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TRANSCRIPT OF PROCEEDINGS

THE HON MICHAEL F ADAMS KC, COMMISSIONER

THE ACT INTEGRITY COMMISSION – OPERATION KINGFISHER

PUBLIC HEARING

DAY 11

WEDNESDAY, 6 DECEMBER 2023 AT 10.04 AM

MR CALLAN O'NEILL, Counsel Assisting
MS SULLIVAN, Counsel for Kelly Young
MS KATE MORGAN SC with MS KEARNEY, Counsel for Katy Haire
MR KIERAN GINGES, Counsel for Yvette Berry
MR WAYNE SHARWOOD, Counsel for Mr Matthews
MR ATHOL OPAS, Counsel for Mr Green

COMMISSIONER: Yes, Mr O'Neill.

MR O'NEILL: Thank you, Commissioner. This is the resumption of the evidence of Ms Young.

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COMMISSIONER: Right.

MR O'NEILL: I don't think Ms Young needs to be re-sworn, unless you have a different view?

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COMMISSIONER: Quite.

<KELLY KATHLEEN YOUNG, ON FORMER AFFIRMATION

15 MR O'NEILL: Ms Young, in the chronology yesterday we finished at your email to your colleagues, and I will just bring it up again, at court book 2.1437. And so, where we left off yesterday was at this email which, I think as you accepted yesterday, indicated that you still did not think that there was a basis for a best and final offer process, even after receipt of the Government Solicitor's Office advice?

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MS YOUNG: Yes. Based on the Government Solicitor's advice the, I – and comparing that to what our situation was, I didn't think a BAFO was justified.

25 MR O'NEILL: So, it wasn't indicated based upon what now, you'd received advice in relation to?

MS YOUNG: Yes.

30 MR O'NEILL: The following morning there was a meeting between you, Mr Morton and Mr Jacobi, is that correct; that's the Friday? Do you remember having a meeting?

MS YOUNG: The 13th?

35 MR O'NEILL: Yes. Or you weren't present at that meeting? Mr Green was there as well. No? If you can't recall, just say so.

MS YOUNG: I wasn't at a - I wasn't at a meeting with Mr Green.

40 MR O'NEILL: Okay. Then if I can take you to 2.1449. Do you see here then Mr Morton, at 9.11, sends you an email indicating that:

The delegate had advised that the TET is to proceed with the BAFO.

45 MS YOUNG: Yes.

MR O'NEILL: So, you had not had any pre-warning that this email was coming -

MS YOUNG: No.

50 MR O'NEILL: - as I understand from your previous answer?

MS YOUNG: Correct.

5 MR O'NEILL: And this was all you got in relation to the explanation for why it was that the delegate was proceeding to a BAFO?

MS YOUNG: A BAFO, yes.

10 MR O'NEILL: What was your reaction to that?

MS YOUNG: I think I forwarded this to my director, Rebecca Power, and said something along the lines of, "Well, I tried."

15 MR O'NEILL: And what did you mean by that?

MS YOUNG: I tried to justify the reasons why we did not have to go to a BAFO.

MR O'NEILL: And what did Ms Power say to you?

20 MS YOUNG: I don't recall exactly. I - usually she would say, "Just follow the process", you know, "respect the delegate's wishes. Keep going with the Tender Evaluation Report and finalise it for going to a BAFO."

25 MR O'NEILL: You understood at that point that -

MS YOUNG: There was no discussion.

30 MR O'NEILL: There was to be no discussion. The process was to go to BAFO and that you were to continue to make changes to the Tender Evaluation Report to achieve that?

MS YOUNG: Yes, that's correct.

35 MR O'NEILL: You subsequently had a conversation with Mr Morton, did you not, over the telephone?

MS YOUNG: Yes.

40 MR O'NEILL: Now, I want you to do the very best you can to try to recount words to the effect of how that conversation went. Who rang who, to start?

MS YOUNG: I don't recall who rang who. I think it might have been Phil ringing me.

MR O'NEILL: Right.

45 MS YOUNG: Obviously, I have a file note from this which I have read several times over and it's been (indistinct), so -

MR O'NEILL: Yes. I can bring the file note up if it assists you. It's at 2.1448. I'm going to come to some questions about the file note, but I'm trying to - I'm really looking at examining your memory about the phone call.

5 MS YOUNG: Well, what I wrote in the file note is going to be more accurate than what I can remember now, three and a half years later.

MR O'NEILL: Right.

10 MS YOUNG: The conversation at the time was that there may be union involvement, that's why the Minister - or something about, "the unions are pressuring the Minister" or "the Minister's office". And something about, "Manteena was getting all the jobs", which I didn't know about, didn't make any sense to me. But, I guess, in the conversation with Phil what I think I was expressing from my point of view was, why is there so much pressure to go to a
15 BAFO? Like, why is this the preferred choice? And, this is the explanation that I got.

MR O'NEILL: The step of taking a file note, that is, sending yourself an email, why did you think that was important?

20 MS YOUNG: Well, I was concerned about it, obviously mentioning the Minister or the Minister's office at all and - this is the Minister for Education - and potentially union involvement, but it wasn't conclusive, and I have used the words "may" in - selectively because there was no evidence.

25 MR O'NEILL: My question though is, why did you think it was important to record it? Noting of course that reservation that you've just come to, that it was - you've used a double "may"?

MS YOUNG: We don't usually get any kind of indication about Minister involvement or
30 union involvement in a tender. Like, it's just not appropriate.

MR O'NEILL: It doesn't conform with the Tender Evaluation Plan, does it, to allow -

MS YOUNG: No.

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MR O'NEILL: And it doesn't conform with the Procurement Plan Minute, does it?

MS YOUNG: No.

40 MR O'NEILL: And so, to understand have I got this correct, that is, you were concerned to make sure there was a record about this because of how unusual it was?

MS YOUNG: Yes.

45 MR O'NEILL: Did that concern extend to the fact that, and if it were that there was some truth to that rumour, you wanted to make sure that there was a record of that in the future or -

MS YOUNG: Yes.

MR O'NEILL: In your earlier answer to me about the conversation, you used interchangeably the words "Minister" and "Minister's office." Do you have any independent recollection, sitting there now, whether what Mr Morton told you was "Minister" or "Minister's office"?

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MS YOUNG: Sitting here now I don't have a recollection either way, but I'm going to say that my file note at the time - like, I wrote this directly after the conversation - is going to be more accurate than anything I'm going to say now.

10 COMMISSIONER: Can you recall whether - how Mr Morton conveyed this to you? Did he say, for example, "I've heard", "I've been told", "I understand", "There's a rumour going round that"? Are you able now to recall what, if anything, he told you about the source for this information?

15 MS YOUNG: Not with any accuracy.

COMMISSIONER: All right. And the next question I have is, having made the note, did you think about whether you should pass that information on to anybody?

20 MS YOUNG: Yes. I was concerned about it and I discussed this with my director after -

COMMISSIONER: Who was?

MS YOUNG: Rebecca Power.

25

COMMISSIONER: And you discussed - what did you discuss with her?

MS YOUNG: So, I had a meeting with her at 12:00, but it would have been after that meeting, because that was with David Grey as well, and it would have been after David - not with David Grey, it would just - it was just with Rebecca and myself. But I - it wasn't the only time that this issue of union involvement was discussed within NPC; like, it was intimated in other conversations that there had been possible union involvement, but it was - yeah, there were certainly rumours going around NPC, or a select number of people in NPC.

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COMMISSIONER: If we could come back to my question and that is, what did you discuss with Ms Power?

MS YOUNG: Just - so, I can't recall exactly what my words are.

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COMMISSIONER: No, no, but the substance of it?

MS YOUNG: Well, the substance was exactly what I've just heard from -

45 COMMISSIONER: Mr Morton?

MS YOUNG: - Mr Morton.

COMMISSIONER: And what was her response?

MS YOUNG: She was saying to - well, I don't recall exactly, but around that time the response was - because obviously I was unhappy about a number of decisions that had been made, but the response was to follow the process.

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COMMISSIONER: Right. Yes.

MR O'NEILL: Did Mr Morton explain to you in the conversation, to the best of your recollection, where he had heard the rumour?

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MS YOUNG: No.

MR O'NEILL: And you said to the Commissioner that it was a rumour that had otherwise been circulating through NPC. Doing the very best you can, do you recall from any other places that you heard a rumour of this nature or similar to this?

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MS YOUNG: You mean, this rumour, or similar to this?

MR O'NEILL: Well, we'll take it one at a time. Why don't you say this rumour first?

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MS YOUNG: Okay. For this rumour, there was probably about five people or so that knew - knew about it. I do recall later I remember telling my past manager about it. Yeah, he - I remember that he laughed because he thought it was incredible that this could be tried - I guess, tried on, or an explanation for why the BAFO was - we were going down this route of the BAFO.

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MR O'NEILL: And so, if I gave you a piece of paper and a pen, you'd be able to write down the names of those people that you heard this rumour from?

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MS YOUNG: Yes.

MR O'NEILL: All right. I will do that. Then -

COMMISSIONER: Perhaps we might do that now while it's -

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MR O'NEILL: Certainly. And I will circulate it amongst the parties.

MS YOUNG: I need another pen. Do you want me to get one from my bag? Thanks. I think that's all.

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MR O'NEILL: Thank you. And then you provided some evidence - if that can just go to the Commissioner, firstly and then - you provided some evidence about similar rumours. What similar rumours had you heard?

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MS YOUNG: There are no similar rumours.

MR O'NEILL: Right, okay. So you were just clarifying my question to you?

MS YOUNG: Yes.

MR O'NEILL: This was the one rumour and you'd heard it from multiple places?

MS YOUNG: Yes.

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MR O'NEILL: All right.

COMMISSIONER: Can you tell me this about timing: did these rumours follow - I'm talking about chronologically, not because of, but follow the BAFO decision or were they around before that?

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MS YOUNG: Well, I only knew them after the BAFO decision.

COMMISSIONER: Right. Okay. I think that needs to be marked in due course.

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MR O'NEILL: Thank you. I'm just letting the other parties see the names.

COMMISSIONER: Yes, yes.

MR O'NEILL: All right. Did anyone provide you advice at the time that it needed to be elevated in any way, that there needed to be a report made to anybody else?

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MS YOUNG: No. I think the indication was that it - there was no particular evidence about it, it was - I don't know, unjustified. I don't know.

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MR O'NEILL: Then, moving forward, on the Monday, so that's 16 March 2020, you provided by email, at 2.1454 a revised Tender Evaluation Report which now indicated that - the recommendation for best and final offer; do you recall that?

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MS YOUNG: Yes.

MR O'NEILL: And the changes that you had made largely reflected those that you had previously made - and I can just show you, for example, at 2.1457 - largely reflected those that you had previously made in the highlighted version we saw yesterday?

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MS YOUNG: Yes.

MR O'NEILL: For the benefit of the transcript, that document extends to 2.1537. On the same day you sent this email. This is at 2.1538. What's the point of this email that you were trying to express to Ms Stewart?

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MS YOUNG: So, this was confirming with the GSO the final list of the best and final offer text that we were about to send to tenderers subject to the approved TER coming back, so I was finalising what actually had to - what I actually had to do to get the BAFO put out through Tenders ACT.

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MR O'NEILL: Right. And did this go to the procurement board, do you know?

MS YOUNG: Not this, no. No, this didn't go to the procurement board.

MR O'NEILL: For the benefit of the transcript, that document goes through to 2.1548.

5 COMMISSIONER: Was it your decision whether this should go back to the board, or do you know whether any active consideration was actually made about whether it should go back to the board?

MS YOUNG: In the answers - no, I didn't make a decision about it.

10 COMMISSIONER: Right.

MS YOUNG: In the tender - in the original tender documents in the standard conditions of tender there is the option to go -

15 COMMISSIONER: Go to a BAFO, right. And that had already been signed off by the board?

MS YOUNG: Correct.

20 MR O'NEILL: You received delegates' approval from the Tender Evaluation Report on 18 March 2020. I will just bring you up, 1.279 is the start of that document in volume 1 of the brief. And, next page. Do you see here on the title page the details - your details are now no longer on that page?

25 MS YOUNG: Correct, yes.

MR O'NEILL: You had taken them off at this stage, had you, or is that some kind of clerical error that I'm reading too much into?

30 MS YOUNG: I don't think I'd read too much into that.

MR O'NEILL: Okay. All right. When did you make the decision - sorry, I withdraw that, I will come back to that later. And again, for the benefit of the transcript, that document goes to -

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MS YOUNG: So, sorry, this is a Tender Evaluation Report, not -

40 MR O'NEILL: Yes. No, you're quite right. The minute that you received back, I will just bring that up. I will come back to that but, in any event, you did receive a minute back and it was signed by Mr Green?

MS YOUNG: No, I don't think I did actually.

45 MR O'NEILL: No, that's true, you didn't. So you never received one back, that is the fact, isn't it?

MS YOUNG: That's - that's the problem.

MR O'NEILL: You never changed the scoring in the document?

MS YOUNG: No.

5 MR O'NEILL: And so, the document itself had - that is, the report that we've got up now, if one just goes into the next page of it, and the next page. The scoring which was, at the next page -

MS YOUNG: There will be a table. That one.

10 MR O'NEILL: Yes, that's it there. It maintained the same disparity that you and your team had arrived at in undertaking your assessment?

MS YOUNG: Yes.

15 MR O'NEILL: And yet it had this change in it where it was recommending a best and final offer?

MS YOUNG: So we hadn't done a reassessment.

20 MR O'NEILL: No.

MS YOUNG: We were sticking with the same assessment that we had done before, they were - there had been nothing that changed; it was just that the delegate wanted to go to a best and final offer, so we had to rewrite the sections that referred to Manteena as being the preferred, take those out, and put in, you can go to - well, originally I had originally put in the text at the end:

It's open to the delegate to go to a BAFO.

30 Or that:

An option is available for the delegate to go to a BAFO.

35 I was told to change that because I was told that the delegate wouldn't accept that, it had to be more direct, that it was the recommendation from me to go to a BAFO, or from the TET.

40 COMMISSIONER: Just before we finish with the document, as I understand it but correct me if I'm wrong, Mr Green did not actually suggest to you that your scoring, or the team's scoring, was inappropriate or needed change or reconsideration?

MS YOUNG: No.

COMMISSIONER: All, what he focused on was the recommendation; is that -

45 MS YOUNG: Yes, correct.

COMMISSIONER: Right.

MR O'NEILL: Commissioner, while I've got it in my hand, can I have this document marked, please?

COMMISSIONER: What is the next -

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MR O'NEILL: This is the document that -

COMMISSIONER: Yes, I know. What is the next number?

10 MR O'NEILL: D.

COMMISSIONER: D, yes. It'll be marked for identification D, thank you.

15 <MFI-D - A HANDWRITTEN NOTE BY MS YOUNG [THE CONTENTS OF THIS LIST WILL BE KEPT CONFIDENTIAL]

MR O'NEILL: You did execute this document, if I take you across to the next page, and the next. We can't see your signature because it's covered off by the block but you did -

20 MS YOUNG: Yes, I executed it. I actually executed it on an earlier date but I had actually forgotten to date it, so Phil, when he signed his, he put the date in, so that's why the date is the same.

MR O'NEILL: Right.

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MS YOUNG: But it goes from me in NPC to the Education Directorate.

MR O'NEILL: Were you comfortable in executing this document?

30 MS YOUNG: Well, I was resigned to the fact that we were going to a BAFO, because that's what the delegate wanted. I had obviously already given my -

COMMISSIONER: Protest.

35 MS YOUNG: - protest about going to a BAFO, that I didn't think it was justified. However, we've got two other people in the Tender Evaluation Team both who were saying, "We need to go to a BAFO" or that's what the delegate had said and that's what they were meant to follow, so I was -

40 COMMISSIONER: Of course, he was their direct boss?

MS YOUNG: Yes. Well, for both of them.

COMMISSIONER: For both of them, yes.

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MR O'NEILL: On 23 March 2020, at about 8 o'clock in the morning, 8.07 to be precise, you sent this email at 2.1566, where you indicated to the other members of your TET that you'd received a phone call from Manteena. And then you asked:

Could you please reconsider the need for a BAFO.

See that at bullet point 1 in the second substantive paragraph?

5 MS YOUNG: Yes.

MR O'NEILL:

Or if that's not going to happen expedite the signature and let's get this moving -

10 MS YOUNG: Yes.

MR O'NEILL:

15 *And reconsider to increase the amount of copyright or assignment because of the amount of work that had been done by the tenderers to date.*

MS YOUNG: Sorry, hold on, can I go back?

20 MR O'NEILL: Certainly.

MS YOUNG: So, the third point there is:

Reconsider to increase the amount of the copyright assignment.

25 MR O'NEILL: Yes?

MS YOUNG: So, previously the copyright assignment was just paid to the unsuccessful tenderer. What I was saying here is, if we're going to a BAFO, both of them need to be - or I think, should be paid for their work.

MR O'NEILL: Yes. Both of them should be because it's going to be another costly process that they're going to have to undertake?

35 MS YOUNG: Yes. They're going to have to redesign some aspects of their design.

MR O'NEILL: Do you recall receiving any feedback, other than what's contained above, so you can see the email from Mr Morton back to you; did you receive any other feedback from the other members of the TET in respect of that email?

40 MS YOUNG: I think that's all I got.

MR O'NEILL: And so, here you had set out some further suggestions and got another fairly blunt response?

45 MS YOUNG: Blunt rebuttal, yes.

MR O'NEILL: I want to take you to some of your notes, first at 2.1591. So you see here, it's a timeline of - labelled at the top:

Campbell PS.

Do you see that?

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MS YOUNG: Yes.

MR O'NEILL: Campbell Primary School. Do you recall when it was that you drafted this?

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MS YOUNG: This was before 8 May, very - either on 8 May, very shortly before, because this was in response to the chief project officer of Major Projects Canberra, Duncan Edghill's request to see an explanation about delayed procurements. So, I was - on 8/5 I was providing him a timeline of Campbell Primary School procurement and why it was delayed and this was my notes in preparation of putting that email together.

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MR O'NEILL: I now just want to draw out a section of it at or about the bottom, just after the bottom half. Now, can you just help us out firstly with the black - the darker writing that appears on the left-hand side of the note. What's that say?

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MS YOUNG: That actually looks like building areas. Well, "IDP". Well, doesn't make sense, but "IDP", but looks like building areas.

MR O'NEILL: And then you see across, is it "26/3"?

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MS YOUNG: At 12.30, yes.

MR O'NEILL: At 12.30, can you read that out, what it says?

MS YOUNG:

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Advised by Erica by phone that RP [that is Rebecca Power] [hadn't] met with EDU exec this morning and that a BAFO was not going ahead as the Minister had rejected this. (I said, "Thank God!") EDP [that is, Erica Pilgrim-Day] said I should get advice today or tomorrow.

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MR O'NEILL: So, as of 26 March after that phone call, you understood that perhaps someone had listened to what you were saying and the BAFO process was -

MS YOUNG: There was some sense coming through.

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MR O'NEILL: Were you concerned at all that it appeared that it had been the Minister that had rejected that suggestion?

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MS YOUNG: I must admit, I didn't exactly - I wasn't - I don't recall being exactly concerned at the time, but certainly in hindsight, in reading it, you know, a few days ago, yes. In light of everything that's come out, yes.

MR O'NEILL: And that concern you hold now is because there should be no ministerial involvement -

MS YOUNG: Involvement at all.

MR O'NEILL: As the evidence you gave earlier this morning?

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MS YOUNG: Yes.

COMMISSIONER: Erica is?

10 MS YOUNG: Erica was my new manager.

COMMISSIONER: Erica; what's her -

MS YOUNG: Pilgrim-Day.

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COMMISSIONER: And "RP", that's Rebecca Power?

MS YOUNG: Correct. I think I had forgotten about this note - you know, I've got hundreds of notes but - because it didn't go ahead anyway.

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COMMISSIONER: All right?

MS YOUNG: I mean, sorry, the BAFO went ahead anyway so it was of no consequence.

25 COMMISSIONER: It seemed to be, in retrospect, a hiccup?

MS YOUNG: Yes.

MR O'NEILL: Then, at 2.1595, you sent this email to Mr Green, this is on 27 March 2020. You see here:

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Dear John, as the education delegate -

Isn't that him, or no?

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MS YOUNG: Yes.

MR O'NEILL: So use his first name in the salutation line and then referred to him as his title in the second. So:

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As you have requested a re-evaluation ...

MS YOUNG: Yes.

45 MR O'NEILL:

... the original Tender Evaluation Team will be replaced.

Was that at your instigation, that you were not going to be part of the ongoing process?

MS YOUNG: Would you like me to explain?

MR O'NEILL: Certainly.

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MS YOUNG: I had been called into a meeting with my director, Rebecca Power, and I was told that they wanted a re-evaluation, that is, the Education Directorate, and that I took it to be the delegate and perhaps Dylan Blom, that they wanted a re-evaluation of what we had just evaluated - well, that's what I was asked, to - I was asked to re-evaluate. And, I was - I - I was exclaiming on what grounds? Because there was no new information, I had done - we had done an evaluation, we'd come out with an outcome, there was no reason to re-evaluate. I had resigned to the fact that we were going to a BAFO. Obviously, I'd put lots of things in train to actually go to the BAFO: I'd opened a tender box to go to a BAFO, I'd finished the report recommending to go to a BAFO, I was resigned I had to respect the delegate's wishes and go to a BAFO. But, yes, I was asked to re-evaluate, and, so yes, on what grounds was I to do a re-evaluation? It was indicated to me that they wanted a different outcome and -

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COMMISSIONER: Who did this indication?

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MS YOUNG: Well, the conversation was with Rebecca.

COMMISSIONER: Right. Did she say - you may not be able to answer this at this stage - did she say, "the delegate wanted", or "they wanted", or "I wanted", or "we wanted"? Do you know - can you recall?

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MS YOUNG: I'm pretty sure she said, "They want a different outcome", I -

COMMISSIONER: Meaning the Education Directorate?

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MS YOUNG: The Education Directorate but specifically the delegate.

COMMISSIONER: Right.

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MS YOUNG: At which point I said, "No, I won't do it." And I said I would quit from the Tender Evaluation Team because I wasn't about to go and re-evaluate something that I had already just evaluated. There was no new information to re-evaluate. I guess it was indicated from me that Rebecca had - well, Rebecca had said Dylan had indicated that, if I didn't want to re-evaluate, that he could see the reasoning in that, at which I was kind of a bit bemused because, obviously she'd be been discussing it with Dylan, but I kind of felt like they knew that I wasn't going to re-evaluate, so this was an easy way to get me off the Tender Evaluation Team and obviously - well, more obviously now, but it seems now that I was a thorn in their side and they wanted to get me out of the road.

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COMMISSIONER: Can I just ask about the logic of this. There would be no sense in re-evaluation if it was going to go to a BAFO because, if it was going to go to a BAFO there would have to be an evaluation of whatever came forward at that point. I'm just saying, to my mind, the logic of this seems to be that it wouldn't go - you would make a re-evaluation but only on the basis that it was not going to BAFO, which is what you had already been

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informed of; do you see what I mean? It seems to me to be more consistent with not going to a BAFO, that you would be asked to re-evaluate, than going to a BAFO because obviously at that stage a re-evaluation would have to take place. That's how it occurs to me; does that make sense to you or am I reading too much into this?

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MS YOUNG: I took it another way.

COMMISSIONER: Right.

10 MS YOUNG: Because of the GSO advice which had indicated that in order to go - one of the justifications for going to a BAFO is that there was no distinguishable difference between the two tenderers. But obviously in the scoring of the first Tender Evaluation Team our scoring was quite disparate and, I mean, as it turns out later the scoring became closer together and therefore justified going to a BAFO. So, I think it was more comfortable
15 for - or, this is my opinion, of course - I think it was more comfortable for him to sign off on a - justify signing off on a Tender Evaluation Report where the scores were closer together than one where the scores were further apart.

COMMISSIONER: I see your reasoning. Yes, thank you. Yes.

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MR O'NEILL: You, however, were still the project manager?

MS YOUNG: Yes.

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MR O'NEILL: You just weren't the chair of the Tender Evaluation Team.

MS YOUNG: No.

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MR O'NEILL: So, relevantly for the tenderers' purposes, they understood you still to be the conduit?

MS YOUNG: So that was a decision that was made, I think between Rebecca and myself, that I would still be the contact for the tenderers to have some consistency, and - you know, Sally had other projects to do, and I - so, my role was still to - I guess, I gave all the
35 information to the new Tender Evaluation Team and said, "Off you go, do your own re-evaluation", but the contact with the tenderers was still with myself.

MR O'NEILL: Did you feel that that put you in a position of potential conflict, though, between having to be the conduit for a decision that you were really not, by this stage, even
40 involved in?

MS YOUNG: I don't think I was particularly conflicted about that.

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MR O'NEILL: Okay. All right.

MS YOUNG: I was following a process; it was passing information.

MR O'NEILL: On 8 April 2020 the new Tender Evaluation Team managed to produce its Tender Evaluation Report; did you have cause to review it?

MS YOUNG: No.

MR O'NEILL: And was that a deliberate decision made by you?

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MS YOUNG: Yes, but also the - the new Tender Evaluation Team, we were trying to keep some probity, in that, it was just going to be their recommendation that was - you know, they were doing their own assessment, I had nothing to do with it, and that they would put it up to the delegate. Like, can I just clarify?

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MR O'NEILL: Certainly.

MS YOUNG: I think - I was reading the transcript of the Auditor-General's report, or my transcript of an interview for the Auditor-General. I think when I had that interview I was getting confused between when my involvement was and when it wasn't. So, definitely at this time when the new Tender Evaluation Team came on board and the new evaluation was done on the original pre-BAFO material, I had nothing to do with that at all.

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COMMISSIONER: Right.

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MS YOUNG: And that went up to the delegate. I didn't see the response until it came back down and was signed.

MR O'NEILL: Thank you. On 17 April - and this is at 2.1777 - at the bottom of the page, you see here you write to Ms Pilgrim-Day, copying Ms Power and Ms Wright, who is the chair of the new TET by this stage. And there's something going on here about the BAFO wording in that; do you recall what this issue was?

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MS YOUNG: 17 April.

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MR O'NEILL: I can tell you in the timeline, if you like, that the tender evaluation -

MS YOUNG: So - sorry.

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MR O'NEILL: - had prepared its report and the BAFO request had issued on the - the BAFO was about to be issued, if that assists, or had been issued (crosstalk)?

MS YOUNG: The BAFO was issued on 8/4.

40

MR O'NEILL: That's right.

MS YOUNG: Okay. So, during the BAFO period where there was the three weighted criteria that were being re-assessed, there was RFIs - there was some RFIs that had come in from tenderers -

45

COMMISSIONER: RFIs, requests for information?

MS YOUNG: Sorry, yes. And the response to an RFI as an addenda. So, the addenda - I can't remember what the addenda was about, but the addenda may well have been drafted by

the TET and - but I was just saying here that, you know, it's usually me that puts - that approves the release of addenda. I was sending the addenda to Rebecca to get her to review it, noting that all of the TET had approved the wording on it, the second Tender Evaluation Team. I don't know if that answers your question.

5

MR O'NEILL: Certainly. As we move up, you will see that Ms Pilgrim-Day responds to you on the 20th, and then you say in response to her email:

10 *I've advised the new TET that the GSO is available to discuss. Dylan doesn't want to involve them. I will call you.*

Do you see that?

MS YOUNG: Yes.

15

MR O'NEILL: Did Mr Blom provide you - I assume that's Mr Blom; my assumption's correct?

MS YOUNG: Yes.

20

MR O'NEILL: Did Mr Blom tell you why he didn't want to involve the GSO in the next stage?

MS YOUNG: My correspondence would have been through Sally.

25

MR O'NEILL: Right. Did Ms Wright explain to you why that was so?

MS YOUNG: No.

30 MR O'NEILL: On 8 May 2020, and this is at 2.1783, you provided this email to Mr Edghill. Now, you gave some evidence earlier about the file note, the Campbell timeline?

MS YOUNG: Yes.

35 MR O'NEILL: Do you think these two are related?

MS YOUNG: They are, absolutely. This is - those file notes were the preparation of this and just putting things - like, what things were in what - what happened in what order.

40 MR O'NEILL: Do you see though that the relevant part that I took you to before, which was that the (indistinct) -

MS YOUNG: Yes.

45 MR O'NEILL: -- is not there?

MS YOUNG: Yes, because it didn't happen anyway. It was of no consequence, it didn't - like, it seemed to be going down the wrong path.

MR O'NEILL: And then at the bottom you are providing Mr Edghill with the notes as to the current status of the matter as at 8 May 2020, that's the two bullet points at the bottom?

5 MS YOUNG: Yes. So, I'm quite a detailed person, but this was probably - even as it was here it was probably too much detail for Duncan in retrospect.

MR O'NEILL: What makes you make that observation?

10 MS YOUNG: Something he said in the open hearing, in his -

MR O'NEILL: It washed over him a little bit. I see. So, the next step in the timeline was at or about this time, evidence before the Commission is it's around 15 May 2020, Ms Haire made herself the decision-maker in respect of this project. Were you provided any information in relation to that decision?

15 MS YOUNG: No.

MR O'NEILL: No one came and told you, as the project manager, that that was what was going on?

20 MS YOUNG: At some stage, and I - at some - I wouldn't be able to say on any particular date, but at some stage there was talk about a decision-maker, but there was no explanation about who that - well, what the - what the role was.

25 MR O'NEILL: Or why that decision had been made?

MS YOUNG: Yes.

30 MR O'NEILL: The Tender Evaluation Report, the final Tender Evaluation Report, was prepared on around 9 June 2020 and that Tender Evaluation Team had arrived at a conclusion that - or recommendation, rather, that Manteena be awarded the contract for phase - for stage 1. Were you aware of that at the time?

35 MS YOUNG: No.

COMMISSIONER: So, you were not told by - who was the chairperson of that group?

MS YOUNG: Sally.

40 COMMISSIONER: Sally. You were not told by her anything about it?

MS YOUNG: No. So, to clarify though, I was - probably about two days after the tender closed I was asked by Sally and on behalf of the Tender Evaluation Team to assist them with the assessment of some part - of some parts of the design, and I said - like, in the F - trying to help out Sally and the Tender Evaluation Team to expedite getting this assessed, and of course I knew this project backwards, I said I would help with the areas, like, something that was subjective.

COMMISSIONER: Yes.

MS YOUNG: But don't involve me with any of your discussions, I don't want to know the scores; that's the extent of my assistance.

5 COMMISSIONER: And that was honoured, they didn't ask you any more, just for that particular help?

MS YOUNG: Yes, that's correct.

10 COMMISSIONER: Right.

MR O'NEILL: And that was a matter that was within, effectively, your technical expertise?

MS YOUNG: Yes.

15

MR O'NEILL: That's something that you were trained in and you understood quite intimately?

MS YOUNG: Yes. So it's like being a technical advisor for the TET too.

20

MR O'NEILL: So then, you weren't told about the Tender Evaluation Report, though, when it was produced?

MS YOUNG: No.

25

MR O'NEILL: You weren't told the scores at that time?

MS YOUNG: No.

30 MR O'NEILL: What about the executive brief was endorsed - that was in a brief prepared by Mr Green that went to Ms Haire; were you involved in that process at all?

MS YOUNG: No.

35 MR O'NEILL: Did you know that it was being undertaken?

MS YOUNG: No.

40 MR O'NEILL: When was the first time that you learnt of the decision that had been made?

MS YOUNG: When the signed brief - when we got a copy of the signed brief. It was sent to us, I think it was on a Thursday night - Thursday. We couldn't actually read it because it was in TRIM and that's not a program that we use in NPC. But the trail of the email from John Nakkam indicated that the - that Ms Haire had made a decision about putting - that the winning - that the - that Lendlease would be the contractor that they wanted to go into contract with.

45 MR O'NEILL: Now, what was your reaction upon learning that information?

COMMISSIONER: Well, does it matter?

MR O'NEILL: Probably not, Commissioner. One moment. I have no further questions, but
5 can I respectfully request this, Commissioner: that this witness and any other witnesses leave
the room for the moment and the public feed be turned off because there's an issue that I need
to raise with you?

COMMISSIONER: Very well. Would you mind leaving?

10 <THE WITNESS STANDS DOWN AT 11.00 AM

COMMISSOINER: Yes, Mr Callan.

MR O'NEILL: Thank you, Commissioner. There was another potential topic that I
15 considered quite carefully about putting to this witness, and that was the topic about this
witness tipping off the commercial party that was the tenderer that did not win the topic.

COMMISSIONER: You mean about the possibility that it was her?

MR O'NEILL: That is so. I carefully considered that, and quite frankly there was discussions
20 amongst those at the bar table candidly. But thinking about it overnight, it's difficult for me
to arrive at a fair conclusion that that topic is something that: (a), is relevant to what the
Commission is doing; and (b), is fair or in the public interest in circumstances where what
this public servant may or may not have done in doing so was in effect a whistle-blow. And
25 that is a topic which is - those members of the public service should know that they are free
to report, either to us or generally, where there are issues such as these that cause them
concerns. And publicly examining that question does not (a) serve the public interest; Or,
(b), it doesn't actually relevantly assist you in arriving at any conclusion or matter that you
have to decide in respect of your remit. As I said, I carefully considered that.

30
The reason I've asked for this to be ventilated before you is that I accept that that may not be
the only view, and I wanted to ventilate that before the lawyers so that they had a reasonable
opportunity to hear what I have to say about it, and then to address you in respect of that
matter in their interests so that you can make a considered determination on the question.

35
COMMISSIONER: Thank you. Well, I think you have heard now what Counsel Assisting
has said. Does anybody wish to make a submission about this?

MS SULLIVAN: Commissioner, I suppose having heard that for the first time has saved me
40 a little bit of breath. We don't see that it's relevant or fair and it is simply not necessary, so –

COMMISSIONER: Very well.

MS SULLIVAN: It is a course of action best avoided.

45
COMMISSIONER: You may be pushing an open door. I'm not sure that anyone –

MS SULLIVAN: Correct. Correct, Commissioner.

COMMISSIONER: I'm not sure that anyone wishes to broach that subject. Do I correctly – well, would someone put their hand up if I'm mistaken? That's the easiest way of dealing with it. In that case I leave it to your judgment, but I should indicate that I can't see how that is relevant to any matter which I need to consider for the purpose of this investigation.

5

MR O'NEILL: Thank you, Commissioner. In that case then we may as well –

COMMISSIONER: Just before we call the witness back, I have assumed that there may be some cross-examination. Is there to be some cross-examination?

10

MS SULLIVAN: I have three very short questions to ask Ms Young if I may, Commissioner.

COMMISSIONER: Yes, I will give you leave. I just wanted to know whether there are any questions – does anyone else – will have any questions?

15

MR GINGES: Commissioner, I may. My name is Ginges, I appear for Minister Berry. I may have some questions, but I wanted to actually speak with your Counsel Assisting first, just for a moment before I pursue down that path, because I just wanted to raise one thing with him first. It may be that I don't.

20

COMMISSIONER: Why don't you have that conversation now?

MR GINGES: Yes, thank you.

25

MR O'NEILL: Directed to me.

MR GINGES: Apparently I'm not recording anyway. I think I am now. Will you excuse me, please?

30

COMMISSIONER: We are just waiting for the witness; she won't be long.

MR GINGES : Commissioner, I'm grateful for that time. It's Ginges for Minister Berry. I have two questions.

35

COMMISSIONER: Very well.

MR GINGES: It may develop into slightly more than two, but I anticipate two questions with the Commissioner's leave to ask of this witness.

40

COMMISSIONER: Yes, I will give you leave.

MR GINGES: Thank you.

<THE WITNESS RETURNS AT 11.05 AM

45

MR O'NEILL: Thank you, Commissioner. I have no further questions of this witness. I understand there are -

COMMISSIONER: I have a couple, and then we will move on. This note that you made to yourself about the union involvement or potential involvement, were you ever asked about it by any person within the directorate?

5 MS YOUNG: Education Directorate?

COMMISSIONER: First of all, let's deal with yours: the NPC?

MS YOUNG: I didn't share my file note with anybody until -

10 COMMISSIONER: I understand that.

MS YOUNG: Did I discuss it with -

15 COMMISSIONER: No, no.

MS YOUNG: Sorry.

COMMISSIONER: It's really quite a very specific question. Did anybody raise this note with you?

MS YOUNG: Ever?

COMMISSIONER: Well, let's say, up to the time of the Auditor-General's report?

MS YOUNG: No.

COMMISSIONER: So we've covered the NPC. Just, did anyone in the Education Directorate raise it with you?

30 MS YOUNG: No.

COMMISSIONER: Let me ask then a more general question. Did anybody in NPC raise with you what you knew, if anything, about union involvement in the procurement? So, asking a more general question; did anyone ask you about that?

35

MS YOUNG: Outside of NP - sorry, say that again?

COMMISSIONER: NPC, firstly; for example, Mr Edghill. I'm not suggesting that he did. I'm just saying, by way of example, did anyone raise it with you?

40

MS YOUNG: So, when the - my file note came out in FOI, I was - I had a brief meeting with Rebecca and Erica and they said, "This has been discovered", and indicated to me that this was going to go to the head of service.

45

COMMISSIONER: Right. Did anyone from the Education Directorate ask you about it?

MS YOUNG: No. Never.

COMMISSIONER: So, you became aware that it had been disclosed in the FOI material?

MS YOUNG: Yes.

5 COMMISSIONER: I take it -

MS YOUNG: Well, I - sorry, can I? The FOI, I provided a lot of material for that, because obviously as the project manager -

10 COMMISSIONER: Sure, you had a lot of material. You were able to identify a lot of material?

MS YOUNG: Yes. So that was one of the documents in -

15 COMMISSIONER: That you provided?

MS YOUNG: That I provided.

COMMISSIONER: Right. So you were aware that it was in the FOI bundle?

20

MS YOUNG: Yes.

COMMISSIONER: And so far as you were aware it was the first time this particular entry had been disclosed to anybody?

25

MS YOUNG: Correct. Yes.

COMMISSIONER: And this was on your official NPC email account; is that right?

30 MS YOUNG: Yes.

COMMISSIONER: Now, were you told of a probity enquiry or probity audit being made by Sparke Helmore?

35 MS YOUNG: I think I became aware of it much later, but I generally was not aware of it.

COMMISSIONER: Right. When you were told much later, was that after the audit had been done or could you recall now?

40 MS YOUNG: I don't particularly recall when - I think I was trying to get hold of some people in the Education Directorate and somebody said to me that, "Oh, they're a bit busy over there with a probity audit".

45 COMMISSIONER: I take it, it's implicit in what you say but I just wanted to be explicit, Sparke Helmore never contacted you about this note?

MS YOUNG: No.

COMMISSIONER: Yes. Now, yes, thank you, Ms Morgan.

MS MORGAN: Thank you, Commissioner.

<CROSS-EXAMINATION BY MS MORGAN:

5

MS MORGAN: Hello, Ms Young. My name is Ms Morgan and I appear for Ms Kearney and Ms Haire in this Commission. I'm just going to ask you a few questions about your evidence yesterday. First of all, if I could ask for your notes of the meeting on 28 February 2020 which are doc ID 2.0380 be brought up on the screen.

10

Commissioner, could I note that there has been a problem with us getting access to some of the documents, so if I make a mistake it's because I'm relying on what I saw yesterday.

COMMISSIONER: Right.

15

MS MORGAN: These are your handwritten notes of, above the line, a meeting that was conducted with Mr Green and others in relation to the Campbell procurement process; is that right?

20

MS YOUNG: Correct.

MS MORGAN: Now, as part of that meeting, do you have any recollection of a suggestion that the entire process should start again?

25

MS YOUNG: Yes.

MS MORGAN: And, what was that recollection?

30

MS YOUNG: I think the delegate suggested the other option might be to start the tender process again.

MS MORGAN: And what were other people's reaction to that that you recall?

35

MS YOUNG: "You can't be serious".

MS MORGAN: And so, did that discussion go anywhere after that meeting?

MS YOUNG: No.

40

MS MORGAN: And did you say "you can't be serious" or was that somebody else's statement?

MS YOUNG: I think the - it was not taken seriously by anybody at NPC.

45

MS MORGAN: Did you think it was meant seriously?

MS YOUNG: Oh -

MR O'NEILL: Do you mean if it was her perception that it was taken seriously?

MS MORGAN: It was pretty clear.

5 COMMISSIONER: I think that requires some telepathy. But did you - was the language itself a mere idle suggestion or was it a distinct proposal, for example? Can you recall that?

MS YOUNG: I didn't take it as a suggestion that was to be - that would be a very difficult decision to go back and re-tender the whole thing again.

10 COMMISSIONER: No, I understand that, that would have been the response. What I think the point is, was it being put forward, do you think, by Mr Green as a realistic possibility or simply one that was a logical available possibility? Are you able to say that, if you can? That's what Ms Morgan wants to know.

15 MS YOUNG: I took it as, if he wasn't going to get his way with the dual negotiation, then the other option was to re-tender.

MS MORGAN: Thank you, Ms Young. And yesterday you were asked some questions whether Mr Green had read the draft Tender Evaluation Report at the time of this meeting.
20 The evidence you gave yesterday was that you didn't know if he had read it; do you recall giving that evidence?

MS YOUNG: Yes.

25 MS MORGAN: Was it clear to you that he knew what the recommendation proposed in the draft Tender Evaluation Report was?

MS YOUNG: It wasn't clear to me if he knew what the recommendation was. It was clear to me, because I said, "We're over" -

30 COMMISSIONER: Over budget?

MS YOUNG: Over budget, and that we will have to negotiate with the - the recommended tenderer to get it under budget.

35 MS MORGAN: And so, do you understand that during the course of the meeting he understood that's where with the current view was of the Tender Evaluation Team?

40 COMMISSIONER: Namely, that there was a preferred tenderer. Is that what you mean, Ms Morgan?

MS MORGAN: Yes, Commissioner.

45 MS YOUNG: Yes.

MS MORGAN: And then, could I ask for document 2.1582 to be brought up, please. If you can see the bottom - if the bottom original email can be blown up. You will see there the date, just to orient you, the date's 25 March 2022 when this is being circulated, and this is from Mr Edghill to Ms Haire. You were not copied on this, Ms Young, so I'm not suggesting

that you've seen it in the course of your employment. I was just wondering if you could assist, in the middle paragraph there you will see the reference to "Campbell", and it says: we understand that the two bids have come in over budget and there are some other sensitivities. And his suggestion is rather than go to the Minister or re-opening the bid, that we identify the preferred bidder. Do you see that? The main paragraph?

COMMISSIONER: That seems to embody your recommendation.

MS YOUNG: Which is a typical line of course.

COMMISSIONER: It's conventional, that's what you'd conventionally do?

MS YOUNG: Yes, that's correct.

MS MORGAN: This is at 25 March, in terms of the dates.

MS YOUNG: Yes.

MS MORGAN: So this is around the - I mean, first of all, do you recall having any conversations with Mr Edghill at this point, in March, about where Campbell was up to?

MS YOUNG: The only - no.

MS MORGAN: And do you recall -

COMMISSIONER: Sorry, did you want to add something?

MS YOUNG: So, my only correspondence with Mr Edghill is through the emails of where I've updated him - I think that first one was in May.

MS MORGAN: So, well after this process?

MS YOUNG: Yes.

MS MORGAN: Could I ask for the next document to be brought up, 2.1 -

COMMISSIONER: Just before you do, just before we leave this document, could I just ask - do you mind, Ms Morgan?

MS MORGAN: No, of course. I'm going to another version of the same document, Commissioner. I'm not sure if it will follow from -

COMMISSIONER: I'll ask the question and then you let me know.

MS MORGAN: Certainly.

COMMISSIONER: Do you see there's a reference to "other sensitivities" in that second line?

MS YOUNG: Yes.

COMMISSIONER: Without speculating, are you aware of what that's a reference to?

MS YOUNG: No.

5

COMMISSIONER: Very well.

MS YOUNG: I would be speculating.

10 COMMISSIONER: Sorry?

MS YOUNG: I would be speculating.

COMMISSIONER: Yes. No, no, we can all do that.

15

MS MORGAN: Can I ask for document 2.1589 to be brought up. Now, at the top, if we could just stay on screen, I know it's very small, you will see there that Mr Green has sent that to Ms Power, who's one of your supervisors; is that right?

20 MS YOUNG: Yes.

MS MORGAN: And you will see that, if you drop - at the very bottom of the page, it's the same email I took you to a moment ago, from Mr Edghill to Ms Haire?

25 MS YOUNG: Yes.

MS MORGAN: So, Ms Haire has responded to Mr Edghill indicating, as you will see, that she has discussed the ideas with Mr Green. And "MO", we understand, is "Minister's office".

30 *... and we are keen to work with you on them.*

Do you see that?

MS YOUNG: Yes.

35

MS MORGAN: So that is 26 March. And, if we scroll up, then that is forwarded by Mr Green to Ms Power on 26 March 2020. Did Ms Power talk to you about the change in strategy in relation to Campbell?

40 MS YOUNG: That is going back to my original suggestion which was to VM and work with a -

MS MORGAN: Preferred tenderer, yes?

45 MS YOUNG: - tenderer, no.

MS MORGAN: And would you say that this is consistent with your note of 26 March, that you'd been advised by Erica that she'd been told by Ms Power that the Minister had rejected the BAFO; would that be right?

COMMISSIONER: What do I gain from that?

MS MORGAN: We don't have Ms Power, so I'm trying to work out -

5

COMMISSIONER: No, I understand, but I don't think this fills the gap, because she either knows or she doesn't, and the documents speak for themselves, Ms Morgan.

MS MORGAN: Could I just ask the witness then a different question?

10

COMMISSIONER: You can ask a direct question, but - ask her whether documents are consistent with something else is, I don't think, useful.

MS MORGAN: You spoke to Ms Pilgrim-Day on 26 March in relation to Campbell; that's correct?

15

MS YOUNG: Yes.

MS MORGAN: And you were told by her that she had had a conversation with Ms Power that the Minister had rejected the BAFO process; that's correct?

20

MS YOUNG: That's what I was told.

MS MORGAN: And do you have any recollection of being told about Mr Edghill's involvement in a process in relation to Campbell?

25

MS YOUNG: No.

MS MORGAN: Thank you. No further questions.

30

COMMISSIONER: Thank you, Ms Morgan. Yes, Mr Ingles.

<CROSS-EXAMINATION BY MR GINGES:

MR GINGES: Ms Young, my name is Ginges, I appear -

35

COMMISSIONER: I beg your pardon, Mr Ginges, I apologise for getting your name wrong.

MR GINGES: Not at all, Commissioner. I appear for Minister Berry, I have just a couple ever questions for you. The first is, with respect to the handwritten timeline you have seen this morning - I must apologise, I don't have the document reference for it - is it the case that you -

40

COMMISSIONER: We can get it up if that would be helpful?

45

MR GINGES: Yes. That would be helpful, please.

COMMISSIONER: Yes.

MR GINGES: 2.1591, thank you. Thank you. This was a document which you prepared prior to the timeline that we saw in the written document; is that correct?

MS YOUNG: Correct.

5

MR GINGES: And this was a document that you had prepared at one time; is that correct?

MS YOUNG: On or around 8/5, or before. 8/5 or before.

10 MR GINGES: Certainly after 5 May, because there's a reference there, I think, to 5 May; is that correct? BAFO closed 5 May; is that right?

MS YOUNG: Yes, the BAFO closed on 5 May.

15 MR GINGES: So this document was written by you at some time between 5 May and 8 May; is that right?

MS YOUNG: Well, I would know the date that the BAFO closed as soon as I had prepared the BAFO, because when you put it out you've got to say when it's closed.

20

MR GINGES: Does it assist you though as to when you prepared this document?

MS YOUNG: I would have prepared this document on the 7th or the 8th of May.

25 MR GINGES: You had no other records or notes, did you, of what you say occurred on 26 March; is that correct?

MS YOUNG: Apart from the record that the conversation was on 26 March at 12.30 because of a - my phone record that says that I had a conversation with Erica at that time, but not what it was, of course.

30

MR GINGES: So, on 7 May you were going on your recollection of the substance or the content of that discussion to record what had occurred on 26 March; is that correct?

35 MS YOUNG: Yeah, five weeks previous.

MR GINGES: You've now been shown some emails that you were not the subject - or you weren't involved in that occurred around that time concerning Ms Haire having contact with Mr Green and the MO; you've seen that just now? We can bring that up, if you like, that was 2.15 -

40

MS YOUNG: Yes.

MR GINGES: I think it was 2.1589, if that assists. That's the document that Ms Morgan asked you about. We can see that on 26 March, that is that same day on which you made your file note -

45

COMMISSIONER: Well, not made the file note.

MR GINGES: I'm sorry, thank you.

COMMISSIONER: To which the file note refers.

5 MR GINGES: Commissioner, you're absolutely correct. The date to which the file note made on 7 May refers there's a reference there, isn't there, to Ms Haire having discussed - I will call it the ideas - with Mr Green and the MO; you see that?

MS YOUNG: Yes.

10

MR GINGES: You would understand the "MO" to be the Minister's office; is that correct?

MS YOUNG: Yes.

15

MR GINGES: It's quite likely, isn't it, that when you've come to recollect on 7 May the content of the conversation you had with Erica on 26 March, that your reference to the Minister may well have been the Minister's office; is that correct?

20

COMMISSIONER: Well, I'm not sure that - since she was not aware of this email, I don't know the relevance of the email - you can ask the question directly, but I don't think you can ask her to undertake a process of reconstruction by reference to documents to which she was not party.

25

MR GINGES: Thank you, Commissioner. I will reframe the question. A lot had happened, hadn't it, between 26 March and 7 May in your day-to-day duties; is that right?

MS YOUNG: Yes.

30

MR GINGES: And you'd accept, don't you, that memory of matters and events can be susceptible to suggestion and variation; you'd agree with that, wouldn't you?

MS YOUNG: Yes.

35

MR GINGES: And that indeed something called "confirmation bias" can occur, that is, that something's occurred after the fact and when you come back to reflect on it, it may alter how you have viewed something that happened earlier; you'd agree with that, wouldn't you?

MS YOUNG: Potentially.

40

MR GINGES: And when you came to make your note on 7 May your recollection of what was said to you on 26 March may have been altered by those factors; you'd accept that, wouldn't you?

MS YOUNG: Potentially.

45

MR GINGES: You'd accept, wouldn't you, that you may have been - you may have been told about the Minister's office, for instance, rather than the Minister; you'd accept that, wouldn't you?

MS YOUNG: Possibly.

MR GINGES: Now, you didn't recall which Minister --

5 COMMISSIONER: When you say "possibly", are you suggesting a level of likelihood? Do you think it was likely or unlikely?

MS YOUNG: My notes at the time back - my notes taken five weeks after that phone
10 conversation are going to be more accurate than what I'm - what I can say is likely or more likely or more unlikely -

COMMISSIONER: What you're saying - let me just reflect back on what I understand you to be saying. What you're saying is, as you sit there now you're not able to usefully reflect on likelihood. What you did at that time was the best of your recollection?

15 MS YOUNG: Correct.

MR GINGES: Thank you, Commissioner. Now, at this time were there were other Ministers who were involved in this process such as the Minister for Government Services and
20 Procurement?

MS YOUNG: No, there was no other Ministers involved. This was a project appropriated to the Education Directorate which was under the Education Directorate portfolio.

25 MR GINGES: The -

MS YOUNG: In Minister Berry's portfolio.

MR GINGES: Minister Berry's portfolio. Actually, I'm not sure I can interrogate things
30 much further than that.

COMMISSIONER: It's not easy. We're all in the position, things which at the time seem unimportant then later become important and vice versa and it's just an inevitable part of an investigation that covers the kind of time range that we're looking at now.

35 MR GINGES: The question I was next going to ask, Commissioner, may not assist you. Perhaps I will ask you and you might tell me whether it assists, but it was simply to ask, can you recall the content of phone calls you had five weeks ago -

40 COMMISSIONER: No, I don't - it depends so much on the circumstances, doesn't it? However, can you make those submissions.

MR GINGES: I accept that.

45 COMMISSIONER: I can assure you, I am very sensitive to the problems about recollection of conversation about, as you will be aware, courts have dilated over the years because they are so difficult to be certain about.

MR GINGES: The question I was seeking to pose is what might sometimes be called a jury question, but it may not assist, Commissioner. If it doesn't, I won't press it.

COMMISSIONER: Well, I'm not a jury.

5

MR GINGES: Of course. There's no further questions, thank you, Commissioner.

COMMISSIONER: I gather there are no other questions? No re-examination?

10 MS SULLIVAN: No. Thank you, Commissioner.

COMMISSIONER: Look, I think I can confidently say that you are no longer required, that your evidence has now been completely taken. It's possible I am wrong, but I think in fairness to you I should discharge you from your summons, so you're - you know, you are free now from its obligations. You're still bound, however, by your confidentiality notice but only in relation to matters which are not in the public arena. Those that are in the public arena you're entitled to talk about as you wish.

MS YOUNG: Thank you, Commissioner.

20

COMMISSIONER: All right then, thank you very much, and we will take a short adjournment, I think.

<THE HEARING ADJOURNED AT 11.29 AM

25

<THE HEARING RESUMED AT 12.01 PM

COMMISSIONER: Yes. I note Mr Matthews is back in the witness box. Mr Matthews, you are still bound by your affirmation to tell the truth. Yes, thank you, Mr O'Neill.

30

<DAVID ANDREW MATTHEWS, ON FORMER AFFIRMATION

MR O'NEILL: Mr Matthews, since you were last here you were served with firstly in draft and now in final a summons to produce further documents that arose from the subject of your evidence; do you recall that?

35

MR MATTHEWS: I haven't seen the final summons myself (indistinct).

MR O'NEILL: But, in any event, noting it was coming and noting you had seen its draft form you've provided to the Commission some documents. Can I just bring them up for everybody, noting that we only received them this morning. Now, the terms of the summons asked for communications as between you and Ms Haire in a period of time, being 1 January to 1 March 2021; do you recall that?

40

MR MATTHEWS: Yes. My apologies, about the audio.

45

MR O'NEILL: 3.0201, thank you.

COMMISSIONER: Do you have a spare set for me, Mr O'Neill?

MR O'NEILL: Yes. I will get a set delivered in hard copy to you, Commissioner.

COMMISSIONER: Thank you.

5

MR O'NEILL: It's 3.0201. It may well be that it's on the bottom of this page somewhere.

MR MATTHEWS: Yes.

10

MR O'NEILL: So, you gave some evidence in relation to some correspondence you'd received and you couldn't recollect it with any great precision, but I'm just going to take you through these emails. You see here you received an email from Ms Haire dated - well, you were copied to an email more correctly, from Ms Haire to Ms Laurent and Ms Murray. And there, Ms Haire was informing everybody that Dr West was going to undertake a review of the documents. Were you aware of that process, that Dr West was going to be the person to undertake an initial review?

15

MR MATTHEWS: Mr O'Neill, I think the evidence that I gave yesterday was, this was the first time that I became re-engaged in the Campbell issue.

20

MR O'NEILL: Yes.

MR MATTHEWS: So this was the first information that I'd received.

25

MR O'NEILL: Then, turning over, and this is 3.0202. You see you're sent and forwarded an email from Ms Haire, where Ms Haire has been forwarded an email from Ms McKinnon, and ultimately at the bottom Mr Green has sent an email to Ms McKinnon setting out some dot points of the steps in the procurement process for Campbell. Now, those dot points, they go across to the second page. And you see on the second page, three bullet points from below, there's quite a significant jump between "firstly" and "secondly", do you see that?

30

MR MATTHEWS: What do you mean by significant jump?

MR O'NEILL: In terms of the reasoning. This reasoning was in effect what you had no doubt seen previously - sorry, on your review of the Freedom of Information contained in the minute?

35

MR MATTHEWS: Yes, Mr O'Neill, so this email was cc'd to me by Ms Haire as part of my - you know, backgrounding me to become involved in the FOI issue, so I don't ever recall actually reading Mr Green's account in this email.

40

MR O'NEILL: Okay. All right. Attached to that email was the Procurement Plan Minute, if we just go across to one more page. Was this the first time, when you received this email, that you'd read this?

45

MR MATTHEWS: Mr O'Neill, I think you referred to it as a Procurement Plan Minute.

MR O'NEILL: Sorry, I withdraw that. No, the executive - the minute to the recommendation?

MR MATTHEWS: So, Mr O'Neill, I started to receive a range of materials around this time. My memory is that I didn't engage with the content significantly until I was able to read the FOI, and I believe that occurred on the weekend of 7 and 8 February. So, at this stage, I was
5 receiving material, and on or around that time I reviewed all of the material that I had had access to.

MR O'NEILL: Can I just see the number on the bottom of that page, please. Can we go to 3.0209. Do you see here is an email from Ms Haire to Ms Laurent and Ms McKinnon,
10 copying you, about:

For action: FOI next steps - brief to the GSO.

Do you recall the context in which this email was being circulated?
15

MR MATTHEWS: At the time, I didn't pay attention to the detail, but I understand it now to be, this is the initiation of the probity audit that flowed on from the discussions that Ms Haire has mentioned.

MR O'NEILL: The email refers to:
20

Dr West's review of the documents.

Which appears to have occurred over the two days between 1 February and 3 February. Did
25 you speak to Dr West in respect of his review at any time?

MR MATTHEWS: I don't recall speaking to Dr West about the FOI.

MR O'NEILL: And so, therefore, you can't assist the Commission in respect of the second
30 paragraph?

MR MATTHEWS: No, I can't.

MR O'NEILL: Do you recall why it was that - I'm sorry, I withdraw that. Do you have an
35 understanding as to why you're copied to this email?

MR MATTHEWS: Only in that broad sense that the probity audit was being initiated as an outcome of those earlier discussions with the expectation that I would support the probity audit, was my general understanding.
40

MR O'NEILL: If I can take you then to the next page. So, the email that I just took you to is at the bottom of the page. You're then copied into some discussions as between various people, and then you inject yourself into the conversation at 9.40 on 4 February and you say that:
45

We need to engage with Major Projects Canberra as they undertake the procurement process on our behalf.

Why is it that you thought that that wasn't being done, or were you just making a general note that that needed to be done?

5 MR MATTHEWS: Yeah, I didn't recall this email, but when I reviewed it after the request for documents I identified it, and my recollection based on reading it again was that my input was around saying that the audit needed to cover both Major Projects Canberra and Education, so it was a scope type question and that's it, yeah.

10 MR O'NEILL: And you're saying, ensure that the scope covers both directorates?

MR MATTHEWS: That's right, Mr O'Neill.

MR O'NEILL: And what prompted you to make or to send that email?

15 MR MATTHEWS: I can't recall that. My feeling, looking at my own email, was that it would have been a very quick note, just to sort of make a contribution, you know, quickly on the run probably while I was attending to other things.

20 MR O'NEILL: And then you see at the top that you received a response back from Ms Haire eight minutes later confirming that Mr Edghill was aware, and then she makes a supposition as to the likely alertion to his team; do you see that?

MR MATTHEWS: I do.

25 MR O'NEILL: There's nothing that causes you any concern with that response, is there?

MR MATTHEWS: Indeed. Obviously it's a reply to "all" to a number of people, so I took it as, this had been taken into account.

30 MR O'NEILL: The next page - the one following, sorry. This is a discussion that starts after the email that I just took you to. So, if I can take you to the next page and I will pick it up, it's the email at the bottom from Ms Laurent from 4 February, and -

MR MATTHEWS: I recognise, Mr O'Neill, that this flowed on from my email earlier.

35 MR O'NEILL: Yes. So you see there that Ms Haire says:

I can confirm that Mr Edghill is aware and would likely have alerted his team.

40 Then if we could just bring up the two documents side-by-side, so the one that precedes this at 3.0212. You see at the bottom Ms Laurent:

Hi Katy.

45 And you. So it's being addressed to you. Confirmation about probity advice for both projects, that's because the other project was Throsby; is that fair?

MR MATTHEWS: That's correct.

MR O'NEILL: And then:

I had a good conversation about what we are seeking and how to go about this and it should be done by an external law firm.

5

Was your view, other than this email, were your views sought in respect of this approach?

MR MATTHEWS: No. So, the context, as I understand it, just to assist the Commission, was evidence has already been given that the GSO had given advice on probity matters for this procurement, so it's a normal course of event where they would then outsource the provision of further advice and that's what I believe occurred.

10

MR O'NEILL: And that appears to be then, with respect to her, in essence what Ms Haire was writing back to Ms Laurent. If we take those down and look at the top email. There's that clarification about all of those matters in that email; is that fair?

15

MR MATTHEWS: I think that relates to that conversation, yes.

MR O'NEILL: On or about 10 February 2021, if I can take you two pages on, you see here at 3.0215 - I only need that one up, I don't need the other one - that Ms Haire emails the same people and then says:

20

The MO ...

So Minister's office:

25

... has asked for the following ahead of Friday.

And that's:

30

A step-by-step outline of the ACT government procurement process that demonstrates that Ministers do not play a role in it.

Do you see that?

35

MR MATTHEWS: I do.

MR O'NEILL: Did you have any insight, as at the date of this email, that there was any contention or assertion that the Minister had had some role in this procurement process?

40

MR MATTHEWS: Not direct awareness. My understanding, and Ms Haire gave evidence around the FOI process, so that when we release FOIs generally we give a heads-up to the Minister's office, that's a no-surprises approach, and if it's a particularly sensitive matter there are talking points that are prepared. And the fact that this email is addressed to Ms Laurent, who is responsible for the FOI area, and Mr Short who is the media and communications person, suggests that it was in the context of that FOI release, but I'm not aware of the background to this request.

45

MR O'NEILL: So you're not aware of - to any conversation that had happened between the Minister's office and anybody else about the necessity for the outline to include point (1)?

MR MATTHEWS: No, I was not involved in that.

5

MR O'NEILL: Do you have any awareness in respect of the issue that's raised in point (2)?

MR MATTHEWS: No, I don't.

10 COMMISSIONER: Can I go back to (1).

MR MATTHEWS: Yes, Commissioner.

15 COMMISSIONER: (1) is obviously a response to the file note from Ms Young which raised this whole issue; correct?

MR MATTHEWS: I think that's a reasonable conclusion.

20 COMMISSIONER: And I notice that (1) is not cast in terms of establishing whether or not there was a basis for that note but that the process was, in effect, inconsistent with the intimation contained in that note?

MR MATTHEWS: Commissioner, my reading of that would be it's a generic statement.

25 COMMISSIONER: Quite. It's talking about the process, not what actually happened in this case?

MR MATTHEWS: I think that's correct.

30 COMMISSIONER: Right.

MR O'NEILL: And then point (3) about an ACT government spokesperson, did you have any involvement in that point?

35 MR MATTHEWS: No, I didn't.

MR O'NEILL: If I can take you to the next document. This is 3.0216. You see at the top Ms Laurent responds to - or Laurent rather, responds to Ms Haire and Mr Short, and that:

40 *M and C have already prepared some speaking points ...*

MR MATTHEWS: Yes, I do see that reference.

MR O'NEILL: Who are M and C, to the best of your understanding?

45

MR MATTHEWS: I'm not exactly sure of that acronym. I imagine it's our media and communications team, though.

MR O'NEILL: And that they're going to work with Mr Short in respect of those speaking points?

MR MATTHEWS: Well, Mr Short is the head of that area.

5

MR O'NEILL: Right. Did you have any awareness around the preparation of speaking notes and this kind of process?

MR MATTHEWS: Not the specifics, but as I've just given evidence, it was not an uncommon thing and obviously I had an awareness that speaking points were being developed.

10

MR O'NEILL: If I can take you then to the next page. You see here at the bottom there's the email from the external provider, Sparke Helmore, and it had the probity report attached to it - or the preliminary audit findings. And you see here it talks about - sorry. When you weren't copied to that email, it came to you as a forward as it was from another forward, and you can see that at the top of the page?

15

MR MATTHEWS: I can.

20

MR O'NEILL: Did you review the preliminary audit findings contained in that email?

MR MATTHEWS: Yes, I did.

MR O'NEILL: And what was the purpose of you reviewing that?

25

MR MATTHEWS: As I mentioned previously, that I was being asked to have some general oversight of the probity audits that were occurring. And it is noteworthy that the actual work was being done by Ms McKinnon and Ms Laurent, so they were the people that were engaging with the GSO and Sparke Helmore, but I was expected to have some overview and to understand that material and that's what I did.

30

MR O'NEILL: Why is it noteworthy?

MR MATTHEWS: Well, it's noteworthy that, essentially, that at this stage still that my role is Deputy Director-General. Around this time it would have been very early in the school year of 2021, after a very interrupted 2020, so that was still my primary focus, so I wasn't essentially hands-on in the management of this audit.

35

MR O'NEILL: I will just take you across to the next page. You see here under the subheading, "Campbell Primary School Modernisation" the author of this preliminary audit goes on to list in the third paragraph probity concerns?

40

MR MATTHEWS: I do.

45

MR O'NEILL: Do you recall reading, in it particular, this part of the assessment?

MR MATTHEWS: I do and I have, if you like, cross-referenced it with my own direct review of the FOI documents and obviously had all of that information available to me.

MR O'NEILL: And what was the result of your cross-checking? What did you - what view did you form?

5 MR MATTHEWS: Well, my view formed that this fairly accurately reflected the apparent probity issues with the process.

MR O'NEILL: So then what needs to happen now after that point?

10 MR MATTHEWS: Well, I think that it's important to note that this was a rapid review, so this preliminary findings was provided, you know, within a week or two of the actual process being initiated with the expectation that it would then obviously turn into a formal report. But my understanding was that the intention was to - was to do a rapid assessment of available documents to try to identify what occurred.

15 MR O'NEILL: And were you involved at this point in time in any public communications or the assessment of public communications that were going to be made in respect to this matter?

20 MR MATTHEWS: I'm not sure of that question, Mr O'Neill, you -

MR O'NEILL: Sorry, any communications that were going to be made to the public, were you involved with assisting with that?

25 MR MATTHEWS: That wasn't what was occurring at this stage, it was an internal audit to try to find out what occurred.

MR O'NEILL: Certainly.

30 MR MATTHEWS: And it hadn't been finalised yet. The public element of it was the Freedom of Information request, yes.

35 COMMISSIONER: I feel bound to point out to you though, Mr Matthews, when you say "find out what occurred", there was not the slightest enquiry made about whether or not the note made by Ms Young was accurate or not accurate.

MR MATTHEWS: I would agree with that assessment, Commissioner, that -

40 COMMISSIONER: And that note - I'm sorry, I spoke over you. What did you want to say?

MR MATTHEWS: The only thing I was going to say was that it is referred to in the probity audit, so -

45 COMMISSIONER: Yes. But it's referred to in these terms: that even if completely false it still raised a probity issue.

MR MATTHEWS: Exactly.

COMMISSIONER: On the other hand, if it were true, it would raise a different probity issue of considerably greater significance; do you agree?

MR MATTHEWS: I do.

5

COMMISSIONER: So this probity audit actually in one - at least one important respect, did not attempt to get to the truth of it at all. It did not attempt to get to the issue which, after all, instigated it. It was her note, this note, which instigated the need for the report; do you agree?

10

MR MATTHEWS: Commissioner, I didn't have all of that background at the time.

COMMISSIONER: I see. No, that may be an unfair question.

15

MR MATTHEWS: But I do understand that that was the case. The only extra comment if I can make, was that, in my mind all throughout this was, this was not the end of scrutiny of this matter. So there was no sense from my point of view that the probity audit in itself was going to sort of fully conclude the investigation of this matter and I certainly expected it to be ongoing. So my understanding was that, in the timeframe that was available, the purpose was to try to get the key facts, you know, available and reviewed by somebody else as quickly as possible.

20

COMMISSIONER: We will return to that in due course. Yes, thank you.

25

MR O'NEILL: Thank you. Whereabouts in this process was your request of Mr Green to undertake his chronology for you?

MR MATTHEWS: That was on 18 February, so -

30

MR O'NEILL: Hold there and I will come to that in a moment. Can I then take you to the next page. Obviously, not that one, the next one. There we are. Thank you. This is at 3.0220. You see here, the bottom - or if I can just bring up the next page so you can see. There's a series of emails all flowing on from each other about talking points?

35

MR MATTHEWS: I do.

MR O'NEILL: It doesn't appear you're in that chain until the very first email on the preceding page. Why is it that you understood you were involved in looking at talking points?

40

MR MATTHEWS: I think I was just being cc'd into relevant matters.

MR O'NEILL: So you're now part of this process and just having some oversight, there wasn't anyone seeking your input in relation to talking points?

45

MR MATTHEWS: I don't recall.

MR O'NEILL: The talking points are two pages over. Do you see here under Campbell Primary School, the last two bullet points. Firstly, if we can just draw them out under Tender Process. Thank you:

5 The tenders were evaluated, following a best and final offer phase ...

And then:

Delegate instruction was received ...

10 Do you see that?

MR MATTHEWS: I do.

15 MR O'NEILL: That seems to be a fairly brief, to put it neutrally, traverse of what had actually occurred. Now, firstly, as at the time did you review this document when it was sent to you?

MR MATTHEWS: I can't remember if I reviewed it.

20 COMMISSIONER: Can I point this out, Mr Matthews, what it does not actually do is set out the actual chronology of the events relating to the TET, does it?

MR MATTHEWS: No, it doesn't.

25 COMMISSIONER: And the crucial point or, if not crucial, significant point that the recommendation made by, in effect, two teams to prefer Manteena's bid was not accepted by the decision-maker?

MR MATTHEWS: That's correct.

COMMISSIONER: And that indeed was in terms of - how should I put it - unorthodox procedures or unusual procedures or unconventional procedures, whatever adjective one chooses, the most potentially controversial issue in the process; do you agree?

35 MR MATTHEWS: I agree.

COMMISSIONER: Can you think of a good reason why that fact and the fact that two recommendations by two separate teams were not accepted, was left out of this chronology?

40 MR MATTHEWS: The only way I can explain that, Commissioner, because again, as I've said, it wasn't necessarily my production of this material, is that, that the purpose of the talking points for the FOI was to provide a general response on the basis that that - all that information would be put into the public arena. I would also say the people that wrote the talking points probably did not have a detailed knowledge. So again, only around this time was when I'd read the FOIs and that the people from the media and communications area wouldn't have had as much knowledge as myself, for example. And so, I think - I can't explain why selective or limited material was included in these talking points.

COMMISSIONER: But all that material was contained in the FOI.

MR MATTHEWS: It was, Commissioner, but the FOI, I'm sure you can appreciate, was just a collection of documents. There was no chronology, for example, they weren't in date order, they weren't in topic order, and I think I was - my memory is there was about seven to 800 pages of FOI material, so it was just a - it was an array of documents that I know that, when I read it, I had to sort of try to make sense of and work my way through.

COMMISSIONER: So, in order to correctly portray what these talking points were or amounted to, there should have been a qualification that this was not based upon any examination of the relevant documents and was an understanding, uninformed by those actually - who actually took part in the process, and that was the source of these talking points?

MR MATTHEWS: I think that sort of qualification would help -

COMMISSIONER: Well, it would not only help because, unless we're inhabiting a different universe, if one got talking points from a department one would have expected or assumed that the subject matter of the talking points would be one with which those who provided them were aware; is that not reasonable?

MR MATTHEWS: I think that's reasonable, Commissioner. I was - I was supposing -

COMMISSIONER: I'm not blaming -

MR MATTHEWS: A level of (crosstalk).

COMMISSIONER: Sorry, I'm not suggesting you're responsible for this.

MR MATTHEWS: No.

COMMISSIONER: But the recipient of these talking points - who was to be the recipient, by the way?

MR MATTHEWS: I believe it was the Minister's office.

COMMISSIONER: Right. So that the recipient, namely the Minister's office, ultimately having ministerial responsibility for the probity of procurements, was provided with talking points which omitted highly relevant - that is, matters highly relevant to the probity of the process by people who, as you understand it, didn't do that intentionally, but were in fact ignorant of the critical points or hinges, if I may put it like that, of the process itself. Now, if I were in the Minister's office and received this wouldn't I justifiably assume that the talking points came from someone who knew the subject matter?

MR MATTHEWS: I think that's a reasonable assumption, Commissioner, that the talking points would be - would be accurate and complete. The only comment I would make, and I've made some assumptions around what level of knowledge people did and didn't have, but again, these things are often produced very quickly in a matter of hours and the clear focus of these talking points was to address any enquiries that came from the FOI release.

COMMISSIONER: And quite.

MR MATTHEWS: Yes.

5

COMMISSIONER: But, Mr Matthews, do you see from an outsider's point of view it looks as though this - if one is looking, what is the consistent hypothesis, a hypothesis that's consistent with the absence of crucial information, it suggests a cover up. That's what it looks like. Now, that may be an unintended consequence, but do you see what this looks like? And if the Minister's office had received it, the Minister's office could quite justifiably think that they were being deceived?

MR MATTHEWS: I think in isolation if these talking points were the only activity, then that would be a fair hypothesis. But, as we know, a probity audit had also been initiated to try to get a factual basis for further briefing.

15

COMMISSIONER: Well, we will come - there are a number of significant shortcomings in that process which we may come to.

MR MATTHEWS: Yes.

20

COMMISSIONER: But the talking points could have said there was a probity audit underway. We don't know whether the Minister's office was aware of it, do we?

MR MATTHEWS: I'm not aware of that, Commissioner.

25

COMMISSIONER: And it's not one of the talking points, so one can't make assumptions here. The talking points should be accurate. It's obvious you're not going to get a 20-page detailed analysis, but you'd expect the important matters to be highlighted, otherwise you're going to have the Minister's interaction with the press and the reporter is going to say, "What do you say about the change of the recommendation of two Tender Evaluation Teams?" And the Minister's office is in the position of saying, "Well, what are you talking about?" Do you see?

30

MR MATTHEWS: I do see that.

35

COMMISSIONER: It undermines the entire - not only it undermines the official purpose, it undermines the public interest purpose of the FOI, of the interaction of the Minister's office with the public, the interaction and mutual confidence there should be between the Minister's office and the department. We are not talking about trivial matters of idle curiosity.

40

MR MATTHEWS: I agree, Commissioner.

COMMISSIONER: Yes, I'm sorry, perhaps I've exhibited more frustration than is necessary, but you understand the point here.

45

MR O'NEILL: Commissioner, if I could interject respectfully?

COMMISSIONER: Yes, please do.

MR O'NEILL: Could we just take you then to the next document. And you see there at the top Ms Haire says:

5 *[The] draft points are no longer current.*

MR MATTHEWS: I do see that.

10 MR O'NEILL: Do you remember if there was any discussion about the talking points and the very issue that the Commissioner is now raising with you?

MR MATTHEWS: No, I don't remember a discussion around that.

15 MR O'NEILL: Now, you haven't produced any further emails yet about talking points. I assume, is it fair to say, that you don't recall there being any more discussion at least with you about talking points to go to the Minister on this topic?

MR MATTHEWS: Well, my understanding was the FOI release had sort of occurred and there was minimal or no media interest.

20 MR O'NEILL: I see. All right.

MR MATTHEWS: So I think the need for talking points at that point had been satisfied.

25 COMMISSIONER: Because all that information to which I referred was in the documents released by the FOI?

MR MATTHEWS: That's correct.

30 MR O'NEILL: Then can I take you to the next document. Here you've been forwarded, again, another chain, this time from Ms Taber, T-a-b-e-r, below to Ms Haire, talking about the Auditor-General. And if we take you to the next page just so you can see the bottom, the email that triggers it all. That:

35 *The AG may have made a reference to Education estimates today.*

Do you see that?

40 MR MATTHEWS: I do.

MR O'NEILL: Do you recall what this issue pertained to and why it was that you were being involved?

45 MR MATTHEWS: Yes, Mr O'Neill. So, essentially we had recently just received the final probity audit, I think around 23, 24 February, and then there was a public reference in annual report hearings, I believe, by the Auditor-General to an Education matter, so it gave us a signal that the Auditor-General would be looking into this matter.

MR O'NEILL: Now, just returning then to the matter of Mr Green's chronology, can I just bring it up for you. It doesn't yet have a number. Now, you see here - is this the document that you recall was the chronology that you and Mr Green - or you had reviewed that Mr Green had prepared?

5

MR MATTHEWS: I believe it to be, yes.

MR O'NEILL: And you see that - and this was the document - you gave some evidence about this yesterday, but when you reviewed it you were disappointed, you said, I think was your words in relation to how it -

10

MR MATTHEWS: Yes.

MR O'NEILL: And so, the date of it is about 18 February or thereabouts; is that right?

15

MR MATTHEWS: Well, this final version I did receive in the morning of the 19th, I believe.

MR O'NEILL: 19th, but you'd seen it on the previous day on the 18th?

20

MR MATTHEWS: Yes.

MR O'NEILL: In a draft form, but relevant -

MR MATTHEWS: I think in the context I gave evidence I think I might have held a hard copy while I was standing and read it and gave some very quick feedback on it, so I didn't give it a huge amount of consideration.

25

MR O'NEILL: And the purpose of this was to go to the probity auditors to give an outline of what had occurred; fair?

30

MR MATTHEWS: No, not necessarily. So I think on that same day we would have received the draft probity report on about 18 February. So, from my perspective, it was a more foundational issue of record-keeping, which is, you know, if there's any other information or recollections that you've got available, please write them down now with an expectation that there would be ongoing scrutiny of the matter.

35

MR O'NEILL: Now, you see that it really - well, you tell me and feel free to reject this contention, but it is in essence a rehash of the minute that had gone to the Director-General in support of the decision?

40

MR MATTHEWS: Correct, and that was my analysis on reading it. There was very little information. There was also, I think you showed up earlier today, an equivalent other version that Mr Green provided to Ms McKinnon on 2 February, and they're all very consistent in terms of the types of issues that they've canvassed.

45

MR O'NEILL: Did you raise then with Mr Green the problem with - what you had perceived to be the problem with this document and the documents that had preceded it? That is, that on your review now - you'd reviewed the FOI documents at this stage; fair?

MR MATTHEWS: Yes.

MR O'NEILL: You've given evidence to the Commission that the reasoning for the minute did not hold together in relation to how you had reviewed it; fair?

5

MR MATTHEWS: Yes, that's correct.

MR O'NEILL: And did you provide that feedback to Mr Green?

10 MR MATTHEWS: No.

MR O'NEILL: Why?

15 MR MATTHEWS: Because I didn't want to become involved in the process. It wasn't my - and even with my commentary or my review of this account from Mr Green, I was very careful not to make any suggestions around it. The only thing that I raised was that he should add to it by including additional information about the BAFO. So I was cautious not to - to be involved in his account.

20 MR O'NEILL: And is that - that caution, it sounds to me that that's driven with by some kind of ensuring that whatever occurred, ensuring the integrity of whatever occurred is preserved and that you're not injecting yourself into the recollection of the facts?

MR MATTHEWS: That's correct, yes.

25

COMMISSIONER: One example is - you were here, I think, during Ms Young's evidence about the BAFO?

MR MATTHEWS: Yes.

30

COMMISSIONER: Nothing of that process is in this document?

MR MATTHEWS: I think on the second page there is some information on the BAFO. But I agree with you, Commissioner, that was my concern, that the sort of details around the BAFO was certainly incomplete from what I had understood in reading the documents, yes.

35

COMMISSIONER: You, of course, were unaware of what Ms Young said about that?

MR MATTHEWS: I -

40

COMMISSIONER: At the time, at all events?

MR MATTHEWS: I mean, as Ms Young described, she provided a range of documents in the FOI.

45

COMMISSIONER: Yes.

MR MATTHEWS: You know, and it was apparent that she didn't agree with the BAFO from reading the documents.

5 COMMISSIONER: No, quite. But the troubling thing which is not in the documents - or a number of troubling things, but one of the troubling things is that Mr Green would not even accept a recommendation that BAFO was an alternative, but required the team to recommend - make that recommendation. That's an extremely troubling interpolation of his authority, isn't it?

10 MR MATTHEWS: Yes, Commissioner. I think I gave evidence yesterday that the TET should have been allowed to complete their assessment.

COMMISSIONER: No, quite. But I'm -

MR MATTHEWS: Yes, so that's right, any interruption of that is a significant issue.

15 COMMISSIONER: And the way it happened which was the exercise of authority rather than the relationship between a delegate and a team?

MR MATTHEWS: That appears to be the case.

20 COMMISSIONER: And the – that fact, which in terms of probity, is an important fact, is omitted entirely from this account.

MR MATTHEWS: That's correct.

25 COMMISSIONER: Of course for this I'm assuming that Ms Young is telling the truth and I'm not sure what Mr Green will say about it. But on the - and the assumption that her account is a truthful and accurate account, it should have been in this document?

MR MATTHEWS: The BAFO?

30 COMMISSIONER: Even if it was just mentioned, "I directed the team to change the recommendation to that of a BAFO." For example, it didn't have to be a novel, it could have been briefly expressed?

35 MR MATTHEWS: It could have been.

COMMISSIONER: And it was a relevant step?

40 MR MATTHEWS: The reason for the BAFO and how the BAFO was used is a very important part of this procurement process.

COMMISSIONER: Quite.

45 MR O'NEILL: The probity report, which is found at 2.064, when it was provided - so it's dated 23 February 2021. You received a draft slightly earlier than that. When you received the draft did you understand that you were to give any input in respect of it or make any comment in respect of it at the time?

MR MATTHEWS: Yes. So, I mean, from my perspective I've been engaged in lots of auditing work over many years. I'm a - I'm the executive responsible on the EDU audit committee. I'm also an independent member of the Transport Canberra and City Services Audit Committee, so engaged in many, many, many audits over the years. So, the way the methodology always works is, after the fieldwork is completed the client gets access to a draft report and gets to provide comment on the report, mostly around factual information and just confirming details, and that was the case here as well.

MR O'NEILL: Did you have -

COMMISSIONER: Sorry, we just need to be a bit more specific rather than roll up the process. The provision of the draft report was part of the usual process?

MR MATTHEWS: That's correct.

COMMISSIONER: We're not aware of - and there may have been, but are you aware of any responses to the draft report that were made?

MR MATTHEWS: I remember attending a meeting myself, I believe it was a Teams meeting because of the times that it occurred, but yes, we engaged with Sparke Helmore on their draft report and the purpose of that meeting was for them to tell us what they'd found and for us to ask any questions, or if we felt there was additional information, it would be able to provide that.

COMMISSIONER: Am I right in saying that no additional information was provided, or do you think some was provided?

MR MATTHEWS: I can't recall in detail, but I don't think significant detail was provided, and I think that was consistent with the idea that this was a rapid process that needed to be completed quickly, so I don't recall additional material being provided.

MR O'NEILL: With your significant experience in auditing, do you think that having known you'd reviewed the FOI, there'd been a file note made of what someone had been told, did you think that a desktop methodology was the proper or the appropriate process to adopt in respect of this probity investigation?

MR MATTHEWS: I didn't have a view on that, Mr O'Neill. But I think you've raised a really keyword there, which is "investigation." I never understood the probity audit to be an investigation. It was an audit, of course of available material, and the audit - the independent probity auditors, you know, were given what was available, so the FOI and related materials and were able to ask for more information. So it was a limited methodology, I think that would absolutely be fair to say, and it was not an investigation and I don't think intended to be an investigation.

MR O'NEILL: Right.

COMMISSIONER: But nevertheless, there were rather some - may I suggest, some rather obvious points which were not made. Let's take, for example, the observation in the report concerning what we might call the "Young file note" for brevity.

MR MATTHEWS: That might be on the next page.

5 COMMISSIONER: I think it is on the next page. We might bring it up. But essentially
saying, even if this did not happen this created probity issues because of potential for
influencing the TET. But the problem was this - or an additional and perhaps even greater
10 problem was this: that Mr Green was the source of the brief upon which the Director-General
relied to overturn on to decline to accept the recommendation of the last report and, thus, to
award the contract to Lendlease. In other words, it's much more the thinking through what is
the significance of this document, even if you're not going to test whether it's true or not true.
You're assuming that it's, even if false, that it had the effect of - potentially has the effect of
15 influencing the TET. But by precise parallel reasoning it had the effect of influencing
Ms Haire's ultimate decision on the procurement itself and that reasoning is nowhere
undertaken in this report?

15 MR MATTHEWS: Commissioner, the thing I would say about this report was that it
confirmed my understanding that there were serious probity issues involved in this
procurement. So I think that the next steps that were envisaged on this were that it would be
provided back to the head of service, which it was, and -

20 COMMISSIONER: But surely one of the purposes of the report is to identify what the
probity problems are, and this did not identify the potential link for that information with the
actual procurement itself; that which - the probity of which was in issue; do you see?

25 MR MATTHEWS: Commissioner, I definitely acknowledge that the limitations of that
methodology didn't get to those issues.

COMMISSIONER: No, not the limitations, Mr Matthews, of the methodology, it's the
30 limitations in the reasoning. You ask for an audit - a probity report of a process. That
process has a potentially significant problem. You're not going to - plainly, you're not going
to investigate whether that allegation is true or not. But you are going to say, even if false,
that is, taking the most conservative view of it, it has this problem, but the precise process of
reasoning means that the decision-making ultimately by the Director-General is also flawed.
So, that is how one expresses it, but it strikes me, and I'm conscious of this being a public
35 hearing, but that strikes me as a problem of competence.

MR MATTHEWS: Okay.

40 COMMISSIONER: And I am concerned that the gap does not seem to have occurred to
anyone else. Do you see my line of thought?

MR MATTHEWS: I do, Commissioner. I guess the only thing I can do is place myself in
that time to the best of my recollection. As I said, there was a fairly significant volume of
45 material which suggested significant probity and potentially other issues that had occurred a
number of months ago previously, so eight or nine months ago prior to that FOI. And
we - the government was in the situation where the information was public through the FOI
and the discussions that I had understood occurred was that we needed to get to the bottom of
the probity issues. So, there was no sense, from my point of view, that people did not see
significant probity issues with this process, so that there was no - there was no denial of the

fact that the process as it unfolded created a whole range of probity issues, and there were lots of unanswered questions that were still embedded in all of the material. So, that's all I can explain in terms of what was happening and what was covered by the probity audit. And then the timeline is that, really just at the completion of the probity audits, we'd provided the material to the Government Solicitor's Office to try to get some probity advice about that report and then the Auditor-General stepped in and effectively that ceased further action on that whilst the Auditor-General's work was undertaken.

COMMISSIONER: Why? Why did the directorate not have its own responsibilities? You don't delegate responsibilities to the Auditor-General, do you?

MR MATTHEWS: I'm explaining the chronology to my best knowledge.

COMMISSIONER: Sorry, not you personally, of course, I'm not talking (crosstalk).

MR MATTHEWS: I think, as I said, the only thing that was in my mind was that the Auditor-General had foreshadowed this interest, and then there was contact from the Auditor-General to me around 19 March, so again within a very small window, about starting a conversation around an audit scope, and that then turned into a formal letter around 16 April, I think it was. So, I think I was certainly conscious that the probity audit was - had been finished, but there hadn't - there'd been - that is, myself, about cutting across any work that they would be doing.

COMMISSIONER: What this does of course, I think, is highlight the importance of the initial instructions to Sparke Helmore as to the matters that they were to cover and a process of reasoning and analysis that justified limitations imposed on Sparke Helmore in relation to their probity audit; is that a fair observation?

MR MATTHEWS: I certainly can see that line of thinking, Commissioner.

COMMISSIONER: Can you think, knowing the process and where things were at the time, can you think of any reason why Sparke Helmore would not have been asked to conduct a thorough-going investigation of the probity? I understand you give a particular meaning to the word "investigation", but investigating whether the procurement was adversely affected by inappropriate conduct or other problematic processes rather than as appears - I must say, I haven't got the letter of instructions yet, but judging from the report - as appears a desktop review of the documentation. Do you know why a desktop review was chosen instead of a thorough-going review and particularly one which attempted to investigate the fact implied in the Young file note?

MR MATTHEWS: Commissioner, the only thing that I can really recall is that speed was of the effort - essence to get the core facts on the table. So, I think that that certainly, from my point of view, assumed ongoing scrutiny, so not the end of the matter, but to get as rapidly as possible key facts. Now, I appreciate what - you know, you've made comments around the limitations of that and by necessity that makes that exclusive process. But I understood the intention was to get a quick analysis of the facts, the chronology, the key events, to inform further consideration.

COMMISSIONER: Yes. But given the instigating matter, which was the Young file note, and given that even if there were to be - if there were to be a thorough-going investigation of any real - of any kind, it was going to have to deal with that issue as accuracy, of reliability or otherwise; do you agree?

5

MR MATTHEWS: That's correct.

COMMISSIONER: And that was of central significance because it was, if true, patently problematic and a serious insult to the integrity of the procurement process; do you agree?

10

MR MATTHEWS: I agree, Commissioner. But I would also say, if it was not true, there were still significant probity issues that were identified.

COMMISSIONER: Absolutely. What you start with is, what they did was, we're not investigating it but let's take the minimum most conservative view as to its significance, I've already explained why that analysis was inadequate. But I think what most - how should I put this - most on-lookers would expect, when such an allegation is made and you're going to have a probity audit, and you're not going to do anything more than a desktop audit, you would actually clearly consider, weigh up, the alternative processes available, make a decision between them and explain why that decision was taken so that there would be an explicable process which justified such an important decision because it is, I think we're agreed, important.

15

20

MR MATTHEWS: It is important.

25

COMMISSIONER: The extent of this audit was an important issue. And we have not seen, and perhaps there's a document which we're just not aware of and it's there, but there does not appear to be any document that suggests that attention was given to it. But the process of reasoning, which is often available, indeed is sometimes the only one available where you don't have direct evidence of intermediate steps, is to say, what happened was intended, and then look at what reasonably would have been understood by someone with such an intention; do you see that would be the process of reasoning one is left to undertake?

30

MR MATTHEWS: I do.

35

COMMISSIONER: So, I understand what you're saying about the need for speed and the question would be whether the need for speed would trump the need for thoroughness. All those things are matters of fact and degree, of course, and there's no bright line answer to them. In each case the relevant decision-maker has to weigh up the different relevant considerations, I entirely accept that. But looking at it in a way - attempting to look at it in a way without hindsight, and taking on board your point about the expectation of a further investigation, you would have expected in the instructions that went to Sparke Helmore: this issue is an important issue, we are not at this stage asking you to determine or investigate whether the implications of fact are true and reliable, but this will be a matter reserved to later action or for later investigation; do you see the point?

40

45

MR MATTHEWS: I see your point, Commissioner.

COMMISSIONER: So then one at least has a record, yes, we are going to investigate it. Otherwise, aside from - perhaps your expectation at the time, but you were not a relevant decision-maker - there's nothing that indicates that that matter was going to be - at the time of the Sparke Helmore involvement, was going to be investigated?

5

MR MATTHEWS: The only thing I can say about -

COMMISSIONER: So what is left - sorry, let me just finish.

10 MR MATTHEWS: Yes.

COMMISSIONER: So one is left with the picture that it wasn't?

15 MR MATTHEWS: I can appreciate that chain of logic. The only thing I can say is that, from my perspective this was the beginning, not the end of the process. Like, in real-time when I read those documents clearly the issues of concern were very evident. I expected them to be certainly subject to a whole lot of scrutiny, including potentially by this Commission eventually. So, from my point of view, I certainly saw this as the beginning rather than the sort of conclusion of any investigation or examination of these matters, and I
20 think from my own point of view that was confirmed immediately after when the Auditor-General expressed their interest in it.

COMMISSIONER: Yes, but at the time you were unaware that the Auditor-General had an interest?

25

MR MATTHEWS: Absolutely, Commissioner. Just to be again clear, like I'm saying, as much as I can sit myself in February 2021, reading the documents, saying - seeing that the evident probity issues, and indeed going well beyond just the Ms Young email about whether there was any - even without those issues there was lots of other potential probity issues that
30 would need to be looked at. From my point of view it was, there will be ongoing investigation of these things. I was very clear about that at that time and the Sparke Helmore probity audit from my perspective was not the end of that, it was about trying to get initial advice, to get some advice, and certainly I was informed by their advice and I found their advice useful for me.

35

COMMISSIONER: Did you articulate that expectation to Ms Haire?

MR MATTHEWS: I don't think so, no.

40 COMMISSIONER: May I ask why?

MR MATTHEWS: Well, because it was a personal opinion that I had formed based on my own judgment that this was a serious matter, and I couldn't predict the future, but that was about my assessment.

45

COMMISSIONER: Very well.

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

COMMISSIONER: Have you dealt now with this - with the Spark Helmore report or ...?

MR O'NEILL: I've still got two questions on the topic and then ...

5 COMMISSIONER: Why don't you do those and then we will take the luncheon adjournment.

10 MR O'NEILL: One of the difficulties with the Spark Helmore report, of course, is that it raises questions as to - it doesn't answer them as we've just gone through, but it raises questions as to the involvement of two senior staff within the EDU and their decision-making, Mr Green and Ms Haire. That's a significant issue for any directorate to deal with; do you agree with me?

15 MR MATTHEWS: I agree.

MR O'NEILL: And so, when we turn to the recommendations, the recommendations in the report - this is at page 2.2072 - the recommendations simply state, firstly, if there's any further documents we'll consider them, okay. And then, the second paragraph:

20 *We recommend the Territory considers, as a priority, taking steps to improve the standard of probity awareness ...*

Now, that isn't a recommendation about further investigation to be undertaken; you accept that?

25 MR MATTHEWS: Obviously, I just have to go back to section 6, but it says to me that - just looking at the wording of recommendation 7:

We recommend the Territory considers the matters outlined ...

30 So, to me, that is, they've provided their analysis and they've passed that back to the Territory to consider what the implications of that are.

35 MR O'NEILL: All right.

COMMISSIONER: Is it not what they say is:

... and whether any further documentation may be available to address our concerns.

40 MR MATTHEWS: I think there's two parts to that, Commissioner. The:

We recommend the Territory considers the matters outlined in section 6 above and whether any further documentation ...

45 So, I think they're highlighting the limitations of the desktop methodology there, but I think the issues in section 6 are the probity issues.

MR O'NEILL: The problem, though, is that there's no real direction or whether - there's no real direction from this report who's going to put the ball under the arm and take the next step, and that is the investigation of what's going to go on; you accept that?

5 COMMISSIONER: And there's no focus.

MR MATTHEWS: I accept the limitations of the recommendation as you've just described them.

10 MR O'NEILL: So, were you concerned at the time as to those matters or did the chronology just overtake you at the time and things moved on?

MR MATTHEWS: I hadn't had a significant chance to sort of further consider next steps with this myself. I'm not aware if anybody else was doing that or having conversations, but
15 my memory is that the chronology just took over.

MR O'NEILL: And this wasn't discussed at the feedback session between the various members of the directorate and Sparke Helmore when you were asked to provide your feedback on the draft?
20

MR MATTHEWS: I don't think so, no.

MR O'NEILL: That's where I wanted to end on that topic. I'm not quite finished but -

25 COMMISSIONER: All right. If that's convenient to you, Mr O'Neill?

MR O'NEILL: It is, thank you.

COMMISSIONER: Yes, very well. We will take the luncheon adjournment. Resume at 2.
30

<THE HEARING ADJOURNED AT 1.06 PM

<THE HEARING RESUMED AT 2.04 PM

35 COMMISSIONER: Yes, Mr O'Neill.

MR O'NEILL: Thank you, Commissioner. Mr Matthews, you will be pleased to know we're not going back to the probity report, but -

40 COMMISSIONER: In that case, I just want to give you this opportunity though, Mr Matthews. If you feel that something I have said is unfair, doesn't give you an opportunity to make an explanation which you think is justified, this is an opportunity for you to do that if you have that feeling. I'd like you to be candid and tell me if you have a problem with maybe you want to reconsider some answer you've given, or you think my question
45 insinuates something which is unfair, I want to give you this opportunity to respond if there is anything of that kind.

MR MATTHEWS: Commissioner, I had no difficulties with our exchanges before lunch about this matter. I was happy to assist you to explore the issues around the probity audit and

also to explain what was in my mind at that time to the best of my recollection, so I've been happy with that exchange.

COMMISSIONER: Thank you, Mr Matthews. Yes.

5

MR O'NEILL: Sorry, thank you, Commissioner. And just confirming, you had no involvement in setting up the terms of reference for that report or being involved in how it was to be conducted?

10 MR MATTHEWS: I can't recall that. I've given the material that I have available to me and my recollection was that that was being directly managed by Ms McKinnon and Ms Laurent.

MR O'NEILL: Thank you. I want to take you to a couple of months after that and this is the last topic. We understand that Mr Green was asked to go and give an interview to the
15 Auditor-General, as were other staff members, and the Commission has evidence that you were involved, at least, in organising support for people. Do you recall undertaking that role?

MR MATTHEWS: Yes, Mr O'Neill.

20 MR O'NEILL: Now, I don't want you to, at all, traverse any confidence about something that you don't wish to share with us of any medical nature or anything like that, or any supportive nature, this is not the import of that question. But during that process were you given any information about the actual issues that had been undertaken during the timeline, that is, the decision-making process?

25

COMMISSIONER: Sorry, information from who?

MR O'NEILL: From Mr Green.

30 COMMISSIONER: I think that, if he was given that information because of his role as a support person I would not wish to go there, at least without Mr Green's permission. I think those things are given in confidence, so -

MR O'NEILL: Can I get an answer to my question because that'll be whether it's even worth
35 worrying about because if it is, and he says no ...

COMMISSIONER: All right. So, this is a yes or no. Were you given information that was relevant to the involvement of Mr Green; is that your -

40 MR O'NEILL: That is. Thank you, Commissioner.

COMMISSIONER: Yes, but don't tell us - if it happened don't tell us what it was. Is that a yes or a no?

45 MR MATTHEWS: No, Commissioner. Can I correct one thing though because it's a public hearing? I was not Mr Green's support person. I think that's an important distinction.

COMMISSIONER: Sorry, I misunderstood.

MR O'NEILL: You were coordinating support for -

MR MATTHEWS: Numerous staff members.

5 MR O'NEILL: - numerous staff members and doing so as a function of your role in that silo of how the directorate operated; is that fair?

MR MATTHEWS: We facilitate the involvement of the directorate in the audit and also we have a general duty of care to our staff, so we make sure that all of our staff know that they've got wellbeing supports.

MR O'NEILL: Thank you. One moment. Thank you, Mr Matthews. They're the questions I have for you. I understand that there may be an application from some others to ask you some questions. Thank you, Commissioner.

15 COMMISSIONER: Just one moment. I would like to know who wishes to cross-examine Mr Matthews? Obviously, Ms Morgan does.

MS MORGAN: Yes, thank you.

20 COMMISSIONER: Is there anyone else who expects that they'll want to do that? Very well.

<CROSS-EXAMINATION BY MS MORGAN:

25 MS MORGAN: Could I ask that document 1.139 brought up? Mr Matthews, you understand, my name is Morgan and I appear with Ms Kearney for Ms Haire?

MR MATTHEWS: Yes, I do.

30 MS MORGAN: Do you recognise this document as the Procurement Plan Minute in relation to Campbell?

MR MATTHEWS: It's obviously one page, so without the whole document -

35 MS MORGAN: Yes.

MR MATTHEWS: It does look like it is.

MS MORGAN: Could we turn to the next page or just stroll through it so Mr Matthews can see the document and then stop at 1.1. Could you make it a bit smaller so I can see the numbers? Perfect. 1.141. So just stopping there and hopefully you can read it. Mr Matthews, you will see at about point (3) of the page there's a reference to an Attachment A to the Procurement Plan Minute, being the risk management plan. Do you see that?

45 MR MATTHEWS: I do.

MS MORGAN: And then Attachment B is the Tender Evaluation Plan; do you see that?

MR MATTHEWS: I do.

MS MORGAN: And so, these two documents are created as part of the Procurement Plan Minute process; is that right?

5 MR MATTHEWS: That would be correct.

MS MORGAN: And they travel with the procurement through the process; is that right?

MR MATTHEWS: That's my understanding.

10

COMMISSIONER: And they are on a conventional template?

MR MATTHEWS: That's exactly right, Commissioner.

15 MS MORGAN: And you will see, in relation to the Tender Evaluation Team, we have the nominated three members plus an observer; do you see that?

MR MATTHEWS: I do.

20 MS MORGAN: And in your experience, if there's a change to that Tender Evaluation Team, is the normal process to go back and amend this procurement minute, or is that a process that doesn't occur?

25 MR MATTHEWS: My direct experience is that you don't go back to amend the minute, but you record the changes in membership, and at various times, as the delegate, I've approved changes in memberships of text.

MS MORGAN: And that can happen because someone goes on parental leave or for any number of reasons; would that be right?

30

MR MATTHEWS: That's correct, a whole range of reasons.

MS MORGAN: And there would be a minute, in effect, or a formal documentation of that process; is that right?

35

MR MATTHEWS: It could be a formal minute or it could be simply an email.

COMMISSIONER: At all events, some written record?

40 MR MATTHEWS: Some documentation would be the key element.

MS MORGAN: Thank you, Mr Matthews. Could I ask that document 3.0184 be brought up. You will see that that looks like it's the front page of Attachment B, the tender evaluation plan. I'm not expecting you to remember what was in it but that looks like what that document is and we're told that that's what this is, the first page of that document. If we could go to page - section - actually, just travel down the page. You will see, if we could make bigger 2.1, Role. Call that out. So this is the Tender Evaluation Plan and you will see at 2.1(e) that:

45

The evaluation team will be responsible for ["seeking", it should say] Director-General or delegate approval to commence post tender negotiations with the preferred tenderer.

Do you see that?

5

MR MATTHEWS: I do.

MS MORGAN: On - yesterday you gave evidence that, if there had been a change from the Tender Evaluation Plan so that the delegate wasn't going to make the decision but it was the Director-General that the Tender Evaluation Plan, that change should be formalised in some way; do you recall giving that evidence?

10

MR MATTHEWS: Not specific (audio drop) my views.

MS MORGAN: And you will see with this Tender Evaluation Plan, it actually envisioned that either the Director-General or the delegate, and you understood that person to be, for this kind of level (audio drop) business services; is that right?

15

MR MATTHEWS: As the occupier of that position I got direct experience, yes.

20

MS MORGAN: And it attaches to the position, not the (audio drop) meant you suggested (audio drop) correct in this instance because the Tender Evaluation Plan included the Director-General as a potential decision-maker?

MR MATTHEWS: Well (audio drop) will be a documentation of that change, not necessarily a re-writing of this document.

25

MS MORGAN: I don't quite understand that answer because at 2.1(e) and (f) it provided the option so you wouldn't have to amend this document; is that not correct?

30

MR MATTHEWS: The document, as you say, is like an enabling power, if you like, but I think the general expectation would be that, if a delegate is changed, that there'd be some record of that. Certainly, that's the action that I would take.

MS MORGAN: And when you say "changed". I thought this was the document that you had identified which indicated who the decision-maker was, or have I got that -

35

COMMISSIONER: It doesn't actually do it. It doesn't identify the (crosstalk) -

MS MORGAN: That's why I'm asking the question, Commissioner.

40

COMMISSIONER: Sorry. It doesn't identify the individual; it identifies the office holder.

MS MORGAN: Yes, of course. Mr Matthews, I'm just trying to identify, where is it in the documentation where the delegate is said to be the person responsible in relation to Campbell Primary School Modernisation Procurement?

45

MR O'NEILL: Can I just point out the chapeau to the section is actually directed to a team; it's not about enabling anyone to make a decision. I don't know if that's the question, though. The question might be directed to where in all the suite it is but -

5 MS MORGAN: Yes, Commissioner. The answer was given yesterday by Mr Matthews that "this is the document where we would find that the delegate was the decision-maker", that's all. So, we're trying to get to the bottom of that process, that's expended a lot of time in the Commission, this issue of changing the decision-maker.

10 COMMISSIONER: I haven't stopped you from answering the question - from asking the question.

MS MORGAN: No, from Mr O'Neill's query as well I'm just asking for help from Mr Matthews.

15 COMMISSIONER: By all means.

MS MORGAN: This is the only place we could find in the minute or in the Tender Evaluation Plan where the delegate is referred to potentially as the person making the final decision, but the plan actually envisions either the Director-General or the delegate. So I was just asking for your help, Mr Matthews, would there be somewhere else that we haven't looked yet where I would find that?

MR MATTHEWS: What I can speak about is my direct experience, so I acknowledge what the wording of the document is, and that the document is around - is very clear that the decision-making fits within the delegated responsibility of various officers in ACT government entities, in this case in the Education Directorate. As the person that has been in this role for a number of years and had occasion to be the delegate for decision - for procurement processes, I've always regarded myself as being the decision-maker and delegated to make the decision to accept advice from a Tender Evaluation Team, and that's what I've always done in that role. If I were to pass that responsibility to another person, I would make a record of that.

MS MORGAN: Thank you. I think that answers the question. I think we've worked out you're a very careful and process-oriented employee and that's a good thing, so I'm not criticising. We're just trying to find the information in the material.

MR MATTHEWS: Sure.

40 MS MORGAN: Further to what you've just raised, Mr Matthews, if you had been told by a member of your staff that the Minister or the Minister's office had been approached by the unions and that this may have been affecting the procurement decision, what steps would you have taken?

45 MR MATTHEWS: I'm happy to answer that question, Ms Morgan, but just really noting it is speculative -

MS MORGAN: Yes?

MR MATTHEWS: - it's based on a hypothetical.

MS MORGAN: Yes.

5 MR MATTHEWS: I would certainly take any direct reports or advice around possible
corruption seriously and would then take appropriate action in relation to that depending
upon what the content of that was. It could include referring it to our senior executive
responsible for business integrity and risk. It may be a public interest disclosure as well
10 under that Act. Executives have responsibilities now under the Integrity Commission Act, so
really, there are a range of responsibilities that fall upon an executive receiving that kind of
information and I would - I would assess the information and assess my responsibilities and
then make a decision.

MS MORGAN: And if Ms Haire had said to you that "the Minister's office didn't want
15 Manteena to win this procurement" and that's the outcome she wanted, what would you have
done?

MR MATTHEWS: Well, I can say, whether it was Ms Haire or somebody else, I would not
have taken direction around the outcome of a procurement process.

20 MS MORGAN: And what would you have done if that had actually happened?

MR MATTHEWS: I would have made a record and I would have instructed the team to
continue as per normal. As I said, also, in the context of the last answer, if I felt that that
25 direction invoked other responsibilities that I had as a senior executive, I would consider
those as well.

MS MORGAN: And if Ms Haire had asked you whether the core principles of the Secure
Local Jobs code were being taken into account in procurement, what would you have said to
30 her?

MR MATTHEWS: In general, as I said in my evidence, that that was my general
understanding of what the queries that were being raised at the time was whether we were
compliant and I'd gone back and looked at the procurement documentation myself, so I would
35 have been able to give firsthand advice about the fact that those matters had been considered
within this particular tender evaluation process, for example.

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

40 COMMISSIONER: Thank you. Anything - there's no one else who wishes to
cross-examine? Thank you. Yes, Mr O'Neill.

MR O'NEILL: Can I just take you to the procurement -

45 COMMISSIONER: Sorry, I just might ask, is there any re-examination?

MR SHARWOOD: No.

MR O'NEILL: Can I just take you to the Procurement Plan Minute. It's at 1.138. Do you see how the minute is addressed to:

The executive group manager, Business Services Education Directorate.

5

MR MATTHEWS: I do.

MR O'NEILL: Is there a reason that you understand that that's why the minutes are addressed to that person?

10

MR MATTHEWS: That the responsibility for the procurement fits within that role and that the role includes approving the documentation and then taking it to the Government Procurement Board.

15 MR O'NEILL: And so, the answers that you gave to my learned friend, Ms Morgan, about what would happen when there would be a change about in that person being responsible, is that the document - sorry, is that the place that someone finds who is responsible and, if that's going to be changed, documenting that without touching the integrity of that minute?

20 MR MATTHEWS: I'm not sure how to answer that question, just simply because I'm trying to understand really what's being asked.

MR O'NEILL: So what's being asked -

25 COMMISSIONER: I think, can I just ask it in this way. This assigns a role, not only in relation to the ultimate - what's going to happen to the ultimate contract negotiation but a role to oversee the process. If the individual involved were removed from that role you would expect there to be a formal process undertaking that?

30 MR MATTHEWS: All I can - I'm trying to be of assistance but -

COMMISSIONER: Is that because this is too hypothetical?

35 MR MATTHEWS: It is. Because what I would say, the best way I can answer this question is that, the general expectation of all the people that work for NPC and EDU is that this position is going to make the decision in relation to the procurement. That is the default. These documents are produced at a point in time -

COMMISSIONER: On that assumption?

40

MR MATTHEWS: On that assumption and going through an approval process and then become the basis on which the procurement occurs. As I've mentioned, as the procurement unfolds there can be changes in membership as we've just talked about, there can be further consultation between the chair of the panel and the delegate. So it's not a process that just stops at the point at which the procurement is approved, but from my point of view it provides the rule book and the basis upon which things then vary after that point. Is that helpful in terms of -

45

COMMISSIONER: Thank you.

MR O'NEILL: It is. Then, at 1.143, do you see that various people subscribe on - this is a very bad copy of it, but just so you know, you see that there's Ms Young, Mr Hawkins and Ms Power and Mr Piani at the top in relation to the recommendation?

5

MR MATTHEWS: I do.

MR O'NEILL: And then the directorate endorsement, Lee Barker and Rodney Bray, and that's from the directorates of the two - the two directorates that are involved?

10

MR MATTHEWS: That's correct.

MR O'NEILL: And then the Director-General/delegate approval and then underneath that you see you in your role as the executive group manager and you've executed that?

15

MR MATTHEWS: I do.

MR O'NEILL: And so that, in effect, is your agreement to be the person who is going to be in charge of the procurement from that point forward unless there are going to be changes?

20

MR MATTHEWS: At that point in time - I mean, obviously in what unfolded after I signed that document was periods of leave -

MR O'NEILL: Sure?

25

MR MATTHEWS: - and so, yes, but -

MR O'NEILL: We know you go on leave pretty soon after executing this document later in that year in September?

30

MR MATTHEWS: In September, yes. So the short answer is, this is an important part of the accountability from my point of view. This shows that it has been given consideration by a range of officers in both NPC and EDU and it's that advice that I rely on. Obviously, as the person that is authorising, I'm taking into account the fact in this situation that it has been viewed and approved by the relevant people and that's important advice to me in being able to execute a decision.

35

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

COMMISSIONER: Yes, very well. Thank you, Mr Matthews. Unfortunately, I don't think I can release you because of things that I know are going on. We may require your return. It's unlikely they will, but there's a possibility - real possibility - and I know you would undoubtedly be relieved if I could tell you you won't be recalled, but I'm afraid I can't give you that undertaking at present. So I must nevertheless hold you to your summons. If we reach a stage where positively we know we don't need you, we will let you know as soon as we can so that, as it were, you're not on the hook for any longer than you need to be.

45

MR MATTHEWS: Thank you, Commissioner.

COMMISSIONER: I repeat what I said about your confidentiality notice. You are bound by it except in relation to any consultations you might need to make. And, of course, you are perfectly entitled to discuss things which are in the public domain.

5 MR MATTHEWS: Thank you.

COMMISSIONER: So, thank you for that, and yes, you are free to go.

MR MATTHEWS: Thank you, Commissioner.

10

<THE WITNESS WITHDREW

MR O'NEILL: Commissioner, the next witness I wish to recall is Mr Green. There just needs to be a short adjournment to enable that to occur.

15

COMMISSIONER: Right.

<THE HEARING ADJOURNED AT 2.25 PM

20 <THE HEARING RESUMED AT 2.31 PM

COMMISSIONER: Mr Green, you are still bound by your affirmation, or was it oath, I can't remember now?

25 MR GREEN: Affirmation, Commissioner.

COMMISSIONER: By your affirmation to tell the truth. Do you wish to announce your appearance?

30 MR OPAS: Yes, may it please the Commission, Opas, O-p-a-s, with your leave appearing as counsel for Mr Green instructed by Mr Santucci of Sneddon, Hall & Gallop Lawyers.

COMMISSIONER: Yes, leave is granted.

35 MR OPAS: Thank you.

COMMISSIONER: Mr O'Neill.

<JOHN GREEN, ON FORMER AFFIRMATION

40

<EXAMINATION BY MR O'NEILL:

MR O'NEILL: Thank you, Commissioner. Mr Green, the Commission has received some further evidence since you were last here, including some notes that were provided to it by
45 Ms Cross of some conversations she had with you, and I just want to take you through them, if I may. Now, of course, the warning that I have to give you is, of course, these are not your notes and you are to - if something is in them that doesn't accord with your recollection, can you please let us know. You don't have to accept them simply because they're on the page. The first note that I want to take you to is at 3.0144. Now, I will help you with some of the

next that's written there. Firstly, "Min B" is Minister Berry, and "(Josh)" is Mr Ceramidas. The significance of that is that it may well be that sometimes what's been recorded is from Minister Berry, sometimes it's from Mr Ceramidas, and so that they're both in attendance. I understand that this is some kind of MINSET style meeting whilst Ms Cross was the
5 Director-General, Acting Director-General in Ms Haire's absence. And the date of this is 24 February 2019. Is that right? 2020. Excuse me, 2020. Now, firstly, you see, if I take you to the preceding page, the meeting traversed matters such as school packs for students, My School Release, et cetera. Now, is that - do you recall a meeting at or about this date?

10 MR GREEN: No, counsel. This, I think's probably the MINSET meeting that we've spoken about before that I have no recollection of what was discussed.

MR O'NEILL: All right.

15 MR GREEN: This looks like a typical MINSET.

COMMISSIONER: This is the kind of thing you'd expect to discuss at a meeting of this kind?

20 MR GREEN: Yes, Commissioner.

MR O'NEILL: And do you think that you were in attendance at this MINSET meeting now? Having a look at it, does it help you?

25 MR GREEN: I don't recall my attendance but I went to MINSET meetings regularly.

MR O'NEILL: You see on the next page then, this is at the bottom of 3.0144, there's a note that says:

30 *Long discussion on EOI/tender and Secure Local Jobs code - how to avoid having providers that don't meet appropriate standards - more important than just working to envelope.*

That's what that note says. Does that trigger any recollection of yours about this kind of meeting, or a meeting at or about this date, rather?

35

MR GREEN: No. Sorry, counsel.

MR O'NEILL: The next part says:

40 *Plus check being properly monitored post contract. Had success with cleaners (Joss).*

Which we understand is the contractor. You don't - that's making you look more puzzled from what I can observe of you, it's making it more confusing rather than assisting?

45 MR GREEN: Yes, counsel. Joss and cleaners don't really go together in my mind.

MR O'NEILL: All right. So that's not triggering anything - any recollection of yours?

MR GREEN: (No audible answer).

COMMISSIONER: Joss is a building contractor?

MR GREEN: Yes, a facilities management contractor.

5

MR O'NEILL: Can I then go to 0.1049. 0.149 - 0.0149. I will get it eventually. There we are. Now, this is a note made by Ms Cross about what someone was telling her that she needs to do. She can't recollect too clearly as to what it was, although it was written in prospect, that is, that this was a note to herself to do something about - to talk to the Minister about these two matters?

10

MR GREEN: Yes.

MR O'NEILL: You will see there that it says:

15

Two new school contracts EOI.

And the first notes:

20

Pause on it.

Now, the best date that we have of this is that it's about 27 February of the same year. Do you recall ever having a discussion - sorry, 25 February of the same year - do you recall having a discussion with Ms Cross about this, these matters?

25

MR GREEN: I recall having a discussion with Ms Cross. I have given evidence on it before. I don't know exact timing, but this - the two school contracts EOI would be consistent with what that conversation was about.

30

MR O'NEILL: What about the concept of "pause on it"? Now again, this is someone else's note. They've taken a note, you don't have to -

MR GREEN: I don't - I don't recall -

35

COMMISSIONER: The problem with a note such as this is, and Ms Cross acknowledged it, is that she's not sure whether this is her to do or her conclusion from what she's talked - she's spoken about, or whether this is information that's come to us; do you see?

MR GREEN: Yes.

40

COMMISSIONER: And she can't now determine which it is.

MR GREEN: Yes, Commissioner. I use similar notes for myself as well and understand where - you know, is it - is it a note to herself saying to do these things or is it a note about having a meeting with me. Looking at it, it's a note to herself to do something about it. It's broadly consistent, I think, with the conversation that she and I had. We talked about where the EOI process was up to, which could be part of on what "pause on" is about and not fully meeting policy on unions is what I remember of the substance of our conversation between Ms Cross and I.

45

MR O'NEILL: More precisely what Ms Cross says is that it was a phone message and she was recording what the phone message was. Does that help you?

5 MR GREEN: No, I don't have any knowledge of how she -

MR O'NEILL: This idea of not fully meeting policy on unions though, that was something that you and she had discussed?

10 MR GREEN: Yes. I think my evidence - sorry, I haven't reviewed my transcripts. I'm pretty sure my evidence, most recently and I was reminded in the statement of Mr Ceramides that I saw recently, is that conversation with Ms Cross, I remember coming out of that conversation and feeling that the conversation we'd had was - had some union involvement in the - in the
15 genesis of it because the language that was - that she used was words like "not fully meeting policy, the Secure Local Jobs policy" which was a concept that the unions had used regularly. It was when they felt that a company was - had to do more than just have a Secure Local Jobs code certificate, which was the statutory compliance part of Secure Local Jobs but when the unions felt they needed to do more or weren't a company of good industrial standing they would use the language that the companies weren't fully meeting the policy.

20 MR O'NEILL: And so, that was a compliance with policy issue rather than a technical -

MR GREEN: Yes. Technical compliance with the code (indistinct) certificate.

25 COMMISSIONER: I think I recall your evidence, and I don't mean to be dismissive of the issue, but this language was a mantra frequently expressed?

MR GREEN: Yes, Commissioner, by the union. So -

30 COMMISSIONER: By the union, yes?

MR GREEN: So whenever you heard the language about "not fully meeting the intent" it -

35 COMMISSIONER: Seemed to reflect or echo what the unions -

MR GREEN: What the unions.

COMMISSIONER: - said with about it?

40 MR GREEN: Yes.

COMMISSIONER: And the CFMEU in particular?

MR GREEN: Yes.

45 MR O'NEILL: Can I then take you to the next page. This is a note either 26 or 27 February, and this is a note that Ms Cross has taken of a conversation she's had with you. So, here it is that - well, she thinks was with you. You see:

3 major construction tenders.

At the top:

5 *Campbell 6 expressions of interest. Joss withdrew then 5.*

You see that on the right?

MR GREEN: Counsel, I think it's Early Childhood School, ECS.

10

MR O'NEILL: Yes. So that's Franklin and then below, "Campbell", do you see that?

MR GREEN: Yes.

15

MR O'NEILL: And then:

Split into two groups of two.

MR GREEN: Yes.

20

MR O'NEILL: The:

Built and Zorna Franklin - signed with Built.

25

Do you see that?

MR GREEN: Yes.

30

MR O'NEILL: Do you recall discussing that tender, which is the Franklin tender, and talking about those two tenderers with Ms Cross?

MR GREEN: No, I don't recall having a conversation about Franklin because it had already been awarded and it was underway.

35

MR O'NEILL: Right.

MR GREEN: But, Built was the contractor.

40

MR O'NEILL: Do you recall whether you expressed to her any position about whether Built was liked or not liked?

MR GREEN: I can't recall, sorry, counsel.

45

MR O'NEILL: Or whether Zorna was ambivalent, that is, there was ambivalent view towards Zorna?

MR GREEN: I can't recall expressing those. I - they're not contractors who I think strong views were held about.

MR O'NEILL: Right. And when you say strong views, strong views by who?

MR GREEN: Strong views by the union.

5 MR O'NEILL: And then so you see below -.

COMMISSIONER: So are you saying then that you did not actually have a view that Built was not liked, or that Zorna was uncertain. In other words, whether or not you said it to her, do you recall having an opinion about that?

10

MR GREEN: I don't recall having a conversation with her about it. Looking at the names of the companies and from previous experience I think those two companies are on, kind of, neutral ground as opposed to strongly positive or strongly negative, they're on neutral. I don't think there's any -

15

COMMISSIONER: So what I would infer from that answer, and correct me if my inference is unfair, that it follows that you would be unlikely then to have expressed an opinion about whether Built, for example, was liked or not liked?

20 MR GREEN: I think that's a reasonable assumption, inference.

COMMISSIONER: It's a reconstruction because you don't remember the conversation at all, but doing the best you can that's your understanding; is that the position?

25 MR GREEN: Yes.

MR O'NEILL: You see the next line, just ignore the part to the left for the moment, it says:

Lendlease.

30

And then there's a love heart below it, so liked or loved.

MR GREEN: Yes.

35 MR O'NEILL: Do you recall ever expressing that view to Ms Cross?

MR GREEN: Yes.

40 MR O'NEILL: And then "Manteena" next to it and underneath it, "NL", not liked or not loved. Do you recall expressing that view?

MR GREEN: Yes.

45 MR O'NEILL: And that's something you expressed to Ms Cross?

MR GREEN: I think so.

COMMISSIONER: The relevant liked or disliked by -

MR GREEN: The CFMEU, Commissioner. Sorry, my understanding of their view of those companies.

COMMISSIONER: No, that's right.

5

MR O'NEILL: You see that then to the right:

Tenders are being every evaluated.

10 That was no doubt correct as at 26, 27 February to the best of your recollection; yes?

MR GREEN: Yes.

MR O'NEILL: And then across, you see there it's got:

15

John talking to assessors.

MR GREEN: Yes.

20 MR O'NEILL: Were you talking - assuming that "John" is you, do you recall telling Ms Cross that you were talking to the assessors?

MR GREEN: I think by that stage I'd heard from the Tender Evaluation Team where their deliberations were up to and what their view was by then.

25

MR O'NEILL: Right. But my question's about your recollection of telling Ms Cross that.

MR GREEN: I don't have a recollection either way, no.

30 MR O'NEILL: Do you have -

COMMISSIONER: I need to go back a step though, and this shows you how difficult it is sometimes to interpret notes. Because one possible explanation for these notes is that the assessors were telling you that Lendlease was liked and Manteena was not liked. Now, I've understood that the assessors always, so far as they did tell you about the way they were going, were favouring Manteena over Lendlease. So, can you respond to that?

35

MR GREEN: I -

40 COMMISSIONER: I'm just exploring the possibilities, that's all?

MR GREEN: I think your recollection's correct, Commissioner, that the tender assessors, Tender Evaluation Team, always liked Manteena over Lendlease, so to me then the love heart and "NL" is their view about their -

45

COMMISSIONER: Other informants?

MR GREEN: Yes.

COMMISSIONER: Right. In - sorry, Mr O'Neill, I will leave it to you.

MR O'NEILL: You will see then that there's - so then, going back to "talking to assessors", do you recall the context of that conversation with Ms Cross, or I think you answered me no, but I just want to double-check?

MR GREEN: I don't recall it. I think I was passing on information to my Director-General about where my knowledge was up to.

10 MR O'NEILL: You see in the next line Ms Cross has made a note:

Commitment to union.

15 And now embodied in Secure Local Jobs is broadly what that means, I don't have that precisely correct because I don't have a transcript yet, but it is broadly commitment to union. Now, that is a concept that you were familiar with at the time; agree?

MR GREEN: Yes.

20 MR O'NEILL: And does that accurately reflect to the best of your recollection information you imported to Ms Cross that, well, this is how it actually works?

MR GREEN: Yes, it looks like - to me it looks like she's taken notes about my explanation on how Secure Local Jobs worked, which I recall having a conversation with her about how Secure Local Jobs worked, so she's put down the steps there.

25 MR O'NEILL: And so, in the next line, you need a Secure Local Jobs certificate and labour relations training, workplace and equity plan, so you need those two things, that's the gateway before you're even allowed to tender; agree?

30 MR GREEN: Yes. Sorry, no, sorry -

COMMISSIONER: Next to the SLJ certificate, do you see the asterisk, and then it looks like "independent"?

35 MR GREEN: "Independent auditor", is how I -

COMMISSIONER: Right, which was the process which you've already described?

40 MR GREEN: Yes. So, can I go back to something counsel said? The process is a little bit different from how you described. That the gate to tender is, you're not allowed tender without a Secure Local Jobs certificate, but then, once you've tendered you've got to have a labour relations training, workplace and equity (crosstalk) -

45 MR O'NEILL: Yes, and your compliance with the Secure Local Jobs code is also going to be assessed?

MR GREEN: Correct.

MR O'NEILL: In accordance with the Procurement Plan Minute?

MR GREEN: And the requirements of the Secure Local Jobs amendments.

5 MR O'NEILL: And the Procurement Act at the very top?

MR GREEN: Yes.

MR O'NEILL: And then there's a line at the bottom:

10 *Have to provide evidence.*

Do you see that?

15 MR GREEN: Yes.

MR O'NEILL: Do you think - do you recall explaining to Ms Cross the requirement that there needed to be more than just a stamp here, that there needed to be evidence about compliance?

20 MR GREEN: I don't recall the - how that conversation happened, but I recall it was part of the conversation she asked me also for copies of the evaluation of the Secure Local Jobs on, I think, two tenders or two processes underway there, and I have seen that email and my reply in evidence.

25 MR O'NEILL: We've traversed that on a previous occasion, yes. So that evidence that you've just given is, as you understand it, this gave rise to the request to go back and make sure that -

30 MR GREEN: Yes, and I think I undertook to provide her some documents or she asked me to provide some documents and I gave her copies.

MR O'NEILL: And then she came back to you with some questions and you answered those?

35 MR GREEN: Correct.

MR O'NEILL: On the next page, at the top, there's the Throsby expression of interest, and you see there that the first one is:

40 *Icon.*

And there's a love heart for that, that is, that either it was loved or liked?

45 MR GREEN: Yes.

MR O'NEILL: Is that information that you would have had to hand at that time?

MR GREEN: Yes.

MR O'NEILL: And do you recall telling Ms Cross that?

5 MR GREEN: I think I must have told Ms Cross that based on her note there, because she wouldn't have known that.

MR O'NEILL: You have no independent recollection sitting there now?

10 MR GREEN: No, no recollections, no.

MR O'NEILL: And we've already addressed the question of Manteena. That further note doesn't trigger any further recollection?

15 MR GREEN: No.

MR O'NEILL: They are preparing designs and bids and to the best of your recollection that's where the Throsby bid was at?

20 MR GREEN: Yes. So, sorry, I can't recall where Throsby was at, whether the tenders had closed yet.

MR O'NEILL: Now, there's a note - the next note that says:

25 *Someone in ED to track the labour relations training and workplace equity requirement and run the requirements.*

30 We understand that's meant to be "review", and "run the requirements." That is, I think, consistent with the evidence that you just gave about the process that followed this conversation, that is, that you were asked to track - trace up these matters and you responded and then she responded to you and you responded to her; do you agree with me?

MR GREEN: Yes, I agree. I don't have a firm recollection but, as you said, the next request from the - Ms Cross was to follow up those (indistinct) pieces.

35 MR O'NEILL: You see the note that follows, it says:

CFMEU Jason O'Mara, branch secretary.

40 We know that that's the role that that person played at that time. And then:
Next Tuesday David M.

45 Do you recall discussing that? Does that note trigger any recollection? If it doesn't, please say so?

MR GREEN: It doesn't trigger a recollection. But I did have a meeting with Jason O'Mara at some point there, so maybe I mentioned that in the conversation with Ms Cross.

MR O'NEILL: Yes, although your meeting, did Ms Matthews attend your meeting?

MR GREEN: No.

5 MR O'NEILL: Maybe the notes aren't related. I can tell you Ms Cross doesn't remember.
Still not helping?

MR GREEN: No, sorry.

10 MR O'NEILL: All right. And then:

In future engage with unions on the LRTWEs.

And then:

15 *It is not a mandatory requirement (contrary to the Fair Work Act). Therefore it says must
consult with workers not unions.*

Do you see that?

20 MR GREEN: Yes.

MR O'NEILL: Do you recall informing Ms Cross of something to that effect?

25 MR GREEN: I don't recall it, but it's a - it's the standard response to the unions from Secure
Local Jobs.

COMMISSIONER: And indeed, this was the subject matter of that correspondence with the
CFMEU which we've been through?

30 MR GREEN: Yes, Commissioner.

MR O'NEILL: On the next - I want to take you four pages on. This is another note, again
not taken by you, taken by Ms Cross. The date of it's the 28th, so a couple of days later. And
then, if we go another two pages on. You see at the top it says:

35

*Campbell tender - reassess both, neither hit the mark, seek new submissions - more time to
work on bids. Check follow on of issues in expressions of interest.*

40 Do you recall having a conversation with Ms Cross to traverse this topic on or about that
day?

MR GREEN: I don't recall. It sounds like a lay person's discussion of a BAFO, though,
looking at the - the - how she's written it.

45 MR O'NEILL: Yes. So, "reassess both" is effectively what you would say broadly happens
in a BAFO if (crosstalk) -

MR GREEN: Yes, "seek new submissions" is what happens in a BAFO. "More time to work on bids" is, give them another chance to work on it. So, it sounds like a description of a BAFO process.

5 MR O'NEILL: And do you think that was you communicating to Ms Cross that that's what your view was?

MR GREEN: Yes, that's a reasonable assumption.

10 MR O'NEILL: You can't recall that though?

MR GREEN: I can't recall, sorry. And counsel, the other line about:

Check follow up on issues in EOIs.

15

Could be following up on the points Ms Cross raised about the LWRTEs.

MR O'NEILL: Yes. I'm just going to take you nine pages forward. Again, notes of Ms Cross. This is now 4 March 2020. Your name appears at the top of the note, so "John" and then there's some discussions. Relevantly though, you see after the second asterisks but on the same indentation:

20

Take Katy through code.

25 MR GREEN: Yes.

MR O'NEILL: Do you remember talking to Ms Cross about this?

MR GREEN: No, I have no recollection of that. Looks like the notes of a meeting and possibly she gave me a bunch of tasks to do.

30

MR O'NEILL: That may be so. And then you, so:

John to follow the LWRTE issues with Built - obliged to report. We can assist if necessary. And follow up with Campbell and Throsby.

35

Does that trigger any recollection of this meeting?

MR GREEN: No, it triggers no recollection.

40

MR O'NEILL: And then on the next page:

Campbell - Min B - discussing 2 bids and GSO advice. 1DP is MPC.

45 MR GREEN: Yes, so I've given an update.

MR O'NEILL: Do you recall it though? You looked for a moment as if there was a trigger of memory?

MR GREEN: The trigger is what "IDP is MPC" means. I don't have a recollection of this conversation, I'm just reconstructing -

5 MR O'NEILL: No, don't do that. We don't need a reconstruction, they're pretty - but you can't recall having that discussion?

MR GREEN: No.

10 MR O'NEILL: Okay. Thank you. I'm about to leave those notes, Commissioner, if it's convenient. Just excuse me for one moment. The Commission received some evidence from Ms Young over yesterday afternoon and this morning about the process leading up to the decision to remove that team as the Tender Evaluation Team, et cetera, to arrive at the BAFO decision; do you understand where I am in time?

15 MR GREEN: Yes.

MR O'NEILL: It's shortly after these notes. To be fair, it's at or about mid-March. I've taken you through some of the correspondence before, so I'm not going to do that, but what I do need to take you through is, Ms Young made two notes. The first is at 2.1448 and this was a note that she made to herself, and it is that she'd had a phone call with Mr Morton and:

... that the Minister for Education may have been approached by unions and asked why Manteena is getting all the jobs and this may be why [you] are pushing for a BAFO ...

25 Do you see that?

MR GREEN: Yes.

30 MR O'NEILL: Were you aware that, firstly, people within your directorate, that is Mr Morton and others, had that view or held that view as to your motivations?

MR GREEN: No, I wasn't aware that - yeah, I wasn't aware what Mr Morton's views were, but I think I said I spoke to the team at times about the - about the concerns.

35 MR O'NEILL: Right, and when you spoke to the team about the concerns though, you didn't express it as being because Manteena is getting all the jobs though, did you?

MR GREEN: I don't think so. I don't recall that.

40 COMMISSIONER: Of course, once started, these stories take a life of their own?

MR GREEN: Indeed, Commissioner. Manteena weren't getting a lot of work for Education at the time, so.

45 MR O'NEILL: Now, the effect of Ms Young's element - Ms Young's evidence was that you - when they came in to discuss - or there was a meeting on 28 February 2020 where they had anticipated you signing their recommendation. Had you seen a draft of their report at that stage?

MR GREEN: I don't recall ever seeing a draft. I was certainly made aware of what the - where - the direction that we were heading.

5 MR O'NEILL: So the recommendation that they were proposing that you endorse was that Manteena be awarded the contract with the value management process to continue?

MR GREEN: Yes.

10 MR O'NEILL: She recollects the meeting, that you immediately indicated that both tenderers were over budget and that it was your view that there should be a dual negotiation, which was her way of expressing best and final offer; do you recall that meeting?

MR GREEN: Yes.

15 MR O'NEILL: And does that fairly encapsulate the way it was conducted?

MR GREEN: I think there was more options discussed than that, but that was one of my views. I -

20 MR O'NEILL: What other options were discussed?

MR GREEN: I also put on the table the option that we reject the tenders and ask them to tender again.

25 MR O'NEILL: She also said that. She said that that was put and there was an immediate response from the group that "you couldn't possibly be serious".

MR GREEN: Yes. Ms Young's boss was very strong about, we put the tenderers through all this work and we can't just reject their tenders and ask them to do it all again.

30 MR O'NEILL: And so, that was -

COMMISSIONER: Which is not an unreasonable view?

35 MR GREEN: Indeed. I've been in the industry myself, and I know how much it costs.

MR O'NEILL: And that was Ms Power or?

40 MR GREEN: Ms Power, yes.

MR O'NEILL: Otherwise, there was a list of items that they had provided - sorry, you needed to prepare a list of items to be negotiated on for dual negotiation; do you recall discussing that?

45 MR GREEN: Yes. I think they already had a list of items for Manteena at that meeting as well.

MR O'NEILL: Because they were the list of items that they were going to use to value manage the project. Did you see that list at the time?

MR GREEN: Look, I - I don't recall seeing it, it may have been at the meeting, but I think certainly - I think we may have discussed some of the items on it and how relevant they may be to the other tender as well.

5

MR O'NEILL: And do you recall the conversation turning towards probity at any point?

MR GREEN: I recall a discussion around, can we do it, so the probity question of that and that's where I think the discussion went to, that we needed to get advice from GSO around, can we do this, is this in accordance with probity to do that, is it allowed under the conditions of tender.

10

MR O'NEILL: Did you have any involvement in, and I think I've asked you this question but just remind me, in obtaining that probity advice?

15

MR GREEN: No.

MR O'NEILL: Ms Young gave evidence about her views in respect of, once the government solicitor's advice was obtained, her views of whether the BAFO process was still indicated even after that advice. Do you recall receiving her views about that topic? I can take you to the email if you'd like.

20

MR GREEN: I don't recall.

MR O'NEILL: All right. Bear with me one moment. The email is in substantially the same form as 2.1449. At the bottom, do you recall ever being forwarded a version of this email? You're copied in on the top of it, just so that you know.

25

MR GREEN: I don't recall it. I can see I'm copied in on it.

30

MR O'NEILL: So Mr Morton's copied you in on his response saying:

The delegate's advice this morning is to proceed with the BAFO.

Do you recall reading the email below? That's the subject of the text that appears in blue?

35

MR GREEN: No, I don't.

MR O'NEILL: Can I just take you to the next page, 2.1450. In broad terms at the bottom of that email you will see:

40

Given the GSO advice I'm still not convinced that we should be recommending a dual negotiation/BAFO.

Do you see that?

45

MR GREEN: Yes.

MR O'NEILL: Were you aware that that was Ms Young's view?

MR GREEN: Yes, I was aware that was Ms Young's view.

5 MR O'NEILL: But you weren't aware of the substance of how she arrived at that view which is set out above?

MR GREEN: No.

10 MR O'NEILL: On the top of that page, you see, the bullet point:

If a BAFO is to proceed information provided to tenders is to be the same.

That's something that everyone agrees with, no doubt; you agree with that?

15 MR GREEN: Yes.

MR O'NEILL:

20 *Information can only be provided ...*

Et cetera. But then she says:

25 *Where the scope of the deficiencies is "largely similar in scope and magnitude". This is not the case.*

Do you see that?

MR GREEN: Yes.

30 MR O'NEILL: Were you aware that that was a view that she held?

MR GREEN: Sorry, can you clarify which?

35 MR O'NEILL: Certainly. So, you see where it says:

Information can only be provided to each individual tender [it should be tenderer] where the scope of the deficiencies is largely similar in scope and magnitude. This is not the case.

40 So that is, the opinion that Ms Young held, that the deficiencies in the tenders were not similar in scope and magnitude?

MR GREEN: I think I was aware that Ms Young thought that the Manteena tender design was substantially better than Lendlease. I think she had expressed that, and I was aware of -

45 COMMISSIONER: Well, it was more than that. The team had come to that conclusion.

MR GREEN: Yes. Yes, Commissioner, that's fair.

COMMISSIONER: It was in the report?

MR GREEN: Yes, that's fair.

5 MR O'NEILL: Did you turn your mind then to the scope of the - and magnitude of the deficiencies in both tenders before directing the -

10 MR GREEN: I did. My - my assessment of that was probably at a different - sorry, was at a different level. I was concerned that both of them were deficient in that they were over the budget that we'd allocated for the project, and neither of them, in my view, were capable of being accepted without having significant value management exercises which would necessarily mean adjustments to the scope.

15 COMMISSIONER: But this is a slightly different point, this is the scope and magnitude of the difference between their proposals, if I can use that term. And I think we discussed this before, that you intimated that you thought the scores were wider than was justified and you impressed upon, amongst others, Mr Blom that - which of course didn't involve Ms Young - that you expected the scores, when reconsidered, to be much closer together?

20 MR GREEN: Yes, Commissioner, I think that's fair. I would - I think I was looking at a more helicopter view of the two tenders from afar without the level of detail that Ms Young (crosstalk) -

25 COMMISSIONER: Right. What she was doing was going through the particular considerations identified by the GSO?

MR GREEN: Yes.

30 COMMISSIONER: And then asking, well, did the process meet those elements. Whereas, you are looking at it, as you say, more from a bird's eye view and saying, well, you thought you could justify a position where neither was adequate and a BAFO was the way to move it forward?

MR GREEN: I think that's a fair statement, Commissioner.

35 MR O'NEILL: Ms Young gave evidence that this really was her expression, that she did not feel that even after the receipt of the GSO advice, that a BAFO was an appropriate process. Did you turn your mind to the - whether the GSO advice was actually supportive of the best and final offer process?

40 MR GREEN: I - I didn't, counsel.

45 COMMISSIONER: As I understood your position, and correct me if I'm wrong here, but I understood your position that the principal reason that you wanted a BAFO was two - was to kick the can down the road so that you were not faced with an inopportune decision or an awkward decision, and in the hope that you might get a decision which was more in line with what you'd been told to achieve?

MR GREEN: They're the two primary drivers, Commissioner, I think I've said that. The third one would be getting something that works with our budget or having time to increase our budget to - to an amount that meant the prices that came back from the tenderers was -

5 COMMISSIONER: Right. Because ultimately, if things worked out that the contract was going to Lendlease, there was a good chance you were going to need more money?

MR GREEN: Yes, Commissioner. And Commissioner, in fairness, there was a good chance that we would need to have more money for Manteena to build.

10

COMMISSIONER: Even more Manteena, but perhaps not quite as much?

MR GREEN: Correct.

15

MR O'NEILL: All right. Now, you will recall that what happened was that you directed - you - did you receive a report from this Tender Evaluation Team recommending best and final offer, to the best of your recollection?

20

MR GREEN: I don't recall, I'm sorry. I do not mean to be evasive on this one. Can I explain?

MR O'NEILL: Certainly.

25

MR GREEN: So, I know a report was written, I have seen it. I do not recall whether it actually progressed through the sign-off chain to me before - for me to consider before the change of Tender Evaluation Team. So, I know it exists, I - I cannot recall whether I read it before we changed the Tender Evaluation Teams.

30

COMMISSIONER: Well, it's more than that, isn't it, because before you changed the Tender Evaluation Team you directed the first Tender Evaluation Team to recommend a BAFO, and that's what they did, and in fact made a recommendation for a BAFO?

35

MR GREEN: Yes, Commissioner, I think that's a fair statement. I don't think I directed, but I - I - we've discussed this and I think my evidence is that I gave enough instruction to -

COMMISSIONER: To have that effect?

MR GREEN: Yes, Commissioner.

40

MR O'NEILL: Now, what occurred between the time of this email and then a date, being 26 March, is that major projects started to intervene and asked for the project to speed up and I've taken you through that chain of - chronology and I'm not going to go back -

45

MR GREEN: With Mr Edghill.

MR O'NEILL: With Mr Edghill, yes. Now I want to bring up a note, 2.1591. This was Ms Young's note written in retrospect. So, she has drafted this in May, but it captures in the middle of the page -

COMMISSIONER: I think we can give you some background if you don't already know it. Mr Edghill had asked for a timetable of - a chronology of important stages and this was in response to Mr Edghill's request, that document, and this was a draft, it was later formalised in much the same form with one exception. That was the purpose of this document.

5

MR GREEN: Thank you, Commissioner.

MR O'NEILL: But it was written in retrospect, but in any event I will bring it up for you and I will bring up the relevant bit of 26/3. Here Ms Young recorded that she was:

10

Advised by Erica [which is Ms Pilgrim-Day] by phone that Ms Power had met with EDU executives this morning and that a BAFO was not going ahead as the Minister had rejected this. (I said "thank God." EPD said I should get advice today or tomorrow.

15 Now, this sits in the chronology at the time that Ms Haire and you and Mr Edghill were corresponding about what it was that could be achieved, and you recall those emails, "We are looking forward to working with you on this"?

MR GREEN: Yes.

20

MR O'NEILL: Do you recall whether it had ever been expressed this strongly, that BAFO was not going to go ahead?

25 MR GREEN: Counsel, I think you've shown me this or the other version of this before and I think I was equally baffled at that time trying to reconstruct who had had a conversation with who. RP is Ms Power. I do not know which part of EDU exec she met with on that morning and I - I cannot recall a conversation -

COMMISSIONER: It wasn't you?

30

MR GREEN: It wasn't me, and I can't recall a conversation where the Minister had rejected this. It seems remarkably direct.

35 MR O'NEILL: Yes. Now, in the correspondence between you and Ms Haire and Mr Edghill, the working with - actually I will bring it up because it's probably better to do it with it in front of us.

40 COMMISSIONER: To be fair, she's recalling this conversation some weeks after it had occurred, five or six weeks afterwards. Nevertheless, what to my mind makes it persuasive that somehow this is, whatever language was used to her, the message that was conveyed or she received from it was to that effect because of her emphatic response, which of course is exactly her view, she thought it shouldn't happen. So, although she now does not have a recollection of this, I think I would accept that, whether the person conveying the information conveyed it in this form, the message that she understood was being conveyed was to the effect of the note. And I hear you saying, and I can understand why, that so far as you know
45 there was nothing about what was happening that suggested the BAFO was not going to go ahead, still less that the Minister or the Minister's office didn't want it to go ahead. Do I understand your position?

MR GREEN: Yes, Commissioner, and to me this would also - I can't remember the date of the email where Ms Young advised she didn't want to be part of the BAFO process -

MR O'NEILL: It comes after this.

5

COMMISSIONER: It comes after this?

MR GREEN: But this would make sense. If she was being told that the BAFO wasn't going to go ahead and her response was "thank God" and then two days later or so she got told that the BAFO was going to go ahead, I can understand her reluctance to be involved. She thought she was no longer happy to do that, and then got told, no, you do have to do it.

10

MR O'NEILL: She explained that reluctance to the Commission as being one of, well, what am I meant to do? I've already undertaken a valuation task, I can't do it again and I will come to the same result, in effect. That's fair, isn't it?

15

MR GREEN: Yes, that's a fair statement, yes.

COMMISSIONER: Although I think we're in now, this seems at odds, it seems unlikely, and it is what it is. But in fact the process was not - the BAFO process was not delayed because of any interference from the Minister or the Minister's office and it was at all events pressed through as quickly as you were able to manage that?

20

MR GREEN: Which was the intent of those meeting with Major Projects Canberra around giving the industry certainty (crosstalk) -

25

COMMISSIONER: Right. So there's surrounding circumstances suggesting that you were pressing ahead and that's contrary to a suggestion that there was someone, whoever it was, was attempting to put the brakes on the process?

30

MR GREEN: Yes, Commissioner. There's an email that I recall Mr Edghill -

MR O'NEILL: 2.1589.

COMMISSIONER: Yes. I don't think we need to rehearse that, I think we're familiar enough with it. It's just that this then is starkly odd.

35

MR GREEN: I note there's a number of steps between Ms Young, Erica, Ms Power, all the way down.

40

MR O'NEILL: I will just bring that document up. 2.1589.

COMMISSIONER: So there's a Chinese whisper problem perhaps.

MR O'NEILL: You will see here the email at the bottom is the Edghill email?

45

MR GREEN: Yes.

MR O'NEILL: That's dated the 25th. You will see there's the email from Ms Haire copied to you on the 26th, quite early in the morning. They've discussed the ideas with you:

... and the Minister's office and we are keen to work with you on them.

5

And then you sending it on to Ms Power at the top?

MR GREEN: Yes.

10 MR O'NEILL: So that was all occurring on the same date as the note?

MR GREEN: Yes, and sorry, counsel, that may could be the start of the Chinese whisper because we discussed -

15 MR O'NEILL: May well be.

MR GREEN: - the interpretation of discussed and we are keen to work with you on it, in a previous session.

20 MR O'NEILL: Then the last part of the chain, 2.1596. Ms Young writes to you, and we've seen this email before where you've requested a re-evaluation, and here's the replacement team?

MR GREEN: Yes, so this is the nomination of the replacement Tender Evaluation Team.

25

MR O'NEILL: You've agreed to it?

MR GREEN: Yes.

30 MR O'NEILL: I now want to take you to a different part of the chronology which is much later. Actually, before I do that. Prior to coming in today you were provided a statement written by Mr Ceramidas dated 5 September 2023. I'm not going to bring it up. You recall that you were provided that statement?

35 MR GREEN: Yes, counsel.

MR O'NEILL: You were then tasked - you then elected to make a response or gave a response to that; fair?

40 MR GREEN: Yes.

MR O'NEILL: Can I just show you a document. Now, just reviewing that, you've looked over, the first thing you've done is turned it over on the second page, that's your signature on the bottom page under the pseudonym?

45

MR GREEN: John Green's signature, yes.

MR O'NEILL: But, in any event, what I wanted to do is that - you've had a chance to review that before you've come in today. Is that fair?

MR GREEN: Yes.

5 MR O'NEILL: I just want to - is there anything else you need to add or subtract from it, or can the Commission otherwise accept that it's the evidence that you would otherwise give?

MR GREEN: Yes, counsel. I note the last sentence on para 13, and I've made the sentence there:

10 *As a result I thought that there were concerns raised by the union.*

We've discussed that further today and I note that my - the first part of my evidence today was around that conversation based on Ms Cross's notes, and would just like to make sure that that sentence is read in conjunction with my evidence of earlier today.

15

MR O'NEILL: So the import of what you're saying there is that, this thought that you had, was that something that you had prior to going into the conversation with Ms Cross, or that you left with after the conversation with Ms Cross?

20 MR GREEN: I certainly left with it. I don't know if I went into that conversation with that - with that understanding. There was the preceding MINSET meeting which I have no recollection of, so my - my understanding of the conversation with Ms Cross may have been reflecting some of what I can't remember from the MINSET meeting as well as my conversation with Ms Cross.

25

MR O'NEILL: Right.

MR GREEN: But based on those notes today that you showed me earlier I think that's a fair statement.

30

MR O'NEILL: So let me just get this right. Is it the case that, as you were discussing it with Ms Cross, you may have drawn that thought out now that you had connected who was liked and who wasn't liked by the unions with this idea of Secure Local Jobs and labour relations?

35 MR GREEN: Yes, that's possible.

MR O'NEILL: And that's why you say in that sentence:

As a result of that I thought there were concerns raised by the union.

40

MR GREEN: Yes.

MR O'NEILL: And those concerns are related, in that paragraph, back to Secure Local Jobs and labour relations?

45

MR GREEN: Yes, and to do with the way the concerns were expressed by Ms Cross in that meeting, but quite possibly by Mr Ceramidas in the MINSET meeting that I have no recollections of a few days before around Secure Local Jobs, so the real intent of Secure Local Jobs as opposed to just the compliance and requirement to have a code certificate.

MR O'NEILL: And you've provided evidence to the Commission about that matter previously?

5 MR GREEN: Yes. If - is that clear? Do I need - is my explanation -

MR O'NEILL: Please, if you don't think it's clear, please clarify it to the Commission now.

10 MR GREEN: So, Commissioner, I mean, I think that - it's clear to me that I think that as a result of that meeting that I was clear that I thought that there were concerns raised by the union, but that may have been informed by unremembered conversations at the MINSET meeting that had preceded my conversation with Ms Cross.

15 MR O'NEILL: And that's all you want to say with that topic? You think that that's enough?

MR GREEN: I think so.

MR O'NEILL: Okay, all right. Now, the final topic that I need to -

20 COMMISSIONER: I think that when you need to do then is to tender Mr Ceramidas' statement.

25 MR O'NEILL: I will. I was going to do that *in camera* because of the fact that - of Mr Ceramidas' status, if that please the Commission.

COMMISSIONER: Certainly. Some things are also kept secret from me.

30 MR O'NEILL: Now, the final part is that I just wanted to bring up a document for you on which the Commission received some evidence this morning. It's at - I'm just going to have it brought up now. It doesn't have a number yet, that's why I paused. We've received some evidence that this was a final version of a chronology of a process that you prepared at the request of Mr Matthews.

35 MR GREEN: Yes, counsel. There were two versions of this document. I can't tell which is the first and which is the final.

MR O'NEILL: Accept from me this is the final version, but there's no real controversy about that.

40 MR GREEN: Yes.

45 MR O'NEILL: And just onto the next page, so we will have them both up for Mr Green. You've now read that document. This was a document that was prepared in anticipation of the probity audit that was going to be undertaken by Sparke Helmore; do you agree?

MR GREEN: I don't recall why I (indistinct). I recall being asked by Mr Matthews to prepare it and the timing - yeah, I -

MR O'NEILL: You weren't told the purpose for which it was going to be utilised; is that your evidence?

MR GREEN: I don't recall that, but the timing would be consistent with the probity audit.

5

MR O'NEILL: It comes after the Freedom of Information request had been received?

MR GREEN: Yes.

10 MR O'NEILL: And so, it's in about mid-February 2021.

MR GREEN: Okay.

15 MR O'NEILL: But you don't recall the purpose for why you prepared the document, just that you were asked - you were tasked with undertaking a chronological review of what happened and you did so?

MR GREEN: I was tasked with providing some more explanation around what had happened.

20

MR O'NEILL: All right. Now, there's nowhere in this document that you explain the level of detail that you've now provided the Commission in respect of both the BAFO process; do you agree with me?

25 MR GREEN: Yes.

MR O'NEILL: And also the process leading up to the final decision, that is, being told this is not what the Minister wants, you being tasked with drafting the executive minute, and that then leading to the decision; is that fair?

30

MR GREEN: Why.

MR O'NEILL: Why is it not in this document?

35 MR GREEN: I was preparing a clean corporate line kind of version of events. I wasn't ever interviewed as part of the probity audit or anything, it was just an explanation that I was asked to prepare.

40 COMMISSIONER: Well, to be brutal about it, you left it out because - as I understand your position you left it out because it reflected on your integrity, the integrity of Ms Haire, and the integrity of the probity process and you didn't want to expose it?

MR GREEN: That's a fair statement, Commissioner.

45 MR O'NEILL: They are the topics that I wished to address with Mr Green.

COMMISSIONER: Now, Ms Morgan, you have cross-examination?

MS MORGAN: I do. I'm unlikely to finish it this afternoon, Commissioner -

COMMISSIONER: Yes.

MS MORGAN: - but I will start.

5

COMMISSIONER: I'm not expecting you to deal with matters already dealt with.

MS MORGAN: I understand that, Commissioner, and I will - there are some gaps -

10

COMMISSIONER: I know sometimes you have to lead in.

MS MORGAN: And also there are some gaps. I thought stuff would be covered this afternoon that hasn't been covered, so I will just have to go back over that.

15

COMMISSIONER: Very well.

<CROSS-EXAMINATION BY MS MORGAN:

20

MS MORGAN: Mr Green, could I just confirm that you started work in the ACT in 2011. Is that right?

MR GREEN: Yes.

25

MS MORGAN: And did – which was the directorate you started in? What was the name?

MR GREEN: It was ACT Procurement Solutions.

30

MS MORGAN: And is that what became Major Projects Canberra, or was it a separate directorate?

MR GREEN: It wasn't a directorate, sorry. I think ACT Procurement Solutions was a business unit within a directorate and it moved directorates a number of times.

35

MS MORGAN: And in those various roles that you had between 2011 and 2018, did you work in the area of procurement as a part of your employment?

MR GREEN: Yes.

40

MS MORGAN: For that whole period?

MR GREEN: Yes, in ACT Procurement Solutions and its predecessors, whatever that - the renamed business unit.

45

MS MORGAN: And can you assist – you were working at Major Projects – is it Major Works Canberra or Major Projects Canberra?

MR GREEN: It's Major Projects Canberra.

Ms MORGAN: Thank you.

MR GREEN: But I have never worked for Major Projects Canberra.

5 MS MORGAN: You haven't. Do you know though from your own experience whether Major Projects Canberra do their own – make their own procurement decisions or were they always in combination with other directorates?

COMMISSIONER: You mean construction procurements?

10 MS MORGAN: Construction procurements, thank you, Commissioner.

Mr GREEN: So Major Projects Canberra are a different organisation that the ACT Procurement Solutions and its predecessors. Major Projects Canberra has construction funding and I think therefore it makes its own procurement decisions.

15 MS MORGAN: And it also has a role in assisting the Education Directorate, for example, when it has to do capital works. Is that right?

MR GREEN: Yes.

20 MR MORGAN: And is it right that when you were filling in for Mr Matthews in September and October 2019, as a result of your experience you already knew something about the various companies in the construction industry in Canberra?

25 MR GREEN: Yes.

MS MORGAN: And you had that experience, not only from the procurement experience you had, but also from your role as the Secure Local Jobs Registrar?

30 MR GREEN: Yes.

MS MORGAN: So you know about companies such as Built and Joss; that's right.

MR GREEN: Yes.

35 MS MORGAN: And Manteena and Lendlease, that's right?

MR GREEN: Yes.

40 MS MORGAN: And your view in 2019 and 2020 was in relation to Manteena, that as a construction company they were better at green fields with a straight line of work. That was your opinion?

COMMISSIONER: Better than - what's the other comparative?

45 MS MORGAN: Better than managing complex situations with tight deadlines and changing environments.

MR GREEN: Yes, okay that sounds like some of my language, yes.

MS MORGAN: So Manteena are better at green field sites and Lendlease are better at managing complex situations, tight deadlines and changing environments. That was your opinion in 2019 and 2020?

5

MR GREEN: Yes

MS MORGAN: And in October 2019 you knew what Manteena's safety record was. That's right?

10

MR GREEN: In a general sense.

MS MORGAN: What do you mean by that?

15 MR GREEN: So safety by reputation, by industry. I haven't - I don't think I was ever across the detail of workers comp injury frequency rates or something as detailed as that.

MS MORGAN: So what was their general safety record?

20

MR GREEN: They weren't the best in the industry.

MS MORGAN: As compared to Lendlease what would you say?

25

MR GREEN: I don't think they had as good a safety record as Lendlease in my opinion.

MS MORGAN: And in October 2019 you knew that the CFMEU – CFMMEU regularly had concerns about how Manteena went about their industrial relations practices; that's right?

30

COMMISSIONER: I won't allow a question of that form. You can say "expressed concerns". We are not dealing with whether they legitimately had them or not.

MS MORGAN: Certainly, Commissioner. Do you understand the distinction, Mr Green?

35

MR GREEN: Sorry, can you?

MS MORGAN: Of course I can. You knew in October 2019 that the CFMMEU had expressed concerns in relation to how Manteena went about their industrial relations practice.

40

MR GREEN: Yes.

MS MORGAN: And after you had been at the Secure Local Jobs - sorry, Secure Local Jobs Registrar, your view was that Manteena was not adhering to their Secure Local Jobs labour relations training and workplace equity plans?

45

MR GREEN: I don't – I think no is my answer to that, sorry.

Ms Morgan: So if you had expressed that to anyone at the Education Directorate, was it you passing on your perception of the CFMMEU's attitude to Manteena's compliance with their labour relations training and workplace equity plans?

COMMISSIONER: I'm sorry, Ms Morgan, I don't quite understand. Have you got from him that he has expressed that opinion? Is that not the preceding question?

5 MS MORGAN: Certainly, Commissioner. Mr Green, do you recall passing on your view or the CFMMEU's view to anyone at the Education Directorate that Manteena was not adhering to their Secure Local Jobs labour relations training and workplace equity plans?

10 MR GREEN: I don't recall that. There's a – there's yeah, there's – I know I had a concern about how they prepared their labour relations training and workplace agreement plans, but that's a slightly different question to the one you asked.

MS MORGAN: Certainly. Well, perhaps you could answer it then. What was your concern about their preparation?

15 MR GREEN: I remember in 2019 having a session with many of the contractors in town about the correct way to prepare labour relations training and workplace equity plans, because as registrar I had a concern that they weren't being prepared properly, and Manteena were part of that audience at the time.

20 MS MORGAN: And do you recall passing that information on to anyone at the Education Directorate in relation to Manteena?

MR GREEN: I don't recall.

25 MS MORGAN: Is it something that could have happened?

MR GREEN: It could have happened. But I also recall that Manteena took the lesson on board about how to prepare their plans.

30 MS MORGAN: And do you recall telling anyone at the Education Directorate that your view in relation to Manteena was that they said that they would be engaging local staff, local contractors to do the work when in fact they were engaging staff from interstate or overseas?

35 MR GREEN: I don't recall.

MS MORGAN: Is that it didn't happen, or it could have happened but you don't recall.

40 MR GREEN: I don't – I don't recall having that conversation. But every contractor engages people from interstate as required to undertake their work.

MS MORGAN: If someone at the Education Directorate has a recollection of you expressing complaints about Manteena, and one of the complaints was in that context, could that be something that you would have said?

45 MR GREEN: It could have been.

MS MORGAN: Thank you. Now, in relation to -

COMMISSIONER: Do I correctly understand your evidence, that might have been true of Manteena, but it would be true of every contractor in the ACT.

5 MR GREEN: Yes, Commissioner. And that's - is an issue with Secure Local Jobs. The "local" allows things outside the ACT and the definition of local only requires that a company has a presence in the region. It doesn't require that they must be a locally-owned or locally-based, or local-only company only engaging ACT contractors.

10 MS MORGAN: Mr Green, is it right that you first met Ms Haire when you commenced your more permanent role in Education in or around 13 January 2020?

MR GREEN: In a work sense I -

15 MS MORGAN: Yes.

MR GREEN: - might have met her before that.

MS MORGAN: But you knew that she started as director-general in December 2019.

20 MR GREEN: Yes, and I might have met her briefly at a function not long after that.

MS MORGAN: And you knew that Ms Haire didn't have your experience in the construction industry; that's right?

25 MR GREEN: Yes.

MS MORGAN: And you knew she didn't come from a contract - a contracting background; that's right?

30 MR GREEN: Yes.

MS MORGAN: And do you recall saying to the Auditor-General:

35 *Katy does not come from a contracting background. She's an educator and to some extent there's, you know, yeah, I throw contract at her and she doesn't talk contract back.*

Do you recall that?

40 MR GREEN: I don't recall that, but it does sound like my language.

MS MORGAN: And it reflects what you thought too, doesn't it?

45 MR GREEN: Yes.

MS MORGAN: And it reflects your experience of having to assist Ms Haire and explain certain matters to her in relation to the construction industry. Is that right?

MR GREEN: Yes.

MS MORGAN: And in relation in particular to the construction industry in Canberra.

MR GREEN: Yes.

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MS MORGAN: And that - one of those matters was explaining the Secure Local Jobs Code.

MR GREEN: Yes, as on Ms Cross's note.

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MS MORGAN: So I don't need to take you to that, you recall that -

MR GREEN: I recall that note, yes.

15

MS MORGAN: And that was you and Ms Cross agreeing, was it, that it was something you would have to explain to Ms Haire.

MR GREEN: Yes.

20

MS MORGAN: And one of the matters was telling Ms Haire that you knew who the good construction companies were in relation to the Secure Local Jobs Code?

MR GREEN: Yes.

25

MS MORGAN: Now, Mr O'Neill took you to some of the material in relation to the first Tender Evaluation Team's reporting. He did that last time you gave evidence and then again we touched on it this afternoon. Do you recall that?

MR GREEN: Yes.

30

MS MORGAN: And so there was a second version of the Tender Evaluation Report from the first Tender Evaluation Team that was finalised in or around 16 March 2020, which you said this afternoon that it didn't reach you for decision. Or words along those lines. Do you recall giving that evidence?

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MR GREEN: I recall I think I wasn't - I said I can't recall if it did. I was uncertain whether it had or hadn't reached me.

MS MORGAN: Now, so you understand - I'm talking about this period.

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COMMISSIONER: What do you mean by "finalised", because I think it was not signed, isn't that - or you say it was signed?

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MS MORGAN: It - sorry, I shouldn't have used that word, Commissioner, because it's created -

COMMISSIONER: It's ambiguous in the context.

MS MORGAN: Indeed, yes. I was distinguishing it between the one that wasn't signed by the TET back in February and the one that was signed by the TET in March.

COMMISSIONER: So you're talking about the March signed one?

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MS MORGAN: I was talking about the March - so you understand, Mr Green, the second TER was signed by the first TET team in the period 16 to 18 March. They signed the - the three of them signed it in that period.

10 COMMISSIONER: I think you've seen the document.

MR GREEN: Yes, I've seen the document and I think is that the document that has as a recommendation that we go for a BAFO?

15 MS MORGAN: Yes.

MR GREEN: Okay. I'm placed - I'm placed in which document you are talking about.

MS MORGAN: I was just about to get to - but you didn't sign that. You didn't sign that -

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MR GREEN: I didn't sign that.

MS MORGAN: - report.

25 MR GREEN: And that's the document where I'm uncertain I actually saw at that time. I know I've seen it since, but I'm uncertain whether I actually saw it at that time.

MS MORGAN: And you are also uncertain, or that you hadn't seen the first one that wasn't signed. Is that your evidence as well?

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MR GREEN: The first one that wasn't signed with -

MS MORGAN: In February 2020.

35 COMMISSIONER: With the recommendation to go with Manteena.

MR GREEN: I - I - I'm not 100 per cent positive, but I don't think I have ever - I ever saw that one. I can't recall -

40 COMMISSIONER: At the time.

MR GREEN: Yes, at the time.

45 MS MORGAN: Now, do you recall - and I can take you to the evidence if you don't - that on the last occasion you gave evidence in public that the reason you didn't endorse that recommendation was because there was a change of the Tender Evaluation Team.

MR GREEN: Yes. I recall evidence to that effect.

MS MORGAN: And do you agree that you gave evidence to the Auditor-General and the Commissioner in private that the reason the Tender Evaluation Team was replaced was because they didn't want to be involved in the BAFO.

5 COMMISSIONER: Can we just be clear about this. Is your question about whether he recollects the evidence -

MS MORGAN: Yes.

10 COMMISSIONER: All right. So you are not being asked about whether that was the fact, you are being asked whether you recall that was your evidence. No doubt we will get to the fact, but we are first being asked about - do you recall giving evidence to that effect.

MR GREEN: I recall giving evidence to that effect.

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COMMISSOINER: Right.

MS MORGAN: Was just trying to avoid getting all the transcript up, Mr Green. So please don't feel like you have to agree with me, I will get the transcript up and I've spoken to our very important people in the corner to help us if that's necessary. So just to go through the chronology. You knew at the meeting on 28 February 2020 that the Tender Evaluation Report was either finished or was well progressed, which was recommending value management with Manteena; that's right?

25 MR GREEN: I - I can't say yes or no to that, because there's a piece I'm not sure about. I do not - I did not know at that time where the Tender Evaluation Report was up to. If you asked me if I knew where the tender evaluation was up to I could say that I knew the tender valuation was well progressed.

30 MS MORGAN: Thank you, Mr Green. And that that tender evaluation was - at that point as at 28 February, was planning to recommend value management with Manteena as the preferred tenderer. Is that consistent with your recollection?

MR GREEN: Sorry I'm getting lost in dates. 28 February was a meeting with who?

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MS MORGAN: That's the meeting with Major Projects and with your own staff which landed on the notes we saw this afternoon and the last time with the dual negotiations?

MR GREEN: Okay. So the meeting Ms Young was referring to -

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MS MORGAN: Yes.

MR GREEN: - and the meeting at which there was a discussion about getting advice from GSO?

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MS MORGAN: Correct.

MR GREEN: So, I think in the lead-up to that meeting I was aware of where they were at. I don't think the - I don't think the view of the Tender Evaluation Team - I don't think that meeting was the first time I heard the view of the Tender Evaluation Team.

5 MS MORGAN: And that view was value management with Manteena as the preferred tenderer?

MR GREEN: Yes.

10 MS MORGAN: And after the legal advice was obtained you directed the Tender Evaluation Team to recommend a BAFO process; that's right?

COMMISSIONER: Well, I think, Mr Green did - the word "directed", but gave them to understand they were to, I think was the language.

15 MS MORGAN: That was the language.

COMMISSIONER: But if you want to put directed -

20 MS MORGAN: Well, no. I will pull up the transcript where he accepted that proposition. Transcript 83, please. So at the top of the page, I'm not sure there's the equivocation we had this afternoon, but Mr Green, you will see there that you accept - and I'm happy for you to go to page 82 to make sure we know what we're talking about. So, you will see at the bottom of 82 it was the best and final offer, at the bottom of the page. They're talking about the Tender
25 Evaluation Report. And if you turn over to 83, you accept the proposition from Mr O'Neill that you had directed that. So you accept, Mr Green -

MR GREEN: I agree I accepted the proposition from Mr O'Neill. I do agree with the
30 Commissioner that we had conversations around that, and I - my equivocation, if that's the word he called it earlier, is still my view. I don't think I ever gave them a formal direction, but I think by then we'd had a conversation around how my instructions would be perceived as a direction.

35 MS MORGAN: I'm not sure I understand your evidence, Mr Green. Are you saying conversations you've had with the Commissioner or conversations you are having with the Tender Evaluation Team members, or both?

MR GREEN: I'm saying, in relation to your last question -

40 COMMISSIONER: Yes, go on.

MR GREEN: - conversations that I'd had with my team could be construed as a - as an instruction to them therefore a direction to them.

45 MS MORGAN: And those conversations were to the effect that you would only accept a recommendation that was for a BAFO; is that right?

MR GREEN: That I wouldn't accept a recommendation to go to a value management.

MS MORGAN: That you would not accept a recommendation?

MR GREEN: No. Yes.

5 MS MORGAN: What were the other recommendations that you had in mind at that point, Mr Green?

MR GREEN: At which point? Sorry, February?

10 MS MORGAN: After the 28 February meeting?

MR GREEN: After the 28 February meeting we were waiting on advice back from GSO about paths forward. The 28 February meeting was a conversation around what the options would be. Sorry, I'm now lost as to the question.

15 MS MORGAN: Well, you disputed my characterisation that you would not accept anything other than a recommendation to go to BAFO at that point, after the advice from GSO. And you rejected my proposition and said, "No, I would not accept value management", and I asked you what the other options were at that point.

20 MR GREEN: So, at the 28th the options weren't decided. I think the 28th was probably the start of the crystallisation of the BAFO option subject to GSO advice. But then, after that, it comes down to, are there any other valid options, and I think there were, so from then onwards it's heading down a pathway towards BAFO.

25 MS MORGAN: So, shall I put my proposition - so, when you say, when I - sorry, I will withdraw that. I will start again. You told your staff that you would not accept a recommendation other than for a BAFO; that's correct?

30 COMMISSIONER: You mean, in terms? You don't mean - or do you mean words that gave him to understand? What - are you putting the words used?

MS MORGAN: I might go at this a different way. Could I ask for document 2.1449. Is that the right one? So, this is 13 March 2020. You're copied on the - you were already shown this this afternoon - you're copied on Mr Morton's email to Ms Young:

Thank you for the below advice. The delegate has advised this morning that the TET is to proceed with the BAFO.

40 Do you see that?

MR GREEN: Yes.

45 MS MORGAN: And you'd agree that that is consistent with you telling, at least Mr Morton, that you are directing in some way - you are directing or told him - sorry, I withdraw that. That is consistent with you telling Mr Morton that you want the report to recommend that the procurement should proceed to a BAFO; is that right?

MR GREEN: Yes, at that time. So, you know, Friday, 13 March or immediately beforehand I had a conversation with Mr Morton and said, "The TET is to proceed with a BAFO".

5 MS MORGAN: So, I'm going to ask you my question again. So after you obtained legal advice you directed the TET to recommend a BAFO process; is that right?

MR GREEN: I still have a problem with the word "direct." Instructed the TET to proceed with the BAFO.

10 MS MORGAN: Mr Green, could I suggest this: are you expecting, with the word "direction", some formal document with your signature on it?

MR GREEN: Yes.

15 MS MORGAN: So, if we remove that and it doesn't need a formal document with your signature on it, and you can orally direct someone or something to do something, you would agree with me that you directed the TET to recommend a BAFO process; is that right?

MR GREEN: Yes.

20 MS MORGAN: Thank you. Now, you then received - and you went through a bit of this with Mr O'Neill - you received a - sorry, I withdraw that. I think you gave evidence just a moment ago that in relation to the Tender Evaluation Report of around 16 to 18 March 2020, that you don't recall seeing it at the time; is that your evidence? Have I got that right?

25 MR GREEN: Yes, that's my recollection.

MS MORGAN: You know now that what that document did was recommend a reduced scope and a BAFO; that's correct? I can show it to you if it would help.

30 MR GREEN: I think it was recommending a BAFO, so it would have necessitated having something about produced scope, so yes.

35 MS MORGAN: So you don't need me to take you to that?

MR GREEN: If you've got it, I'd like to see it.

40 MS MORGAN: Of course. I think it's 2.1455. Fingers crossed. Yes. Thank you. Would you just scroll through that to the recommendation - at the top. You will see the top. Sorry, go back one page, 1457. I think we will see the recommendation at the top of the page at 2.1457. No. I'm sorry. Yes, the Purpose. So you will see:

... reduce the scope of work ... and to request the best and final offer from both tenderers.

45 Do you see that?

MR GREEN: I can see that. Yes, I agree that's the purpose statement, yes.

MS MORGAN: And can you scroll through - you know those documents better than me, Mr Green. If we just scroll through to the end, we will see the signatures of the - no, this isn't the right one. I celebrated too quickly. There is another version of this at - I'm told it might be 2.0805. No, that's not it either. 1.279, we will get there in the end. We shouldn't have to ask for your help, Mr O'Neill. So, if we can go to the next page, 1.280. And over again. No, we're right. 1.282, you will see the Purpose at the top, which is what we've just seen. If we go through to the signatures, hopefully we will see that all - so, they've been blanked out, but you will see the recommendation there, Mr Green. So, what you've got in this document that was for your consideration was the result that you wanted in relation to the BAFO rather than the value management process with Manteena, but you didn't proceed to adopt this recommendation; that's right?

MR GREEN: Yes.

MS MORGAN: And, I don't think you've been asked, or if you have I don't have a note of it, why you didn't do that?

MR GREEN: I think there was evidence that I gave about the timing of this document being signed, then the change to the Tender Evaluation Team, and then there's a - some other documents about change of Tender Evaluation Team.

MS MORGAN: I'm not asking you about any of those documents. I'm asking you -

MR GREEN: Yes.

MS MORGAN: - why you didn't sign - adopt this recommendation?

MR GREEN: So, the Tender Evaluation Team who had signed this document advised that they weren't - they didn't want to undertake the BAFO evaluation and we - there was another Tender Evaluation Team appointed. And then a conversation around the - whether - whether that team should look at these documents in preparation for the BAFO, or whether they should reconsider this, or whether I should just adopt this piece here.

MS MORGAN: Okay. So, let's just take that one step at a time -

COMMISSIONER: I note the time, Ms Morgan.

MS MORGAN: Commissioner, I'm nearly done, and if we could just finish this section I think that would be -

COMMISSIONER: Very well.

MS MORGAN: - then I will only have a couple more topics in the morning. Mr Green, you have a document here which is signed and provided to you with the recommendation in relation to BAFO which indicates -

COMMISSIONER: Which you instructed to be made. So, yes.

MS MORGAN: Thank you, Commissioner. Which establishes, you'd accept, that these three members of the T - the Tender Evaluation Team were prepared to recommend that to you; you agree?

5 COMMISSIONER: Thus far.

MR GREEN: No. And, sorry, I'm going to replay. I don't know that this had been provided to me at - well, sorry. This was not provided to me on the date it was signed, it has another process to go through. So, in that process there is a time that elapses and then in that time
10 that elapsed was the Tender Evaluation Team change issue.

MS MORGAN: Okay.

COMMISSIONER: Is that the quality assurance process or some other process?
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MR GREEN: It goes through a bit of a quality assurance process. So, I think at that time - and I think practices have changed within ACT Government - at that time that document then went to someone in Education and then a brief was prepared, and then that brief was - you know, reviewed/endorsed. It came - and it was on a trajectory to get to me,
20 but I don't think I had that for my consideration at the time when the Tender Evaluation Team change occurred.

MS MORGAN: And, Commissioner, I will have to finish this tomorrow but I should just correct something I said. Mr Green, I suggested that you hadn't offered an explanation for why the tender evaluation report wasn't signed, but you had, and this has been your consistent evidence. You have said that the reason was the change in the evaluation - in the Tender Evaluation Team, and that's your evidence and that's your position in relation to the - not signing the recommendation of the first TET - not adopting the recommendation of the first Tender Evaluation Team in or around 16 and 18 March 2020?
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MR GREEN: Sorry, I - the - after the 18th, the last thing that's on that document is the 18th -

MS MORGAN: Yes.

MR GREEN: - it took some time to come to me, and my recollection, my evidence, is that in that time was when the Tender Evaluation Team - sorry, before I had a chance to consider that document the Tender Evaluation Team change occurred and that's the decision point on not signing that document.
35

MS MORGAN: And that's the reason why you didn't sign it; that's your evidence?
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MR GREEN: Yes.

MS MORGAN: Thank you. Thank you, Commissioner.
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COMMISSIONER: Thank you. Yes, thank you, we will see you back here tomorrow morning. And can we go into private session, please? Thank you. Yes, you may leave.

<THE WITNESS STANDS DOWN

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**<THE HEARING ADJOURNED AT 4.11 PM TO THURSDAY, 7 DECEMBER 2023
AT 10 AM**

