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TRANSCRIPT OF PROCEEDINGS

THE HON MICHAEL F ADAMS KC, COMMISSIONER

THE ACT INTEGRITY COMMISSION – OPERATION KINGFISHER

PUBLIC HEARING

DAY 8

FRIDAY, 29 SEPTEMBER 2023 AT 10.12 AM

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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

5 MR O'NEILL: So one housekeeping matter before I seek to commence examining Ms Haire. Yesterday, there were some questions asked of a chain of emails both by me and then my learned friend Ms Morgan. Can I seek to tender the chain. It ends with a chain from Mr Piani to Ms Power dated 22 July 2020. That will be Exhibit 5 - 6. 6. Thank you, Commissioner.

<EXHIBIT 6 - CHAIN OF EMAILS BETWEEN MR PIANI AND MS POWER DATED 22/07/2020

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<KATHERINE ELYSE HAIRE, ON FORMER AFFIRMATION.

<EXAMINATION BY MR O'NEILL

15 MR O'NEILL: Now, Ms Haire, I understand that there were a couple of issues yesterday which there need a little bit further clarification. The first is your tertiary qualifications. I believe you failed to mention one?

20 MS HAIRE: Yes, Mr O'Neill. I failed to mention that I have a Graduate Diploma in Education (Secondary), which is obviously very relevant to my position.

MR O'NEILL: Thank you. And you also failed to mention where you obtained some of your degrees. Would you care to assist us?

25 MS HAIRE: Yes, my Bachelor of Arts (Honours) and my Master of Arts is from the University of Melbourne. My Graduate Diploma of Education is from Monash. And my Executive Masters of Public Administration is from the University of Melbourne.

30 MR O'NEILL: Thank you. The second matter, I believe, concerns the sod turning and who you believe you spoke to. On reflection, did you have a clarification you wished to make?

35 MS HAIRE: Yes, I did, Mr O'Neill. On reflection, the principal of the school was not there. She had not been appointed at that stage. She was in her previous position and had not been appointed.

MR O'NEILL: Thank you. I also think there may have been some confusion with your dates of leave. I recorded 22 March, but that might be my error. It can't be that.

40 MS HAIRE: No.

MR O'NEILL: The period of leave was when?

MS HAIRE: From 21 February and I commenced back at work on 13 March.

45 MR O'NEILL: Thank you. Was 13 March the date that was the scheduled return to work date, or was that brought forward?

5 MS HAIRE: It was the scheduled return to work date. I was going to be working from Melbourne that day because there was going to be a meeting of the Education Ministers in Melbourne and that's where my family was. However, due to the increasing concern about the pandemic, the Ministers didn't meet in person and so the meeting was held via teleconference and so I flew back to - from Melbourne to Canberra to be with my staff so that we could do the teleconference together.

10 MR O'NEILL: And do you recall when you took that flight, on what day? Did you take the -

15 MS HAIRE: Actually, sorry, now - it was actually not the Ministers. It was the senior officials meeting that supports the Ministers meeting. So it was the meeting of all the heads of Education Departments across Australia. It was to be in person in Melbourne because Victoria was the chair of the senior officials committee that year, and at the last minute during that week, it was decided not to have people flying to Melbourne, but to hold the meeting by teleconference.

20 MR O'NEILL: And so my question to you was, do you remember when you flew back from Melbourne?

MS HAIRE: Yes, I flew in the morning of the -

25 MR O'NEILL: Of the 13th. Okay. I understand. And then immediately from the airport straight to the office here or was everyone working from home by that stage?

30 MS HAIRE: No, it was prior to the lockdown. The teleconference took place in the Nara building in Civic. I can't remember if I went - I think I probably went straight there due to the timing.

MR O'NEILL: Now, yesterday we got to the sod turning and just the period prior to you taking leave. At the sod turning, were you introduced to a person by the name of Zach Smith?

35 MS HAIRE: I believe so, yes.

MR O'NEILL: Is that the first time you met Mr Smith?

40 MS HAIRE: Yes.

MR O'NEILL: And who is he, to best of your knowledge?

MS HAIRE: He is an official from the CFMEU.

45 MR O'NEILL: Do you recall having a conversation with Mr Smith on that occasion?

MS HAIRE: No.

MR O'NEILL: Other than the introduction?

MS HAIRE: That's right.

5

MR O'NEILL: What about Mr O'Mara? Were you introduced to him.

MS HAIRE: Not - I don't know. I don't remember.

10 MR O'NEILL: Do you know - did you know who that person was at that time?

MS HAIRE: No.

MR O'NEILL: You know who he is now, I assume?

15

MS HAIRE: Yes.

MR O'NEILL: And so, therefore, you don't recall whether you had any conversation with him at the sod turning?

20

MS HAIRE: I didn't have any conversation with either of those people.

MR O'NEILL: Thank you. Now, I believe yesterday you told the Commission that prior to your period of leave, that is, from - prior to 21 February 2020, you had not had any visibility in respect of the Campbell Modernisation program procurement? Other than updates that were coming across your desk in the ordinary course of business?

25

MS HAIRE: Yes. There were the updates in the weekly brief. There were a couple of those, but it was not in my consciousness.

30

MR O'NEILL: Had you considered the issue of procurement more broadly than that? That is, had you had occasion yet to turn your mind to procurement projects that Education were attempting to undertake?

35

MS HAIRE: No, I hadn't.

MR O'NEILL: In your previous roles prior to coming to the Directorate, had you dealt with capital procurement projects before?

40

MS HAIRE: The only - so IT is considered to be capital and I was involved in developing a large IT project in Victoria, but in the main, apart from that, my experience related to the procurement of services.

45

MR O'NEILL: So - and when you say "large", to your mind - you don't have to give us the specific number but in the vicinity of what was that project in Victoria?

MS HAIRE: I can't remember now, Mr O'Neill. But it was a significant project. It had significance for the government.

5 MR O'NEILL: And then in relation to - sorry, was that a tendered - like, a procurement that had been put out to tender?

COMMISSIONER: Competitive tender, I think.

10 MR O'NEILL: Thank you, Commissioner.

MS HAIRE: I can't remember. I expect so, but I can't remember.

15 MR O'NEILL: Now, then in relation to the procurement of services, were they projects that had been put out to competitive tender?

MS HAIRE: Mostly not. In Victoria, there were a number of panels established for services and, generally, the approach was to identify from the panel and then seek quotes from those.

20 MR O'NEILL: And so had you in your previous experience, then, come across the process of competitive tender in any detail?

MS HAIRE: I had not been responsible for any.

25 MR O'NEILL: Thank you. You go on the period of leave, and you return, as you have just informed us, on 13 March. Now, I just want to take you to a document, 2.1418. Now, this is a document - do you recognise that handwriting?

30 MS HAIRE: Yes, it's mine.

MR O'NEILL: Right. It's got a date at the top of the page as at the 12th. So I realise your first day back is 13 March. Does that help orientate you as to how you would be having this conversation?

35 MS HAIRE: Yes, it was a telephone call.

MR O'NEILL: It says "Rebecca handover" at the top.

40 MS HAIRE: Yes.

MR O'NEILL: Is that Ms -

MS HAIRE: Ms Cross.

45 MR O'NEILL: Cross. And she had been in your role while you were on leave. Is that fair?

MS HAIRE: Yes.

MR O'NEILL: The first topic you spoke about was obviously COVID related. And that was likely representative, was it not, of the importance of that issue at the time?

5 MS HAIRE: Yes, there was growing concern all over the world, and in Australia it was becoming much more directly real for us.

MR O'NEILL: And it says here that at the third bullet point:

10 *Walkthrough of what we would do. Minister DG.*

Do you see that?

MS HAIRE: Yes.

15

MR O'NEILL: Looking at that note, was that really a note about planning? Or was that something that there had been some communication that had come from the Minister?

MS HAIRE: I can't remember exactly what that relates to, Mr O'Neill.

20

MR O'NEILL: All right. If you could turn over to the next page. You will see at the top it says:

Secure Local Jobs - intent of code - highest level.

25

And "intent" is underlined. Do you see that?

MS HAIRE: Yes, yes.

30 MR O'NEILL: Doing the very best you can, can you recall what this note relates to?

MS HAIRE: Yes. To the best of my recollection, Rebecca was telling me about a meeting she had had about the importance of the Secure Local Jobs Code, that it was about the principles behind the Secure Local Jobs Code, and I believe the point about "highest level" means the core principles as opposed to taking a compliance-type approach.

35

MR O'NEILL: Right. "Intent" is underlined. Is that of any significance?

MS HAIRE: Yes, I think that's the - the same point, that it's about the principles.

40

MR O'NEILL: That's a - that's a way of you marking in the note that that was the core message that was being delivered from Ms Cross to you?

MS HAIRE: Yes. Yes.

45

MR O'NEILL: And you said that she had been communicating that information because it had been passed on to her. Did she tell you where she had got that information?

MS HAIRE: She met either with the Minister and her chief of staff or just with the chief of staff. I can't -

5 MR O'NEILL: And the chief of staff was the person by the name of Mr Ceramidas?

MS HAIRE: Yes.

MR O'NEILL: Had you met Mr Ceramidas as at this time?

10

MS HAIRE: Yes, I had.

MR O'NEILL: Had you had any discussions with him about this topic, that is, the Secure Local Jobs Code?

15

MS HAIRE: No.

MR O'NEILL: Had you had any discussions with him about capital projects?

20 MS HAIRE: Yes.

MR O'NEILL: And what were they?

25 MS HAIRE: In relation to - there were two projects: (1) the East Gungahlin High School and (2) the proposed Woden High School. And they were two that, from when I started, I had been taking a close interest in those.

MR O'NEILL: And what did he - what was the message that he conveyed to you in respect of those projects?

30

MS HAIRE: For both of them, it was about securing an appropriate site for them, because there had been considerable complexity in both - for both in terms of identifying a site.

35 MR O'NEILL: And so when he expressed that concept to you, how would - how did he actually explain what he wanted or what the Minister's office wanted in respect of those matters?

MS HAIRE: What I understood - I can't remember how he expressed it, Mr O'Neill.

40 MR O'NEILL: Okay. Does he speak in a way in which he is seeking collaboration with the Directorate or is it more direct than that?

MS HAIRE: His approach was - he was very conscious of the distinct roles between the Minister's office and the Directorate.

45

MR O'NEILL: That was your impression?

MS HAIRE: That's my impression. And so I think, identifying things that he considered to be my role and in relation to - both of these projects required work across the ACT Government to identify the site, so, for me, working with other directors-general in relation to those.

5

MR O'NEILL: After discussing those matters with Mr Ceramidas, were you left with an impression that a clear - a clear understanding of what it is that was being asked of the Directorate?

10 MS HAIRE: That's not how I would characterise it, because these were actually more problems to be solved rather than there wasn't a particular outcome. But it was to try to solve the problem.

MR O'NEILL: Underneath -

15

COMMISSIONER: And the problem was finding a site but not telling you how to go about it, but just that it was a problem that needed attention.

MS HAIRE: Yes. Yes, Commissioner.

20

COMMISSIONER: Is that right?

MS HAIRE: That's right.

25 MR O'NEILL: Do you see underneath that there's the bullet point Capital Projects? Does that signify that the conversation moved to a separate topic after discussing this more general topic of Secure Local Jobs?

MS HAIRE: No, I think that's sort of more like a subheading, Mr O'Neill.

30

MR O'NEILL: And how do you arrive at that position? Is that because it's moved across?

MS HAIRE: Because it's indented, yes.

35 MR O'NEILL: Okay. So then underneath that, in the same umbrella of conversation, Capital Projects, and then bracketed:

(Franklin - built).

40 We understand that was the company that was building Franklin; is that right? Or that Franklin had been Built? One of those two?

MS HAIRE: I understand it's the company, yes.

45 MR O'NEILL: At the bottom, "Throsby", which was another project that was out to tender at that stage and was about to be awarded soon thereafter. Yes?

MS HAIRE: Yes.

MR O'NEILL: And then:

5 *Campbell - 2 - both unhappy.*

And "unhappy" is then struck through. Do you see that?

MS HAIRE: Yes.

10

MR O'NEILL: "Campbell - 2": What do you think, looking at that note, "2" meant?

MS HAIRE: I think that that means that it's down to the stage of having two tenders.

15

MR O'NEILL: Two tenderers. Do you recall whether Ms Cross identified those two tenderers to you?

MS HAIRE: No, she didn't.

20

MR O'NEILL: Would you have known at that stage who the two tenderers were?

MS HAIRE: No.

25

MR O'NEILL: Had you had any familiarity with a company by the name of Lendlease prior to this point in time?

MS HAIRE: I had heard of them because they are a national company.

30

MR O'NEILL: Yes. But other than that?

MS HAIRE: No.

35

MR O'NEILL: And a local company by the name of Manteena. Had you heard of that entity?

MS HAIRE: No. No, I hadn't.

40

MR O'NEILL: And then "- both unhappy", struck through. What is that note a reference to, doing the very best you can?

MS HAIRE: I can't remember what that refers to.

45

MR O'NEILL: Well, it must be that it's - is it fair to say that the word "both" must be a reference to the number 2? That is, both tenderers?

MS HAIRE: It might be, or it might be a reference to both - I would be speculating. I honestly don't remember.

MR O'NEILL: All right. "Unhappy"? Can't remember why that adjective is there?

MS HAIRE: No.

5

MR O'NEILL: Why would you strike a word through if it was written in your notes? What is the basis upon which you would do that as a matter of ordinary course?

10 MS HAIRE: Ordinarily, I would cross it out if it was not accurate - if it wasn't the right description of the - what I was trying to capture in my notes. It would have been done contemporaneously.

MR O'NEILL: Yes. There's nothing -

15 COMMISSIONER: Beg your pardon. It would have been done?

MS HAIRE: Contemporaneously, at the time.

20 COMMISSIONER: Right. So you wrote it, realised it was the wrong description and struck it out?

MS HAIRE: Yes. That's what I would do.

25 COMMISSIONER: Right. We all have a situation where we are taking contemporaneous notes, sometimes the wrong words just come to us, and you are then worried that maybe it's misleading in the result if you don't change it straightaway. I understand your point. What about the tick? What did the tick -

MR O'NEILL: Next to Campbell.

30

MS HAIRE: I think that's a tick next to the bracket, Mr O'Neill.

COMMISSIONER: That's for all three. Do you know what it denotes, or can you reconstruct what it denotes?

35

MS HAIRE: No, I can't, I'm sorry.

COMMISSIONER: All right.

40 MR O'NEILL: Do you have an independent recollection now of that conversation with Ms Cross?

MS HAIRE: I - yes, not a very full one, Mr O'Neill, but I do remember it.

45 MR O'NEILL: The conversation insofar as it traversed the topic of capital projects and Secure Local Jobs, as the bigger umbrella, can - doing the very best you can, can you remember what was communicated to you?

5 MS HAIRE: Yes. She indicated - she told me that it was an important issue for government, that the principles behind the Secure Local Jobs were a high priority. She obviously, as the note says, referenced, you know, three projects that were currently underway. She also mentioned that it had been put to her that, for the projects of significance, the Director-General should be the decision-maker.

10 MR O'NEILL: Right. So that was a concept that had come from her, was it, that the projects of significance, the Director-General should make the decision?

MS HAIRE: No, I think she was relaying that that was a view from either the - I think from the chief of staff.

15 MR O'NEILL: Right. So from the - from the chief of staff. What about was it something that it was the chief of staff's personal view or was it communicated to you more that it was the chief of staff's view, as in the view of the Minister's office, that that is the way it should be done?

20 MS HAIRE: I think that it was put to me as an opinion.

MR O'NEILL: Right.

COMMISSIONER: Why do you think you haven't noted that?

25 MS HAIRE: I'm not sure, Commissioner.

COMMISSIONER: It strikes me as an important matter, if the Minister is asking that a DG should take on a role not ordinarily that of the DG, that it would be sufficiently important to note.

30 MS HAIRE: Commissioner, I don't believe it was the Minister, and I don't believe it was being asked. I believe it was an opinion.

35 COMMISSIONER: Right. An opinion of?

MS HAIRE: About how capital projects -

COMMISSIONER: No, sorry, whose opinion?

40 MS HAIRE: For the best I remember, that it was the opinion of the chief of staff.

COMMISSIONER: Right. So, nevertheless, do you - what is your view about its importance and whether it was a matter that was - I mean, in a sense everything, can be noted so it's an - there's no bright line about matters. But why was that matter not noted, do you - can you now recall?

MS HAIRE: No, these are - I mean, as you can see, they are quite messy contemporaneous notes. I write down the things that appear to me to be important at the time.

5 COMMISSIONER: And that didn't strike you as important at the time?

MS HAIRE: That's the - I - I didn't write it down, so that's the likely explanation.

MR O'NEILL: You are fairly new - sorry, Commissioner.

10 COMMISSIONER: Can I just ask you this: The reference to Secure Local Jobs, had you come across that before?

MS HAIRE: No, I hadn't.

15 MR O'NEILL: Right. So in order to understand what - did she explain what was its intent or, at the highest level, what was it designed to do, or you just took that and thought, well, I'm going to have to make some inquiry or find out what that means?

MS HAIRE: Yes, Rebecca didn't - Ms Cross didn't go into any detail about that.

20 COMMISSIONER: Right. Is it fair to say you made a note, it was something you were going to have to look at.

MS HAIRE: That's correct, Commissioner.

25 COMMISSIONER: Right.

MR O'NEILL: And in fairness to you, in the context of - you're very new at the role still. That's a fair descriptor?

30 MS HAIRE: Yes.

MR O'NEILL: And so you are learning a lot of new things almost all of the time in relation to how this - this Directorate operates.

35 MS HAIRE: Yes. And this jurisdiction.

MR O'NEILL: And so there would need to be an - you would need to educate yourself about Secure Local Jobs Code? Yes?

40 MS HAIRE: Yes.

MR O'NEILL: You would also need to educate yourself about the capital projects themselves?

45 MS HAIRE: Yes.

MR O'NEILL: And also one assumes, the process of procurement, given that this was something that you had not previously performed at this level in a capital sense prior to this role?

5 MS HAIRE: Yes, I had very limited knowledge of how it worked.

MR O'NEILL: When was it that you then educated yourself in respect of what Secure Local Jobs Code was?

10 MS HAIRE: A couple of days later, when I was back in the office, I asked Mr Green, who was acting in the position of Executive Group Manager, Business Services whether Rebecca had told him about the discussion she had had with the Minister's office. I asked him whether he knew about the matters raised about the Secure Local Jobs Code, whether he knew about the Secure Local Jobs Code and that was - that was my inquiry.

15 MR O'NEILL: Can I take you to Mr Green's version of what I think is that conversation? And I want you to consider it and then whether you agree or cannot remember the various parts of it.

20 MS HAIRE: Yes.

MR O'NEILL: So it's at transcript - public transcript 101. Mr Green starts at about line 5. He says he had this conversation with you after you came back from leave. That's consistent with your recollection?

25 MS HAIRE: That's correct.

MR O'NEILL: And that it was before 25 March. That's consistent with your recollection? You're saying a couple of day, so maybe 15 March, in and around that time?

30 MS HAIRE: Yes, it was before the schools were closed for the COVID shut down.

MR O'NEILL: I see. Do you remember the date at which the schools closed down?

35 MS HAIRE: On Sunday, 22 March.

MR O'NEILL: I see. So if -

40 MS HAIRE: Or the decision was made on 22 March. So from Monday, the 23rd.

MR O'NEILL: So it's somewhere probably - it's in between the 12th - sorry, that's correct, 12 March and 22 March this conversation is occurring?

MS HAIRE: Yes.

45 MR O'NEILL: He says the conversation was at your office at 220 Northbourne Avenue, consistent with your recollection or can't recall?

MS HAIRE: Yes, that's correct. I believe it was at Northbourne Avenue.

5 MR O'NEILL: Then you see here, at line 25, Mr Green is asked to put it into your words, and he says:

I was summonsed to the Minister's office to talk about the Campbell tender. They have got a view that Manteena is not to get the job.

10 Do you see that?

MS HAIRE: Yes, I do.

MR O'NEILL: Do you recall that being part of the conversation?

15

MS HAIRE: No, it wasn't.

MR O'NEILL: It wasn't part of the conversation?

20 MS HAIRE: No, it wasn't.

MR O'NEILL: You deny it?

MS HAIRE: I do.

25

MR O'NEILL: And why is it that you deny that part of that conversation?

30 MS HAIRE: I wasn't ever summoned to the Minister's office to talk about the Campbell tender, and it was never relayed to me that they had a view that Manteena wasn't to get the tender.

MR O'NEILL: That was never relayed to you?

MS HAIRE: No.

35

40 MR O'NEILL: I will come back to that. I just want to finish this sequence while I've got you. Mr Green, line 36, mentions that he had spoken to Ms Cross about that previously, that is, Manteena not to get the job. And then explained the process, that is, he's explaining the procurement process. Now, that element, that is, Mr Green explaining to you the procurement process, did that occur?

MS HAIRE: That's not what I remember, Mr O'Neill. It was more about, "Do you know what the Secure Local Jobs principle is?" And, you know, what that entails. Because that was the thing that I didn't know about. So that's what I remember.

45

MR O'NEILL: Do you remember -

COMMISSIONER: What did he tell you about that?

MS HAIRE: He told me that he knew about it. He knew about the Secure Local Jobs Code and he had experience in - and knowledge of the construction industry in the ACT.

5

COMMISSIONER: Is that all he told you in that respect?

MS HAIRE: I believe he said he knew something - I believe he said something along the lines of, "I know who are the good companies."

10

MR O'NEILL: The idea that he knew who the good companies were, did you have a reaction to that or did you comment about that?

MS HAIRE: No. Not that I remember, Mr O'Neill.

15

MR O'NEILL: He says the conversation continues across the page, at 102:

I've got a process underway. At the moment, we are looking at a BAFO offer to keep two tenders open at this point to give us a chance to, you know, reassess the tenders and not make a decision immediately.

20

Do you remember those words?

MS HAIRE: No, I don't.

25

MR O'NEILL: Is it - you don't remember them.

MS HAIRE: No, I don't.

MR O'NEILL: You don't deny they were said. It's in a different category to the way in which you denied the - your answer is different to the one you gave previously about Manteena, that's all.

30

MS HAIRE: Yes. He may have said that. I don't remember it.

35

MR O'NEILL: Do you remember learning about what a best and final offer process was?

MS HAIRE: In that conversation?

40

MR O'NEILL: Yes.

MS HAIRE: No, I don't.

MR O'NEILL: Do you remember ever learning about that process?

45

MS HAIRE: Later - in relation to this particular tender later in the piece, yes.

MR O'NEILL: Prior to it being awarded?

MS HAIRE: Yes.

5 MR O'NEILL: We will come to that shortly. What about the concept of not making a decision immediately?

MS HAIRE: I don't remember that.

10 MR O'NEILL: Right. And, again, that's in the category of could have happened but can't remember, as distinct from definitely did not occur.

MS HAIRE: Yes.

15 MR O'NEILL: He says he explained more process issues at that point. I don't wish to seek your input in respect of that piece of evidence. He then says that you communicated that you would be the final decision-maker on this process, that is, as at 13 - sorry, the conversation as at between 12 March and 22 March. That's when you told him that you would be the final decision-maker in the process. Do you recall doing that?

20

MS HAIRE: No, I didn't say that.

MR O'NEILL: Right. And that's a denial that you said that. That's in the first category.

25 MS HAIRE: Yes, that's right.

MR O'NEILL: Why is it that you think it's something that you just didn't say?

30 MS HAIRE: Because I didn't make the decision to be the decision-maker until later in the piece.

MR O'NEILL: When do you say was the time that you made the decision to be the decision-maker?

35 MS HAIRE: In around May that year.

MR O'NEILL: Right. We will come to that in the timeline shortly. And he then corrects himself in evidence -

40 *I've been told that I will be the final decision-maker on this process.*

Do you see that?

MS HAIRE: Yes.

45

MR O'NEILL: I gather you deny that that occurred.

MS HAIRE: Yes.

5 MR O'NEILL: Now, is it possible that what you actually said was, "I understand there's an opinion that these significant capital works positions should - I should become the decision-maker", that is, you conveyed the message that you had received from Ms Cross to Mr Green. Is that a possibility?

MS HAIRE: Yes, I think that's much - that is a possibility.

10 MR O'NEILL: Do you think that's a more likely turn of events as to what occurred? That is, you did communicate to him that there was this view about who should be the decision-maker and left it at that, and that that wasn't then in the emphatic terms that Mr Green sets it out?

15 MS HAIRE: So, I did not say that I would be the decision-maker. I think it's possible, as you say, that I conveyed - in the course of conveying what I had heard from Ms Cross that I conveyed it - conveyed that point about that opinion.

20 MR O'NEILL: Had you had a chance to assess, at this stage, Mr Green's competence in his role and in supporting you in his role? Or is this too early in the piece to be able to make such an assessment?

MS HAIRE: I had only just met him, but he came very highly recommended.

25 MR O'NEILL: He says, line 31, that you repeated that the desired outcome from the Minister's office was that Manteena not get the job. I understand you deny that occurred?

MS HAIRE: Yes, I do.

30 MR O'NEILL: And for the same reasons that you provided earlier in your evidence?

MS HAIRE: That it didn't happen.

MR O'NEILL: Yes.

35 MS HAIRE: Yes. And I didn't know who the - I didn't know the names of the companies.

40 MR O'NEILL: That might be so. The alternate hypothesis is that it was - it was communicated to you and whilst you had no understanding of who these companies were, because of the timeline, that is, it had been communicated to you by Ms Cross on the 12th, and you were having a conversation with Mr Green shortly thereafter, that it could just be that it was repeated without you having to engage with that - the identity of the company. Do you understand where I'm going?

45 MS HAIRE: No, sorry. Could you say that again?

MR O'NEILL: All right. So -

5 COMMISSIONER: You may have been told about - the hypothesis is that you were told about the company's name, although it didn't mean anything to you, and you conveyed that name to Mr Green. That's the hypothesis in response to your evidence, "Well, I didn't know of Manteena." Do you see - that's what Mr O'Neill is putting to you as a possible explanation, yes.

MS HAIRE: No, that didn't happen.

10 MR O'NEILL: So you reject that contention.

MS HAIRE: Yes, I do. Yes, I do.

15 MR O'NEILL: And you reject it on the basis of -

MS HAIRE: The companies - that it was not put to me either by - it wasn't put to me by Rebecca that the - that the meeting she had from the Minister's office was specifically about any particular companies or any particular tenders, nor was there a request to - yes, it simply wasn't what she put to me.

20 COMMISSIONER: Am I correct in understanding that, at this, meeting, you did not delve into what were the core - what was the core intent of the Code? You asked him, in effect, "Do you know about the Code?" And he said, "Yes, I do." But you didn't take the subject matter any further.

25 MS HAIRE: No, Commissioner.

COMMISSIONER: Sorry. By "no" you mean that's right, you didn't take it any further.

30 MS HAIRE: That's right, Commissioner. I did not.

COMMISSIONER: Right.

35 MR O'NEILL: Was it explained to you at or about this time that what was being undertaken, firstly, was an advice was being sought from the Government Solicitors Office about the appropriateness or otherwise of this best and final offer process being undertaken in respect of Campbell?

40 MS HAIRE: No, it wasn't.

MR O'NEILL: And so there was - and also were you aware that, as at 13 March 2020, there was a rumour within the Directorate that the Minister for Education may have been approached by the unions and asked why Manteena is getting all the jobs and that this may be why Mr Green was pushing for a BAFO where Manteena should be the obvious preferred tenderer over Lendlease? Were you aware of that rumour?

45 MS HAIRE: No.

MR O'NEILL: Were you aware as at the date of the conversation you had with Mr Green that the CFMEU had an issue with Manteena?

5 MS HAIRE: No, I wasn't.

MR O'NEILL: No one had - no one had informed you of that matter?

MS HAIRE: No. No.

10

COMMISSIONER: Or more generally about unions having an issue?

MS HAIRE: No.

15

MR O'NEILL: On 25 March 2020, there was an exchange of text messages between you and Mr Green. I want to show you at 2.1578. Now, the green bubbles are Mr Green, and whilst it's identified as "Dad", that's as a function of the extraction process. So accept from me that "Dad" is Mr Green.

20

MS HAIRE: Yes.

MR O'NEILL: And these are text messages being sent to you?

MS HAIRE: Yes.

25

MR O'NEILL: He asks for a chat about his favourite tender, Campbell.

MS HAIRE: Yes.

30

MR O'NEILL:

Can you chat now?

35

And then you say at 6.20 pm, approximately, that you're on the phone with Josh and he's heard about it. Do you see that?

MS HAIRE: I - I can't - actually see it but I know the text message you are referring to, Mr O'Neill.

40

MR O'NEILL: There it is at the top. Do you see that?

MS HAIRE: Yes, I do.

MR O'NEILL: Now, "Josh" is a reference to whom?

45

MS HAIRE: To Mr Ceramidas, the Minister's chief of staff.

MR O'NEILL: And can you recall what Mr Ceramidas was telling you about Campbell?
As at the 25th?

5 MS HAIRE: So these text messages relate to an email or a proposal from Major Projects
Canberra and the -

MR O'NEILL: Do you want me to take to you the email? Is it fairer for me to take to you
the email so to refresh your memory? I don't want to be unfair to you.

10 MS HAIRE: No, it might be helpful. But I know what's in it.

MR O'NEILL: Okay.

15 MS HAIRE: So the first conversation - Mr Green was - was alerting me to the fact that I
was going to receive an email from Mr Edghill.

MR O'NEILL: Yes.

20 MS HAIRE: Regarding both the Campbell and Throsby projects.

MR O'NEILL: Right. And is that the email that appears at 2.1581?

MS HAIRE: Yes, that's right.

25 MR O'NEILL: Right. Okay. So then returning to the text messages. Mr Ceramidas is not
copied to the email, so - sorry, when it goes back. 2.1579. Mr Ceramidas is not copied to
the email. I understand that he was part of a conference call that was being conducted with
industry about getting things moving. But what was Mr Ceramidas communicating to you
on the phone?

30

MS HAIRE: So I'm not sure about the conference call that you are talking about with
Mr Ceramidas.

MR O'NEILL: That's okay. Yes.

35

MS HAIRE: The - I telephoned Mr Ceramidas to let him know that I had received this
email from Mr Edghill, specifically because, at the bottom of the email, it indicates that the
proposals were going to be discussed at a Cabinet meeting the next morning.

40 MR O'NEILL: All right.

MS HAIRE: And so -

MR O'NEILL: I will take you back to the email, 2.1581. It says:

45

*Many thanks in advance. As a heads up I understand Minister Steel is going to raise a
variety of infrastructure matters in SEMC tomorrow.*

Is that what are you referring to?

MS HAIRE: Yes, yes.

5

MR O'NEILL: What does SEMC refer to?

MS HAIRE: Security and Emergencies Management Committee, which is a subcommittee of Cabinet.

10

COMMISSIONER: Did you understand - I gathered from what you've just said, but I think it's necessary to be a little more precise. Did you understand that that was going to raise Campbell in particular - with others - or that it was a general what's happening to infrastructure? Do you see the distinction I'm making? What did you understand was going to be the level of detail - or did you have no expectations one way or another?

15

MS HAIRE: I understood it was going to be discussed - a range of matters about fast-tracking capital projects, including some of our Education projects was going to be raised at the committee the next morning.

20

COMMISSIONER: So potentially Campbell?

MS HAIRE: And Throsby, yes.

25

COMMISSIONER: Right.

MR O'NEILL: And so Mr Ceramidas was not the chief of staff for Minister Steel.

MS HAIRE: No.

30

MR O'NEILL: Why is it that you were giving Mr Ceramidas a heads up about this email from Mr Edghill?

MS HAIRE: So in the normal course of events when the public service is not operating in an emergency, we provide written advice to our Minister ahead of any Cabinet committee meeting that has matters relating to her portfolio. Because during the - by this point, the Territory had entered into the public health emergency, and there were meetings being held of Cabinet committee meetings, practically every day and we were in the process of shifting people either to work from home or to work at our other site in Western Creek, we didn't have the capacity to go through the normal process of providing a written briefing. And also at times, quite often because meetings were being held every day, we didn't receive meeting papers. We rather got an email like this one from a colleague saying, "This is what my Minister is likely to discuss" and it was part of my job to tell my Minister and advise her on what was going to be discussed in the meeting.

40

45

MR O'NEILL: You see how your text message, back at 2.1579 says:

He's heard about it.

MS HAIRE: Yes.

5 MR O'NEILL: What do you say is the subject of that sentence? What is "it"?

MS HAIRE: I think it's he's heard about the discussion that the going to be held at the meeting the next morning.

10 MR O'NEILL: All right. It's not Campbell?

MS HAIRE: No.

MR O'NEILL: Do you see that the next text -

15

MS HAIRE: Sorry. The proposition that's in - he's heard about the discussion about the proposition in Mr Edghill's email, to fast-track various projects.

20 MR O'NEILL: I see. So you're not saying the "it" is the fact it's going to be discussed tomorrow. You are saying that the "it" was -

MS HAIRE: The content of the discussion about fast-tracking capital projects.

MR O'NEILL: And one of those projects was Campbell?

25

MS HAIRE: That's what Mr Edghill's email is proposing, yes.

MR O'NEILL: Yes. And isn't that what Mr Green is asking you to chat about? In the previous texts at 2.1578?

30

MS HAIRE: I'm not sure exactly what that's about. I think it's about the - to do with the email from Mr Edghill, yes.

MR O'NEILL: The first text:

35

Can we chat about my favourite tender, Campbell?

You're not sure what that text message is about?

40 MS HAIRE: I think that's about his alerting me that I'm about to get an email from it Mr Edghill that includes reference to the Campbell project.

MR O'NEILL: And then:

45 *Can you chat now?*

You think that's a different "can you chat" from the text message previous? That these two are not connected?

5 MS HAIRE: So, I think that the email trail shows that I did speak to Mr Green after the first text message because when I respond to him, I say something along the lines of, "Thanks for the heads up." So he had told me that I was going to get this email from Major Projects Canberra. And so I said, "Thanks for the heads up" and then I asked him for some advice about it.

10 MR O'NEILL: I see. I just - in fairness to you I will take you to that, 2.1582. At the top of the page:

Thanks for the heads up.

15 That's what you say. And then:

See below. Can we discuss? Is it even possible to do that under the procurement rules?

Is a reference to the email below.

20

MS HAIRE: Yes, that's right.

MR O'NEILL: I will come back to that shortly. I just want to go back to the text messages, please. Actually, sorry, I didn't mean to confuse you. We can go back - we will go back to the email. It's more appropriate. So you see there, in the email:

25

Thanks for the heads up.

This is at 2.1582:

30

See below. Can we discuss? Is it even possible to do that under the procurement rules?

So the question that you're asking Mr Green is one about probity, effectively. Is it fair to the tenders to be able to do that?

35

MS HAIRE: Yes. Or is it within the rules for the ACT to - I had - about which I had little idea.

MR O'NEILL: Right. So your question is driving at legality, rather than - well, principally at legality, as in, "Is this allowed"?

40

MS HAIRE: Yes.

MR O'NEILL: And then you say, there was a discussion between you and Mr Green, was there?

45

MS HAIRE: I don't think I said that. I mentioned - I - you asked me about a phone call with Mr Ceramidas.

5 MR O'NEILL: Yes. I understand your evidence in relation to the phone call with Mr Ceramidas has nothing to do with Campbell. That was what I understood you told -

MS MORGAN: I object to that. That's not the evidence she gave.

10 COMMISSIONER: No, no, one moment. Ms Morgan, that's not fair. Mr O'Neill is saying that that's what he understood. It can be corrected. But it's scarcely an objection.

MS MORGAN: Certainly, Commissioner. Can I just have a moment, Commissioner?

15 MR O'NEILL: I will put this question to you, so just forget about the last one. The conversation between you and Mr Ceramidas was on the topic of the email; is that - is that right? The whole of the email?

MS HAIRE: Yes. Yes, Mr O'Neill.

20 MR O'NEILL: So that did include Campbell.

MS HAIRE: So it included - yes, I was telling him the matters that I understood were going to be discussed at the Cabinet committee the next day.

25 MR O'NEILL: All right. And so -

COMMISSIONER: Sorry. Just perhaps to be slightly more direct in your answer, so you mentioned Campbell as one of the those matters or not? As you recall it now. If you can't recall it, of course, say so.

30

MS HAIRE: I can't recall any of the specifics of the conversation, Commissioner. But I would have relayed to him the substance of the email I had received, I believe.

35 COMMISSIONER: Does it follow from that you believe that you would have relayed that Campbell was one of those matters because it was mentioned in this the email? Or is that just too speculative?

MS HAIRE: I think I would be speculating, but I think -

40 COMMISSIONER: Well, there's no need to speculate.

MS HAIRE: Given that it's in the email -

45 COMMISSIONER: Sorry?

MS HAIRE: It is in the email. I was telling Mr Ceramidas about the proposition that I had received from Major Projects Canberra that was going to be discussed at the Cabinet committee meeting the next morning.

5 COMMISSIONER: Right. So have we arrived at this: It was in the email and, therefore, would have made sense to mention it. You don't know whether you did or not. Is that fair?

MS HAIRE: Yes. That's fair, Commissioner.

10 MR O'NEILL: Can you recall whether you mentioned that there were two bids that had come in over budget to Mr Ceramidas?

MS HAIRE: No.

15 MR O'NEILL: You can't recall that?

MS HAIRE: No, I can't.

20 MR O'NEILL: It's in the email. Does that mean it may have been discussed but it's not possible to recall it now?

MS HAIRE: I can't say.

25 MR O'NEILL: It also says:

I also understand there are some other sensitivities there.

First, did you understand what that meant?

30 MS HAIRE: No.

MR O'NEILL: Second, was it something that you communicated to Mr Ceramidas?

35 MS HAIRE: I can't recall the conversation.

MR O'NEILL: Did you - do you recall whether you discussed with Mr Ceramidas that - the concept of not going to the Minister to seek additional funding, but to reopen the bidding - or to reopen the bidding process but to identify a preferred bidder, and let them know they are over budget and work to bring the price down?

40 MS HAIRE: I don't know, Mr O'Neill.

45 COMMISSIONER: Can we just go back to that sentence about sensitivities, Ms Haire? It strikes me, as an outsider, that he was intending to refer to a matter that, because of its sensitivity, he didn't want to set out - or, of course, it could simply have been shorthand for something which he understood you as the recipient or - sorry, yes, you as the recipient

would understand. Are you saying you did not understand what that reference is? Or you did at the time, and it's now escaped your recollection?

5 MS HAIRE: I don't know what Mr Edghill meant by that, Commissioner.

COMMISSIONER: Right. Did you ask him?

MS HAIRE: No, I didn't.

10 COMMISSIONER: Why?

MS HAIRE: So at this point in time - so it's the Wednesday after the declaration of the public health emergency. While I understood the importance of the economic, you know, future of the ACT and the - there were - there was concern about the impact on the
15 construction industry of the nation-wide shutdown, pretty much all of my attention was on the extreme pressure that we were under in the Education Directorate to stand up a viable remote learning option for the children of the ACT, and to provide a safe environment for the children of essential workers who still needed to have somewhere to go, notwithstanding the lockdown.

20 COMMISSIONER: So you are saying that you were - in effect, you are saying you were distracted by other immediate and substantial obligations, and you simply put it to one side for the time being because you had other more pressing matters on your desk. Is that a fair -

25 MS HAIRE: I don't think I was saying I was distracted, Commissioner. I think that -

COMMISSIONER: I'm sorry. I didn't - I wasn't using that in a critical sense. What I meant was, your priority then was immediate and pressing and not everything was therefore
30 submitted to fine analysis. You just noted it and moved on. Is that - I'm just trying to understand your frame of mind at this time?

MS HAIRE: Yes. At that time my frame of mind was that the number one priority that I had was the provision - some form of provision of education to the children and young
35 people of the ACT. This is the end of the third day of the -

COMMISSIONER: Lockdown. Is it the lockdown?

MS HAIRE: The lockdown. The schools had been closed at that point for three days. We
40 had no - we didn't have people on site for three days. There was an absolute firestorm of public debate about whether or not schools should operate, and there were extremely fierce arguments in the media about - there was - at that point, there was a belief that children weren't as susceptible to infection from COVID-19 as adults and so some Chief Health Officers in Australia considered that schools could stay open. Some considered that they
45 couldn't. There was - it was an extremely frenetic and chaotic, in some ways, time.

COMMISSIONER: So that - I gather what - that what you are implying is, had this simply been ordinary business time and you were just moving forward with - without any such emergency problems, you would have made an inquiry, but other work really was just of overwhelming priority.

5

MS HAIRE: Look, I can't say what I would have done in different circumstances.

COMMISSIONER: It's difficult, because it is speculative, but -

10 MS HAIRE: This email relates to those circumstances as well, that, for other people who had different responsibilities, the future of construction projects was the highest priority. That wasn't -

COMMISSIONER: Indeed.

15

MS HAIRE: So I think it would all be speculation. I think none of these things would have been happening without the emergency that we were dealing with.

20 COMMISSIONER: So, really, we are left with a position, as it happened, for reasons which, in the circumstances, are necessarily uncertain, you didn't make any further inquiry, but you had - there are obvious explanations in the workload at the time for not doing so. Does that fairly sum up the position?

MS HAIRE: I'm sorry. Could you say that again, Commissioner?

25

COMMISSIONER: We are left in a situation where you're unable to say why did you not raise the matter, but there were other pressing difficulties that you were needing to deal with, and the need to do that may be the explanation for why you did not take this matter any further? If you're unhappy with my summary, I will leave it aside and you can just move on.

30

MS HAIRE: Yeah, I'm not sure that - yes. Right, yes.

COMMISSIONER: All right.

35

MR O'NEILL: So had - did Mr Ceramidas communicate to you during that conversation anything about the view that a preferred tenderer should be selected?

MS HAIRE: No. Not that I remember.

40

MR O'NEILL: Right.

COMMISSIONER: At this time, how frequently do you think you were speaking with Mr Ceramidas? Every day? A couple of times a day? Just occasionally? Can you give any reliable estimate of how frequently there would be communications of between you and he?

45

MS HAIRE: Yes, I would say a couple of times a day, Commissioner.

MR O'NEILL: Going back to the text messages then. 2.1579, Mr Green says to you:

5 *I had a chat with Lynette.*

Do you know who he's talking about there?

MS HAIRE: Yes, I do.

10

MR O'NEILL: Who is it?

MS HAIRE: She was our chief financial officer.

15 MR O'NEILL: And he says:

I think it's doable.

20 And he must be referring to Campbell now. Do you agree, to the best of your understanding?

MS HAIRE: No, I think he's referring to the two propositions in Mr Edghill's email.

MR O'NEILL: All right:

25

If the MO -

Minister's office -

30 *is on side.*

MS HAIRE: Yes.

35 MR O'NEILL: Now, this is at 6.30 pm. You've sent your email at 6.10 pm. That's the one that we previously saw at 2.1528. Is the statement "doable" a reference to your question about:

Is it possible to do that under procurement rules?

40 MS HAIRE: That's what I understand. Yes, Mr O'Neill. Because Lynette was responsible for procurement policy in the Directorate.

MR O'NEILL: I see. And then following the - the text message following that, 14 minutes later - sorry, have I got that wrong? 16 minutes later:

45

Mr Ceramidas is good.

What did you understand that meant?

5 MS HAIRE: So, I believe that's in response to a further email that I had sent to Mr Green where I had asked him to explain to Mr Ceramidas - because he had attended the meeting, that Mr Edghill's email refers to - to explain or to speak to Mr Ceramidas about what was discussed at this construction roundtable. Because -

10 MR O'NEILL: That doesn't happen until the 26th, though. The roundtable happens on 26 March.

MS HAIRE: The meeting that's referred to in Mr Edghill's email.

15 MR O'NEILL: I understand. So not the one as a heads up. Not the one about the SEMC tomorrow.

MS HAIRE: That's right. Not that one.

20 MR O'NEILL: You are talking about the daily hook-up with infrastructure/construction industry representatives?

MS HAIRE: Yes. Hook-up. Sorry. That's the word. Apologies.

25 MR O'NEILL: That's the conversation I was referring to earlier in my questions when I said, "a conference call".

MS HAIRE: Okay.

30 MR O'NEILL: Do you understand now what I was talking about, that Mr Ceramidas was on - on that conference call? Or that's not your understanding?

MS HAIRE: That's not my understanding. I think it was a meeting of the officials, but I'm not sure.

35 MR O'NEILL: All right. I may be in error about that, so don't accept it as authority. At 7.35 pm on the 25th, Mr Green wrote to Mr Edghill and Mr Piani saying that he and you had had a positive conversation about the email. That is, the email to you. Do you remember that conversation?

40 MS HAIRE: I think it is referring to the text conversation.

MR O'NEILL: There was no other conversation over the phone?

MS HAIRE: I'm not sure.

45 MR O'NEILL: It could have happened but you can't recall it?

MS HAIRE: Yes, that's right.

5 MR O'NEILL: Mr Green says at transcript 112 that he thinks that the conversation was the same as the BAFO conversation before, that is, he explained that the process was in best and final offer to you and that the path forward was this best and final offer process. Do you recall that?

COMMISSIONER: Sorry, you are asking her whether she recalled the evidence or whether she recalled his account of the conversation?

10 MR O'NEILL: His account of the conversation. Do you recall that that was the conversation?

MS HAIRE: No, I don't.

15 MR O'NEILL: And he accepts the proposition from me that the import of the conversation was press on with the best and final offer process. Do you see that?

MS HAIRE: Yes, I see that.

20 MR O'NEILL: Do you recall whether that was something that you had indicated to him, that we should press on with the best and final offer process?

MS HAIRE: No.

25 COMMISSIONER: Sorry, are you saying you didn't say it? Or you don't recall whether you said it or not?

30 MS HAIRE: I don't - I didn't say it, because it's clearly in contrast to what I subsequently emailed back to Mr Edghill, which was agreement to discuss and work with him on the proposal that he put in his email. So it's completely contrary to what I subsequently emailed back to Mr Edghill.

35 COMMISSIONER: All right. I can understand the basis for your reasoning, but I - I apprehend that is a reconstruction of why you wouldn't have said it, rather than any actual recollection of not saying it.

MS HAIRE: I'm sorry, could you say that again?

40 COMMISSIONER: Yes, you're reasoning back from that email that did you not have - you did not say what Mr Green said you said. That's just what you've done. You've said that email - have you not?

45 MS HAIRE: Yes, I think that email reflects what I understood to be the outcome of the discussion with -

COMMISSIONER: No, I understand that. What I'm really saying is, you're relying on that email for your answer that you didn't say that to Mr Green, as distinct from your memory.

MS HAIRE: Yes, as I think I've said to Mr O'Neill, I don't recall this conversation at all.

COMMISSIONER: Right.

5

MS HAIRE: I was talking to all my staff about 30 times a day.

COMMISSIONER: But saying such a thing doesn't make sense in light of the subsequent email to which you referred?

10

MS HAIRE: Yes.

COMMISSIONER: Right.

15 MR O'NEILL: Were you aware that Mr Green had spoken - or had sought to speak with Mr Blom about whether there would be extra budget to cover the more expensive tender in Campbell?

MS HAIRE: No, I wasn't.

20

MR O'NEILL: He hadn't told you that he had been seeking to see whether that was the preferred tenderer that could be the one that would be selected?

MS HAIRE: No.

25

MR O'NEILL: At 2.1592 is your direct response to Mr Edghill. It says you've spoken with Mr Green and the Minister's office. That must be Mr Ceramidas?

MS HAIRE: Yes.

30

MR O'NEILL: And:

We are keen to work with you on them.

35

MS HAIRE: Yes.

MR O'NEILL: So that's very early on 26 March. Were you aware that he had then requested a re-evaluation of the D and C tender and that the original Tender Evaluation Team was then to be replaced on the following day?

40

MS HAIRE: No.

MR O'NEILL: Now, I know you've since learnt of that fact.

45

MS HAIRE: Yes.

MR O'NEILL: I just want to give you an opportunity to inform the Commission about what - once you had learnt of that, what your reaction is to that, knowing that they are standing up a new Tender Evaluation Team while you're telling Mr Edghill you are keen to work with him on selecting a preferred tenderer?

5

MS HAIRE: Sorry. I'm sorry, what's your question, Mr O'Neill?

MR O'NEILL: Well, on the one hand, you are communicating with Mr Edghill that we're keen to work with you on this idea of selecting a preferred tenderer.

10

MS HAIRE: Yes.

MR O'NEILL: On the other hand, the Directorate is standing up a new Tender Evaluation Team to conduct a whole new evaluation.

15

MS HAIRE: Yes.

MR O'NEILL: You weren't aware of it at the time, but once you became aware of it -

20

MS HAIRE: No. I don't think until you put the question to me that I was aware that it was the next day, Mr O'Neill.

MR O'NEILL: Right. Now that you are aware it was next day, does that seem surprising to you?

25

MS HAIRE: Yes.

MR O'NEILL: Why?

30

MS HAIRE: Because I had emailed back to Mr Edghill about working with his team on the propositions in his email. And that's what I had discussed with Mr Green and with the chief of staff.

MR O'NEILL: The Commission received evidence yesterday from Mr Blom, who, in effect, indicated that the purpose of the second Tender Evaluation Team was to arrive at a decision that a best and final offer process be recommended, that is, another tender process be recommended after the evaluation had already been taken place.

35

COMMISSIONER: Well, the important outcome of that is, that it was not to identify a contractor. The question that that team was to look at was whether or not there should be a BAFO. Do you see the distinction?

40

MS HAIRE: Yes. I think so.

COMMISSIONER: Right. So that's one step, again, back from actually pressing forward with the matter which Mr Edghill had proposed and which it appears you had accepted as what you were able to do, or what you were willing to do to -

45

MS HAIRE: Yes, I had accepted - I had agreed that we should work together on that - on his proposal.

5 COMMISSIONER: No, sure. And this became - to use the vernacular, this was a glitch which you were unaware of.

MS HAIRE: I was unaware of that, yes, Commissioner.

10 COMMISSIONER: Right. But it was a glitch, of course, of which Mr Green must have been well aware. He was at the centre of the relevant management of the process.

MS HAIRE: I'm sorry. Is that a question for me?

15 COMMISSIONER: Yes. That is, your understanding was Mr Green was managing it and, indeed, I think you said that you had discussed your ideas - that is, Mr Edghill's ideas - with Mr Green. So if there was to be a problem, you would have expected Mr Green to have told you at that stage?

20 MS HAIRE: Yes. When I use the word "discussed", I think that includes text messages as well as actual conversations, Commissioner.

COMMISSIONER: Right. I wonder, then, if we could just go back to the discussion with Mr Green, do you now recall - I mean, your message suggests that you discussed the
25 matters raised by Mr Edghill, does it not?

MS HAIRE: Sorry, which text message are we looking at?

MR O'NEILL: No, the email. The email in front of you.

30 COMMISSIONER: Your top one, your email:

I have discussed your ideas with John.

35 MS HAIRE: Yes.

COMMISSIONER: So, that is, the matters that he has said in his email.

40 MS HAIRE: Yes.

COMMISSIONER: And so can we take that at face value, that you raised those matters with him that Mr Edghill had put forward as the way to move this along?

MS HAIRE: Yes, Commissioner.

45 COMMISSIONER: And from what we now know, there was this problem that a new team was being set up at this very time to - not even to determine a contractor, but to determine

whether there should be another process for deciding on a contractor. Now, that strikes me as being a matter which you would have expected Mr Green to have brought to your attention in this context.

5 MS HAIRE: I guess I can't expect - I can't speculate on what I expected. I think my email back to Mr Edghill is clear that we were agreeing - I was agreeing on behalf of the Directorate to work with Major Projects Canberra on the propositions in his email. That's - that was what I understood we were going to do. That's what I expected.

10 COMMISSIONER: That email suggests, though, agreement, does it not? Or am I misunderstanding it? Or is it simply -

MS HAIRE: Does my - does my email - yes.

15 COMMISSIONER: Your email:

We are keen to work with you on it.

Is, yes, we want to -

20

MS HAIRE: Yes, it's a positive - it's a positive response. It is agreement, yes, Commissioner.

25 COMMISSIONER: Right. And does it follow from that, then, that Mr Green had not informed you of any matter which might constitute a difficulty in moving forward as Mr Edghill had stated? Or you can't say now one way or another?

MS HAIRE: I can't speak for Mr Green. What I can say is that I -

30 COMMISSIONER: No, I'm not - sorry, no, please. I'm not asking you to speak for him. I'm asking you about what he conveyed to you or did not convey to you. And my question is, can we - is it fair to infer from your email that he didn't tell you of a problem or any problem with moving forward in accordance with the suggestions made by Mr Edghill? Or you can't say now one way or another?

35

MS HAIRE: Sorry, I'm not quite sure what the question is. But I agree with you that I was positively agreeing to Mr Edghill's proposition.

COMMISSIONER: Right.

40

MS HAIRE: And I believed that was the course of action we were taking.

COMMISSIONER: Right. And you did that following a discussion with Mr Green.

45 MS HAIRE: Yes.

COMMISSIONER: And the matter that you discussed with Mr Green was the proposal made by Mr Edghill.

5 MS HAIRE: The propositions in his email, yes, Commissioner.

COMMISSIONER: Yes. And what I'm asking you is, does it follow from your email - "We are keen to move ahead with it."

10 MS HAIRE: Yes.

COMMISSIONER: Can we infer from that that Mr Green did not mention to you any problem with moving forward in the way that Mr Edghill had indicated? Or you're unable to say one way or another?

15 MS HAIRE: I'm sorry. I believe I had advice and support from Mr Green that we would take the action as proposed by Mr Edghill.

COMMISSIONER: Right.

20 MR O'NEILL: At 10 am on 26 March 2020 - this is at 2.1602 - Mr Piani informed Mr Edghill via email that he just got off a call with Mr Green and that:

25 *...Mr Green had advised that he is aiming to have a decision made today which likely will be to award to the tender. Once we get that confirmation, we will let the winning tenderer know. Given EDU timeframe, that is likely to be tomorrow.*

So as at 26 March, at least what was being communicated to Major Projects was that there was going to be a decision made. That's consistent with your indication that:

30 *We are keen to work with you on this.*

MS HAIRE: Yes, I haven't seen this email before, Mr O'Neill, but that is consistent.

MR O'NEILL: No, it's not your email.

35

MS HAIRE: That is consistent with my understanding.

40 MR O'NEILL: So then, what happened, to the best of your understanding, between 10 am on 26 March and the next morning on 27 March where a new Tender Evaluation Team is set up for the purpose of arriving at a recommendation to best and final offer?

MS HAIRE: I don't know.

MR O'NEILL: Commissioner, is that a convenient time?

45

COMMISSIONER: Yes, very well. We will take the morning adjournment.

<THE HEARING ADJOURNED AT 11.31 AM

<THE HEARING RESUMED AT 12 PM

5 MR O'NEILL: Ms Haire, so we are in this timeline between 25 March and 27 March. It's these two days. You had obviously communicated to Mr Edghill that you were keen to work with him. What was the plan? What was actually going to take place, as you recall it?

10 MS HAIRE: I - excuse me - I don't think I knew what the plan was, Mr O'Neill. I think I left it - then it was to be delegated to our staff to - to do what - to get on with what was proposed by Mr Edghill.

15 MR O'NEILL: Right. So just - I just want to deal with that in a little bit more detail, if I may. It was your understanding at the time that a plan was that your staff would implement, to the extent that they could, Mr Edghill's suggestion?

MS HAIRE: Yes, Mr O'Neill.

20 MR O'NEILL: And who did you communicate that to?

MS HAIRE: So that was in my email back to Mr Edghill. Implicit in the email back to Mr Edghill.

25 MR O'NEILL: Yes, I understand that. But I'm - it's probably my error. Who did you communicate it to within your Directorate? That is, who did you tell, "This is what we are going to do"?

30 MS HAIRE: So as - I think the email - I think the email may have been copied to Mr Green as well. So he was the - I can't remember, I'm sorry - but he was the relevant responsible executive for it.

MR O'NEILL: So did you have a specific conversation with Mr Green about, "This is what we are going to do"?

35 MS HAIRE: I can't - I don't know. I think my email sets out the intention and the - my agreement to what Mr Edghill had proposed.

40 MR O'NEILL: Your email doesn't tell Mr Edghill, "Look, I'm not the decision-maker, but I've let the delegate know that we are keen to do this." It really just says, "We are". Are you sure that you weren't the decision-maker at this period of time?

MS HAIRE: Yes.

45 MR O'NEILL: You are adamant about that?

MS HAIRE: Yes.

MR O'NEILL: Do you see how there's an ownership, though, of the issue, that is, you're - you have - I know that you've obviously been contacted by another head of a Directorate and so the courtesy is that you will respond.

5 MS HAIRE: That's right.

MR O'NEILL: But it does appear that the collective "we" is used, as, "We are going to work with you on this." Does it appear that you have taken ownership of it by this point, as in the ownership of the Campbell issue?

10

MS HAIRE: No, I don't think so, Mr O'Neill. I think I'm just responding to the email that was addressed to me.

MR O'NEILL: And then in the process of informing Mr Green that that's what was to happen - and I've just taken you to the email where it appears Mr Green has communicated that back through to Mr Piani - is that not a step where you're issuing, in effect, direction to Mr Green as to what should happen on the procurement?

15

MS HAIRE: Sorry, I'm not sure I understand.

20

MR O'NEILL: All right. So you've told the Commission that the plan was, to the best - you accepted my proposition, is the fairer way of putting it - the plan was to implement Mr Edghill's suggestion in respect of Campbell?

25

MS HAIRE: And Throsby, yes.

MR O'NEILL: And Throsby. You agree with me?

MS HAIRE: Yes.

30

MR O'NEILL: I think your evidence was that that then was communicated to Mr Green?

MS HAIRE: I think - well, I think through copying - discussing it with him prior and then copying him into the email -

35

MR O'NEILL: Yes.

MS HAIRE: - that's what I did.

40

MR O'NEILL: Yes, yes.

MS HAIRE: Yes.

MR O'NEILL: You've rejected the contention I have put to you that that's an indication you have taken ownership of this as an issue. You have rejected that contention.

45

MS HAIRE: Yes, I have. Yes, I do.

MR O'NEILL: My secondary contention is that it looks or it appears that by copying Mr Green, you're giving him direction as to what should happen. And I'm giving you an opportunity to respond to that contention.

5

MS HAIRE: I'm not sure what sort of direction that is. It's a process that - it's agreement to work on a process. I had sought - through my previous question, I had sought advice that this was consistent with what was allowed in the procurement rules -

10 MR O'NEILL: Yes.

MS HAIRE: - and had agreed on that basis.

15 MR O'NEILL: But it's a departure from where the process had been prior to Mr Edghill's contact with you. Agree?

MS HAIRE: I'm not sure to - I don't think I was particularly aware of where the process was up to at that point, Mr O'Neill.

20 MR O'NEILL: So you weren't aware - well, let's just test your awareness, then. That's as at the date of - let's make it 26 March. Had you been aware that the first Tender Evaluation Team had undertaken its analysis and had reached a recommendation that Manteena be the preferred tenderer?

25 MS HAIRE: No.

MR O'NEILL: That hadn't been communicated to you?

MS HAIRE: No.

30

MR O'NEILL: Were you aware that then Mr Green had indicated to that team that the preferred option was to go to a best and final offer process?

MS HAIRE: No.

35

MR O'NEILL: You weren't aware, I think you accepted from me, that the Government Solicitor had been - advice had been sought from the Government Solicitor on the probity and best and final offer.

40 MS HAIRE: No, I wasn't.

MR O'NEILL: And so your response to Mr Edghill was in the absence of where the procurement process was at at that time, but that you were keen to then implement what Mr Edghill was suggesting, and that is the selection of a preferred tenderer.

45

MS HAIRE: Yes, based on advice that that was (crosstalk).

MR O'NEILL: Certainly. I'm not being critical.

MS HAIRE: Yes.

5 MR O'NEILL: Based upon advice.

MS HAIRE: Yes.

10 MR O'NEILL: And so to understand that piece of evidence correctly, is it - is it your view, then, you don't think it could be perceived - or you didn't intend it to be perceived as a direction because you're not trying to interfere in any procurement process at that period of time; you're just trying to express, "We are keen to try and Major Projects to the extent that we can"?

15 MS HAIRE: I think I delegated the responsibility for following through on what had been agreed to Mr Green.

20 MR O'NEILL: Yes, but Mr Green already had that delegation. That's really the point that I'm trying to grapple with, as to why it is that you need to be involved in that at all, other than out of the courtesy - I understand that point -

MS HAIRE: Yes.

25 MR O'NEILL: But then you're the person indicating what is going to happen. Do you see that?

MS HAIRE: Because I was responding to Mr Edghill, yes.

30 MR O'NEILL: Yes. And then you had no understanding of what occurred between 10 am on 26 March and then the Tender Evaluation Team - a new Tender Evaluation Team being stood up on 27 March. Is that fair?

MS HAIRE: Yes.

35 MR O'NEILL: When did you become aware that a new Tender Evaluation Team had been stood up?

MS HAIRE: I'm not sure, I'm sorry.

40 MR O'NEILL: All right. When did you become aware that the process was not going to be the selection of a preferred tenderer but, rather, the best and final offer process?

MS HAIRE: I don't think it was until some weeks later -

45 MR O'NEILL: Right.

MS HAIRE: - Mr O'Neill.

MR O'NEILL: I just want to orientate you again in time. So that the Tender Evaluation Team was stood up on 27 March. It produced a report on 6 April 2020. So quite soon thereafter. And that was the report that indicated that best and final offer was to be recommended. Does that assist you with trying to recall when it was that you learnt that that was the process that was being undertaken and that it wasn't what Major Projects had requested?

MS HAIRE: No, not really.

MR O'NEILL: Okay. Is it likely that it would have been - and please don't guess, but is it likely it would have been at or about the time that the team produced its report?

MS HAIRE: I don't know.

MR O'NEILL: Okay. At or about this time, that is, up to 7 April 2020, were you aware of - had you now learnt about what the Secure Local Jobs Code was?

MS HAIRE: No.

MR O'NEILL: Did you have any awareness of what the union memorandum of understanding was?

MS HAIRE: No.

MR O'NEILL: Again, orientating you in time. So the recommendation was made that the tenderers go to the best and final offer process. That recommendation was made on the 6th. On 7 April 2020, the best and final offer request was issued. That process closed on 5 May 2020, and so then the Tender Evaluation Team number 2, went into its assessment of that from at or about 5 May 2020 onwards. They reached their decision in early June. When was it that you understood - sorry, I withdraw that. When do you believe that you took over as the decision-maker?

MS HAIRE: In mid-May.

MR O'NEILL: The Commission has a note from Ms Power dated 15 May that that was - that records that the delegate is you, not Mr Green. Is that consistent with your recollection of when that - your decision was to do - to become the decision-maker?

MS HAIRE: That appears to be about the same timeframe as I recall, yes.

MR O'NEILL: Why did you become the decision-maker?

MS HAIRE: So there was - I became - there was increasing kind of concern about the time delays and in sort of from - around 20 April or so, sort of towards the end of April, I started getting questions from the chief of staff and also from - I believe I got a phone call from Mr Edghill asking about, you know, what was happening with that particular project.

And I think I was a bit embarrassed and realised that I had sort of just completely lost sight of it and dropped the ball. And it struck me that - and I - became apparent to me that I really - I didn't have visibility of what was going on with it and that impact - the only way I would have visibility was if I was the decision-maker.

5

MR O'NEILL: I wanted to -

MS HAIRE: There was increasing concern about the impact on the construction industry of various - the desire to fast-track projects, and we appeared to be doing the opposite.

10

MR O'NEILL: The - I just want to test, then, the reasoning for why it is that you thought becoming the decision-maker would remedy that problem. What was it that you thought you could do as Director-General if you had become the decision-maker that would remedy the fact of delay?

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MS HAIRE: I'm not sure that there was anything that I thought I could do about the delay, but that I would have better information about what was going on.

20

MR O'NEILL: Isn't that, then, solved by making - or asking the relevant delegate to be more forthcoming in communicating to you about what's happening?

MS HAIRE: Yes, I did do that as well, Mr O'Neill.

25

MR O'NEILL: So, again, why is it that becoming the decision-maker is the - is the step that remedies the concern that you have as at about mid-May 2020?

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MS HAIRE: It's hard for me to reconstruct from here, but I considered that I had been asked to - so the proposition had been put to me about the delays, that we needed to fast-track the projects. That was what the 26 - 25 March discussion was all about. I felt as though I just didn't know what was going on. I wanted to know what was going on, and I also, of course, still had from - the handover from Rebecca wanting to consider in relation to any of our projects the Secure Local Jobs principles.

35

MR O'NEILL: And why is it - sorry, I might be missing something. Please forgive me. It's not the first time. But why is it that becoming the decision-maker remedies those concerns? I just - that step means you're taking a decision-making role. How does it fix the attention to those concerns that you have?

40

MS HAIRE: Look, I'm not sure that I can justify the logic at the time and - but that was - that was what was in my mind.

MR O'NEILL: Were you aware now as at - sorry, mid-May 2020, about how procurement was to be conducted in the Territory and the rules around it?

45

MS HAIRE: I don't think I had any greater awareness at that point, Mr O'Neill.

MR O'NEILL: You've got someone who's the delegate, you say, at that time who does have an awareness of that, to the best of your knowledge. Yes?

MS HAIRE: Yes.

5

MR O'NEILL: And that person - was there a lack of faith in relation to how you thought that person was dealing with the process to that point in time?

MS HAIRE: No, I just didn't have great visibility of what was - what was going on. I think I was a bit embarrassed when I was asked what was happening and I realised I hadn't - I really didn't know, sort of in the three or four weeks after March, and I felt as though I needed to take more responsibility for it.

10

MR O'NEILL: Ms Power's note indicates that - sorry, I withdraw that.

15

COMMISSIONER: A crucial matter that had been brought to your attention as being one that the Government regarded as important was to ensure that procurements complied with the requirements or that - with the requirements of the Secure Local Jobs Code. Am I right?

20

MS HAIRE: Yes, Commissioner.

COMMISSIONER: In order to satisfy yourself that that was the position, you would have needed to have got information about what the Code said in relation to procurement. Does that not follow?

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MS HAIRE: I'm not sure what the question is, Commissioner.

COMMISSIONER: My question is, in order to ensure that the procurement process adequately considered and took into account the requirements of the Secure Local Jobs Code, you would have to understand what those requirements were.

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MS HAIRE: Yes, Commissioner.

COMMISSIONER: How did you go about doing that?

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MS HAIRE: I didn't do that at the time, Commissioner. But I sought advice on that - on the - as - in the - in June when I got the brief from Mr Green.

COMMISSIONER: And when you say you sought advice - we will have to come back to these exchanges in due course, of course, so we are leaping ahead somewhat. If it's unfair to you, we can defer this line of questioning until later, but in seeking that advice, what did you actually ask him?

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MS HAIRE: So I didn't at any point seek in-principle advice on the Secure Local Jobs policy from Mr Green or anybody else.

45

COMMISSIONER: I understand. But, if I may, I didn't ask you what you didn't ask him for. I asked him what you did ask for. What did you ask for?

5 MS HAIRE: So, in June, I asked for advice specific to the Campbell project about the two tenders in relation to the government's policy of Secure Local Jobs.

COMMISSIONER: Yes, but what was the question that you asked him?

10 MS HAIRE: I'm sorry, I can't -

COMMISSIONER: Or what was the substance of the question that you asked him?

15 MS HAIRE: I believe that I asked him which of the two tenderers was - best met the principles of the Secure Local Jobs policy, and for advice on the - subsequently on whether it was - what might be the reasons for preferring that company that better met the Secure Local Jobs policy. So it was in the context of Mr Green telling me that the Tender Evaluation Panel had - was recommending one company over another. So it was in that specific context.

20 COMMISSIONER: We will return to that matter in due course. Perhaps I can ask you this: Did you put that request in writing?

MS HAIRE: No. I made a note of it.

25 COMMISSIONER: Where did you make a note of it?

MS HAIRE: In my meeting notes that I keep of my meetings with my direct reports.

30 COMMISSIONER: Have you produced that to the Commission?

MS HAIRE: Yes.

MR O'NEILL: Yes.

35 COMMISSIONER: Thank you. Yes, Mr O'Neill.

40 MR O'NEILL: So is the snapshot of that, that you don't now specifically recall why it was that you understood becoming the decision-maker would remedy the problems, but that it was a step you thought would mean you could have better oversight?

MS HAIRE: Could you just state the first part of your proposition again, Mr O'Neill?

45 MR O'NEILL: Certainly. I will take it piece by piece, because - if it's too long of a proposition I will cut it down. You had - you can't now recall why it was that you had formed a belief that becoming a decision-maker would remedy the problems that you had perceived had occurred on Campbell at the time?

MS HAIRE: That's right.

MR O'NEILL: Other than to say that you thought that being the decision-maker would give you better visibility as to what was going on?

5

MS HAIRE: Yes. And the ability to particularly oversee whether the Secure Local Jobs policy was being represented.

MR O'NEILL: Did you - were you aware that procurement requirements and procurement guidelines required that the Secure Local Jobs Code be considered as a mandatory - firstly, that there was a mandatory consideration that tenderers have a Secure Local Jobs Code certificate? Did you know that?

10

MS HAIRE: Not at that stage, no.

15

MR O'NEILL: Right. Were you aware that under the procurement assessment guidelines that there was a specific category, category 6, which was attended to Secure Local Jobs Code matters?

MS HAIRE: I didn't know that at that stage, Mr O'Neill.

20

MR O'NEILL: Those two matters would have been, as at - sorry, as a matter of policy, indicate that there is adequate consideration of the Secure Local Jobs Code built into the system of assessment. Is that fair?

25

MS HAIRE: Sorry. Could you say that again?

MR O'NEILL: Right. The requirement that both - that all tenderers have certification under the Code and that they will be assessed on their performance under the Code mandatorily by function of the procurement guidelines, isn't that sufficient for the purposes of ensuring that there is appropriate attention to the Secure Local Jobs Code in procurement?

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MS HAIRE: I think that's the intent of the process as I now understand it, yes.

MR O'NEILL: Had you understood that at the time, would there have been a need for you to become the decision-maker?

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MS HAIRE: Look, I can't speculate on that. I - I acknowledge that I didn't know that at the time.

40

MR O'NEILL: And that was an integer, you say, of the reason why you decided - that is, to ensure that there was compliance with this Code was an integer of one of the reasons you decided to become the decision-maker?

MS HAIRE: I think it was about the - the principles behind the Code, as - I don't think I knew about the Code, per se, at that point, but I was - it was about the high-level principles, the intent, as per my note.

45

MR O'NEILL: Yes. And so you - you are being conscious of a message that's coming to you from the Minister's office that the Code is important.

5 MS HAIRE: Or the policy, yes.

MR O'NEILL: Yes. And so without knowing how it was that that was implemented in the procurement process, you took it upon yourself to become the decision-maker to ensure that it was?

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MS HAIRE: To have oversight of, yes, that's right.

MR O'NEILL: The note from Ms Power indicates that there was a higher level of scrutiny in relation to Campbell. Is that something that you recall being the case as at 15 May?

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MS HAIRE: No.

MR O'NEILL: All right. There was not more interest in this procurement coming from anywhere external to you than other procurements that were being undertaken at the time?

20

MS HAIRE: This was the procurement that was being undertaken at the time for us. So - and I -

MR O'NEILL: You had experienced the procurement of Throsby, though. You had understood that process?

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MS HAIRE: Yes, and there had been questions about that and correspondence with Major Projects and so on.

30 MR O'NEILL: Yes.

MS HAIRE: They were the - in the context of the pandemic, it appeared that there was a great deal of concern about the construction projects in general. These happened to be the projects that we had in Education.

35

MR O'NEILL: Was there a specific event that prompted you to then make yourself the decision-maker? Because it's really - and, again, I can give you the timeline, but at this point in time, the BAFO has closed and the Tender Evaluation Team are just performing their role in assessing it. What was it that prompted you to say, "Right, today I'm going to become the decision-maker"?

40

MS HAIRE: I don't know, Mr O'Neill. I can't say to the day or any of the specifics of that sort.

45 MR O'NEILL: Did you have a discussion with perhaps someone in the Minister's office about this?

MS HAIRE: About the decision?

MR O'NEILL: About you becoming the decision-maker?

5 MS HAIRE: I had earlier. Not - not in a - not in May.

MR O'NEILL: It just appears in the timeline, there's nothing around it that prompts this change of you becoming the delegate, decision-maker - whatever the appropriate word is. There's nothing in and around it. Can you explain?

10

MS HAIRE: No, I can't really. I think it was just - no, I can't.

MR O'NEILL: The Tender Evaluation Team produced a report on 5 June 2020. Now, did you see a copy of that report on or about that date? I don't want to worry about what happens next. It's just as they finished their report?

15

MS HAIRE: No, I didn't.

MR O'NEILL: You are the decision-maker. Can you explain why it is that that report hasn't come to you at that time?

20

MS HAIRE: No, I can't.

MR O'NEILL: Were you told at or about that time what the Tender Evaluation Team was recommending?

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MS HAIRE: I think I was told a few days before they finalised it. So I think in late - my memory is in late May rather than early June that I was told they were - the panel was recommending Manteena over Lendlease.

30

MR O'NEILL: Now, as at the date of that, firstly, who do you think told you that?

MS HAIRE: Mr Green.

35 MR O'NEILL: So as at the date of that communication from Mr Green, did you know who Manteena was?

MS HAIRE: I'm not even sure if he mentioned the names of the companies. Though I expect that he did, but the companies meant nothing to me at that point.

40

MR O'NEILL: Right.

MS HAIRE: As before.

45 MR O'NEILL: So neither Manteena nor Lendlease meant anything to you?

MS HAIRE: No.

MR O'NEILL: Mr Blom indicated to the Commission yesterday that he prepared the assessment documents in a presentable draft format and that he was happy to meet with Mr Green or you at that time. That was at or about 29 May. Did anyone tell you that Mr Blom was happy to meet with you at that time?

MS HAIRE: No.

MR O'NEILL: You never saw a draft of the report?

MS HAIRE: No.

MR O'NEILL: On the same date, Mr Green messaged Mr Nakkam. Do you know who he is?

MS HAIRE: Yes, I do.

MR O'NEILL: 29th. Who is he?

MS HAIRE: He works in the Infrastructure and Capital Works branch. He was a senior director in the branch at the time. Sorry, apologies, I think at the time he would have been the acting executive branch manager of Infrastructure and Capital Works Branch.

MR O'NEILL: Thank you. He informed - that is, Mr Green informed Mr Nakkam that the Tender Evaluation Team was making the same recommendation as previous, and he said that the delegate will have to override. Was it something that you had understood that you were going to be asked to override - as at 29 May, that you were going to have to override the decision that the Tender Evaluation Team was arriving at?

MS HAIRE: So in around - so I guess there's a few different things in that, Mr O'Neill. Not - I don't agree with the concept of override from the decision-maker. I think that the -

MR O'NEILL: No, I understand your position is that it's not accept recommendation.

MS HAIRE: Yes, I think the Tender Evaluation Panel makes a recommendation to the decision-maker.

MR O'NEILL: Right. I understand that objection. Next? You said there were a couple of things.

MS HAIRE: Sorry, I've lost my train of thought.

MR O'NEILL: That's all right. So that there was, "Delegate will have to override" as at 29 May 2020, is the concept that we were exploring.

MS HAIRE: So I had had a conversation with Mr Green about the recommendation that was likely to come from the Tender Evaluation Panel. I understood from him that the

5 company that was to be recommended was the one, based on his views and knowledge, that did not have the track record for the bundle of things encapsulated in Secure Local Job, which I understood to be workplace safety, recognition of workers' entitlements and industrial relations requirements. And I sought advice from him on whether, within the procurement rules, there was grounds to make a different decision, whether - and that's what I asked for advice on. So perhaps that's what the email to Mr Nakkan is communicating in a very different way.

10 MR O'NEILL: Well, let's drill into the conversation that you recall you had with Mr Green. How did you say that that went?

MS HAIRE: I won't be able to recall the precise words, Mr O'Neill.

15 MR O'NEILL: No, words to the effect of?

MS HAIRE: Words to the effect of he told me about the - like, the recommendation that's coming from the panel.

20 MR O'NEILL: Yes. You don't recall whether he used names of the companies or not?

MS HAIRE: I can't recall that, I'm sorry.

MR O'NEILL: Yes.

25 MS HAIRE: But I know that - I understood from him that the company that was going to be recommended, or had been recommended - I don't know whether I knew the precise status of it - was one that did not have the track record for the matters that I've just described to you, the principles or the elements of the Secure Local Jobs at the highest level. And I asked him for advice for me as the decision-maker about whether there were appropriate grounds to prefer the other company.

30 MR O'NEILL: And what was that advice? How was that advice given to you, firstly?

35 MS HAIRE: That was the briefing that's dated 22 June.

MR O'NEILL: There was no other advice given to you?

40 MS HAIRE: Yes, I think we subsequently had a conversation - I can't remember if it was in person or a telephone conversation - where Mr Green told me that, in looking back over the documents, he could - he saw that there were three aspects of the companies' tenders that were not reassessed by the best and final over offer process and that, on all three of those, Lendlease had outscored Manteena. I can't remember if the names of the companies were used. Of course, I'm using them now because we are all very familiar with them. I was not familiar with them at the time and had no knowledge in any specifics of either of them.

45 MR O'NEILL: He says, transcript 188, that the conversation went along these lines:

I advised -

This is line 14:

5

I advised the Director-General that the tender evaluation had come back from the BAFO that Manteena was again recommended as the preferred at the end of that evaluation process. I don't think I went into many details. The advice I got back is that that's not what the Minister's office wants.

10

Did you say those words?

MS HAIRE: No. But -

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COMMISSIONER: Did you say anything that might have been construed as conveying that notion?

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MS HAIRE: Sorry, what I did say - and, apologies, I didn't recall this when you were - when we were talking about this before - was that when he told me the likely or the actual recommendation, and that the company that was being recommended was, in his opinion or based on his knowledge or in some form, not the company that had the strong track record, I said "I will need to discuss this with the Minister's office. I will ask - I will seek advice from the Minister's office."

25

And I subsequently spoke to the chief of staff. I did not - I don't remember whether I used the company's names or not. Again, those things just didn't mean anything to me. But I know I asked him whether the significance of the Secure Local Jobs principles were still as important in - and this is late May-June - as it had been when these discussions happened in March with Rebecca and Mr Ceramidas. And noting that this was - since then we had

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gone through the whole first stage of the pandemic and the panic about construction projects, etcetera.

35

And Mr Ceramidas said, "Yes, those - the Secure Local Jobs principles are more important than ever." So I did then subsequently talk to Mr Green and say my - I can't recall the words. I will try to not summarise too much, but I said something - I conveyed to him, I think, the words that those issues or those principles are more important than ever, and at that point I asked him for the advice on whether it was possible to take - for me as the decision-maker to take that into consideration in making a decision, and how that could be done. And I asked him to provide - I asked him to provide me with advice on that.

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COMMISSIONER: So you asked him to provide you with advice as to the significance of the Secure Local Jobs criteria? Or what was it that you actually asked him for advice on?

45

MS HAIRE: No, I asked him for advice on whether it was possible or how it would be - it would be possible, within the rules and within the parameters that we were working in, to take into account - for me to make a decision different to that of the recommended - recommendation from the panel, taking into account the principles of

Secure Local Jobs. That was my request of him. I'm sure I didn't use those words. I can't tell you what words I used, I'm sorry.

5 COMMISSIONER: But you are saying that was the substance of your request?

MS HAIRE: Yes, yes.

10 MR O'NEILL: So an element of that was that you had conveyed to him that there was a need to make a different decision to the one that the - to the recommendation?

MS HAIRE: No. I wanted to understand whether it was possible and, if it was possible - whether it was possible for me to make a decision and on what grounds. Within the -

15 MR O'NEILL: Right. So -

COMMISSIONER: Why would you be asking about changing or not accepting the recommendation if, for all you knew, the recommendation was to - in favour of a company which did satisfy Secure Local Jobs requirements? Why would you start out with an assumption that you might have to reject a recommendation?

20 MS HAIRE: I'm not sure that I started out with that assumption, Commissioner. I'm sorry, can you repeat the question.

25 COMMISSIONER: I see. Well -

MR O'NEILL: Can I do it this way, Commissioner, please.

30 COMMISSIONER: I just want to ask one more question and then I will hand it back to you.

MR O'NEILL: Certainly.

35 COMMISSIONER: Did you assume that both companies had problems with Secure Local Jobs or neither company or just one or you didn't know one way or another?

MS HAIRE: I didn't know independently about either of the companies.

40 COMMISSIONER: No, not independently. You only knew what Mr Green had told you.

MS HAIRE: Yes. Yes.

COMMISSIONER: I see. Very well. Go on.

45 MR O'NEILL: So your answer was, it was possible under the rules - you wanted advice about whether it was possible under the rules and practices to make a decision different to that of the panel, taking into account the Secure Local Jobs Code.

MS HAIRE: So I - sorry, Mr O'Neill, I knew it was possible, of course, for the decision-maker to make a different decision. Otherwise, there's no point in having a decision-maker. Otherwise it would just be the panel's outcome.

5

MR O'NEILL: Certainly. So you knew that that was a possibility.

MS HAIRE: Yes, yes.

10 MR O'NEILL: But that's really not the import of what you were communicating. You were more concerned about what?

MS HAIRE: I was more concerned about the - that the outcome of the tender, to the extent possible within the appropriate rules, reflected the principles as I - to the extent that I understood them of the intent of the Secure Local Jobs policy, so that the company with the best track record in relation to those matter - workplace health, workplace safety, workers' entitlements, industrial relations - that that was the company that was - all else being appropriately done, that that was the company that - that could - that was awarded the tender. I wanted to understand if that - how that - if that could happen and, if so, how it could happen.

15

20

MR O'NEILL: Right.

25 COMMISSIONER: Why didn't you simply ask, did the Tender Evaluation Team adequately take into account the requirements of the Code?

MS HAIRE: I don't know, Commissioner. I'm sorry.

30 COMMISSIONER: Don't you see that your question rather assumed that they had not done so, or might not have done so? Why would you make that assumption?

MS HAIRE: Yes, I can't answer that now three years later, I'm sorry. I don't know.

35 COMMISSIONER: Isn't all you had to do was to ask Mr Green to unpack the analysis of the team as to why they came to the decision they did and ascertain whether or not, in coming to that recommendation, they had adequately accounted for the requirements of the Code? Would that not have entirely satisfied your query? If he would say, yes they adequately considered the Code that would have been it, wouldn't it?

40 MS HAIRE: With the benefit of hindsight, Commissioner, I think that - that was an option open to me, yes.

COMMISSIONER: Very well.

45 MR O'NEILL: And as at the time of this conversation, that is, it's either late May or early June, had you now become aware of the way in which procurement assessed the Secure Local Jobs Code criteria?

MS HAIRE: No, not in any - no.

5 MR O'NEILL: Is there any reason why you hadn't thought to investigate that issue, given you've known since February or March -

MS HAIRE: March, yes.

10 MR O'NEILL: - that it's an important matter? Is there a reason why you hadn't educated yourself on that requirement?

15 MS HAIRE: The intensity of the months leading up to that period - it's hard to recollect in retrospect and, in some ways, I think we all try to block it out because it was so extraordinary. And for us in Education, we were - like many other providers of services, we were both living in the COVID world but also working on it. So it was 24 hours a day. We were in lockdown like everybody else. We were also working seven days a week on the many, many complexities that arose from trying to deliver education to children and young people in the ACT during a lockdown.

20 I don't say that as an excuse, Mr O'Neill, for not doing as you propose, but as an explanation. And it is very, very hard to project back into that time, but I know that my attention was overwhelmingly with the complexity of the work that we were doing in relation to trying to safely and effectively - firstly, go into lockdown, then deliver the lockdown education and then come out of the lockdown, and, yes, that is an explanation, but not an excuse, I want to add.

30 MR O'NEILL: Now, I just want to turn, then, to the conversation, because obviously Mr Green's recollection of it is at 188. Is it possible, then, that you did say, "That's not what the Minister wants" or "the Minister's office wants", sorry. It just appears to be consistent with the view that, you say, very insistent on the Secure Local Jobs Code and that's a message coming to you from the Minister's office. Mr Green, on your version, says, "This is what's going to happen, and on Secure Local Jobs they are lower on the scoring." And you say, "Well, that's not what the Minister's office wants." They are all consistent, aren't they?

35 MS HAIRE: I can't confirm to you that those specific words were used, Mr O'Neill. I don't recall using them.

40 MR O'NEILL: He says, line 26, after:

That's not what the minister answer office wants. Not the outcome we need to achieve.

He was trying to work in your words and struggling to do so:

45 *Then what are the other options?*

That does sound consistent with what you were actually asking him or tasking him to provide you advice on?

5 MS HAIRE: Again, I can't comment on the words but certainly that's consistent, I think, with what I've described to you a few minutes ago.

MR O'NEILL: Yes. And then line 34, you say:

10 *How do we do that?*

And he says:

I will need to write you a brief.

15 Do you recall that part of the conversation?

MS HAIRE: No, I don't. But I know that I asked him - I asked him to provide me with advice on this matter. Perhaps there's a difference between those two. I'm not sure.

20 MR O'NEILL: Right. Now, as the decision-maker - and I appreciate you're not technically the delegate. They are different roles, technically. But as the decision-maker, you didn't review the Tender Evaluation Report dated 5 June 2020 when it was produced?

25 MS HAIRE: No.

MR O'NEILL: Did you review it when it was provided to you as attached to the briefing note?

30 MS HAIRE: Yes, I did.

MR O'NEILL: And did you read it in detail?

MS HAIRE: Yes, it's very short.

35 MR O'NEILL: That is, their report or -

MS HAIRE: Their report is very short, yes.

40 MR O'NEILL: Yes. Were you provided with all of the material that was referenced in that report, the Tender Evaluation Report?

MS HAIRE: Yes, there were a number of attachments to the report.

45 MR O'NEILL: Did you review those attachments as well?

MS HAIRE: I did, to - at different levels of detail.

MR O'NEILL: You didn't descend into the detail of the worksheets, for example, as to where the reasoning is contained for the analysis and the scoring?

5 MS HAIRE: No. Not in great detail, Mr O'Neill. I found them very, very hard to read.

MR O'NEILL: Because of the size of them? I have complete empathy with that position.

MS HAIRE: Yes. And I was reading on a very small screen.

10 MR O'NEILL: At home in a stressful time, no doubt.

MS HAIRE: In fact, I was reading that brief on my laptop screen in Melbourne. It was the first opportunity since the lockdown commenced for me to travel to Melbourne to see my son, who I had left on 15 March and I hadn't seen him.

15 MR O'NEILL: I understand.

MS HAIRE: It was the first opportunity that I had to travel to Melbourne. But then the last

20 MR O'NEILL: I understand. That was a common problem with the thing that a lot of people had suffered.

MS HAIRE: Yes. And it was the last opportunity I had to see him then until November.

25 MR O'NEILL: Okay. So you are reading it on a small laptop. The documents are difficult to read. As you read - I will come to the briefing note shortly, but as you read the Tender Evaluation Report - and I will just take you to it. It commences at 1.453. It's in the public brief. The document is only really seven pages. So that's consistent with you saying that's a short document. And for everyone who works in policy and governance, that's no doubt correct, given some of the documents can be painfully long. I want to walk you through it. When you go to page 1.456, you see here at the top that it's clear that Manteena's bid is cheaper on a raw score than that of Lendlease?

35 MS HAIRE: Yes, I can, Mr O'Neill.

MR O'NEILL: Do you recall noting that at the time?

MS HAIRE: Yes.

40 MR O'NEILL: There's a line under the subheading Conformity of Tenders Compliance that starts, "The Lendlease BAFO submission"?

MS HAIRE: Yes.

45 MR O'NEILL: Do you see that -

MS HAIRE: I can see that.

MR O'NEILL: Do you see it was indicating there was a failure to comply with target budget? Do you recall reading that at the time?

5

MS HAIRE: I know that I read it. I don't particularly recall that point.

MR O'NEILL: Right. It's an important matter, though. Although it wasn't by a great deal, exceeding budget is something that is not the greatest idea at the beginning of a tender. Do you agree?

10

MS HAIRE: As a general proposition, of course, yes.

MR O'NEILL: Then under 6, the Evaluation. Do you see there the summary of the scores?

15

MS HAIRE: Yes.

MR O'NEILL: And do you see how criteria - now, I appreciate this hadn't been reassessed, but this report had contained the scores for the Secure Local Jobs Code, criteria 6?

20

MS HAIRE: Yes.

MR O'NEILL: Did you read that?

25

MS HAIRE: Yes.

MR O'NEILL: Did that not then indicate to you, hang on, there is a part of this procurement process which is - which requires an assessment of the very thing that the Minister's office is telling me is important?

30

MS HAIRE: I'm not sure that it occurred to me in the way you've described. But I see that it is there, Mr O'Neill. And I saw that it was there at the time.

MR O'NEILL: But I guess my question is - and, please, I will ask - I can ask it more openly. I just wanted to try and drive at what I was looking at. But, realistically, that it must have occurred to you that there was an assessment that had been made of the Secure Local Jobs Code as part of the procurement process assessment?

35

MS HAIRE: Yes.

40

MR O'NEILL: And can you see there the differences between the two tenderers?

MS HAIRE: Yes.

MR O'NEILL: You can see that there's a weighting. So that the procurement structure only gives 10 per cent to that weighting. Do you see that?

45

MS HAIRE: Yes.

MR O'NEILL: And that the score is only 0.8 difference between them.

5 MS HAIRE: Yes.

MR O'NEILL: Did you appreciate that that was a fine margin as between them?

MS HAIRE: Yes. Less than 10 per cent.

10

MR O'NEILL: And yet this is the basis upon which -

COMMISSIONER: Sorry, .8 of a per cent is less than 1 per cent. Or have I misunderstood the question?

15

MS HAIRE: I think it's out of 10, Commissioner. Isn't it?

MR O'NEILL: It is, but it's a 10 per cent - it's a 10 per cent weighting.

20 MS HAIRE: I was making -

MR O'NEILL: So it ends up being a .8 per cent difference on that factor across the whole of the assessment criteria.

25 MS HAIRE: Okay, I didn't do those maths, Mr O'Neill.

MR O'NEILL: Right. And this was the very thing, that is, Secure Local Jobs Code, that the minister's office is telling you to pay particular attention to? And this is the basis upon which you are going to decline to accept the recommendation. Do you follow?

30

MS HAIRE: Yes.

MR O'NEILL: And so -

35 COMMISSIONER: It's the very reason why you are looking at the report, isn't it? Secure Local Jobs.

MS HAIRE: Yes. That's right, Commissioner.

40 MR O'NEILL: And so it didn't occur to you that this had already been done? That there had already been an assessment by the Tender Evaluation Team of this very important thing?

MS HAIRE: I could see that it had already been done, yes.

45

MR O'NEILL: And so did that not cause you to reflect upon whether there needed to be - you needed to decide not to accept the recommendation?

MS HAIRE: I'm not sure that I can answer that question. It's hard to project myself back into that time.

5 MR O'NEILL: Right.

MS HAIRE: I agree with you. I could see that it had been assessed.

10 MR O'NEILL: You can also see from this summary that the procurement structure sets out a weighting about - for all of these factors that have been assessed by Tender Evaluation Teams.

MS HAIRE: Yes.

15 MR O'NEILL: Were you cognisant of - at the time that this structure was something that had actually been sent to the tenderers so they understood the rules by which they were being assessed?

20 MS HAIRE: I was conscious that that had been sent to the tenderers, and that they knew that that was the basis on which the Tender Evaluation Team would prepare their report.

MR O'NEILL: Well, it's more than that, though, isn't it? It's assessing the work that they have put into trying to win the bid, isn't it?

25 MS HAIRE: I'm not sure -

MR O'NEILL: You weren't cognisant of that?

30 MS HAIRE: I'm not sure that I understand the - that - the work that they did.

MR O'NEILL: Yes. So they put in work under each of these criteria and make submissions in respect of each of these criteria. That is then what the Tender Evaluation Teams assess for the purposes of arriving at these scores.

35 MS HAIRE: Yes.

MR O'NEILL: And were you aware of that?

40 MS HAIRE: Yes.

MR O'NEILL: In that the possibility - sorry, I withdraw that - the result of failing to accept this recommendation based solely on that 10 per cent weighting skewed how these procurement guidelines had established the tender was to be assessed.

45 MS HAIRE: So I took into account the other two criteria that were not assessed by the BAFO as well. I didn't consider it to be skewing the weighting, or to be re-weighting. I considered it to be within the decision-maker's remit to take into account the

recommendation of the panel and that the panel was bound by the structure that you've described, but that it was open to the decision-maker to take that into account and other matters that were appropriate.

5 COMMISSIONER: And take into account, I think you're necessarily saying, what the Minister's office said about what was really important.

MS HAIRE: Certainly the government's priorities, I would say, Commissioner, and that I was certainly conscious at the sort of principle level that it is common practice, and highly
10 appropriate, for government procurement to seek to also achieve social, environmental and other outcomes - ethical outcomes as well as the purchase of the - whatever the product is.

COMMISSIONER: Do you not - well, these matters are the subject of discussion by the Auditor-General, and I understand you accept the be appropriateness of the comments
15 made by the Auditor-General in this regard.

MS HAIRE: Completely accept the findings and recommendations of the Auditor-General. I don't agree that I re-weighted it, because I think the weighting applied to the work that the panel did. And -
20

COMMISSIONER: Yes, but - all right. Well, you - you have that view. The - and I think, in fairness, you have said it now, and it will be a matter for me to - I don't think it's appropriate now to enter into a debate about whether that's a justifiable view or not. That will be for later.
25

MR O'NEILL: So I think in your answer previously, then, was that you also took into consideration the other two criteria that had not been reassessed. Do you see there that those criteria, Past Performance, there's only a point difference?
30

MS HAIRE: Yes.

MR O'NEILL: And Skills and Resources, there's only a point difference?

MS HAIRE: Yes.
35

MR O'NEILL: And yet Financial Offer, there's three points difference. And then when that is weighted, that actually ends up being six points difference.

MS HAIRE: Yes, I see that.
40

COMMISSIONER: Do you see also that Mr Green's minute does not -

MR O'NEILL: I will come to that, Commissioner, if I may.

COMMISSIONER: Very well.
45

MR O'NEILL: My apologies. I will.

COMMISSIONER: No, no. You take your time.

5 MR O'NEILL: And in - so in relation to Project Completed in Period, there's very - they are very close together. There is only a .5 difference between them which ends up only being a point. And the big ticket item, because of its weighting, is the Clear Understanding of the Project. Do you see that?

10 MS HAIRE: Yes.

MR O'NEILL: So that is the delivery of the very thing that the Directorate is wanting to implement, that is, a school that is appropriate for the children. Agree? Yes?

15 MS HAIRE: Yes. So there was a number of elements bound up in the Clear Understanding of the Project. I think the matter that distinguished them was the design features. Yes.

20 MR O'NEILL: Yes. So - and that's about what the - what the actual children get, rather than whether there's some compliance with a Code governing work health and safety, industrial relations, and those matters. Do you see the distinction I'm drawing?

MS HAIRE: I understand those criteria are about different things.

25 MR O'NEILL: Was that something that was cognisant in your mind, that by elevating the Secure Local Jobs Code component, that that could potentially lead to a - the acceptance of a tenderer whose design wasn't as good as the other one?

30 MS HAIRE: I understood from the advice that I got, that the difference in the design could be remedied during the stage 1 process and that the Directorate would assume the intellectual property of both designs and that it was then open to us during that phase to work with the tenderer on the final design and that that - I would not, Mr O'Neill, have made the decision to compromise the outcome if I had not been assured that that - there was a process to address the discrepancy in that criteria.

35 MR O'NEILL: Can I just take, then, to the next page, 1.457. This is the report that you had reviewed at the same time as the minute. Do you see on that very point Design Solution, the Tender Evaluation Team has made a distinction here that it's about design. There had been significant changes to designs, including it was preferred by both the principal and the advisor who had reviewed the scheme. Do you see that?

40 MS HAIRE: Yes, I do.

MR O'NEILL: Did you read that at the time?

MS HAIRE: Yes, I did.

45 MR O'NEILL: Is that not a fairly strong indication that this is what - this is what the actual people who are going to be the subject of the delivery of the project would like?

MS HAIRE: Yes, that's what it says. I - as I can just refer to my previous answer, that I understood that the design aspects could be addressed during the phase 1 of the project.

5 MR O'NEILL: Under Risk Comparison, can you see there that:

Additional funding would be required to proceed with the Lendlease proposal, which makes their submission a medium risk. Manteena have presented a strong and cost effective design proposal that provides best value for money and the lowest risk profile.

10

Do you see that?

MS HAIRE: Yes.

15 MR O'NEILL: You read that at the time?

MS HAIRE: Yes, I did.

20 MR O'NEILL: So how is it, then, that, in your mind, you say, well, one can sacrifice best value for money and the lowest risk profile in order to achieve what the Minister's office is really stressing about the Secure Local Jobs Code. Is that -

25 MS HAIRE: I might just - if I can make a distinction, it was about government policy rather than specifically the Minister's office.

MR O'NEILL: Well, the Minister's office is directing you to government policy. That's right, isn't it?

30 MS HAIRE: Conveying the priority of that government policy, yes.

MR O'NEILL: Okay. I understand.

35 COMMISSIONER: That had to be transparent. If you were going to change a decision because of government - a recommendation, because of government policy, that had to be transparent. There's nothing in this minute that says anything about government policy.

MR O'NEILL: I will come to the minute shortly, but yes.

40 COMMISSIONER: Is there? Mr Bauer knew nothing about government policy. What he knew was what was on the documents which were created pursuant to the policy expressed by the Procurement Act and Regulations which, as I understand it, express in a legislative form what is government policy. Do you see the point of governance here that was at stake? These - I mean, this is no more than a point made by the Auditor-General.

45 MS HAIRE: I - Commissioner, I agree with the Auditor-General, that the - I - my decision was not adequately documented, and I regret that. And I certainly have - take that fully on

board. And it was not my intention to - but I completely accept what the Auditor-General said.

5 COMMISSIONER: I take it was not drawn to your attention that varying by express or - expressly or implication the terms of a request for tender can have legal consequences because of the legal obligations undertaken by, on the one hand, proposing to consider a tender in a particular way and a variation. Were you aware that there were any legal questions that arose where that's being done?

10 MS HAIRE: I understood that I was operating fully within the law, which (crosstalk)

COMMISSIONER: Yes. Did you get legal advice?

15 MS HAIRE: I would have done nothing other than that. I did not get legal advice. In retrospect, I completely agree that I should have got legal advice. And I wish that I had.

MR O'NEILL: I note the time, Commissioner.

20 COMMISSIONER: Very well. Take the luncheon adjournment.

<THE HEARING ADJOURNED AT 1.11 PM

<THE HEARING RESUMED AT 2.13 PM

25 COMMISSIONER: Yes, Mr O'Neill.

MR O'NEILL: Thank you, Commissioner. Ms Haire, we were examining the document 1.457, being the Tender Evaluation Team's report. And I had taken your attention to the words underneath Risk Comparison. And then you can see that the final part:

30 *Manteena have presented a strong and cost-effective design proposal that provides best value for money.*

35 As at the date of the time when you were reading this report, did you understand that those words, "best value for money", had a special reason - special meaning under the Procurement Act?

MS HAIRE: No, not specifically.

40 COMMISSIONER: Have you since become aware of that?

MS HAIRE: Yes, I have, Commissioner.

45 MR O'NEILL: And this is, in effect, the Tender Evaluation Team informing the reader that, in its view, that criteria, which is the most important criteria for procurement, was best served by awarding the tender to Manteena.

MS HAIRE: Yes.

MR O'NEILL: You understand that now?

5

MS HAIRE: Yes.

MR O'NEILL: But you didn't understand that at the time?

10 MS HAIRE: Didn't understand what at the time, sorry, Mr O'Neill?

MR O'NEILL: That "best value for money" was a specific reference to the Procurement Act and that the Tender Evaluation Team is drawing the reader's attention to that fact.

15 MS HAIRE: That's correct. I didn't understand the specifics of that at the time.

MR O'NEILL: Can I just take you to the next page, 1.458. You will see the recommendation. Sorry, can I have both of those pages up? That's 1.457 and - yes, thank you. Do see at the bottom of 1.457 there's a subheading Work Health and Safety. Did you understand that work health and safety was a component of the Code? Was that something that had been communicated to you?

20

MS HAIRE: I understood that it was part of the framework of the policy, yes.

25 MR O'NEILL: Yes. So reading this, then, did you realise that there had been an assessment of the tenders as against the WH & S Active Certification policy. Do you see that?

MS HAIRE: Yes.

30 MR O'NEILL: So that part of the policy was a tick, yes?

MS HAIRE: Yes.

MR O'NEILL: Were you cognisant of that when you came to read this?

35

MS HAIRE: I can't remember specifically focusing on this aspect of the brief, Mr O'Neill, but I read the entire brief and I'm responsible for that.

MR O'NEILL: Do you see there:

40

Tenders have been assessed -

This is number 2 -

45 *in accordance with RFT as against WHS assessment criteria, including the tenders' past WHS performance.*

Tick. Yes?

MS HAIRE: Yes.

5 MR O'NEILL: Did you turn your mind to that part specifically? That there had actually been an assessment about work health and safety and past performance when you came to read this?

MS HAIRE: I certainly read this, Mr O'Neill.

10

MR O'NEILL: I'm asking a more specific question, though, I think. It may be that I'm confusing you, and please let me know if I am. But my question is more directed to this very specific matter, that past performance had been assessed. Were you cognisant of that when you were reading this report?

15

MS HAIRE: Yes, I saw that in the brief.

MR O'NEILL: And then, third -

20 MS HAIRE: In the report, sorry.

MR O'NEILL: That's fine. And then, third, the report:

Management plans have been assessed and are suitable for this project.

25

So a specific criteria aimed at management of WH & S on this project, that that had been assessed. Were you cognisant of that at the time?

MS HAIRE: I read that at the time, yes.

30

MR O'NEILL: Doesn't this indicate that the very concern that the Minister's office had been keen for you to understand had been assessed by the Tender Evaluation Team in more than one instance, that is, both as a matter of criteria and under a very specific heading, work Health and Safety?

35

MS HAIRE: This - this indicates that the element of government policy relating to work health and safety had been considered, yes.

40 MR O'NEILL: Yes. So then doesn't that indicate that there was no need to concern yourself with not accepting the recommendation in circumstances where those matters had been assessed?

MS HAIRE: Can you ask that question again, Mr O'Neill? Sorry.

45 MR O'NEILL: Certainly. Doesn't that mean that there was no need for you to concern yourself about not accepting the recommendation in circumstances where the very things that the Minister's office were asking you to consider had been considered?

MS HAIRE: I can see in - in retrospect, I can see - I can see the point that you're making, yes.

5 MR O'NEILL: What about at the time?

MS HAIRE: I didn't - that wasn't what I was - at the time - I can't - I can't say.

10 MR O'NEILL: See, isn't your task as decision-maker, if it is that you're not going to accept the recommendation, to be satisfied that the policy reason that you're being asked to look at has not appropriately been considered?

15 COMMISSIONER: Perhaps put the question more positively. If you were satisfied that every policy consideration had been given appropriate consideration by the panel, which is the expert group, so you were satisfied they had, in fact, taken into account all relevant government policy in an appropriate way, there would be no reason to change their recommendation.

20 MR O'NEILL: Or not accept their recommendation.

COMMISSIONER: Or not accept their recommendation. Do you agree with that logic?

MS HAIRE: I - I understand the point that you're making, Commissioner.

25 COMMISSIONER: Yes. And I'm asking you whether you would accept the logic of that reasoning.

MS HAIRE: I -

30 COMMISSIONER: And, of course, if not, why not.

MS HAIRE: Yes. I understand the logic that you're putting to me. I understood that the decision-maker had the responsibility to take the advice - consider the advice of the panel and also consider any other relevant appropriate factors.

35 COMMISSIONER: Yes. Well, here I think we've - we are not looking at this matter at large. Particular policy matters are being brought to your attention, so we are considering those particular matters. You're not suggesting any other reason for not accepting the recommendation as I understand it. You, as I understand it - you did so because of what
40 you understood to be government policy in relation to these issues.

MS HAIRE: Yes, that's correct.

45 COMMISSIONER: What I'm saying is, were you satisfied that the team - the evaluation team had appropriately considered those policy matters and given them the correct influence in terms of their ultimate recommendation, would that not have justified your - or, indeed, required you to accept their recommendation? In other words, there's

nothing left for you to do because, on this hypothesis, you have accepted that they have weighed the matters appropriately and delivered an appropriately calibrated recommendation.

5 MS HAIRE: I'm not quite sure how to answer that, Commissioner, because - sorry, can you ask me again? Apologies.

COMMISSIONER: I'm not sure that I can improve - improve on the clarity very much, but I will have a go. Certain policy issues were brought to your attention as being important.
10 Indeed, very important. You need to say yes, because it's not recorded.

MS HAIRE: Yes.

COMMISSIONER: If you had gone back to the Evaluation Report and examined the
15 commentary which explained how that report was developed and the calculus that was used and came to the view that the team had considered the policy matters which had been brought to your attention and had given them the appropriate significance, then it would follow, would it not, there was no proper basis for you as decision-maker, to exercise any power not to accept the recommendation.

20

MS HAIRE: I don't agree that there wasn't a proper - that I was deliberately acting improperly.

COMMISSIONER: No, I'm asking you - excuse me. I know you take the view you acted
25 properly. I understand that. What I am hypothesising is a situation where you have analysed the material considered by the team and have concluded that the team appropriately considered the matters which had been brought to your attention as important matters. So make that assumption, that you had done that. I am then asking you, was there therefore some remaining reason or some room for you, nevertheless, to reject the
30 recommendation?

MS HAIRE: I considered that there was capacity for me to make a different decision to that recommended to me.

35 COMMISSIONER: Well, that's plain.

MS HAIRE: Yes.

COMMISSIONER: I'm asking you on the hypothesis which I have put to you. Do you - is
40 that clear what the hypothesis is?

MS HAIRE: Not completely, I'm sorry, Commissioner.

COMMISSIONER: That you had examined the report and the commentary that went with
45 the report - that's number one.

MS MORGAN: Can I just interrupt for one minute.

COMMISSIONER: Surely.

5 MS MORGAN: For the transcript, Ms Morgan for Ms Haire, Commissioner, as you appreciate, Mr O'Neill hasn't taken Ms Haire through the briefing note yet and that process. And I am concerned that one of the things that is - the disconnect between yourself and Ms Haire is in terms of the steps that hasn't been done yet.

10 COMMISSIONER: Yes, I understand, Ms Morgan. I want to be - I'm not laying a trap here.

MS MORGAN: No, I'm not suggesting that.

15 COMMISSIONER: What I'm trying to do is to examine, rather than theoretically or at a high level, examine in the particular context here what Ms Haire thought as a decision-maker she was entitled to do in relation to departing from a recommendation. She has made the point that she - that a decision-maker is not bound by a recommendation, and I think no one disagrees with that. Nevertheless, it's not an entirely free discretion. She can't say, "Well, you know, I actually don't like the cousin of the chairperson so I'm going
20 to reject the recommendation." I mean, I use an absurd example, but there are limits to the exercise of the discretion. And what I am trying to explore - I don't propose to take much more time. I'm a bit surprised it's taking me so long and perhaps it's my own shortcomings, but I'm trying to explore where that limit might be. And it seems to me that that's important because that sheds light on what she thought she was doing when she was considering
25 Mr Green's minute.

MS MORGAN: Commissioner, all I'm suggesting is your hypothesis could work more efficiently if it's after Ms Haire has gone to the minute with Mr O'Neill. But could I also note for the record, Commissioner, you have used the words "power" and "discretion" in
30 relation to this decision. And I note that I have already raised with you the legal construct of what this decision is and whether it is subject to judicial review. You might recall we had this discussion in the first week of the hearing, and it will be an issue that I will have to take up with you in submissions. But the language, Commissioner, you have been using is imposing on this decision that - the assumption that Ms Haire is exercising a statutory
35 power.

COMMISSIONER: Well -

40 MS MORGAN: In the procurement context, that's - we would be submitting that that's not -

COMMISSIONER: It's a nice question under the Procurement Act, what power she's exercising, but -

45 MS MORGAN: If any, in fact.

COMMISSIONER: Well, no. We know she made a decision, don't we? We know that much. It's - it's on the - on the document.

MS MORGAN: Yes.

5

COMMISSIONER: Right. And I'm just using Ms Haire's language, I think, when she says she thought she was entitled or able to do that and was not bound by the recommendation of the Tender Evaluation Team. Thus far, are we agreed? Or are we in controversy?

10 MS MORGAN: Well, what I would be concerned about would be the idea that "bound by" includes within it an assumption of an exercise of power as the next step.

COMMISSIONER: Well, I'm just using Ms Haire's language. She said she was not bound - I think she said she was not bound to follow or accept the recommendation.

15 That's - I'm just - I'm just using her language. What language would you use?

MS MORGAN: Commissioner, you're using that language to then examine the decision in the context of an administrative decision exercising statutory power. And my point is, we - that's not how we say the procurement system works.

20

COMMISSIONER: All right. Well, I'm not asking her a legal question. At least I did not understand I was asking her a legal question. I understood I was asking her a question of logic, that is, what followed. Where there was a certain hypothesis, hypothetical facts, did it follow from that that she would have some residual ability, if I can - I will use that phrase, to depart from the recommendation or did that logic mean that she should have agreed with the recommendation? Is that -

25

MS MORGAN: Commissioner, I don't think I can take it any further. I -

30 COMMISSIONER: Well, are you submitting that a question in that form would be objectionable?

MS MORGAN: Commissioner, it's not a question of objection. What I was trying to -

35 COMMISSIONER: I'm sorry. I thought you made an objection.

MS MORGAN: I was hoping to make this more efficient by suggesting that if Ms Haire was taken to the brief first and then these propositions were put, it may be more efficient. That's all I was proposing.

40

COMMISSIONER: I quite understand you're trying to help me and thank you. However, if we could return. I hope that that has clarified - that exchange has clarified to you what I'm interested in asking. Has it helped, Ms Haire?

45 MS HAIRE: I think you are asking me a hypothetical question, Commissioner?

5 COMMISSIONER: I am asking you a hypothetical question, but it's a hypothetical question that exposes - well, I hope exposes what your view is about the extent of your power or your role, or what you were able to do as a decision-maker in this context. That's what I'm aiming to attempt to understand. You have said, in effect - correct me if I am wrong - "I was able to make this decision. I was not required to accept the recommendation of the team."

MS HAIRE: Yes, Commissioner.

10 COMMISSIONER: Right. And I'm trying to explore how wide you think your ability to depart from a recommendation or not to accept a recommendation went. That's what I'm seeking to understand. Aside from anything else, you will understand that one of the issues that is raised in this case is the extent to which, where there is a recommendation of a team
15 in this procurement - highly formal procurement process and assertions in the RFT that the decision-maker - ultimate decision-maker - is not necessarily going to make any particular decision, what that means and what guidance should be given to decision-makers in relation to their functions in - when they are considering recommendations. That's one of the issues in this investigation - of a general public policy character. Do you see?

20 MS HAIRE: Yes. And -

COMMISSIONER: So I'm seeking to explore your view in the context of the particular issues that happened to have been raised in this case. So, you've said, "I was" - I think you used the word "bound", but in deference to Ms Morgan, I won't use it. You said, "I was
25 able to not accept the recommendation." Sorry, I think I can put it positively. "I was able to make a decision which was not the same as that recommended by the TET." Correct?

MS HAIRE: Yes.

30 COMMISSIONER: Now, you've said that you made that decision upon the basis of - as I understand it. Correct me if I am wrong, because it's quite important that I get this right. On the basis of what you understood to be government policy about - or underlying, or expressed in the Secure Local Jobs Code.

35 MS HAIRE: Yes, Secure Local Jobs policy. Yes.

COMMISSIONER: Sorry?

MS HAIRE: Policy.

40 COMMISSIONER: Policy, yes. So the question then is, if by examining the report of the team, the Tender Evaluation Team, including the commentary which analyses or gives some analysis of the reasons that they came to particular decisions, and you have the scoring, if you had come to the view that the policy had been appropriately weighed or
45 measured for the purposes of coming to the recommendation which was made, would you still feel, in that situation, that you would be justified in departing from the recommendation?

MS HAIRE: I think in the hypothetical, I could say probably not.

COMMISSIONER: Because? It's always going to be the second question.

5

MS HAIRE: I'm just - I'm just trying to think my way through the hypothetical situation, Commissioner.

COMMISSIONER: No, no, quite.

10

MS HAIRE: However, as I understood it, it was open to the decision-maker to consider additional information to what was provided, and consider additional information to what was provided by the tender panel.

15 COMMISSIONER: And, to your mind, what was the scope of the additional information? Additional information relevant to what, coming from what source? How ascertained? I mean, look, it's no point my asking you these questions to be responded to off the top of your head if you haven't already given them some consideration. Have you not considered that?

20

MS HAIRE: I haven't thought about it in these terms, Commissioner. I apologise that I'm not giving you -

COMMISSIONER: No, there's no question for apology.

25

MS HAIRE: - your answers.

COMMISSIONER: After all, your essential role is education and not procurement. I quite understand that. Yes.

30

MR O'NEILL: Thank you. I want you to accept from me that these questions are coming from a position of - not about power. I'm not concerned about power. I'm concerned about probity, that is, the thought process that goes into arriving at the decision. Do you accept that? Do you understand what I say when I say that?

35

MS HAIRE: Yes, I do.

MR O'NEILL: So as a matter of probity, that is, you're looking at these factors in circumstances where a decision is about to be made to accept a recommendation or not, and the concern that you understand the Minister's office has is about policy - implementation of policy.

40

MS HAIRE: Could I perhaps reframe that -

45 MR O'NEILL: Certainly.

MS HAIRE: - Mr O'Neill to that it had been - I had been asked to carefully consider the government policy, not - it wasn't a specific - so it's the general government - ACT Government policy.

5 MR O'NEILL: Yes, but in relation to a specific area, that is Secure Local Jobs Policy.

MS HAIRE: Yes, yes.

MR O'NEILL: Which you understood to be broadly IR and WH & S.

10

MS HAIRE: I think it's industrial relations, work - employee and workers' entitlements, and WHS.

MR O'NEILL: Yes, yes. Okay. So under that umbrella. And then I'm exploring with you as a matter of probity your investigation as to what had been done in assessing those concerns, and these are matters that are contained in the Tender Evaluation Team's report which is then going to be compared with the minute. And I presume that's the task that is then next at hand, is you've got to look at the reasoning. Agree with me?

15 MS HAIRE: I read the minute first and then the attached documents.

20 MR O'NEILL: I appreciate that. But you've got to contrast them both.

MS HAIRE: Yes.

25

MR O'NEILL: And I'm showing you what is contained within the assessment and what is contained in the assessment and what they are trying to tell the reader about those very matters. And then I'm testing you as to whether you recall considering these matters at the time once you were pursuing - perusing this part of the papers that you had been provided.

30

MS HAIRE: I don't recall focusing at great length on this part of the report, Mr O'Neill. I would note it is about WHS, which is one of the limbs of the policy.

MR O'NEILL: Certainly. And before lunch, I took you through some other parts where there had been assessment of the very specific Code. You don't - you didn't at the time know what was actually assessed, but, on its face, it says it's been assessed and given a scoring.

35

MS HAIRE: Yes.

40

MR O'NEILL: Is it the case, then - and I just want to explore your answer to me, then, in the order that you read them, that you were approaching the review of this report with the concept in mind that you're not going to accept the recommendation?

45 MS MORGAN: Can I just - if I might just have a moment with Mr O'Neill.

MR O'NEILL: I will rephrase that for you slightly just to help you. The minute is telling you not to accept - well, is recommending not to accept the recommendation. You can't be told anything; it's your decision alone. Agree?

5 MS HAIRE: Yes.

MR O'NEILL: You - as part of being a - diligently trying to consider arriving at a decision here, you've told the Commission that you read this part of the attached documents.

10 MS HAIRE: Yes, Mr O'Neill.

MR O'NEILL: And is it, though, that when you came to read this you had already, in your mind, decided to side with the minute as distinct from what the Tender Evaluation Team was saying?

15

MS HAIRE: I can't tell you - I can't project myself back to what I had already decided; however, as I described to you earlier, I had asked for advice in relation - of Mr Green in relation to the two proponents and the Secure Local Jobs policy and the - and so it was certainly in my mind, and I wanted to understand and have advice on the appropriateness and the grounds on which a different decision might be made. Noting the advice I had that one of the tenderers was preferred in terms of the Secure Local Jobs policy.

20

MR O'NEILL: Certainly. But you were also -

25 COMMISSIONER: Can I suggest then there's this problem. You've got Mr Green, who is an experienced and apparently qualified advisor.

MR O'NEILL: Stop the -

30 COMMISSIONER: I beg your pardon. Yes, would you - Mr Green, who seems to be appropriately qualified for the advice that you were seeking from him. Nodding?

MS HAIRE: Yes. Yes, Commissioner. Sorry.

35 COMMISSIONER: And, on the other hand, you had the Tender Evaluation Team. And you wouldn't have known those people personally, of course, but you could have taken it as a given that they were competent for the purposes of making the evaluation which they were asked to make.

40 MS HAIRE: Yes, Commissioner.

COMMISSIONER: So, therefore, what you've got is a disagreement or difference between two apparently qualified persons. And your difficulty is you have no relevant expertise.

45 MS HAIRE: Yes, Commissioner.

COMMISSIONER: So, how do you go about choosing between them? And Mr O'Neill's questions assume, in part relying on your evidence, that you looked what each said about the issues as best you could, and you decided ultimately that Mr Green's recommendation was the one to be preferred.

5

MS HAIRE: Yes, I did, Commissioner.

COMMISSIONER: The difficulty being, however, that you yourself were not qualified to make the assessment of the criteria, including Secure Local Jobs or industrial relations or those matters, yourself.

10

MS HAIRE: Commissioner, if - if you are asking me to agree that I didn't have detailed knowledge of the construction industry, I fully agree with you.

15

COMMISSIONER: Well, I mean no criticism, of course. It -

MS HAIRE: Yes.

COMMISSIONER: You knew what you knew and that wasn't your professional experience. And that's perfectly reasonable. But it wasn't only detailed. You had - for all practical reasons, you what presumably would be a well had-informed layperson's educated view about the world, which would include some knowledge of construction and some knowledge of what a school needed and those kinds of things. But very far from the expertise needed to decide between two contractors like Lendlease and Manteena. Surely. Or am I - I don't want - I mean, I'm not trying to denigrate your experience or skills but - almost no laypeople would have that sufficient experience or knowledge to be able to form a sensible judgment.

20

25

30

MS HAIRE: Commissioner, senior public servants rely on advice and make decisions all the time -

COMMISSIONER: Necessarily. No, I entirely agree. But the problem here is that you had contradictory advice. Then how do you resolve it? Obviously, you don't toss a coin. There has to be a rational process by which you resolve it in a situation where you yourself do not have the expertise to make the decision yourself, in substance. And how - how do you resolve that problem? I mean, obviously, you don't decide, "Well, Mr Green's a nice bloke. I trust him." I mean, I'm being facetious, but there has to be some basis upon which you proceed. What - what is the basis?

35

40

MS HAIRE: I - I did - I relied on the advice about the track record of both companies from Mr Green. I had no independent knowledge of the companies myself, and I - yes, I relied on - I also respected the advice that the panel gave me.

45

MR O'NEILL: Had you appreciated the significance of the decision you were making? That is, that it was about whether to accept the recommendation of the panel or not? And that that would effectively mean preferring an analysis over the top of what they had - the

work they had done? I don't want to be prerogative. I don't want to say "override", but I want just to understand, did you appreciate that this was a significant decision?

MS HAIRE: Yes, I did.

5

MR O'NEILL: Yes. And the significance of it being that you were awarding - that your decision would mean that the tender would be awarded to a tenderer who was more expensive and, in the panel's view, did not represent the best value for money for the Territory. Did you appreciate that at the time?

10

MS HAIRE: Yes, I understood that very clearly from the report.

MR O'NEILL: Yes. And you're a public servant of significant experience at this time. Agree with me?

15

MS HAIRE: Yes.

MR O'NEILL: Highly trained and highly educated in matters such as governance and policy. Agree?

20

MS HAIRE: Yes.

MR O'NEILL: These things must have been in the forefront of your mind to ensure that the decision that you arrived at was, not as a matter of power, as a matter of probity, appropriate.

25

MS HAIRE: Yes, I believed that it was, Mr O'Neill. With the benefit of hindsight, there are things that I would do differently.

30

MR O'NEILL: Being?

MS HAIRE: I have reflected on that a great deal over the last three years.

MR O'NEILL: Being what?

35

MS HAIRE: I should have - I should have sought - I think I said before lunch.

MR O'NEILL: Legal advice, yes.

40

MS HAIRE: Legal advice about -

MR O'NEILL: Anything else?

MS HAIRE: I consider that I should have interrogated further the contention in the brief about the intellectual property regarding the design.

45

MR O'NEILL: Yes.

MS HAIRE: I consider that I should have interrogated further the - why the scores between the two TERs that were provided to me were so different, because there was a - the scores were very close in the first TER.

5

MR O'NEILL: Yes.

MS HAIRE: There was a much greater gap in the second TER -

10 MR O'NEILL: Yes.

MS HAIRE: And I should have interrogated that further. I think if I - I should have understood those matters in much more detail before making the decision.

15 MR O'NEILL: Do you think in the hypothetical, that is, where those matters are considered further, the decision would have been different?

MS HAIRE: I can't say, Mr O'Neill. But I sincerely regret that I didn't take those further steps, and your point that somebody with my experience should have done those things, I completely agree with.

20

COMMISSIONER: Well, you had a lot on your plate at the time. Mr O'Neill, I'm just not sure what commentary - the one that Ms Haire said she found it difficult to read. What was the actual document you had?

25

MR O'NEILL: It was the worksheet.

COMMISSIONER: Yes. There are several of those that we have seen. I wonder if we can bring up the worksheet that you took Mr Blom to.

30

MR O'NEILL: It's a different worksheet.

COMMISSIONER: Maybe.

35 MR O'NEILL: Yes.

COMMISSIONER: I would like to - I would like to clarify it, please.

MR O'NEILL: Certainly. The worksheet that I took Mr Blom to, that will come up now.

40

COMMISSIONER: Now, that's still very small, but you can perhaps read it more easily than on your -

MS HAIRE: I apologise. I can't read that at all.

45

MR O'NEILL: Can I just point out, Commissioner, also, that's not the worksheet that was attached to the tender evaluation assessment.

COMMISSIONER: I understand that.

MR O'NEILL: As long as we are all on the same page.

5

COMMISSIONER: I understand that. Can we just expand, say, the top 10 lines, so Ms Haire can sort of see what it's about? And going into the next column. And into the next column. Go across the page, please. Now, expand that. I'm not sure if that makes it any -

10

MR O'NEILL: They will split it up and put it underneath each other.

COMMISSIONER: Right, okay. And can we have the last column, please? All right. Now, this is, we've been told, not document that you saw.

15

MS HAIRE: Yes, that's correct, Commissioner.

COMMISSIONER: Because the document that you saw, so far as commentary is concerned, would only have had that bottom paragraph in relation to that part of it.

20

MR O'NEILL: This is the assessment on the decision to arrive at best and final. Commissioner, I think you would like the -

COMMISSIONER: No, that's not -

25

MR O'NEILL: That would have accompanied the minute and the note, and the Tender Evaluation Team's assessment of the best and final.

COMMISSIONER: Perhaps I can just ask the question and see.

30

MR O'NEILL: Certainly.

COMMISSIONER: The - and correct me if I've got this wrong. The TET recommendation which was that Manteena should be the preferred contractor, which was the recommendation you were reconsidering - or that you were considering and had come to you for decision -

35

MS HAIRE: Yes.

40

COMMISSIONER: - the commentary that the - the final commentary schedule had the criterion, relevant criteria, then it had the commentary of the first Tender Evaluation Team, and then it had the commentary of the final Tender Evaluation Team. And I understand you did not have that document.

45

MR O'NEILL: Can I - can I be of assistance Commissioner, if I may. On the screen is a document that was attached to the Tender Evaluation Report, which is a worksheet of the Tender Evaluation Team that undertook the assessment of the best and final offers. The

Commissioner's questions, as I apprehend them, are that whilst you had this document, it was not possible for you to read it. Is that fair?

5 MS HAIRE: That's correct, Mr O'Neill.

COMMISSIONER: Right.

10 MS HAIRE: Which I - is - partly a function of my own choice, that I was working from my laptop.

MR O'NEILL: Certainly.

MS HAIRE: It's not a good - it's not an excuse. It's just the reason.

15 MR O'NEILL: Certainly. Now, if we just draw out the top two boxes for you, do you see here how the criteria is set out and then it's set out what the criteria is for the assessment criteria and then the next box was commentary by the team as to how it arrived at the assessment that it made? This is the Manteena sheet, but there was one for Lendlease also. You didn't consider this kind of detail at the time that you were making your decision?

20 MS HAIRE: No, Mr O'Neill. But, in retrospect, I consider that I should have interrogated further why only certain of the criteria were reassessed and others weren't. I think that's a - with the benefit of hindsight, and the benefit of the last three years of reflection, I think that is an obvious question that I should have asked, and I didn't ask.

25 COMMISSIONER: And maybe ask for a printed out copy of a larger print so you could actually read it. That might have helped. I'm not being facetious. I can tell you, I asked for the same thing in my office.

30 MR O'NEILL: We have all struggled with this document, given its size. So you agree with that, that a printout may have been of great assistance?

MS HAIRE: Yes.

35 MR O'NEILL: You didn't have a knowledge even of the criteria - each of the criteria and the way in which one needs to assess each of the criteria. That's fair, isn't it?

MS HAIRE: Yes.

40 MR O'NEILL: Other than what was on its face, what I took you to before.

MS HAIRE: Yes.

45 MR O'NEILL: And can I just take to you another aspect of this document, please. And that's, say, at page 2.1869 at the bottom of the page. Sorry, I withdraw that. If I could take you to 2.1871. This document - and if we can just take out - zoom in on, say, the first - that's better. This document even set out a scoring methodology. You weren't across

this kind of level of detail as to how it was that the assessments were being conducted to arrive at scores, were you?

5 MS HAIRE: I can't comment on whether I did at the time. I've subsequently read this document. I think it's extremely helpful. But I can't recall if that was one that I examined at the time.

10 COMMISSIONER: So it amounts - have we reached this stage, then, that whilst you had Mr Green's - I think I'm not being unfair to it - broad-brush minute, and you did have the report of the TET with detailed commentary, you were not in a position, really, to compare them or - because that detailed commentary, you couldn't read.

MS HAIRE: Commissioner, the -

15 COMMISSIONER: Or you didn't read. I'm not - perhaps a combination of both.

MS HAIRE: Commissioner, the report of the TET I read, the seven-page report that Mr O'Neill spoke about earlier.

20 COMMISSIONER: Surely. But not this worksheet.

MS HAIRE: And I - I looked at those other documents, but I found them - and as I say, again, through circumstance, I was unable to read them.

25 COMMISSIONER: No, I understand. But I'm just trying to just be really clear about what in the end you were left with to actually compare.

MS HAIRE: Yes.

30 COMMISSIONER: So I think we now know.

MS HAIRE: There was another attachment. I can't remember the number. That's a one-page attachment that I think preceded the six-font document.

35 COMMISSIONER: Was that the one that just summarised the outcome of the evaluation and the recommendation? If we can get it up, it would be good.

40 MS HAIRE: I would know if you put it up. Apologies. I can't remember the attachment number.

MR O'NEILL: I see. 1.499. Mr Blencowe making himself useful.

MS HAIRE: Yes.

45 MR O'NEILL: That document.

MS HAIRE: Yes. So that's - yes. So -

COMMISSIONER: Just a summary of scores, essentially.

5 MS HAIRE: Yes, a summary of the - I took that to be a summary of the detailed document.

MR O'NEILL: Certainly. But - and in reality the - most of that information is captured in the report itself in any event.

10 MS HAIRE: Yes.

MR O'NEILL: In the little summary box that I took you to.

MS HAIRE: Yes.

15 COMMISSIONER: Yes. Thank you.

MR O'NEILL: So you've received - you did look at the Tender Evaluation Team's assessment. It was signed by Ms Wright. Did you know at the time who she was?

20 MS HAIRE: No, I didn't.

MR O'NEILL: She was with Major Projects, so that's unsurprising. Is that a fair reflection?

MS HAIRE: Yes.

25 MR O'NEILL: It was signed by another person, Mr Blom.

MS HAIRE: Yes.

30 MR O'NEILL: Did you know who he was?

MS HAIRE: Not at the time, no.

MR O'NEILL: He was within your Directorate.

35 MS HAIRE: I know that now, yes.

MR O'NEILL: And did you turn your mind to whether you needed to speak to him at the time?

40 MS HAIRE: Because - was he the chair, sorry?

MR O'NEILL: No, he can't be the chair, because he's not in Major Projects. So -

45 MS HAIRE: Right. Sorry, yes. I did not turn my mind to speaking to the panel at the time. I think that's another - sorry, that is another reflection that I've had, that that was open to

me. It was - and with the benefit of hindsight, I think that would have been an appropriate course of action to take. And I wish that I had taken it.

5 MR O'NEILL: He gave quite impassioned evidence yesterday that the decision to overturn that recommendation was wrong, based upon the analysis that's contained in the minute that we are about to come to. Is there - was there a mechanism at the time for someone to be able to communicate to you, the decision-maker, directly to communicate that kind of -

10 MS HAIRE: Could I just respectfully note that I didn't consider that I was overturning. I thought it was a recommendation.

MR O'NEILL: That's what he considers, though, that - I'm putting to you what he thought. A mechanism by which -

15 COMMISSIONER: Departing from or not accepting, I think.

MR O'NEILL: Yes, sure. I'm not attempting to be (indistinct) about it but that's what they - was there a mechanism by which he could come and see you?

20 MS HAIRE: I think this is - this is where, unfortunately, the context becomes relevant again, Mr O'Neill, that everybody was still working remotely at this point. I hadn't met any of these people. I subsequently have met Mr Blom and have the highest respect for him and - however, at that time, none of the Infrastructure and Capital Works people were working in any physical location be near me and, again, I suspect that if circumstances were more normal, I would like to think that that's an option I would have availed myself of.

25 MR O'NEILL: All right. And Mr Patel, he was within your Directorate. You obviously didn't speak with him?

30 MS HAIRE: I don't know Mr Patel.

MR O'NEILL: Can we turn, then, to the minute. 1.462. Now, you can see here the date of the minute is 22 June 2020. On that date, your calendar indicates that you were having a week - sorry, a monthly catch-up with Mr Ceramidas. Did you discuss with Mr Ceramidas at or about this time - or specifically on this date - what was likely going to happen with Campbell?

40 MS HAIRE: I don't remember that meeting at all, Mr O'Neill. I'm not even sure whether it occurred. I have described to you that I had a phone conversation with him prior to the production of this brief where I asked him about the continued importance of the Secure Local Jobs policy. In any conversation I had with Mr Ceramidas about Secure Local Jobs, which I think there was either two or three, he was very clear to me - and I understood very clearly - that his advice to me about the importance of Secure Local Jobs was not in relation to the specific outcome of any tender, and I believe he was a very meticulous - he is a very meticulous person. He's got a focus on governance, and I took him at face value

that that was his intent in drawing this to my attention. And I was applying the request to take into account the broad policy to those matters that were in front of me.

5 MR O'NEILL: Is it possible that the way in which that is - was being delivered to you had the effect of having you not accept the recommendation in relation to Campbell?

MS HAIRE: Could you say that again, Mr O'Neill?

10 MR O'NEILL: Certainly. It was a bit - it was a bit mangled. The question is one of intended meanings, express meanings and what occurs as a result of what someone tells you. Is it possible that it was told to you - no, I will withdraw that. I will move on.

15 In relation to your OneNote document, it contains this line on 22 June. Well, actually I might bring this document up because it's a bit confusing to me. Again, that might not be a surprise to most people in this room. Do you see at the top it's got "WO 22 June"?

MS HAIRE: Yes.

20 MR O'NEILL: What does that mean?

MS HAIRE: Week of 22 June.

MR O'NEILL: I see. So this is actually an entry for 18 June. Do you see that? Is that right?

25 MS HAIRE: It's really confusing. The -

MR O'NEILL: Good. I'm glad I'm not the only one.

30 MS HAIRE: The date, I believe, relates to when the document was created. So given the way I do this, is that I develop the list of matters - effectively the agenda for my meeting - ahead of the meeting. I think that that means I created the document on the 18th for a meeting in the week of the 22nd.

35 MR O'NEILL: Right. So where it says:

Campbell Primary Project - KH to do today.

MS HAIRE: Yes.

40 MR O'NEILL: Is that an entry made on 18 June, or do you say that must have occurred at some time later?

45 MS HAIRE: I know for a fact that that occurred some time later because I didn't have the brief on 18 June. So I compile the document, but I also use it to make notes during the meeting, and I think that reflects the fact that I - that the brief was going to come to me that day, which, as the date on the brief shows, it did.

MR O'NEILL: On the 22nd or on the 18th?

MS HAIRE: On the 22nd.

5 MR O'NEILL: Right. So how does one know when it was that you made the entry:

Campbell Primary Project - KH to do today.

There's nothing independent that allows us to know that, is there?

10

MS HAIRE: I don't know. I couldn't say. I think that's a technical IT issue. There probably is some way, but I think, on the face of it, it is clear.

15 MR O'NEILL: And then so doing the very best you can, when do you think that that note was made?

MS HAIRE: I think that that note was made in the week of 22 June, whenever I was having my routine meeting with Mr Green.

20 MR O'NEILL: I see. Can return then back to the briefing note, 1.462. So you see here:

Critical date, 29 June.

25 The subject is the Campbell Primary School Best and Final Offer Tender Evaluation Report. The recommendations there are matters that you must consider. And the red lines, that is, through, for example, in the first one "please discuss", that's a mark made by you or your office?

30 MS HAIRE: It's made by my office. On my instructions.

MR O'NEILL: At your direction?

MS HAIRE: Yes.

35 MR O'NEILL: So:

2. Agree to enter into the contract.

That's indicating that you have agreed with that recommendation?

40

MS HAIRE: Yes.

MR O'NEILL:

45 *3. Note that intellectual property payments be made in accordance with the tender document.*

That's you noting it, that that's the likely consequence of your agreement?

MS HAIRE: Yes.

5 MR O'NEILL: Your signature appears, dated 25 June 2020. And then there's a box that says Executive Feedback. That's your feedback, isn't it?

MS HAIRE: Yes.

10 MR O'NEILL: And why did you put that feedback there in that box? What was the purpose of doing that?

MS HAIRE: That's part of my regular practice when I consider briefings, that in addition - if I consider there's additional matters that I want to put on the record in addition
15 to the decisions that are listed above and so that's - that's what I did.

MR O'NEILL: Do you see there that where you say:

20 *Approved, noting the reasons identified -*

We will come to those shortly -

in particular, the importance of long-term factors.

25 Do you see that?

MS HAIRE: Yes.

30 MR O'NEILL: There is no mention there in that box of the Secure Local Jobs Code policy, is there?

MS HAIRE: No.

35 MR O'NEILL: Is there any reason for that?

MS HAIRE: I think I was echoing the language in the brief.

MR O'NEILL: Right.

40 MS HAIRE: Which - where those three criteria were described, including the Secure Local Jobs criteria was described collectively as representing long-term factors.

MR O'NEILL: Yes. And then:

45 *Please keep me informed.*

MS HAIRE: Yes.

5 MR O'NEILL: Now, can I take you, then, to the paragraphs? They appear at 1.464 of the public brief. Do you see there at 8, Mr Green is informing you that evaluation of the responses had been completed and a summary was at attachment 1. And I think we've dealt with that matter. Agree?

MS HAIRE: Yes.

10 MR O'NEILL: He reiterated that - the recommendation of the Tender Evaluation Team in 9. Do you see that?

MS HAIRE: Yes.

15 MR O'NEILL: And then, in 11, stated that, having reviewed the report, he considered that the other tenderer, that is, in contradistinction to Manteena, offers the best value for money, despite a lower score in the TET's evaluation.

MS HAIRE: Yes.

20 MR O'NEILL: And that he says that that's based on two main factors. Do you see that?

MS HAIRE: Yes.

25 MR O'NEILL: And then these are the paragraphs you referred to in your approval:

First, the three evaluation criteria that were not reassessed as part of the best and final offer -

30 This is in 12.

MS HAIRE: Yes.

MR O'NEILL:

35 *...are reliable long-term indicators of a company's ability to deliver quality projects and government initiatives, such as Secure Local Jobs.*

Do you see that?

40 MS HAIRE: Yes.

MR O'NEILL: Did you consider you needed to understand why that was so?

45 MS HAIRE: Why what was so, Mr O'Neill?

MR O'NEILL: Why it was that those evaluation criteria are reliable long-term indicators of a company's ability to deliver quality projects and government initiatives such as Secure Local Jobs?

5 MS HAIRE: I thought that that logic was clear on the face of it, Mr O'Neill.

MR O'NEILL: Can you just expose that reasoning?

10 MS HAIRE: That the past performance, the skills and resources both go to the capacity and track record of the company. And, obviously, Secure Local Jobs speaks for itself.

MR O'NEILL: But - so you have - you then understood that those matters are reliable long-term indicators of a company's ability to deliver quality projects?

15 MS HAIRE: I accepted that advice, yes.

MR O'NEILL: Right. You didn't know or you hadn't given yourself an information as to what these criteria actually assess, though? I think you have accepted that from me already.

20 MS HAIRE: Not in the detail of that spreadsheet, no.

MR O'NEILL: And so the basis upon which you accepted that analysis was purely based upon the way in which it had been expressed in this paragraph. Is that fair?

25 MS HAIRE: By and large, yes.

MR O'NEILL: In the next paragraph, 13, there's a discussion about the outsourcing in respect of design and the procurement model. Do you see that?

30 MS HAIRE: Yes.

MR O'NEILL: Now, you accepted that analysis based upon that paragraph alone. Is that fair?

35 MS HAIRE: Yes, and I think I've said several times that I consider I should have interrogated the contention further about the intellectual property, because, otherwise, the issue of design had much different ramifications. And I didn't interrogate that enough and I sincerely regret that. I wish that I had.

40 MR O'NEILL: Mr Blom, again, sat there yesterday and said that, in fact, this - this reasoning in this paragraph is flawed on the basis that, in fact, what it's saying would be a more high-risk proposition for the Territory because it involved a contractor having to go back and do a redesign and reprice and reassess all of those matters during the phase 1 contracting phase. I don't know if you heard him say that yesterday. Did you?

45 MS HAIRE: No. I didn't.

MR O'NEILL: Does that make sense to you, though, when you hear it expressed that way as a matter of logic, that if you are asking someone to go and do something different, it's going to cost more?

5 MS HAIRE: Yes, it does.

MR O'NEILL: And it's going to -

10 COMMISSIONER: I think the problem is, though, isn't it, that Mr Green never puts in any of the countervailing considerations that give balance to his - his conclusions and Mr Blom's explanations of risk, which I must say seems obvious and self-evident, are simply not adverted to by Mr Green and the thrust - indeed, the thrust of this minute is really to say, "Well, this is my view, and if you want the Tender Evaluation Team's view you can go and have a look at their report and their analysis." But it doesn't actually help
15 you in negotiating the differences between them. Do you see? I think you have already said that you would have interrogated more and so on.

MS HAIRE: I agree.

20 COMMISSIONER: But that's because of the kind of problem which I'm outlining in relation to this minute. It doesn't actually bring them together to - in an analytical way to enable you to appreciate quite the point that's being made as distinct from a bland assurance.

25 MS HAIRE: Commissioner, I think it was my responsibility to bring those things together. And as I've said and set out a number of specific elements, I don't consider that I did that adequately. And I deeply regret that and, with the benefit of hindsight, there is five, six steps that I should have taken and I wish that I had taken.

30 COMMISSIONER: And they might have been - who knows, but they might have been decisive one way or another had you had that information.

MS HAIRE: Had I - had I taken those steps that it was my responsibility to take, yes. It may have been different. It may not have been different. That's hypothetical.

35 COMMISSIONER: No, quite. I understand what you are saying.

MR O'NEILL: But I fully take responsibility for not having done those things. And with regret.

40 MR O'NEILL: In 14, the stronger proven track record of Lendlease over Manteena - you're given no information in that paragraph about the track record. Do you accept that?

45 MS HAIRE: I took that to refer back to the matters outlined in paragraph 12, Mr O'Neill. That construction may or may not be accurate, but that's what I thought.

MR O'NEILL: So you draw - draw a corroboration between reliable long-term indicators and proven - stronger proven track record?

MS HAIRE: That may or may not have been the intention but that's what I understood.

5

MR O'NEILL: Right. So this is really just point - point 1. It's not a point 3. It was just point 1. And so, therefore, based upon, really, two paragraphs, you made a decision to not accept the recommendation of the Tender Evaluation Team and to award the contract - phase 1 of the contract, thank you - to Lendlease.

10

MS HAIRE: Based on the entire brief, but noting that those paragraphs in particular were what I was - the points made in those paragraphs, not the paragraphs themselves -

MR O'NEILL: Certainly.

15

MS HAIRE: - were significant.

MR O'NEILL: And just so there's no ambiguity between us, those two points are the criteria were better reliable long-term indicators, and that there could be a redesign to take out - to address the difference between the design submissions.

20

MS HAIRE: Yes.

MR O'NEILL: The second of those two points has nothing to do with the Secure Local Jobs Code policy implementation, does it?

25

MS HAIRE: No.

MR O'NEILL: And the first has some relationship with it, you say.

30

MS HAIRE: Yes.

MR O'NEILL: Was it the case that, in fact, what had occurred was that the Minister's office had directed you that Manteena should not win the bid?

35

MS HAIRE: No.

MR O'NEILL: You are adamant about that?

40

MS HAIRE: Yes, I am.

MR O'NEILL: Was it the case that this minute did not need to be an in-depth analysis of the issues because the decision - your decision had already been made prior to it being received by you?

45

MS HAIRE: No, my - the decision hadn't been made. I was seeking advice on what I - what was in front of me, and with the advice that one of the companies

was - as - Manteena, as it transpires, did not have the track record in relation to those matters that were of importance to the government. So I hadn't made the decision, but I wanted advice on those matters for me to make the decision.

5 MR O'NEILL: Did you feel at the time that you had adequately explored whether Manteena, in fact, had a less satisfactory track record than Lendlease?

MS HAIRE: It's impossible for me to say what I felt at the time. I agree now, with the benefit of hindsight, that I didn't.

10

MR O'NEILL: Yes. So I apologise if I misframed my question. That's definitely my fault. But did you have the information necessary to make a determination as to the track record between the two tenderers?

15 MS HAIRE: With the benefit of hindsight, as I've set out I think in a number of - on a number of occasions this afternoon, I don't think that I did. I think that I should have sought more information. But at the time I did think that I had the information, which is why I made the decision.

20 MR O'NEILL: When you sought advice about the - about not accepting the tender evaluation team's recommendation, was that because you had already performed the preliminary view that Manteena was not to be awarded the tender?

25 MS HAIRE: My goal and intention in all of this was nothing to do with the specific companies, and I had no knowledge of them whatsoever. I had no independent knowledge nor interest in relation to them. I can - I believed and considered that I was applying not just Government policy, but a particular priority which had been conveyed to me was even more important in the context of the pandemic. It was not made in the context of the specific companies about which I had no interest or knowledge, as you've pointed out.

30

MR O'NEILL: I'm about to move to a different topic, Commissioner, on this. Unless you have anything further on this. No. I'm going to come to debriefs and those matters shortly, but before I do -

35 COMMISSIONER: Ms Haire, how are you feeling? Are you - you are going to need to come back at all events. It's been a long day and I'm just wondering do you feel able to do yourself justice or for the sake of half an hour maybe we could adjourn now. But I'm just asking you how you are travelling.

40 MS HAIRE: Thank you, Commissioner. I appreciate that. I'm happy to keep going.

COMMISSIONER: All right.

45 MR O'NEILL: I just wanted to return then to the handover to Ms Cross if I may. Sorry, because I had a think about it over lunch, it's always dangerous to have an adjournment -

COMMISSIONER: Handover by Ms Cross I think you -

MR O'NEILL: Yes, handover by Ms Cross. Your evidence this morning was that it was during that handover that it was communicated to you that - about this concept of director-generals being more involved in decision making. Is that fair?

5

MS HAIR: Yes.

MR O'NEILL: And you were told that by Ms Cross, were you?

10 MS HAIR: That's my memory, Mr O'Neill.

COMMISSIONER: I'm sorry, my recollection of your evidence is that you were told that it was expected that as - that directors-general, I'm not sure whether it was you -

15 MS HAIRE: Correct.

COMMISSIONER: - that directors-general were expected to make decisions.

MS HAIRE: Yes.

20

COMMISSIONER: These decisions about procurement.

MS HAIRE: Yes, that's more accurate, Commissioner, thank you.

25 COMMISSIONER: Yes.

MR O'NEILL: Commissioner, I seek your leave to refer to two pages of a private examination between Ms Haire and myself on 9 February 2023, that is page 1142 and 11 - sorry, 1141 and 1142.

30

COMMISSIONER: Leave is granted.

MR O'NEILL: May it please. Now, if I could just have 1141 brought up. Do you see during our - during the private examination I raised with you similar questions to those that led to the evidence this morning. And we were - as between us we were attempting to ascertain when it was that you became the decision maker. Do you see that?

35

MS HAIRE: At the bottom of the page?

40 MR O'NEILL: Yes.

MS HAIRE: Yes.

MR O'NEILL: You gave an answer to the Commissioner which is in reference to the timeline at about 5 June. Do you see that, at the bottom of 1141? If you need it drawn out let me know and I'll have it -

45

MS HAIRE: I think the 5 June is -

MR O'NEILL: At or about line 27.

5 MS HAIRE: Yeah, that's when I became - that's you saying that date.

MR O'NEILL: It is.

MS HAIRE: Yeah.

10

MR O'NEILL: And you're not agreeing with me, you can't remember.

MS HAIRE: Yeah.

15 MR O'NEILL: And then if you continue on through that you'll see you're asked a question by the Commissioner at the bottom, and you give an answer about -

It had been apparent to me that things had continued to slip because I'd been asked to take an interest in the outcome of this project.

20

Do you see that?

MS HAIRE: Yes.

25 MR O'NEILL: The idea that you'd been asked to take an interest in the outcome of the project, who had asked you to take an interest in the project?

MS HAIRE: I think that that's potentially poorly expressed.

30 MR O'NEILL: Right.

MS HAIRE: The - as I think I set out to you before, that what I was asked, what Rebecca conveyed to me was the Secure Local Jobs policy and that obviously it was to be applied to the projects that were in front of me. So I guess it's a two - it's - well, noting that those
35 were the projects in front of me. It was never put to me to make a specific decision about any of the projects.

MR O'NEILL: No, no. I think you're jumping at what you think the import of my question might be.

40

MS HAIRE: I'm sorry.

MR O'NEILL: Do you see how - I'll take you back. So 38, "isn't that something" - this is me -

45

Isn't that something you should be aware of because the delegate became you, didn't it?

And you said "Yes" and the Commissioner, "Why?".

MS HAIRE: I see, sorry.

5 MR O'NEILL: Yes. And then you say:

I had been asked to take an interest in the outcome of this project.

Do you see that?

10

MS HAIRE: Yes.

MR O'NEILL: Who asked you take an interest in the outcome of the project?

15 MS HAIRE: So, this is perhaps what I was trying to say to you poorly a moment ago, where that in the handover from Rebecca there was the - she relayed the discussion that she had about the Secure Local Jobs policy and noted the three projects that were underway. Subsequently I had a phone call from the chief of staff confirming Rebecca had - Ms Cross had handed - passed that on to me along with the other things that we had
20 discussed, and so that's what I'm conveying there.

MR O'NEILL: Your answer continues:

25 *It became apparent to me that it was only by being the delegate that I would have any insight into the outcome of this project.*

And then the Commissioner asks you:

Who asked you to take an interest?

30

And you say:

In the handover from Rebecca.

35 MS HAIRE: Yes.

MR O'NEILL: And that's - you're saying that's the interest that had been passed from the Minister's office and confirmed from the Minister's office?

40 MS HAIRE: Yes.

MR O'NEILL: And you say that interest is generated by an interest in the Secure Local Jobs Code -

45 MS HAIRE: Policy.

MR O'NEILL: - policy.

MS HAIRE: Yes.

5 COMMISSIONER: But that's not the same thing as - as Director-General you were expected to make the decision, is it?

MS HAIRE: It wasn't.

10 COMMISSIONER: Take an interest is one thing, expected to make a decision is another.

MS HAIRE: It wasn't put to me that I was expected to make the decision, Commissioner.

COMMISSIONER: I see.

15 MR O'NEILL: Ms Cross did communicate to you, didn't she -

MS HAIRE: An opinion.

20 MR O'NEILL: That directors-general are to take an interest - or are to become decision makers.

MS HAIRE: It wasn't - I didn't take that as a direction.

25 MR O'NEILL: No.

MS HAIRE: I took that as an opinion.

MR O'NEILL: Yes, but the opinion that -

30 MS HAIRE: For significant projects, capital projects, that directors-general should be the decision maker. It was put to me as I did not take that as a direction in any way.

35 COMMISSIONER: No, you took it as, what, just advice from Ms Cross or what she understood the Government expected, or what? What was it?

MS HAIRE: I took it as an opinion that she was passing on to me from the chief of staff.

40 COMMISSIONER: Right. So the chief of staff, that is the Minister's Office, expected that as Director-General you would make the decision.

MS HAIRE: No, I don't think "expected" is the right concept, Commissioner.

COMMISSIONER: But you - well -

45 MS HAIRE: Had -

COMMISSIONER: Had a view -

MS HAIRE: Had an opinion, yeah.

5 COMMISSIONER: Had the opinion that you as Director-General should make the decision.

MS HAIRE: Not - and not specific to this, but in general it's, I guess a fine point but important in this context.

10 COMMISSIONER: Certainly, but the context was capital works, and as it happened including Campbell.

MS HAIRE: Yes.

15 COMMISSIONER: So my difficulty is, that it strikes me there is a considerable difference between taking an interest, knowing you have to take an interest and then ultimately decided that to do that effectively you should be the decision maker, which I think is the purport of your previous answer, is it not, that Mr O'Neill read to you? Perhaps read it again, Mr O'Neill.

20 MR O'NEILL: That is:

I had been asked to take an interest in the outcome of this project.

25 COMMISSIONER: And -

MR O'NEILL:

30 *It became apparent to me that it was only by being the delegate that I would have any insight into the outcome of the project.*

Who asked you to take an interest?

In the handover from Rebecca.

35 COMMISSIONER: So it developed - you decided that you would need to be the delegate. That is to say be the decision maker because of what was happening or not happening. That's the line of reasoning which you give in that answer, is it not?

40 MS HAIRE: I understand the interpretation. I think the other element that I've talked about today is the fact that this project was just - the timelines were considerably - had slipped considerably and I felt a great deal of pressure. Not specifically about any specific outcome, but the pandemic context was putting a great deal of pressure and there was a great deal of anxiety about the timeliness of capital projects. It was very -

45 COMMISSIONER: Yes, I understand that. And it was because of that issue you ultimately decided you should be the decision maker. We've already discussed whether that was

necessary because you were anyway, as Director-General you had power over the process, but let's leave that matter aside. But it's one thing for you to decide that you should be the decision maker, another when you had been told that it was the opinion of the Minister's office that you should be the decision-maker. Do you see the distinction?

5

MS HAIRE: I'm not sure how to answer that question, Commissioner.

COMMISSIONER: Very well. Yes, Mr O'Neill.

10 MR O'NEILL: At 2.1883, that is, at 3.52 pm on 25 June 2020, you messaged Mr Ceramidas and told him that you had the "Campbell reco" - which is recommendation?

MS HAIRE: Yes.

15 MR O'NEILL: And will shortly be finalising a decision.

MS HAIRE: Yes.

MR O'NEILL: Why was it necessary to tell that or share that with Mr Ceramidas?

20

MS HAIRE: Well, it wasn't necessary, and from what I know now, it was not appropriate to do that. Because I know much more about the requirements of the procurement processes now than I did then. So I will firstly start by saying that: It wasn't necessary. However, the context was, as I've outlined before, that I was - from some time late in April was getting - every now and then felt pressured by the delay in the decision for Campbell coming through. And so this is me sort of, "Good news, it's going to be finalised soon."

25

MR O'NEILL: Had you informed Mr Ceramidas at or about this time that the likely decision - your likely decision was to be - to recommend that the Territory enter into a contract with Lendlease?

30

MS HAIRE: No.

MR O'NEILL: You are adamant about that?

35

MS HAIRE: Yes.

MR O'NEILL: Why?

40 MS HAIRE: Because I know that I told him after the decision, after I had made the decision. And I remember I where I was when I told him.

MR O'NEILL: A debrief was conducted with Manteena online on 28 July 2020. You weren't - you did not participate in that.

45

MS HAIRE: No.

MR O'NEILL: Even - now, as the decision-maker, should you have been in that debrief?

MS HAIRE: I'm not sure.

5 MR O'NEILL: Okay. Was information fed back to you about what had occurred during the debrief?

MS HAIRE: Not that I remember.

10 MR O'NEILL: Mr Green did not tell you what had occurred?

MS HAIRE: I know I got an email from Mr Green at some point later in the year, maybe in September, after he had a meeting - but I don't know if it's this meeting or - I'm not sure.

15 MR O'NEILL: I will assist you slightly. 2.1941 is an email from you to Mr Green:

We've had a phone call from an unsuccessful tenderer. Could you provide advice and make contact as soon as possible.

20 MS HAIRE: Yes.

MR O'NEILL: Is that more likely at or about the time that you had your conversation with Mr Green as to what needed to happen? Or do you think this is the -

25 MS HAIRE: Yes, I think that's more likely, yes.

MR O'NEILL: There was a meeting between Mr Green and Manteena representatives at the Bittersweet Café here in Kingston on 18 September 2020. Were you aware that that was taking place?

30

MS HAIRE: I - I am not sure. I know I knew about it afterwards because he sent me an email about it, and I asked him to make contact with them, but I don't know the bit in between.

35 MR O'NEILL: Did you know what was discussed at that meeting?

MS HAIRE: No.

40 MR O'NEILL: Did you understand what it was that was the gripe that the unsuccessful tenderer had?

MS HAIRE: No. Well, I got an email from Mr Green, a two-line email about it. That's what I - that's the information that I had.

45 MR O'NEILL: 2.1946. Do you see here, this is an email from you to others, including Mr Green. And you have set out some dotted items for action and advice.

MS HAIRE: Yes.

MR O'NEILL: And down at - about two-thirds of the way down:

5 *Campbell. Major Projects are keen for a review.*

Do you know why you were being asked for a bit of a review by Major Projects?

10 MS HAIRE: I certainly know that the lengthy process was part of it and clearly, from the words on the page, the undertaking of the BAFO was raised in the meeting. This is my - this is not completely - this would have been written relatively quickly after the meeting as a summary of the points that were raised.

15 MR O'NEILL: One accepts that. And then is that bullet point where you've got:
Mr Green is being tasked -

MS HAIRE: Yes.

20 MR O'NEILL:

- to discuss with Major Projects.

25 So, Mr Green, you go and find out what it is that is really driving at the detail.

MS HAIRE: Yes. Well, I think it's, you know, to discuss how we can do a review or a - you know, an informal review.

30 COMMISSIONER: So by "MPC", you just meant Mr Edghill had raised it?

MS HAIRE: Yes, it's a meeting with Mr Edghill.

COMMISSIONER: Right.

35 MR O'NEILL: 2.1953. Is this the email you were talking about just earlier where Mr Green reports back of his meeting. And he says:

40 *They are still a bit cranky because they feel they've been unsuccessful because someone doesn't like them.*

Do you see that?

MS HAIRE: Yes.

45 MR O'NEILL: As at this date, that is 23 September 2020, had you become aware that there were rumours circulating within the Directorate that Manteena was not to be preferred because the unions didn't like it?

MS HAIRE: No.

MR O'NEILL: Were you ever aware that those rumours were circulating?

5

MS HAIRE: The first time I became aware of it was when the file note from Ms Young was - came to light from MPC because of the FOI lodged by Manteena.

MR O'NEILL: Right. Was it concerning to you to note that at the time?

10

MS HAIRE: Yes. Yes.

MR O'NEILL: Did Mr Green ever explain to you what "cranky" meant?

15

MS HAIRE: Not that I recall.

MR O'NEILL: Did Mr Green ever explain to you - sorry, withdraw that question. Did you ever ask Mr Green to explain what was meant by "someone doesn't like them"?

20

MS HAIRE: No, I don't think - I don't think I responded to - this email didn't come to me, and I don't think I responded to it.

MR O'NEILL: It went to -

25

MS HAIRE: It went to my assistant.

MR O'NEILL: So you never saw this email at the time. I thought you agreed with me this was the email that was the -

30

MS HAIRE: I think - no, I think that my assistant passed it on to me.

MR O'NEILL: Right.

MS HAIRE: But I don't believe I ever responded to it or -

35

MR O'NEILL: No, no, you didn't.

MS HAIRE: That's right.

40

MR O'NEILL: Not in writing, but this is what I'm asking you, is whether you spoke to him about it in person?

MS HAIRE: No.

45

MR O'NEILL: When you read that, that is, when you read, "someone doesn't like them", were you perturbed by the concept that it was about who likes whom which is how the

tenderer had thought that the decision had been arrived at? Your decision had been arrived at?

5 MS HAIRE: I can't remember how I felt at the time. So I think I thought this was sort of quite colloquial language and perhaps, you know -

10 COMMISSIONER: Well, it's - he's reporting a meeting that he's had with Manteena CEO and manager. So it's obviously a formal meeting, that is, it's a business meeting, I should say. Yes?

MS HAIRE: I didn't know who - I now know who Mark and Rod are. I didn't know -

COMMISSIONER: From Manteena anyway.

15 MS HAIRE: Yes, yes. Yes.

COMMISSIONER: You knew that. "Still a bit cranky". So obviously that means irritated, upset, frustrated, negatively - of a negative view, yes? That's obvious. Do you agree?

20 MS HAIRE: Not happy, yes.

COMMISSIONER: Yes, not happy.

25 *They feel they have been unsuccessful because someone doesn't like them.*

Since the purpose of this meeting was to tell them why the - or debrief them as to the reasons for their lack of success, didn't it follow that Mr Green had told them, in effect, that the outcome was due to - they had been unsuccessful because someone didn't like them? Isn't that the implication of this email?

30 MS HAIRE: I didn't take that to be the implication, Commissioner.

COMMISSIONER: What implication did you take, if any?

35 MS HAIRE: I can't recall, but I certainly - the construction you've just put on it had not occurred to me until you said it.

COMMISSIONER: Very well.

40 MR O'NEILL: At 2.1951, this is part of a response that Mr Green is giving you, the document starts at 2.1950. And the blue is Mr Green's response to your notes about Campbell. Do you see that?

45 MS HAIRE: Yes.

MR O'NEILL: Do you see there he informed you:

The BAFO was suggested by MPC and GSO as a better process than my suggestion of re-tendering. In hindsight, I think their advice was wrong.

Do you see that?

5

MS HAIRE: Yes.

MR O'NEILL: Did you read that at the time?

10 MS HAIRE: I don't remember ever seeing this document before, Mr O'Neill. I'm sorry.

MR O'NEILL: I will take you to the beginning of it just to assist. 2.1950. It's an email from Mr Green to you, dated 18 September 2020, in response. You've not seen that?

15 MS HAIRE: Well, clearly I have. So thank you for that. I'm sorry. I - I don't remember it. It's - but that's my failing, I'm sorry.

MR O'NEILL: Can I take you now to a new time period, 2.2060. Do you see here there's a series of text messages, the first one between you and Mr Ceramidas. You are asking for "a bit of a risk-based heads up".

20

MS HAIRE: Yes.

MR O'NEILL: And then you provide him some further info about the Freedom of Information request that had been made. What was the context in which you were asking for "a bit of a risk-based heads up"?

25

MS HAIRE: I can't say for sure. That might have been when I was telling him about the FOI and the document that had been located from Kelly Young.

30

MR O'NEILL: You told Mr Ceramidas about that, did you?

MS HAIRE: Yes, so we - with FOIs, the Minister's office is informed of all FOIs and provided -

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COMMISSIONER: Sorry, is what with all FOIs?

MR O'NEILL: Informed.

40 MS HAIRE: Informed of all FOIs before they are released and provided with information about them. So I didn't - that was provided in a weekly report. And on particular FOIs, we provide more information and briefing.

MR O'NEILL: Now, in July 2020, members of this Commission attended the Directorate to provide training in respect of decision-making. Do you remember that?

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MS HAIRE: In July 2020?

MR O'NEILL: Yes.

MS HAIRE: The Integrity Commission came to the Education Directorate?

5

MR O'NEILL: Yes.

MS HAIRE: I have no memory of that, Mr O'Neill.

10 MR O'NEILL: You don't recall that. Do you recall this email?

MS HAIRE: No, I don't. I'm sorry, Mr O'Neill.

15 MR O'NEILL: Can I just take you to the next parts of it, so that you can see the full document. And then I will take you to the attachment. Do you see here that there was an information brief provided about records management and corruption. Do you ever recall reading this as or about the date of it, 2 July 2020?

MS HAIRE: I don't remember, but I'm sure - I would have read it.

20

MR O'NEILL: Do you see at the bottom:

25 *Recordkeeping by senior officials is particularly important, given the authority and discretion they are afforded to make key decisions and influence the decision-making of others. Maintaining clear and accurate records which justify decisions taken or advice provided may prevent allegations of improper conduct and avoid the validity of key decisions being challenged.*

Do you see that?

30

MS HAIRE: Yes, I do.

35 MR O'NEILL: Now, the decision had been made to engage the contract with Lendlease, but at this date, that actually hadn't occurred. Lendlease weren't contracted. That didn't happen until September. Did you read that and think, perhaps one should go back and review that decision to ensure that it accorded with this information that you were being provided by this Commission?

MS HAIRE: No, I didn't.

40

45 COMMISSIONER: There's another matter which is raised generally, and, indeed, it was the subject of a recent report which has been widely commented on in the press from Victoria, which is the relationship between Minister's staff, ministerial staff and public servants, and, in this case, you had two or three, as you said, conversations with Mr Ceramidas. They related to the business of the Directorate and how particular decisions should be - what particular decisions should take into account. In this particular case, as I understand it, the - from you, the Secure Local Jobs policy.

MS HAIRE: I'm not sure that I agree with the construction of that, Commissioner. I think it was much more general than that about the importance of Secure Local Jobs -

5 COMMISSIONER: Very well.

MS HAIRE: -as a government policy.

COMMISSIONER: I'm -

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MS HAIRE: I didn't take it as a direction.

COMMISSIONER: I don't think I said direction. I didn't mean direction. I meant that it concerned those issues; correct? On reflection, do you agree that you should have made a note of each of those conversations?

15

MS HAIRE: Yes - well, I - in the - I'm not sure, Commissioner - yes. I had so many conversations during the COVID period. As I said to you, maybe five or six a day.

20 COMMISSIONER: I understand that.

MS HAIRE: And the conversations that I've described to you were a tiny, tiny minority of the many, many conversations that I had.

25 COMMISSIONER: Yes, I'm not - I'm - the conversations which I'm focusing on are conversations between political officials of various kinds and you as Director-General. I accept that it might be a nuisance and an inconvenience, but it's a matter of appropriate governance, would you not agree, that there should be a record kept of such conversations?

30 MS HAIRE: I certainly - I agree that if there was any conversation that had a specific action or requirement in it, or request, that it should be in writing. And, in fact, I always ask for that when I'm given a request or a requirement from the Minister's office. So I agree with that.

35 COMMISSIONER: I understand. But my question is cast more widely. Bringing a particular policy to attention of a Director-General, depending on the context, may be more than, as it were, a by-way discussion of the weather. There may be point to it, depending on the context. And to avoid the need to read into or read out of what might or might not have been said, especially where conversations - even with people who have - are
40 completely honest, with no axe to grind, people can easily have different interpretations and different understandings and those can prove problematic where particular decisions are being examined. Do you agree? As a general matter.

MS HAIRE: I'm sorry. I think I lost the train of your thought there for a moment.

45

COMMISSIONER: I see. What I'm saying is, memory is unreliable, and records should be kept because conversations can be potentially significant.

MS HAIRE: I certainly agree. The memory is unreliable. And -

5 COMMISSIONER: Well, what about the second part of my proposition? Because conversations between political officials and departmental officers, particularly Directors-General, could be of significance.

10 MS HAIRE: I agree with that, and I certainly consider that I document the significant conversations and seek for those to be in writing.

COMMISSIONER: Yes, but they are not always put in writing, are they?

MR HAIRE: Any -

15 COMMISSIONER: Not all important conversations, in the end, are in writing.

MS HAIRE: That's - that's probably correct, Commissioner.

20 COMMISSIONER: Furthermore, the writing may not exactly reflect what was the conversation; correct?

MS HAIRE: Potentially.

25 COMMISSIONER: Yes. Well, what one is attempting to do is to - within the bounds of ordinary human failures, which are regrettably all too common, to try and create a record that gives some basis for understanding how particular decisions may be undertaken or particular actions taken. That's the point of it, you understand? Sorry.

30 MS HAIRE: Yes. Yes, I understand.

COMMISSIONER: And taking these conversations with Mr Ceramidas, on reflection, having regard to what I think you've just agreed to, should they have been in writing - or, sorry, should you have made a written record of them?

35 MS HAIRE: With the benefit of hindsight, Commissioner, yes. In the context of the time where I was speaking with Mr Ceramidas five or six times a day about multiple other matters, to my regret, I would say that would have been an impossibility to do.

40 COMMISSIONER: Obviously, I'm only - if it's impossible, then the situation simply doesn't arise, because it can't arise. I'm only talking about possible - possibilities.

MS HAIRE: I understand the principle and I agree with it. In the -

45 COMMISSIONER: So from now on, would you agree that communications between you and the Minister's office will be recorded? I don't mean tape recorded.

MS HAIRE: So -

COMMISSIONER: I mean will be the subject of a record?

MS HAIRE: Any -

5

COMMISSIONER: Well, that's unfair. I won't ask you like that. I will ask you in this way. Are you prepared to give consideration to ensuring that communications between you or your personal staff and the Minister's office, will be the subject of a written record?

10 MS HAIRE: I certainly have a practice already, Commissioner, that any significant request or direction is put in writing. Administrative minor conversations about timing of things, etcetera, conversations are not put in writing.

15 COMMISSIONER: Yes. What you need to have, though, is a protocol that gives guidance about the things that need to be recorded and the things that don't need to be recorded. But at least you've got a process that you hope will capture important matters.

MS HAIRE: Yes. I agree and we've had a discussion about such matters in the last couple of weeks with the senior staff.

20

COMMISSIONER: Very well. Thank you. Yes. If you are now coming to the meeting - or you are coming to the debrief meeting between the Director-General and -

MR O'NEILL: I am. I've got - I've just got -

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COMMISSIONER: I think that's a convenient time.

30 MR O'NEILL: Can I just indicate formally, then, if that's - if that's how are you minded, Commissioner, that between now and the next time we resume, I have no objection to my learned friend and her team speaking with Ms Haire as to any topic at all, because these are two different topics that - I've addressed all the others. And so -

35 COMMISSIONER: That's all right. And I'm sure counsel will be governed by the appropriate rules about communications in these circumstances. Ms Morgan, can I just ask you this: I understand you will probably have some questions you want to ask. The matter which I'm asking you to consider - I have no view with it, and I'm prepared to accept - Mr Opas also has questions for cross-examination, and I've got no problem with you asking - following Mr O'Neill, you asking your questions, Mr Opas cross-examining and then you re-examining or you not asking your questions, waiting until Mr Opas has finished and then you re-examining. It's a matter entirely for you. Could you have a talk to Mr Opas and come to some agreement, if you can, and I'm happy to comply with any agreement that you've arrived at?

45 MS MORGAN: Certainly, Commissioner.

COMMISSIONER: All right. Yes.

MR O'NEILL: That being the case, can I just indicate that the next date upon which it's likely the Commission will be sitting publicly is 4 December 2023 at 10 am, and that the Commission has set aside four days in that week, that is, until the 7th. And I anticipate, as I presently understand it, that that will conclude the evidence in the public hearing. The
5 reason for the substantial gap is because one of the witnesses I intend to call in that in that week is currently on sabbatical and does not return until a date just before those dates. And so, unfortunately -

COMMISSIONER: Yes, there's another matter of process which doesn't require any
10 present decision, but there are two - you may stand down for the time being. Thank you. But regrettably, Ms Haire, I think you will need to come back.

<THE WITNESS STANDS DOWN

COMMISSIONER: And that is once the evidence is completed, how the Commission
15 should proceed. Different Commissions have different practices in this regard. One way is for a draft proposed report to be circulated and comments sought from interested persons. Another way that I personally - but perhaps this is because of my experience on the bench - find more - would find more helpful, but I'm in the hands of counsel, is that Mr
20 O'Neill, as Counsel Assisting, would make submissions as to findings that he submits ought to be made, or are open to be made in a public hearing and that, obviously, interested parties have to have adequate notice of what's contained in that submission, but then have an opportunity to make a written submission but also make oral submissions in response.

So those are the two methods, I think, of affording natural justice, but at the same time
25 giving me assistance on how to resolve the issues in this matter. There are general issues of public importance or of public policy that are not really - do not really concern any particular party in the procurement space, and I shouldn't think that I would be asking any party to make submissions about those issues. But I think I would be assisted by the parties
30 making submissions on the factual issues in the matter.

The advantage of having everyone in the room when they are made is, otherwise, one has
35 submissions being circulated that other people then want to respond to and it becomes an unmanageable and long, drawn-out process with people swapping various drafts. And it's much better for there to be one initial proposed -

MR O'NEILL: Target.

COMMISSIONER: - submission - yes, and one target - and then people knowing what the
40 responses of other parties are so they can have a response. And I would be open to - so that people can respond carefully - because off the top of the head responses is not worth much - to later written submissions, if that needs to help. But so what I'm stating is, my preference is for written submissions from the Counsel Assisting, written responses from the parties who wish to make a response to those submissions, then oral submissions in
45 public which allow people to state a public position which seems to me just fair.

But also, effectively, an exchange of contentions which then enable everyone to know what the - how - what parties are taking what particular issues and, ultimately, I've got assistance from everyone about the facts upon which I need to report. So I - what I'm doing now is giving you notice and discuss it, please. If you can come to an agreed view, do so.

5

But at the end of the next tranche, I will be asking for submissions as to process. So I would like you all to be ready in respect of how we proceed to the drafting of a report. Very well. Are there any matters that need to be raised now? Yes, Mr Opas.

10 MR OPAS: Very briefly. May it please the Commission, Opas for - in the interests of Mr Green. Commissioner, I just wanted to flag, because I anticipate that we will be proceeding into cross-examination of Ms Haire when the - fairly soon after the Commission -

15 COMMISSIONER: I expect so.

MR OPAS: - next resumes. I will just flag that I will be seeking the Commission's leave to use and refer to the transcript of the private hearings on 8 June 2022 and 9 February 2023.

20 COMMISSIONER: Just as a process matter, Mr Opas -

MR OPAS: Yes.

25 COMMISSIONER: - would you mind asking your solicitor make that request in writing, and we will respond accordingly. In principle, I don't have a difficulty with it, but I need to consult with Counsel Assisting.

30 MR O'NEILL: It also would assist if that note contains pinpoint references as to what parts of that transcript so that you, Commissioner, have a more focused bundle of material that is the subject -

COMMISSIONER: My immediate response is that I'm likely to give leave. I would just like a somewhat more formal process, Mr Opas.

35 MR OPAS: Yes, of course. I can do what both - both you and Counsel Assisting seek. Thank you. May it please the commission.

COMMISSIONER: Thank you. Are there any other -

40 MR WALKER: Commissioner, my name is Walker. I seek your leave to appear for Mr Ceramidas.

COMMISSIONER: Yes.

45 MR WALKER: Mr Pararajasingham is occupied in trial and so didn't appear in this tranche of hearings, but I just stand to foreshadow that we may have an application of a similar

nature to Mr Opas, and we will write to the Commission in the break if that application is going to be pursued in the next tranche.

5 COMMISSIONER: Right. The only - the only complication - and I frankly have not worked out in my own mind what the significance is - but the only complication is that, at present, I don't think Mr Ceramidas will be giving evidence.

MR WALKER: Yes.

10 COMMISSIONER: In public hearing. That's a matter, I think, for the Solicitor of the Commission to raise with your solicitors. And as I sit here now, I am not quite sure of how significant it is, but it might have some bearing, so we have simply got to pay attention to it and resolve -

15 MR WALKER: I anticipate it might affect the scope of the cross-examination that the Commission allows. But it's something that we will address in writing if the application is to be pursued.

20 COMMISSIONER: Yes. I think - yes, if you can put it in writing so we have plenty of notice and we can then consider it. Again, Mr Walker, I'm not unsympathetic, but I just need - we just need to touch some appropriate bases.

MR WALKER: I understand. Thank you, Commissioner.

25 MR O'NEILL: Can I also indicate through you, Commissioner, to my learned friend that it's not immediately apparent how it is that there would be cross-purposes such that cross-examination would be required. And if it's in the nature of examination, then perhaps Mr Walker would more appropriately maybe consult with me as to if it's something that I can assist his client.

30 COMMISSIONER: Well, that's a matter that can be further negotiated. Very well. I will adjourn.

35 **<THE HEARING ADJOURNED AT 4.19 PM TO MONDAY, 4 DECEMBER 2023 AT 10 AM**