

MS HAIRE: Her name was Ms Meg Brighton. And I was also provided with a range of documents, and a series of briefings with executive staff was set up for my first couple of weeks.

MR O'NEILL: And so was that pretty much what occupied your time in the first few weeks, was getting across the job, meeting relevant people and understanding what it is that everyone did within the whole of the network?

MS HAIRE: That was the intention, except that my arrival coincided with the start of the bushfires. And so I think within about a week, we - the period of time where Canberra was enveloped in smoke commenced. So some of - some of my attention was diverted to the response to the smoke and the bushfires.

MR O'NEILL: And that was a whole of government approach that was then going to be undertaken because it had an impact across a whole range of sectors, including Education?

MS HAIRE: Yes. Well we had a particular - we had a particular issue about our responsibility for the health and safety of children and staff with the very poor air quality. So we had quite significant work underway to work out - keep track of the air quality, to provide advice to schools about whether they should keep the children inside during the day on particular days, and liaising with the Worksafe Commissioner to ensure we were complying with his expectations about the safety of staff and students. So it was quite an intensive undertaking.

MR O'NEILL: The school term would have ended in the lead-up to Christmas at some time. I forget when, but some time in mid to late December.

MS HAIRE: Yes.

MR O'NEILL: At that time, then, what did - did you go back to the task of trying to learn and introduce yourself to all of the relevant people within the Directorate?

MS HAIRE: So the school - there was - there's usually about one week before Christmas before the end of the school term. I can't remember precisely how that fell in 2019, but approximately that time. At that point, of course, the bushfire situation was getting worse.

So a great deal of - and Education also has some direct responsibility for the evacuation. Evacuation centres are located in Education facilities.

MR O'NEILL: I see.

MS HAIRE: So we were - we weren't at the point where they were being used but we were planning for those - for that work and there was still the ongoing. So that - the one week or so prior to Christmas, certainly, I was doing as much as I could to get across my new job, but also very much in the throes of the impact of the smoke and the fires on the ACT.

MR O'NEILL: When do you think it was that you first became aware of the procurements that were - the major capital procurements that were out at this period of time for the Education Directorate?

MS HAIRE: I am aware that there were updates provided in the Minister's weekly brief on the projects that were underway. I have to say that I was not giving that any of my attention at that time, and that appeared to me to be not something that required my attention at that those - at that point.

MR O'NEILL: Right. Specifically, then, in respect of Campbell, during the December 2019, do you think you had any understanding - or any specific understanding - not general, it would have appeared in -

COMMISSIONER: Mr O'Neill, I think you need to speak up.

MR O'NEILL: Sorry. Did you have any general understanding of that project at that time?

MS HAIRE: No.

MR O'NEILL: Did you take any period of leave over December-January?

MS HAIRE: The ACT has a shut down between Christmas and new year. So I left the ACT on 24 December and came back on the 1st or 2nd, prior to the first day back of government. And that was the point at which the - in the midst of that, there had been the fires on the south coast. So I drove back from Melbourne as the people were pouring out from the south coast who were escaping from the fires.

MR O'NEILL: And so, again, correct me if I am wrong, but at that period of time, then, your focus professionally would have been in relation to relief centres and the use of facilities for that purpose at that time?

MS HAIRE: Yes. We had to have staff members in the emergency centre at all times, and we had to have executives on duty at all times who reported to me at any time, day or night, seven days a week while that was underway.

MR O'NEILL: When did you go on your - sorry, I withdraw that. You went on a period of leave in the early part of 2020. Is that fair?

MR HAIRE: Yes, I had a - prearranged events prior to accepting the job in the ACT. And I was allowed - I requested to be able to fulfil those plans.

MR O'NEILL: And what were those dates?

MS HAIRE: I - my leave - my last day of work, I think, was 21 February and I returned to work on 13 March 2020.

MR O'NEILL: Prior to your period of leave, that is, prior to 21 February, had you become aware specifically of the Campbell Modernisation Project and where it was in its procurement process, where it was up to at that point in time?

MS HAIRE: No.

MR O'NEILL: Now -

COMMISSIONER: Can I just ask this though, was that - was it something that crossed your desk and you were just too busy to take note of or something that didn't even reach your desk at that time?

MS HAIRE: Commissioner, in reviewing the papers to prepare for this hearing, I'm aware that there were updates in the weekly brief that we provided to the Minister.

COMMISSIONER: Right.

MS HAIRE: And that weekly brief came through me each week, but it was not something that -

COMMISSIONER: That registered.

MS HAIRE: That registered in my consciousness.

COMMISSIONER: Right.

MR O'NEILL: Do you remember attending a sod turning at Molonglo Valley?

MS HAIRE: Yes, I do.

MR O'NEILL: And that was in relation to a primary school that was to open after its construction, whenever that may have ended? Fair?

MS HAIRE: Yes, it was the Evelyn Scott school.

MR O'NEILL: The Evelyn Scott school. Thank you. At that sod turning, the Minister was there, that is, Minister Berry. Did you speak to her while you were at the sod turning?

MS HAIRE: I'm sure I said hello to her. I arrived - it was very embarrassing, so I remember this quite clearly, that I arrived late. I got lost on the way. I had to change into - there was a whole lot of requirements that I had never had to fulfil before about wearing steel -

COMMISSIONER: Safety gear.

MS HAIRE: Steel capped boots and I think you have seen the photograph. And so I was late trying to put all this gear on. I imagine I apologised to the Minister - I actually think I was late, and I would, of course, have said hello to her and probably apologised.

MR O'NEILL: Did you have any substantial conversations with her other than pleasantries at that period of time?

MS HAIRE: No.

MR O'NEILL: Had you -

MS HAIRE: At that event?

MR O'NEILL: At that event.

MS HAIRE: No.

MR O'NEILL: Sorry. Thank you. Did you speak to her chief of staff at that event? Mr Ceramidas?

MS HAIRE: I would have said hello to him.

MR O'NEILL: But nothing that you can recall of any substance?

MS HAIRE: No.

COMMISSIONER: You had met him before?

MS HAIRE: Yes, Commissioner. I had met him when I had commenced work.

COMMISSIONER: Right. I assume that early in the piece you would have had meetings of a kind, even if just to get to know you meetings, with the Minister?

MS HAIRE: I met the Minister once after I had been offered the position.

COMMISSIONER: Right.

MS HAIRE: And then - so that was the only one -

COMMISSIONER: That was essentially an exchange of pleasantries, not much more than that.

MS HAIRE: Yes. That was the only meeting that I ever had with her and her chief of staff. That was the only time I met with her on my own. Usually - otherwise, we have the weekly meeting with her with my senior staff.

COMMISSIONER: Right. And her staff as well?

MS HAIRE: Yes.

COMMISSIONER: Right.

MR O'NEILL: And had you been introduced to a person known here as Mr Green prior to that event?

MS HAIRE: Yes.

MR O'NEILL: And you know who I'm talking about when I say Mr Green? You know -

MS HAIRE: Yes, yes.

MR O'NEILL: And he was - at that period of time, was he employed by the Directorate, to the best of your understanding?

MS HAIRE: Can you remind me the date?

MR O'NEILL: 6 February 2020.

MS HAIRE: 6 February. Yes. He was seconded to us to act in a position. The substantive occupant had gone on extended leave and Mr - it was an executive branch manager position and Mr Green was seconded to us to backfill that position. But subsequently the Deputy Director-General was offered a secondment to another part of the ACT Government, so over the January period, January - I think leading up to February, I asked Mr Matthews to fill the position of Deputy Director-General and so then his substantive position of executive general manager was vacant, and it was recommended to me that Mr Green could fill that position because he had filled it during 2019 when Mr Matthews took a six-week period of leave. So it's very - I know it's convoluted. He came for one job and then he subsequently was acting in another job.

MR O'NEILL: And there was no reason for you to object to any of that. That's standard government practice, as best as you understood it, that people fill in and act up and do all sorts of things when there's a need to do so?

MS HAIRE: Yes.

MR O'NEILL: Had you had any introduction to him as to what his background was and where he had been?

MS HAIRE: No. The main thing I knew was that he had previously worked - acted in the job in the Education Directorate, and that was the reason that he was suggested to come and work in the substantive vacancy that we had.

MR O'NEILL: Did you know at that period of time, that is - so we are still talking 6 February 2020 - did you know anything about the Secure Local Jobs Code?

MS HAIRE: No.

MR O'NEILL: Had you known that he had performed the role of Secure Local Jobs Code Registrar?

MS HAIRE: I didn't know that at that point, no.

MR O'NEILL: At 2.0 - do you know who had suggested that Mr Green fill that position? Do you remember who had made that recommendation to you?

MS HAIRE: To fill the substantive executive branch manager position?

MR O'NEILL: Yes, yes.

MS HAIRE: Yes, Mr Matthews.

MR O'NEILL: Right.

COMMISSIONER: To whom Mr Green reported?

MS HAIRE: Yes.

MR O'NEILL: 6 February 2020 -

MS MORGAN: Commissioner, can I just make clear that you are asking the question as at 6 February 2020.

COMMISSIONER: Yes.

MS MORGAN: That's when Mr Green - the question was Mr Green reported to Mr Matthews as at 6 February. Is that -

COMMISSIONER: Yes. That's true. Perhaps I should have been clearer.

MS HAIRE: Yes. Yes. So on 6 February, he reported to me because, by that point, Mr Matthews was the Deputy Director-General.

COMMISSIONER: No, what I meant is, before Mr Matthews went on leave, Mr Green reported to him.

MS HAIRE: Before Mr Matthews went into the other role of Deputy Director-General, Mr Green reported to him. Then when Mr Matthews went into that role, Mr Green acted in Mr Matthews' role.

COMMISSIONER: Right.

MS HAIRE: As he had done -

COMMISSIONER: Earlier.

MS HAIRE: - as I was advised, for six weeks in 2019.

COMMISSIONER: Right.

MR O'NEILL: Now, had Mr Green spoken to you about - sorry, did Mr Green speak to you at the sod turning?

MS HAIRE: I'm sure he - I'm sure we exchanged greetings.

MR O'NEILL: Did he tell you anything about any information he had received at the sod turning?

MS HAIRE: No.

MR O'NEILL: And when you say "no", that's definitely you would recall if he had told you something like that or you - you just can't recall?

MS HAIRE: I don't believe that he did. Yes. I - I was only there for a very brief time, as I remember, and I was trying to cover the embarrassment of being late. And I also wanted to meet the new principal, was sort of my main purpose.

MR O'NEILL: And you did so?

MS HAIRE: Yes.

MR O'NEILL: Now, your diary, which is at 2.0290, indicates that there was a catch-up meeting between you and Rebecca on 14 February 2020. Do you see that?

MS HAIRE: Yes.

MR O'NEILL: Do you know what that meeting was?

MS HAIRE: I don't remember that meaning at all, Mr O'Neill. If it took place, I imagine it was as part of a handover, because that's a week before I went on leave. But I can't remember.

COMMISSIONER: So that's a reference to Rebecca -

MS HAIRE: Ms Cross, yes.

COMMISSIONER: Cross. Right.

MR O'NEILL: It says it's in your office.

MS HAIRE: Yes.

MR O'NEILL: Does that assist your memory?

MS HAIRE: No.

MR O'NEILL: Friday afternoon, 3.30. Still not helping?

MS HAIRE: No, I have - I have considered this, Mr O'Neill, and -

MR O'NEILL: Given the correspondence we've seen from you, that's about one-third into your day. So you have only just - you start at about 4 in the morning and you finish at about 11 at night. So that may not help you at all. No?

MS HAIRE: No.

MR O'NEILL: All right. I will just take to you next entry of relevance, 2.0291. You see here that this one is a little bit more prescriptive. It says, "hand over/lunch at Temporada." Do you recall that meeting?

MS HAIRE: No, I don't.

MR O'NEILL: It's at lunchtime on a Wednesday. And this is very close to when you went on leave. You went on leave on the Friday.

MS HAIRE: Yes.

MR O'NEILL: You can't recall?

MS HAIRE: No.

MR O'NEILL: So therefore can't assist us whether the topic of what procurements were presently out for tender at that period of time was mentioned or not?

MS HAIRE: Can't - I can't remember anything. I'm not even sure whether those two meetings took place, Mr O'Neill. Partly because we were - you know, we were still in the throes of the bushfire response and so on.

COMMISSIONER: Nevertheless -

MS HAIRE: I don't - however, those procurements were not on my agenda and I - they wouldn't have been part of any handover to Rebecca.

COMMISSIONER: However, there would have been - whenever it was, there would have been some handover meeting. Wouldn't it have been necessary?

MS HAIRE: Yes, I think so, Commissioner. I just can't remember -

COMMISSIONER: No, quite.

MS HAIRE: - back to that time.

COMMISSIONER: I understand you don't recall it happening and you don't recall any times. But that such a meeting took place seems very likely.

MS HAIRE: Yes. Unless for some - unless some kind of other urgent priority overtook it. But the intention, clearly, was there to have a handover and that is the normal practice.

COMMISSIONER: Practice, right.

MR O'NEILL: Commissioner, I note the time. I'm in your hands as to whether you wish me just to press on or -

COMMISSIONER: Well, I don't think we are going to get very much further this afternoon at all events. So I will take the afternoon adjournment now. And we will resume at 10 o'clock tomorrow morning.

<THE HEARING ADJOURNED AT 4.06 PM TO FRIDAY, 29 SEPTEMBER 2023 AT 10 AM