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**TRANSCRIPT OF PROCEEDINGS**

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**THE HON MICHAEL F ADAMS KC, COMMISSIONER**

**THE ACT INTEGRITY COMMISSION – OPERATION KINGFISHER**

**PUBLIC HEARING**

**DAY 9**

**MONDAY, 4 DECEMBER 2023 AT 12.03 PM**

**MR CALLAN O'NEILL, Counsel Assisting**  
**MS KATE MORGAN SC with MS KEARNEY, Counsel for Katy Haire**  
**MR ATHOL OPAS, Counsel for John Green**

5 COMMISSIONER: I apologise for this late start, but I'm afraid something arose that induced it which was not predicted at the time before we were informed of commencing times. I know that you had another important engagement and I trust you finished it in time, but I apologise for inconveniencing you. Murphy's law provided, of course, that if it was easy to accommodate you it would have been impossible. But at all events we're ready to start now.

10 Ms Haire, I have to comply with certain formalities first. This is a public examination of Ms Haire concerning a corruption report involving the question whether recommendations and decisions relating to the education directorate's procurement at the Campbell Primary School Modernisation Project were made improperly.

15 Now, people will note that I'm wearing a mask. We have masks available if anyone wishes to take advantage of that. I will leave it entirely to you. If you're comfortable without a mask, that's a matter for you. Are you happy without a mask

MS HAIRE: Yes, thank you, Commissioner.

20 COMMISSIONER: Very well. I've already raised with this witness the requirements of the Act and I don't think it's necessary to repeat them. I wonder, for the record would you please announce your appearances.

MR O'NEILL: May it please, Commissioner, my name is O'Neill and I'm your counsel assisting.

25 COMMISSIONER: Thank you.

MS MORGAN: Commissioner, Morgan for Ms Haire with Ms Kearney.

30 COMMISSIONER: Thank you. Thank you, Ms Morgan. And I'm sure, Ms Morgan, you've informed your client of the requirements under which she is obliged to give evidence here?

MS MORGAN: That's correct, Commissioner.

35 COMMISSIONER: Thank you. I won't take other appearances. However, if you have an objection or you wish to raise a matter, would you state who you are and for whom you act at the outset so that the transcript can note your intervention.

Yes. Thank you, Mr O'Neill.

40 MR O'NEILL: Thank you, Commissioner. If the witness could be affirmed.

COMMISSIONER: Yes. Affirm the witness, please.

45 <KATHERINE ELYSE HAIRE, AFFIRMED

MR O'NEILL: Thank you, Commissioner.

<EXAMINATION BY MR O'NEILL:

MR O'NEILL: Ms Haire, the last time you were before the commission we had arrived in the chronology at the time you had made your decision. I now want to start asking you some questions about the period of time after the decision had been made. The first point in time is a date around 28 July 2020 when there was a digital debrief meeting held with the  
5 unsuccessful tenderer, Manteena. Were you aware of that meeting taking place at the time?

MS HAIRE: I was certainly aware of it, I believe, afterwards, Mr O'Neill.

MR O'NEILL: Right. So, you can't recall whether you were made aware that that was going  
10 to occur prior to it occurring?

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

MR O'NEILL: Did anyone ask you whether it was appropriate that you should attend that  
15 meeting, given you were the person who had made the decision?

MS HAIRE: No.

MR O'NEILL: Reflecting upon that point that I just put to you now, do you think it would  
20 have now been appropriate - and I'm asking a contemporary view - that you were the person that give that debrief?

MS HAIRE: I haven't given that any thought, Mr O'Neill. I wasn't an expert in the area, so I  
25 think it's appropriate that people who were more expert in it gave the debrief.

MR O'NEILL: Were you given a debrief of the debrief after it occurred?

MS HAIRE: Not formally. I've got an email from Mr Green, I believe a week or so  
30 afterwards, where - which I think you have - where he indicated that the Manteena people that he'd met with were - I think the word was "cranky" about the outcome.

MR O'NEILL: Yes. I will get that up for you. In fact, I won't do that for the moment. If we  
35 could just move onto something slightly, then. So, do you understand that that occurred after the online debrief? That's the first debrief with that unsuccessful tenderer? I think you were given an email that was told?

MS HAIRE: I don't remember - I think I know more about the debriefs now than I did at the  
40 time, Mr O'Neill. So, I don't recall knowing that there were two debriefs or the two meetings until, you know, the later events.

MR O'NEILL: Can I move to the second one, that was the meeting that occurred at the  
Bittersweet Cafe here in Kingston. That occurred on 18 September 2020. Were you  
informed in respect of that debrief prior to it occurring?

MS HAIRE: I can't recall knowing the different - knowing that there were two debriefs,  
45 Mr O'Neill, and so, I can't tell you which one I knew - I knew that there was to be a debrief and I was given some information after a debrief. I wasn't aware, until relatively recently, that there were two.

MR O'NEILL: Right. Can I take you to 2.1941. This is an email that you have sent to Mr Green?

MS HAIRE: Yes.

5

MR O'NEILL: It talks about a person by the name of Hannah?

MS HAIRE: Yes.

10 MR O'NEILL: Who is that?

MS HAIRE: She was my assistant.

MR O'NEILL: And it notes that:

15

*We've had a phone call from an unsuccessful tenderer.*

Do you see that?

20 MS HAIRE: Yes.

MR O'NEILL: That is, that the tenderer has made contact with the Director-General's office?

MS HAIRE: Office.

25

MR O'NEILL: As distinct from major projects or anywhere else who would then have been then in charge of the delivery of the project. Do you understand?

MS HAIRE: Yes.

30

MR O'NEILL: Was that an unusual thing to your mind when contact was made?

MS HAIRE: I can't recall thinking it was - thinking anything particular about it, Mr O'Neill, but - yeah, it was contact made with my office and I asked Mr Green to follow up on it.

35

MR O'NEILL: And then if I can take you to 2.1942. To the bottom of the page, we will read the email in its chronological order. You will see that Mr Green asks you:

*Was that Manteena about the Campbell tender?*

40

Do you see that?

MS HAIRE: Yes. Yes, I do.

45 MR O'NEILL: Then he says:

*In my last conversation I told them that they would get a debrief after the contract was signed.*

Was that something that you were aware of Mr Green had made a commitment to that tenderer about that prior to you receiving that email?

MS HAIRE: No.

5

MR O'NEILL: And then he notes that:

*The contract was signed on the Thursday so they are quick off the mark.*

10 Do you see that?

MS HAIRE: Yes.

MR O'NEILL: And then someone by the name of Margaret writes back:

15

*They could wait to be disappointed.*

Do you see that?

20 MS HAIRE: Yes.

MR O'NEILL: Who was Ms McKinnon?

25 MS HAIRE: She was acting in the role of executive group manager for business services at that time.

MR O'NEILL: And she makes some observation about being asked to be told, from Mr Green, about when they have been called, et cetera, and then:

30 *You or your team should call them tomorrow.*

Do you see that?

MS HAIRE: Yes.

35

MR O'NEILL: You've been dropped off that communication?

MS HAIRE: Yes.

40 MR O'NEILL: Do you understand why you were dropped off, if at all?

MS HAIRE: No. I haven't seen that email before, Mr O'Neill.

45 MR O'NEILL: Okay. And then I assume then that the same answer applies for the email that appears at the top where Mr Green provides Ms McKinnon details about speaking to Mr Bauer and setting up the face-to-face conversation later in the week. Do you see that?

MS HAIRE: Yes, I do.

MR O'NEILL: You weren't provided that information?

MS HAIRE: No.

5 MR O'NEILL: Then, as I understand it then, at 2.1944, and correct me if I'm wrong, the communication in the sequence from your office is the communication from Ms Flaherty in the middle of the page; is that right?

MS HAIRE: Yes.

10

MR O'NEILL: She attaches the details, and then is it fair to say that the email at the top of this chain is a communication you received from Mr Green about arranging for a time to meet?

15 MS HAIRE: That's not to me, though, that's to my office.

MR O'NEILL: I understand that, yes.

MS HAIRE: Yes.

20

MR O'NEILL: But do you think that this would have come to your attention?

MS HAIRE: I'm not sure. I think - yeah, I can't tell you that.

25 MR O'NEILL: Well, what assurances did you have at the time that somebody was going to undertake the debrief as requested by you since you were seeking advice on that topic?

MS HAIRE: I don't remember precisely, Mr O'Neill, but I'm sure that my assistant would have confirmed to me that she'd provided the details and that Mr Green was setting up the meeting, or Mr Green would have let me know. But my assistant was very efficient, so I expect she would have just in passing said she had done what was need - what - she had set that up.

30

MR O'NEILL: At 2.1946 is an email from you to Mr Green and others which appears to be a file note?

35

MS HAIRE: Yes.

MR O'NEILL: That's a discussion you had with Mr Edghill?

40

MS HAIRE: Yes.

MR O'NEILL: And you say that there are a number of notes and items below for action/advice?

45

MS HAIRE: Yes.

MR O'NEILL: And under the heading "Campbell":

*Major projects were keen of a bit of a review.*

MS HAIRE: Yes.

5 MR O'NEILL: And some matters there. Firstly, "What can we learn from the process? And what would we do differently?" Do you remember whether anybody gave some answers in respect of that.

10 MS HAIRE: Mr Green replied to me and I think we looked at this last time I was here, Mr O'Neill, that he made some dot points underneath those - I didn't have a particular independent recollection until you showed me, but I believe - it included, I think, a reflection that instead of the BAFO his view was that it should have been re-tendered. I think that's in a subsequent email.

15 MR O'NEILL: And also then that there would be a discussion between ICW and MPC?

MS HAIRE: Yes.

20 MR O'NEILL: Do you know whether that occurred?

MS HAIRE: I believe it did occur, yes.

25 MR O'NEILL: The document that I just took the witness to, Commissioner, is 2.1946.

COMMISSIONER: Thank you.

30 MR O'NEILL: The email that I think you were drawing my attention to is at 2.1950. And in particular, at 2.1951, at the bottom of the page. The answers that Mr Green provided you to your note.

MS HAIRE: Yes.

35 MR O'NEILL: If you turn across to the top of the page 2.1952, that finishes the conversation with the BAFO:

*It was suggested by MPC and GSO as a better process than my suggestion of re-tendering. In hindsight I think their advice was wrong.*

40 MS HAIRE: Yes.

45 MR O'NEILL: Now, at 2.1953, halfway down the page you will see that Mr Green - actually, I should start at 2.1954. You will see that Ms Flaherty asks at the bottom of the page Mr Green to touch base with you after the meeting and let you know how it went. She chases that up again at the top of 2.1952, and then at the bottom of 2.1953 you have an answer for Mr Green at 10.35?

MS HAIRE: Yes.

MR O'NEILL:

*They are still a bit cranky because they feel that they've been unsuccessful because someone doesn't like them.*

5

Do you see that?

MS HAIRE: Yes.

10 MR O'NEILL: We explored on the last occasion what you understood "cranky" to mean. Then he says:

*I've suggested again they find out why they are unpopular.*

15 MS HAIRE: Yes.

MR O'NEILL: Did you know why they were unpopular?

MS HAIRE: No.

20

MR O'NEILL: Did you think to investigate why they thought they were unpopular.

MS HAIRE: No. I thought it was a colloquialism.

25 MR O'NEILL: You see the next line, "They may still request a meeting with you."

COMMISSIONER: Yes, but even if it's a colloquialism, it carries a notion of a state of facts. It's not without meaning. Why would the fact that it was a colloquialism mean that you were disregarded?

30

MS HAIRE: Apologies, Commissioner, I guess, I thought it was another way of saying why they were unsuccessful.

COMMISSIONER: Yes.

35

MR O'NEILL: But surely the preceding sentence says that they've felt they've been unsuccessful because someone doesn't like them. And then, that their unpopular, so there is something about this company which is leading to it not winning tenders. That's clearly what's being stated here; do you agree or disagree?

40

MS HAIRE: I understand that - that now, Mr O'Neill, that that was what was discussed at the meeting. I didn't know that it at the time.

45 MR O'NEILL: Ms Flaherty thanks Mr Green on your behalf at the top of the page. Does that indicate that it was passed on to you, or that you read it at or about this time and that this was something that you had considered?

MS HAIRE: She would certainly have passed it on to me, yes.



MR O'NEILL: Did anything happen between this period of time and when the Freedom of Information request was received in any way to review what this sentiment was being passed on from the "cranky" tenderer?

5 MS HAIRE: Not that I'm aware of. What happened was, what was referred to in the preceding email that you showed me, which was a discussion between MPC and the Education Directorate about the process, and you saw the notes from that.

MR O'NEILL: That had happened before you'd got the feedback though?

10

MS HAIRE: Yes.

MR O'NEILL: That is, before you as the Director-General had received the feedback about the "cranky" tenderer. Did it cause you then to go back and say maybe we do need to have another review of process to make sure we did actually get it correct?

15

MS HAIRE: No.

MR O'NEILL: You didn't think, well, it isn't - this was a decision that had overturned what had been a recommendation. I won't use the word "overturned". I know that you have an objection to that. So this was your decision.

20

COMMISSIONER: Well, it rejected the recommendation.

25 MR O'NEILL: Well, it made a different recommendation.

COMMISSIONER: No. There was a recommendation and it was - Ms Haire decided she would not accept it, made a decision to the opposite effect. That's what happened. I don't think there's any characterisation about it that's unfair, is there?

30

MR O'NEILL: You disagree with that.

COMMISSIONER: Or have I misstated the position?

35 MR O'NEILL: Do you disagree with that characterisation.

MS HAIRE: No, Commissioner. I made a different decision to that which was recommended. I agree with that.

40 COMMISSIONER: I think that's true, but you not only made a different decision, it was binary, wasn't it? That is, they - the tender evaluation team recommended Manteena and not Lendlease, and you decided in favour of Lendlease, so it wasn't merely different, it was categorically opposite?

45 MS HAIRE: Yes. Yes, Commissioner.

COMMISSIONER: There was a third possibility, that is, you accepted neither and, as I understand your evidence, that did not occur to you?

MS HAIRE: No, it didn't.

MR O'NEILL: And see, here what is being communicated to you is that the unsuccessful tenderer thinks it's because of some kind of popularity problem. Is there something about it that is driving the decision. Do you see that?  
5

MS HAIRE: Yes, I do.

MR O'NEILL: So that didn't cause you then to go back and reflect upon whether "I had made the right decision to not accept the recommendation".  
10

MS HAIRE: No, not at this stage. But I have subsequently, Mr O'Neill.

MR O'NEILL: Yes, and we addressed that last time as well. The Freedom of Information request was received by the Education Directorate on 13 November 2020, so this is some time after - or about a month after this interaction. When did you become aware of the Freedom of Information request, if ever?  
15

MS HAIRE: I can't tell you exactly when, I'm sorry, but I know - I get notified of all Freedom of Information requests through a weekly report, so within a week or a fortnight, however the processing goes.  
20

MR O'NEILL: And are you involved in the collation of the response to the Freedom of Information request?  
25

MS HAIRE: No, I'm not responsible for doing the collation. We have people who are specific FOI officers under the Act who do that work. However, if it's matter that I might hold documents for, then I'm responsible for finding the documents that are relevant.

MR O'NEILL: And so, once it was notified to you, what did you do?  
30

MS HAIRE: My office, I believe, looked - identified any documents that were relevant. That's -

MR O'NEILL: All right.  
35

COMMISSIONER: So, they would have - that would have necessitated some sort of email search of subject matter? How would they actually undertake that, do you know.

MS HAIRE: I don't know, I'm afraid, Commissioner. It's a very - it's a very common process, we - people are very skilled at doing it.  
40

COMMISSIONER: No, certainly. I'm not suggesting that it was an unusual process. I'm just wondering the extent to which you know what was involved in it. You don't?  
45

MS HAIRE: No.

COMMISSIONER: Anyway, someone was tasked to produce the material sought in the FOI; is that right?

MS HAIRE: Yes, Commissioner.

5 COMMISSIONER: Then a decision needs to be made about what in that material ought - one can do it one way or the other, but it leads to the same result - either ought to be disclosed or ought not to be disclosed because there are classes of documents which ought not to be disclosed; they are specified in the Act?

10 MS HAIRE: Yes, Commissioner.

COMMISSIONER: And who makes the decision about documents that ought not to be disclosed?

15 MS HAIRE: The FOI officer.

COMMISSIONER: So that wouldn't come to you either?

MS HAIRE: No. No, I don't have anything to do with that.

20 COMMISSIONER: Right.

MR O'NEILL: Do you recall seeing the request?

25 MS HAIRE: I remember being - I remember it being part of the notification that we get weekly and fortnightly - get, I think it's weekly, Mr O'Neill.

MR O'NEILL: Did you review it? Did you review that, the actual request itself?

30 MS HAIRE: The specifics of the request?

MR O'NEILL: Yes.

MS HAIRE: No, I didn't.

35 MR O'NEILL: So the way it works is, you're directed by the relevant group within government to find these parts of pieces of documents or whatever?

MS HAIRE: Yes.

40 MR O'NEILL: And you task people with doing it?

MS HAIRE: Yes. There's a function in the directorate that does that as a matter of course.

45 MR O'NEILL: Was it explained to you why it was that the request had been made by the entity?

MS HAIRE: No.

MR O'NEILL: Did it cause you to reflect upon why it was that the request had been made by the entity?

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

5

MR O'NEILL: You didn't draw a link between the receipt of the FOI request and the sentiment that had been expressed previously, that Manteena was unhappy with how it had been treated - it was cranky, sorry?

10 MS HAIRE: No. I can see that now, Mr O'Neill, but it didn't occur to me at the - particularly at the time.

MR O'NEILL: Did you document what it was that you were going to task people below you with in respect of answering the FOI request?

15

MS HAIRE: No, I didn't.

COMMISSIONER: Is it normal practice that when the FOI process is completed in terms of gathering the material to be - that's to form the response to the request, that you would be shown the material that was being provided?

20

MS HAIRE: No, it's not, Commissioner.

COMMISSIONER: Yes.

25

MR O'NEILL: At 2.2060, there's a series of text messages between you and Mr Ceramidas; do you see that?

MS HAIRE: Yes.

30

MR O'NEILL: The first one dated 20 January 2021, at 6.38 in the evening, you ask him:

*Do you have a sec? Bit of a risk-based heads up.*

35

MS HAIRE: Yes.

MR O'NEILL: What was that about?

MS HAIRE: That was about a document that had been found through MPC's part of this FOI, that Duncan Edghill had told me about.

40

MR O'NEILL: And that document was?

MS HAIRE: That was the file note from Ms Young that we've, I think, previously looked at.

45

MR O'NEILL: Yes. And what was the risk that you were going to give Mr Ceramides a heads-up about?

MS HAIRE: Because it mentioned the Minister and so it's part of my responsibilities if something mentions or has an impact on the Minister, I would as a matter of course let the chief of staff know.

5 MR O'NEILL: Do you recall having a conversation with him about that?

MS HAIRE: I don't specifically recall that, but I believe that I would have because I was asking him to ring me.

10 MR O'NEILL: The text that follows below, just under two hours later:

*Further info - my FOI team believe that both FOIs are due to be released on 29, not 22 January and will pursue further.*

15 MS HAIRE: Yes.

MR O'NEILL: That's mechanical but it indicates that you were having discussions with the FOI team.

20 MS HAIRE: No, I think that that was information that I had -

MR O'NEILL: "My MOI team"?

MS HAIRE: Yes. So I think that the sequence of events was that Mr Edghill had told me about the document that was found in the MPC FOI, and that he understood that both of - that the - all the documents were going to be released on the same day, and I believe I made an enquiry of our FOI team, who said, "Yes, we are working together with them, they're going to be released on the same day, but it's not the day that Mr Edghill told you, it's another day." A week later.

30 MR O'NEILL: Who's your FOI team?

MS HAIRE: We have a number of people in our information area in the governance branch.

35 MR O'NEILL: So that's the third silo of governance and policy in the directorate?

MS HAIRE: That's right. Yes.

40 COMMISSIONER: Do you recall what Mr - what Duncan told you about this?

MS HAIRE: Not - I can't remember the words that he used, Commissioner, but -

COMMISSIONER: The substance of it?

45 MS HAIRE: He wanted to alert me to - to finding the document from Ms Young which makes a sort of an assertion about the Campbell project and the unions and the Minister.

MR O'NEILL: And the specific tenderer?

MS HAIRE: Right, yes.

MR O'NEILL: This is the cranky tenderer?

5 MS HAIRE: Yes.

MR O'NEILL: Who is the person who's asking for the Freedom of Information request, who's driving it?

10 MS HAIRE: Yes.

MR O'NEILL: So at this point do you now pause to reflect upon, that is, at the time, hang on, this person has this and they're cranky, and they say that they're unpopular, there's now a file note that says that they were not to be preferred; maybe there's something going on here that needs careful investigation?

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

MR O'NEILL: So, what do you do about that?

MS HAIRE: So, Mr Edghill and I sought a meeting with the head of service, Ms Kathy Leigh, and alerted her to the file note from Ms Young, and then as a result - following that discussion the Education Directorate commissioned an auditing firm to undertake a probity audit of both the Campbell and the Throsby tender processes.

25 COMMISSIONER: Was a note made of your conference or discussion with the head of service?

MS HAIRE: I can't say for sure. Certainly, there would be emails following the meeting with the follow-up actions, Commissioner.

COMMISSIONER: And who attended that meeting.

MS HAIRE: Mr Edghill, Ms Lee and myself.

35 COMMISSIONER: Just the three of you?

MS HAIRE: There may have been others there, I can't recall. It was during that time in 2021 which was - we were still largely doing all of our meetings online. I just can't recall whether there were others meeting. It wasn't a physical meeting.

COMMISSIONER: This was a virtual meeting?

MS HAIRE: Yes.

45 COMMISSIONER: Can you remember the substance of the response to the head of service to this information?

MS HAIRE: Yes. She was very concerned that the - about the substance of the email and we sought her advice on, you know, the appropriate steps to take and the advice was that we should undertake a probity audit.

5 COMMISSIONER: Right. Can you now recall any particular matter of concern? I mean, I can understand she could say "this is very worrying", but presumably it descended into some detail, do you recall?

10 MS HAIRE: The specific thing that I recall is that she was very concerned that Ms Young had - holding the concerns that she had on the date that she had them, hadn't raised them earlier.

15 COMMISSIONER: Right. And what about, was there some discussion about the nature of the concern, that is, its potential impact upon the probity of the procurement? If I can give you an example, the kind of thing I'm thinking of to assist, obviously, you couldn't regard this as trivial, this was serious. But what was said about the nature of the problem? Was that discussed, for example? Who was Mr Green. The head of service had probably never heard of him, I expect. Do you see what I mean? In other words, the context which enabled some evaluation to be made of the importance or potential significance of this note. Was there  
20 discussion about that?

MS HAIRE: So, I think that the agreement that we would undertake a full probity audit of both the tenders indicates that we agreed that this was a serious matter and that it required investigation and it should be an investigation, you know, that had - that was done by a third  
25 party, so -

COMMISSIONER: What do you - what is meant by "a full probity audit"?

30 MS HAIRE: I may not have the technical terms of that -

COMMISSIONER: No. What did you understand?

MS HAIRE: I understood it to be reviewing all of the documents to consider whether the process had been done properly.  
35

COMMISSIONER: Well, (indistinct) the documents?

MS HAIRE: Yes, it was a desktop investigation.

40 COMMISSIONER: How could a desktop examination of an allegation of this kind possibly be regarded as a full probity audit, Ms Haire? Take this particular allegation here. It's most unlikely, you'd think, for such a communication to have been made in a document, isn't it?

MS HAIRE: I wasn't directly involved in establishing the audit, but my - I understood it was done in the normal way that such things are done, Commissioner.  
45

COMMISSIONER: I don't think that's an answer to my question. I was pointing out to you, taking up your description of the audit as a desktop audit which looked at documents, and pointing out that the matter which was at the centre of or instigated this was most unlikely to

be contained in a document; or, if in a document, would also very likely be the subject of discussion or oral or verbal communication; do you agree?

5 MS MORGAN: Commissioner, can I just clarify what Ms Haire is being asked? Is she being asked to offer an opinion as to the ACT Government's use of probity audits and how they apply in this particular instance?

10 COMMISSIONER: No, she's not. The information which I'm seeking from the question is to be obtained from the question itself.

15 MS MORGAN: But in the context of this particular line of questioning Ms Haire had said that the decision of Head of Service was along the lines of ACT Government practice of an audit being established and that that was to be a desktop audit. I understood your question was about - and this might be where we're at cross-purposes - is, at a specific level and given what we know, would a desktop audit have been sufficient? Is that what you're asking Ms Haire?

20 COMMISSIONER: I have to say, I'm a little baffled by the uncertainty to which you refer. I will rephrase the question.

MS MORGAN: Thank you, Commissioner.

25 COMMISSIONER: Do you agree that a desktop audit would not or might well not acquire information about the matter to which this file note refers if it were confined to a desktop examination?

MS HAIRE: Do I agree that it might not find - it might not.

30 COMMISSIONER: M'mm?

MS HAIRE: I think that's possible, Commissioner, I -

35 COMMISSIONER: Did you yourself think about what the scope of the probity audit should be?

40 MS HAIRE: The task was given to the appropriate executive to develop the terms of reference. I cannot remember if - I don't - I cannot tell you whether I looked at the terms of reference. I understood it to be a standard process and I wanted it, of course, to happen expeditiously. And also, given I had some involvement, I was conscious that I should stay somewhat at arm's-length from it.

COMMISSIONER: Are you saying that it was the Head of Service who said this should be a desktop audit?

45 MS HAIRE: No. No, Commissioner. The decision to have the audit came out of the discussion with the Head of Service, but it was my decision to commission my organisation to set up the audit.



COMMISSIONER: So, the fact that it was a desktop audit came out of whose recommendation?

5 MS HAIRE: I can't tell you. I understand it - the audit was carried out in a way that I understand such things are always done. I was using the term "desktop" to describe how I understood it happened, but I may have confused it.

10 COMMISSIONER: When you say "always done", how often do you have an audit where the allegation is that the Minister of Education may have been approached by the unions and asked why a particular tenderer was getting all the jobs and this may be why the delegate is pushing for a BAFO, whereas that company should be the obvious preferred tenderer? How many probity audits are you aware of that have examined questions of that kind?

15 MS HAIRE: I'm not aware of any others, Commissioner.

COMMISSIONER: Isn't it self-evident that a probity audit needs to be focused on the issues which question the probity of a particular transaction, and that's self-evident?

20 MS HAIRE: Yes, Commissioner.

COMMISSIONER: In this case did you sign-off on the ultimate terms of reference?

25 MS HAIRE: I can't recall, I'm sorry. I think it was at arm's-length from me, but I can't be sure.

COMMISSIONER: Was the person given the task of drafting the terms of reference made aware of what I might call the instigating material?

30 MS HAIRE: The Ms Young email.

COMMISSIONER: Yes. Well, I don't think it's - is it - yes, the email.

MR O'NEILL: It's worth having it up, Commissioner. It's at 2.1448.

35 COMMISSIONER: Yes. Perhaps that would be helpful. So, was this brought to the attention of the - whoever was responsible for drafting the terms of reference - as being a matter which it was necessary, amongst other matters perhaps, but it was at least necessary to examine?

40 MS HAIRE: Yes.

COMMISSIONER: And, who did that?

45 MS HAIRE: Who did that.

COMMISSIONER: Who communicated that to that person?

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

COMMISSIONER: Right. I think at one stage Ms Laurent had responsibility in this area?

MS HAIRE: Yes.

5 COMMISSIONER: Now that I've reminded you, do you think she was the person responsible or that doesn't help?

MS HAIRE: She was the person responsible for establishing the probity audit, yes.

10 COMMISSIONER: Right. And so, would there be any communication that we might find between you and her about the setting up of the term of reference or the setting up of this probity audit?

MS HAIRE: I imagine that - I haven't seen a document around about this, but I would have sent an email following the meeting with the head of office to Ms Laurent's supervisor with the decision to set up the probity audit and then -

COMMISSIONER: Who was her supervisor?

20 MS HAIRE: Her supervisor was Mr David Matthews.

COMMISSIONER: Right. Come back to -

MS HAIRE: No, apologies. Her supervisor was Ms McKinnon.

25 COMMISSIONER: Who was in what formal position in the directorate at that time, do you recall?

MS HAIRE: Ms McKinnon was the acting executive general manager for business services.

30 COMMISSIONER: Right. Did you copy the Head of Service into the process?

MS HAIRE: I can't recall, Commissioner, because these are not documents that I've reviewed recently. I can't remember.

35 COMMISSIONER: You don't remember. Do you think that would have been likely?

MS HAIRE: I don't know.

40 COMMISSIONER: Did she thereafter express an interest in the matter?

MS HAIRE: I know that I provided a copy of the final report to her.

COMMISSIONER: Right. But do you recall any intervening exchanges?

45 MS HAIRE: No. It happened within a couple of weeks, I think, from the instigation to the completion of the report.

COMMISSIONER: Did you have any communications with the Minister's office about this claim?

5 MS HAIRE: I had let the chief of staff know about the document, which is the texts that you saw earlier. I didn't -

COMMISSIONER: Sorry, that's up -

10 MR O'NEILL: 2.2060.

MS HAIRE: The exchange with Mr Ceramidas where I told him about the FOI dates.

COMMISSIONER: Right. But did you bring this particular document to his attention?

15 MS HAIRE: Yes. That's what I brought to his attention in that -

COMMISSIONER: I beg your pardon, did you copy him, did you actually give it to him or copy of it to him?

20 MR O'NEILL: Did you send him a copy of the file note.

MS HAIRE: No, I didn't.

25 COMMISSIONER: Did you tell him that a probity report was to be conducted?

MS HAIRE: I don't think I did, no. I'm not sure, though, I can't recall, I'm sorry. But I don't think so. Certainly, what I can say is that he did not receive a final copy of the probity report because it was a directorate matter.

30 COMMISSIONER: Did you discuss with Mr Matthews this note and what should be done as a result of it?

MS HAIRE: Yes, I did.

35 COMMISSIONER: He was then Deputy Director-General?

MS HAIRE: Yes, he was. Yes.

40 COMMISSIONER: And what did you tell him?

MS HAIRE: I believe that I talked to him after I'd had the meeting with Mr Edghill and Ms Leigh, and I told him we were going to have the - we were going to commission the probity audit, and I asked him to handle it on my behalf because I was involved in it, so I needed to remain at arm's-length.

45 COMMISSIONER: So, as it were, he took the file off your desk?

MS HAIRE: Yes.

COMMISSIONER: And we would ask him about what communications took place with Ms Laurent or Ms McKinnon. He should know that?

MS HAIRE: Yes.

5

COMMISSIONER: You said a - mentioned a meeting with Mr Edghill. I thought it was a phone call but I may have misunderstood?

MS HAIRE: I was referring to - it's - well, it was a virtual meeting with Mr Edghill and Ms Leigh and myself, and possibly some others, I can't recall.

10

COMMISSIONER: So, Mr Edghill was there?

MS HAIRE: Yes.

15

COMMISSIONER: Was the subject of - I understand the ultimate step that was taken was to agree there should be a probity audit?

MS HAIRE: Yes.

20

COMMISSIONER: And that that should be organised through your directorate?

MS HAIRE: Yes.

25

COMMISSIONER: Were other courses of action discussed?

MS HAIRE: The other course of action was that Ms Leigh asked for the FOI documents to be provided to the Deputy Director-General who was responsible for workplace and public sector matters, the late Dr Damien - sorry -

30

COMMISSIONER: West?

MS HAIRE: - West, and so, I think this was at the same time Dr West undertook a review of the documents in order to, I think, possibly to provide separate advice to the Head of Service.

35

COMMISSIONER: When did you become aware that this was going to be a desktop review? Before it was undertaken or were you only aware after the event?

MS HAIRE: I'm not sure. I think - I think I saw the terms of reference before it commenced.

40

COMMISSIONER: Now your exchanges (indistinct) with Mr Green, about the procurement - I'm deliberately using a comprehensive term - were all oral except for the brief to you at the close of the proceeding; is that right?

45

MS HAIRE: Well, I think that in my meeting notes with Mr Green on six occasions I noted that we had discussed the matter over the preceding six months leading - prior to the brief.

COMMISSIONER: Did you make those notes available to - for the purpose of the audit?

MS HAIRE: I'm not sure if - I can't - I would have made everything available.

5 COMMISSIONER: We'll show you the report in due course which actually lists the documents, but let's leave it there for the moment. You also had, did you not, discussions with Mr Ceramidas about the procurement?

MS HAIRE: Yes.

10 COMMISSIONER: Had you made a note of what was contained in those discussions or what was asked in those discussions?

MS HAIRE: No, I didn't, Commissioner.

15 COMMISSIONER: So, that would not have been part of any record that went to the auditor; correct?

MS HAIRE: Correct.

20 COMMISSIONER: Indeed, there was no way that the auditor would have known that you had such discussions; correct?

MS HAIRE: Yes.

25 COMMISSIONER: So, you received - let's be neutral about this - certain information about what was important to the government in relation to procurement; agreed?

MS HAIRE: What was - yes. What was - yes.

30 COMMISSIONER: And you passed that information on to the delegate; do you agree?

MS HAIRE: Yes.

35 COMMISSIONER: And at the end of the process when considering whether a recommendation should be accepted, you discussed with him that information, one way or another; correct? It was raised between you as relevant to considering whether or not the recommendation should be accepted; do you agree with that?

MS HAIRE: What was raised, Commissioner, I'm sorry?

40 COMMISSIONER: Information about government priorities?

MS HAIRE: Yes, Commissioner.

45 COMMISSIONER: And if the recommendation did not adequately respond to those requirements, what then could be done about it?

MS HAIRE: Yes.

COMMISSIONER: And you sought a brief from him to enable you to make that decision; correct?

MS HAIRE: I sought a brief from him with advice about the decision, yes.

5

COMMISSIONER: Yes, as to that matter?

MS HAIRE: Yes.

10 COMMISSIONER: Which you accepted?

MS HAIRE: Yes. Or I made my own independent decision based on the advice, yes.

15 COMMISSIONER: Do you agree that all those matters went to the heart of this procurement? Well, let's avoid metaphor. Went to the centre of this procurement? It raised material issues, it was discussed with a delegate, and afterwards it was a vital part of the information which led you to make the decision that you did; is that a fair description of the process, at a high level, I agree, but that's a fair description of the process, so far as you were concerned? If there's any amendment that you would like to make in the interests of fairness or comprehension, please make it?

20

MS HAIRE: I don't quite understand the question.

COMMISSIONER: I will rephrase the question.

25

MS MORGAN: Even before that, Commissioner, you've left out any number of steps in the chronology that Mr O'Neill has taken this witness to in relation to what occurred in the procurement process, and you're now trying to truncate -

30 COMMISSIONER: I am not.

MS MORGAN: -- for a purpose that is unclear in relation to the probity audit, as I understand it.

35 COMMISSIONER: Now, now.

MS MORGAN: Well, Commissioner it's clear -

40 COMMISSIONER: It's perfectly obvious that I'm taking a bird's eye view of the process and I accept I'm leaving out quite a lot of detail. However, I will move on and I will ask another question.

45 MS MORGAN: Your Honour - Commissioner, could I just note, what seems to be occurring is a hindsight view of what, Commissioner, you see are the high points that go to the heart of the procurement which, from Ms Haire's perspective which was set out with Mr O'Neill last time, was much more complex and nuanced than how you, Commissioner, have truncated the issue this morning.

COMMISSIONER: Yes. You will have an opportunity to make the submissions that you wish to make in due course.

5 MS MORGAN: Well, Commissioner, Ms Haire is in the witness box and submissions are one thing; fairness to a witness and fairness in answering questions about facts are what are occurring now, and Ms Haire has (crosstalk) -

10 COMMISSIONER: Very well. Perhaps you might tell me then, what was unfair about my question?

MS MORGAN: As I said, the chronology that Ms Haire gave evidence about on the last occasion had many elements to it that were not reflected in the three points that, Commissioner, you put to Ms Haire and that's what I was concerned about, in truncating it in that way in the context of the probity audit as I understood the question was framed. That's what I - that's the unfairness as I could see it from my perspective and from the witness giving evidence about questions of fact.

20 COMMISSIONER: Well, thank you for that, but it is - you're quite mistaken. Now, let me put it at an even higher degree of generality. You were involved to a greater or lesser degree in the procurement process; do you agree?

MS HAIRE: I agree I was involved in the process, Commissioner, yes.

25 COMMISSIONER: You were involved in part because you were informed this was a matter of importance to the government; do you agree with that?

MS HAIRE: I think there is a potential conflation between the specific procurement and the matter of importance to the government which was the Secure Local Jobs policy.

30 COMMISSIONER: Indeed. And it was the application of the government's view of the importance of the Secure Local Jobs policy as it applied to this particular procurement that led to communications between you and Mr Green; correct?

35 MS HAIRE: I communicated with him -

COMMISSIONER: About those matters?

MS HAIRE: - about two procurements, two projects initially as we've previously discussed.

40 COMMISSIONER: Yes.

MS HAIRE: And then one was completed and then there was the briefing on the Campbell process.

45 COMMISSIONER: Well, I think it's fair to observe that two includes the one; do you agree?

MS HAIRE: Yes.

COMMISSIONER: Thank you. Now, at the end of the process there was a recommendation, a particular recommendation, that Manteena should be the contractor; correct?

MS HAIRE: Yes.

5

COMMISSIONER: You decided Manteena should not be the contractor; correct?

MS HAIRE: Yes.

10 COMMISSIONER: So, it's true to say, isn't it, that the ultimate decision was made by you in part, or perhaps in whole - you tell me - but at least significantly influenced by what you understood to be the government's priorities about Secure Local Jobs; does that put it fairly?

15 MS HAIRE: Yes. I think I said at my last hearing that that was the - one of - that was what was in my mind, yes.

COMMISSIONER: That was, as it were, the driving issue that led to your ultimate decision?

20 MS HAIRE: I think I said last time that the most important thing was getting the school built - getting the rebuild of the school in that complex project, and then -

COMMISSIONER: Well, that was going to be rebuilt whatever contractor you had. That wasn't the issue that drove the particular decision, was it, in relation to the - that you made as to which was to be the contractor?

25

MS HAIRE: Sorry, I can't understand.

COMMISSIONER: Well, let's leave that. The point is, though, that none of this information was conveyed to the probity auditor; is that correct?

30

MS HAIRE: I didn't review the documents that went to the probity auditor, Commissioner, but I would be as certain as I can be that the briefing, along with all the other procurement documents, would have gone to them, and so, that final decision which is where the decision - that final document which is where the decision was made was provided to them.

35

COMMISSIONER: But none of the oral exchanges between you and the Minister's office; correct?

MS HAIRE: Yes.

40

COMMISSIONER: None of the oral exchanges between you and Mr Green; correct?

MS HAIRE: Yes.

45 COMMISSIONER: Do you say that those matters were irrelevant to the probity of the procurement?

MS HAIRE: Do I say they were irrelevant?



COMMISSIONER: Yes. Do you say they were irrelevant?

MS HAIRE: No.

5 COMMISSIONER: Why, therefore, were they not provided to the probity auditor?

MS HAIRE: I'm afraid I can't answer that question, Commissioner, because I didn't manage that process and I am not particularly well versed in how such things are done. I understood it was being done in accordance with the usual practice, with the full cooperation of the  
10 directorate, and that anything that they wished to be provided with would be provided to them.

COMMISSIONER: You told me, however, that you saw the terms of reference that went to the probity auditor?

15

MS HAIRE: I believe I said I thought that I saw them, but I can't be sure, and I think, as I said, it was done at arm's-length from me. I didn't have a role in designing them.

COMMISSIONER: Nevertheless, you were aware when you read the report - did you read the report?

20

MS HAIRE: Yes, I did.

COMMISSIONER: You were aware when you read the report that it was -

25

MR O'NEILL: Was it provided in draft for your comment?

COMMISSIONER: Sorry, I've forgotten.

30 MS HAIRE: The directorate was provided a copy in draft, yes.

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

MS HAIRE: I believe I did, yes.

35

COMMISSIONER: And you didn't correct any part?

MS HAIRE: No. I didn't actively take part in the reviewing process for the reasons I've already discussed.

40

COMMISSIONER: Did you notice that none of your oral communications with the Minister's office or with a delegate were referred to in the report?

MS HAIRE: I don't remember noticing that, Commissioner.

45

COMMISSIONER: Although this was a report about the probity, ultimately of a decision that you made?

MS HAIRE: Yes, Commissioner.

5 COMMISSIONER: So, objectively speaking, and leaving aside what is in - what you may or may not have noticed - objectively speaking do you agree that the probity audit could not be adequately undertaken on the basis of a desktop analysis alone in light of the oral communications which you as Director-General had with the government and with the delegate?

10 MS MORGAN: Commissioner, I object to that question because inbuilt in that is an assumption from your perspective, Commissioner, which you haven't heard submissions about, in relation to whether those communications come within the scope of the probity examination. We all, sitting here now, with the full understanding of all the different documents that went to and from, and the communication and some of the witnesses may have a particular view about that, and yourself, Commissioner, have expressed quite firmly various views about that.

15 Asking this witness who hasn't been here necessarily for all of the examination of the whole chronology, it seems an unfair question to be asking Ms Haire at this point as opposed to, in response to your draft report, for example.

20 COMMISSIONER: No, I don't think so. I think it's a perfectly fair question. Indeed, it's asking the very question which you posed yourself to me just now, on reflection. It's a perfectly fair question.

25 Do you consider that a desktop probity audit such as this adequately dealt with the probity of this procurement in the absence of all the oral communications which you made to which we have referred?

MS HAIRE: I'm sorry, can you repeat the question, Commissioner.

30 COMMISSIONER: Yes. It's a desktop analysis; correct? We know that, surely?

MS HAIRE: Yes. Well, it looked at the documents involved in both of the procurements, yes.

35 COMMISSIONER: And only the documents?

MS HAIRE: Yes.

40 COMMISSIONER: And there are a number of communications which are not reported or recorded in documents; correct?

MS HAIRE: Yes.

45 COMMISSIONER: And those involved communications between you and the Minister's office?

MS HAIRE: Yes.

COMMISSIONER: They involved the way in which procurements should be approached from the government's point of view?

MS HAIRE: I'm not quite sure what that means, but the -

5

COMMISSIONER: The importance of the -

MS HAIRE: The importance of the Secure Local Jobs policy.

10 COMMISSIONER: Yes?

MS HAIRE: Yes.

COMMISSIONER: You're communicating those views to the delegate?

15

MS HAIRE: Yes.

COMMISSIONER: And that informing what was to happen following the recommendation being made by the Tender Evaluation Team?

20

MS HAIRE: I don't quite follow the sequence there, Commissioner.

COMMISSIONER: It was part of the material you took into account in deciding how to deal with that recommendation?

25

MS HAIRE: Yes.

COMMISSIONER: And informed the decision that you ultimately made?

30 MS HAIRE: Yes.

COMMISSIONER: None of that information was conveyed to the probity auditor?

MS HAIRE: So, as I think I said, the briefing was, I believe (crosstalk) -

35

COMMISSIONER: Yes, the briefing itself was, but none of the oral communications were conveyed; do you agree?

MS HAIRE: Yes.

40

COMMISSIONER: Do you agree, therefore, that is desktop probity audit could not adequately determine the probity of the procurement in the absence of that oral material?

45 MS HAIRE: I'm not sure that I can agree or disagree with that, Commissioner. I understand that the terms of reference, which I didn't influence or have any involvement in, were standard terms of reference for such a - for such an audit. It was an audit, not an investigation. I think that might be a relevant consideration and auditing is usually - as I understand it conducted in this way.

COMMISSIONER: Well, you've read the audit?

MS HAIRE: Yes.

5 COMMISSIONER: You will see that there are a number of observations made about the probity of the process of the procurement which were highly critical.

MS HAIRE: Yes.

10 COMMISSIONER: So, it evaluated what was done to the extent that it was exposed; correct?

MS HAIRE: Yes.

15 COMMISSIONER: And said, these things should not have been done in that way; correct?

MS HAIRE: Yes.

20 COMMISSIONER: Well now, that could only deal with, however, the documentary material provided; correct?

MS HAIRE: Yes.

25 COMMISSIONER: Therefore, it could not deal with a procurement as a whole because it omitted the matters to which we have already referred on a number of occasions? Standard or not, in fact, it could not deal with those matters, could it?

MS HAIRE: It didn't deal with matters that weren't documented, yes.

30 COMMISSIONER: And anyone reading this report would be completely unaware of the fact that such oral communications occurred and that they had a role to play in the procurement process; is that fair?

MS HAIRE: Yes.

35

COMMISSIONER: So, in effect, if it were used to suggest that the only probity problems with this procurement were those identified by the auditor, that would be a mistake; correct?

MS HAIRE: Sorry, I don't understand that question, Commissioner.

40

COMMISSIONER: Very well. Yes, thank you, Mr O'Neill.

MR O'NEILL: I note the time, Commissioner. I'm in the Commission's hands.

45 COMMISSIONER: We started late. And I wonder - we would usually take - Ms Haire, we would usually take a luncheon adjournment around this time. Do you feel like an adjournment or do you feel -

MS HAIRE: I'm happy to continue, Commissioner.

COMMISSIONER: Let's go on for another 15 minutes.

5 MR O'NEILL: There was certainly no time when you received the draft that you indicated to Sparke Helmore that, look, I can answer some of these - I have some information that's relevant to some of the questions you're raising in the probity report; you didn't do that - undertake that step, did you?

10 MS HAIRE: I had no contact with them whatsoever, Mr O'Neill.

MR O'NEILL: Not at all. No emails, no interviews, nothing?

MS HAIRE: No.

15 MR O'NEILL: I just want to return back to the text messages between you and Mr Ceramidas.

20 COMMISSIONER: Sorry, I assumed you'd go onto something else but there's something I want to ask again.

In relation to the Head of Service having agreed that there should be a probity audit, was there some discussion about what would be done with the report when it was provided?

25 MS HAIRE: No. Not that I recall, Commissioner. I think it was - the - no, I can't recall.

COMMISSIONER: Sorry. When you say, "No, I can't recall", do you mean there may have been and you don't recall it, or your recollection is, there was no agreement about what would be done with the report when it was completed?

30 MS HAIRE: I would be speculating, I can't -

COMMISSIONER: You can't say one way or the other?

35 MS HAIRE: I can't say one way or the other. I am trying to think about what logically might have happened but I am speculating.

40 COMMISSIONER: Let's just look at logically what would have happened. You would have expected that this would not have been filed away in someone's bottom drawer, it would have been used for some purpose or other; that would have been envisaged, surely?

MS HAIRE: I can't remember the discussions, Commissioner, but yes.

COMMISSIONER: Did you have in your own mind how this report might be used?

45 MS HAIRE: Not that I - I think we were - I was waiting to see the outcome of the report to decide on the next steps.

COMMISSIONER: Right. But it's clear there would have to be next steps of one kind or another?

MS HAIRE: Yes.

COMMISSIONER: What was the range of actions that you thought might be possible?

5

MS HAIRE: I don't believe I had that in my mind, Commissioner.

COMMISSIONER: You hadn't got to that level of decision making?

10

MS HAIRE: No.

COMMISSIONER: So, what did you do with it?

MS HAIRE: So, the - the timeline gets a little blurred for me at this point, Commissioner,  
15 but I think it was shortly after the probity report was completed that we became aware - that I became aware that the Auditor-General was going to conduct an audit into the procurement.

COMMISSIONER: The report is dated 23 February 2021. Does that assist you?

MS HAIRE: Yes, and I believe it was around that time, I think it was in the hearings - it is  
20 around - at around that time that the Auditor-General indicated that he was going to conduct an audit.

COMMISSIONER: Conduct an audit?

25

MS HAIRE: Yes.

COMMISSIONER: And, therefore?

MS HAIRE: So, as a result we - sorry, I've lost track of the question now, I'm sorry.  
30

COMMISSIONER: All right. We're talking about what happened to the report after it came to you, and you said, well -

MS HAIRE: Yes. Sorry. So we identified there was a series of issues identified in the report  
35 and we undertook - we met - I didn't meet directly with Major Projects Canberra, but my staff did, and took a number of actions to address some of the flaws in the process that had been identified. However, we were also conscious - I was also conscious - that the Auditor-General report was underway and so we were, I believe, from memory - and I  
40 apologise if this is unclear - taking the steps, the immediate steps that were identified but also noting that there may be further actions required depending on what the Auditor-General said.

COMMISSIONER: Well, I suppose you would have recognised or expected that the  
45 Auditor-General - you would have sent this to the Auditor-General of course?

MS HAIRE: Yes.

COMMISSIONER: - and you would have expected one of the Auditor-General questions to you would have been, "Well, what have you done about the matters identified in the report?", wouldn't you expect that?

5 MS HAIRE: Yes.

COMMISSIONER: As a fairly obvious question; do you agree?

MS HAIRE: Yes.

10

COMMISSIONER: So, were the steps to be taken identified in writing to any particular person?

15 MS HAIRE: Yes. There was communication between Education and MPC about the steps that we should take in the light of the probity audit.

COMMISSIONER: In writing?

20 MS HAIRE: Yes. In an email, I believe.

COMMISSIONER: Was Mr Matthews still charged with that or had you taken it back as your responsibility at this stage?

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

COMMISSIONER: So it may have been him or you, you don't -

MS HAIRE: Yes, I'm not sure.

30 COMMISSIONER: Is it fair to say, it would have been one or other of you?

MS HAIRE: Yes, I think that's right.

COMMISSIONER: All right. Do you recall seeing responses in writing?

35

MS HAIRE: I don't specifically recall, but I'm sure that there would have been, and I know that we - we identified a number of - the Education Directorate identified a number of steps, and Major Projects Canberra agreed to those, and there were meetings to put things in place to improve the processes.

40

COMMISSIONER: What about the matters raised in the report that said there were, or was, no record or no explanation for particular decisions, in other words, there were gaps in the record; did you think those gaps should be filled?

45 MS HAIRE: I'm sorry, I don't know the part of the report that you're referring to, Commissioner.

COMMISSIONER: That can be left for now. Yes, thank you.

MR O'NEILL: If we can then return back now to the text messages. So, you will see there, at the top of page 2061:

5 *Mr Edghill has confirmed that he gave me the wrong day. It's not going to be released this week.*

That was at 8.23 am on the following day, 21 February?

10 MS HAIRE: Yes.

MR O'NEILL: And then, Mr Ceramidas:

*Hi. I'm going to have to cancel this afternoon.*

15 MS HAIRE: Yes.

MR O'NEILL: What was that?

20 MS HAIRE: I think - well, clearly we had some agreement to meet or speak; I don't remember specifically. Maybe we had a - one of our regular meetings scheduled. I haven't checked my diary for that, Mr O'Neill, I'm sorry.

MR O'NEILL: And then you say:

25 *No prob. Can we chat about a few things?*

You see that?

30 MS HAIRE: Yes.

MR O'NEILL: And then at the top of the page following:

*You will need to talk to Bec.*

35 MS HAIRE: Yes.

MR O'NEILL: Who's that?

40 MS HAIRE: That is Rebecca Hobbs. She was the senior advisor who worked to the chief of staff on the Education Directorate matters.

MR O'NEILL: Yes. And then:

45 *Sorry.*

And then:

*Sure. Hope all is okay.*



MS HAIRE: Yes.

MR O'NEILL: You had some concern about Mr Ceramidas at that point?

5 MS HAIRE: I think, from the previous message, the one that said "sorry" - I'm reconstructing here, but I think I just thought it was kind of an odd series of messages. So, what's going on, hope everything's all right.

MR O'NEILL: And that's as far as your thought on that matter went? You just thought, well,  
10 I will get back to it when I can?

MS HAIRE: I can't recall, yeah.

MR O'NEILL: The next page:

15 *I have a document that relates to our earlier discussion. Give me a call when appropriate or I can talk to Bec.*

Do you see that?

20

MS HAIRE: Yes.

MR O'NEILL: That's on 22 February 2021 -

25 MS HAIRE: January, I think.

MR O'NEILL: January, sorry. Thank you. What are you talking about there?

MS HAIRE: That's the Kelly Young document.

30

MR O'NEILL: That's the file note to herself?

MS HAIRE: That's the file note, yes.

35 MR O'NEILL: And so, there had been a discussion, obviously, by this stage with you and Mr Ceramidas about what was to happen. Do you recall that discussion now?

MS HAIRE: About what was to happen.

40 MR O'NEILL: Well, "I have a document that relates to our earlier discussion." Do you recall that earlier discussion.

MS HAIRE: So, I think, Mr O'Neill, that I had - when I first spoke to Mr Ceramidas I hadn't seen the Kelly Young document.

45

MR O'NEILL: Right.

MS HAIRE: But I had been appraised of its contents. And then, I think at this point -

COMMISSIONER: Was Mr Edghill your only source for that? I just want to clarify.

MS HAIRE: Yes, it came from Major Projects Canberra. It wasn't in -

5 COMMISSIONER: I understand that. But was Mr Edghill your sole informant about it?

MS HAIRE: Yes.

COMMISSIONER: Right.

10

MS HAIRE: So then, I think I subsequently had a copy of the document, Mr O'Neill, and so - because previously I had just a description of it. That's my recollection of what that chain implied - is about.

15 MR O'NEILL: And he replies:

*Bec please.*

Do you see that?

20

MS HAIRE: Yes.

MR O'NEILL: And then, below that you've liked that message. Now, did you speak to Ms Hobbs about -

25

MS HAIRE: Yes, I believe I did.

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

30 MS HAIRE: I think I described to her the - that by now I had the document, and I think I read it out to her, or something along those lines.

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

35 MS HAIRE: I can't remember.

MR O'NEILL: By this stage had you become concerned about the probity of the process in which you were the final decision-maker?

40 MS HAIRE: I was - so, the information in Ms Young's - or the - the - not "the information" - the - what's - I'm not sure of the right word - the imputation in her email about the unions, and Manteena, and so on was all complete news to me when I saw that document. And so, I was concerned; I was concerned that this allegation had been made and of course I was concerned that it was something that I had been involved in.

45

MR O'NEILL: In addition to that, what about the fact that the Minister's chief of staff is now not talking to you about the very thing that you've raised? Does that add to that concern? Was that something you thought at the time?

MS HAIRE: No.

COMMISSIONER: Did you raise it with Mr Green?

5 MS HAIRE: Raise what with Mr Green.

COMMISSIONER: This information with Mr Green; after all, it specifically mentions you?

10 MS HAIRE: I don't think so. He no longer reported to me at this point, Commissioner.

COMMISSIONER: No longer directly. He was still in the directorate?

MS HAIRE: Yes. Yes.

15 COMMISSIONER: Did you ask Mr Matthews to raise it with him?

MS HAIRE: I'm not sure, I can't remember.

20 COMMISSIONER: Very well.

MR O'NEILL: Did you speak to anybody - sorry, I think I distracted you from answering my question about whether you had been concerned about the fact that the Minister's Chief of Staff was now not talking to you about a file note that indicated that his office had some involvement in changing the decision-making here and you didn't have that concern at the time?

25 MS HAIRE: I didn't understand it that he wasn't speaking to me because of the content. I didn't know why he - I didn't put - I didn't connect the two in the way that you have just connected them, Mr O'Neill.

30 MR O'NEILL: Have you ever connected those two? Have you ever spoken to Mr Ceramidas about why it was that he stopped speaking to you about this at the time?

35 MS HAIRE: He finished working for the Minister's office shortly after that, so I don't think I did speak to him again.

MR O'NEILL: I'm about to come to the audit report, Commissioner, and it'll be a topic longer than 5 minutes.

40 COMMISSIONER: Very well. Does anyone have a difficulty about resuming at 2 o'clock? Very well, we will resume at 2 o'clock.

**<THE HEARING ADJOURNED AT 1.26 PM**

45 **<THE HEARING RESUMED AT 2.09 PM**

MR O'NEILL: Now, I'm going to take you to the audit report itself. It's at 2.2064. Now, I appreciate it's not addressed to you, it's addressed to Ms Laurent. But I understand your

evidence earlier was that you'd received a draft of it prior it being finalised. You will see in the first line there:

*We refer to our engagement by the Territory as probity auditors.*

5

Just in relation to your engagement I understood your evidence before lunch was that that was Ms Leigh who was the person involved in organising and - no

MS HAIRE: No.

10

MR O'NEILL: Who was it?

MS HAIRE: It was my directorate who organised it.

15

MR O'NEILL: Right.

MS HAIRE: It was following the discussion with Ms Leigh to seek her advice and -

20

MR O'NEILL: And Ms Leigh provided you advice that the appropriate step was, in essence, a probity report?

MS HAIRE: One of the outcomes of the meeting that we had where we discussed it, I can't say who - you know, exactly who said what, but one of the outcomes of that meeting was the probity audit.

25

MR O'NEILL: In that meeting had you discussed with Ms Leigh the fact that some of what was likely to be relevant to the consideration of the probity was unlikely to be contained in documents?

30

MS HAIRE: No.

MR O'NEILL: And that is, for example, there were rumours circulating that that wouldn't necessarily be contained in documents. It may well be that needs to be some kind of other form of investigation that needs to take place; was that discussed?

35

MS HAIRE: No.

MR O'NEILL: What about the selection of who was to be the probity auditors? Do you recall how a decision was made to arrive at that firm?

40

MS HAIRE: I think it was organised through the Government Solicitors Office.

MR O'NEILL: I see.

45

MS HAIRE: But I can't be sure.

COMMISSIONER: Was the file note itself the subject of discussion with Ms Leigh?

MS HAIRE: Yes, Commissioner. It was because of finding that file note that we sought the meeting with Ms Leigh.

5 COMMISSIONER: No, I understand that. But was the file note itself discussed with Ms Leigh?

MS HAIRE: Yes.

10 COMMISSIONER: And what were the ways that - sorry, let me go back a step. Was the question, whether the file note was a true report or not discussed?

MS HAIRE: I can't recall the detail of the conversation, Commissioner. The input of the conversation was that these were - that the imputation in the file note was very troubling and required further work - further investigation.

15 COMMISSIONER: Certainly. Well, it would be troubling if false, because you've got a senior member/person making a - or circulating a false view, false facts, yes?

20 MR O'NEILL: Or recording a false fact.

COMMISSIONER: Recording, yes, a false fact; that would be troubling of itself; yes?

MS HAIRE: Yes.

25 COMMISSIONER: And, if it were true, that would also be very troubling?

MS HAIRE: Yes.

30 COMMISSIONER: So, on either account whether it was - it would be troubling; correct?

MS HAIRE: Yes.

35 COMMISSIONER: Was there a view, though, about whether it was important to discover whether it was true or not, or was that regarded as irrelevant or was that matter not broached?

MS HAIRE: The purpose of the probity audit - so, I can't remember the detail of that conversation, I'm sorry, Commissioner.

40 COMMISSIONER: Just dealing then - I understand you're going on to say something and I will certainly invite that answer. But just for now I'm asking you, are you able to recall whether - whatever was said about it, whether the truth or otherwise and how to find out whether it was truthful or otherwise, whether that subject matter was discussed at all. Are you able to say one way or another?

45 MS HAIRE: The purpose of the probity audit was to find out if there were any problems with the process of the procurement and including whether there was inappropriate influence on the audit - on the procurement.

COMMISSIONER: Are you saying, therefore - I don't want to - I just want to make sure we're clear about this. Are you saying that as you understood it one of the purposes of the probity report, in terms of the discussion about having a probity report in this meeting, was to ascertain whether or not this allegation was true?

5

MS HAIRE: Yes, I think that is what I'm saying, Commissioner.

COMMISSIONER: Right.

10 MR O'NEILL: And so, in establishing what was to go to the probity auditors, was that a discussion - was that discussed in this discussion that you had with Ms Leigh?

MS HAIRE: No.

15 MR O'NEILL: Then if you just turn to the report. Did you ever see an engagement letter that went to Sparke Helmore?

MS HAIRE: I can't recall.

20 MR O'NEILL: Just turning then to the report, 2.2064. You see at 1.2 the authors there say that:

*This relates to the defensibility of the decision to award a contract to Lendlease Building Pty Ltd.*

25

MS HAIRE: Yes.

MR O'NEILL: Do you see how it's expressed in the negative, that is, can we defend this decision? Rather, can we explore what's - no, no, 1.2, sorry - rather, can we explore what happened, whether that occurred or not? Do you see the difference?

30

MS HAIRE: Yeah, I see the word "defensibility", yes.

MR O'NEILL: Did it occur to you at the time that you read the draft, no, hang on, we've got to dig deeper than this. We're not interested in whether we can defend our position. We're interested in what actually occurred. Did that occur to you at the time?

35

MS HAIRE: No.

40 MR O'NEILL: The authors of the report point out, 2.3 - sorry, I will withdraw that, 2.2 that:

*The first part of the RFT process appear to have been conducted in a defensible manner, and materially in accordance with the authority set out in the PPM [the procurement plan minute] and the tender evaluation.*

45

Do you see that?

MS HAIRE: Yes.

MR O'NEILL: Then they go on in 2.3 to say:

*They have identified probity concerns and information gaps affecting the later stages of the RFT process.*

5

Now, they go on to outline what those concerns and gaps were, but prior to this report being finalised did it occur to you to say, look, I can assist you with some of the information gaps potentially because there will be things that aren't documented and if you conduct interviews with people in my team, or whatnot, you will be able to find out what the information gaps are?

10

MS HAIRE: No, I didn't.

MR O'NEILL: And then they go on to conclude in 2.3, on the next page, so that is:

15

*In our view these matters -*

Which is set out in 6:

20

*- mean the processing behind the decision to award a contract is not wholly defensible from a probity perspective and may give rise to the criticism of the Territory's conduct of the Campbell procurement.*

25

Now, given you were the decision-maker, when you read that, was that a concerning contention for which the authors of that report had arrived at?

MS HAIRE: Yes, I was concerned about that.

MR O'NEILL: What did you do about that specific identification?

30

MS HAIRE: I think, as I said earlier, I undertook, I think with Mr Matthews, to address all the issues that were raised to ensure that we improved our processes for future procurements.

35

COMMISSIONER: Well, can I just point this out to you. Would you have a look at paragraph - would you bring up, please, paragraph 6.1(a)(iii) at the bottom of 2.2068, I think it is. So, you see there:

*Although Mr Green is named in the TEP -*

40

Which is the Tender Evaluation Plan; you understand that?

MS HAIRE: Yes.

COMMISSIONER:

45

*As the delegate for the RFT stage we understand that rather than exercising his role as delegate after the conclusion of the BAFO process, he instead made a recommendation to the Director-General, who made the decision. We have not seen any documentation explaining this change in the nominated delegate for the procurement, or the date upon which this*

*change took [place]. The absence of [any] amendment to the TEP or other explanatory document means that, towards the end of the Campbell procurement, Mr Green's formal role in the process is very unclear.*

5 What steps did you take to ensure that that would not be repeated?

MS HAIRE: So, this - the steps that we took in conjunction with major projects, and also I think with Procurement ACT, was to improve and formalise the documentation of all such decisions for procurement; that there was, I think, also in the Auditor-General's report a  
10 finding that things had not been properly documented and there have been a range, which I can't go through in detail with you now, but a range of improvements to the documentation of procurement decisions and steps along the way in the process.

COMMISSIONER: Including as to that matter?  
15

MS HAIRE: Including as to the roles and responsibilities for - you know, the - I haven't got the detail, I'm afraid, Commissioner, but I believe that's what's covered. But I am drawing on my broad understanding.

20 COMMISSIONER: Very well.

MR O'NEILL: You were in a position though, when you received the draft, to be able to explain to the auditors, if you could, why it was that you'd taken over the decision-making; that was something you could have informed them of?  
25

MS HAIRE: Yes.

MR O'NEILL: But did not elect to do so at this time?

30 MS HAIRE: No.

COMMISSIONER: Why?

MS HAIRE: It didn't occur to me, Commissioner.  
35

COMMISSIONER: So they raise a specific matter going to probity, about which you had specific information in a draft report, you were able therefore to inform and you decided not to do so but you cannot now recall why; does that fairly put the position?

40 MS MORGAN: Commissioner, can I just interrupt for just a moment? 6.1(a)(iii) is directed at the lack of documentation.

MR O'NEILL: No. We accept that.

45 MS MORGAN: So I just wanted to make sure that -

COMMISSIONER: No, no.



MS MORGAN: The concern in this document is the lack of documentation, that the question being asked of Ms Haire is whether she was going to offer an independent explanation not documented but -

5 COMMISSIONER: That's right.

MS MORGAN: - would not have addressed -

COMMISSIONER: That's right.

10

MS MORGAN: Okay. Thank you, Commissioner.

COMMISSIONER: But also an explanation as to why there was no documentation might also have been material. Do you recall my question?

15

MS HAIRE: I'm sorry, Commissioner. I think you asked if I'd made a decision not to tell.

COMMISSIONER: That's right.

20 MS HAIRE: I didn't make any active decision. It didn't occur to me.

COMMISSIONER: Sorry. The possibility of making that comment - or making - giving that information did not occur to you?

25 MS HAIRE: No.

COMMISSIONER: Why were you reading the report?

MR O'NEILL: In draft, I think that question is directed to. Reading the report in draft.

30

COMMISSIONER: Why did you read it?

MS HAIRE: It was provided to me to read for information. I didn't take any active part in reviewing the content of the report.

35

COMMISSIONER: Very well. Yes, thank you, Mr O'Neill.

MR O'NEILL: Thank you. In 6.1(d), and in particular on the following page which is at 2.2071, there the authors make critique of there being no explanation provided for the reasons for the decision of Mr Green to request a re-evaluation. When you read that, had it occurred to you that that was a problem, that there was actually no reason for why there had been a re-evaluation and that was something you hadn't been aware as to why that occurred?

40

MS HAIRE: I wasn't aware that there had been a re-evaluation until I read the report, Mr O'Neill.

45

MR O'NEILL: So the first time you understood that that process had occurred was when you read this?

MS HAIRE: Yes.

MR O'NEILL: Thank you. In (e), you will see there that there's instructions provided to the authors about who was in attendance at the debrief. Now, there was in fact a note, or notes  
5 that Mr Green had provided you about the debrief?

MS HAIRE: The email that he looked at earlier.

MR O'NEILL: Yes.  
10

MS HAIRE: Yes.

MR O'NEILL: And so, did you not read this and say, well, hang on, there has been some explanation about what happened?  
15

MS HAIRE: No, I didn't.

MR O'NEILL: I'm going to move on to a different topic, if I may, unless you have any further questions, Commissioner, on the probity report. Now, I'm sorry to take you out of  
20 chronology. I'm going to have to do this because information's come to hand about some other matters. I want to take you back now, if I could, to the period when you returned from leave.

MS HAIRE: Yes.  
25

MR O'NEILL: And again, I apologise for taking you out of chronology. The Commission has received evidence that it was known to at least Mr Green and Ms Cross that there was a perception about the various tenderers for both Campbell and Throsby. Now, I think your evidence to the Commission so far is that you don't recall there being mention of tenderers' names at that point in time.  
30

COMMISSIONER: Would you mind answering the question?

MS HAIRE: I think I said to you, if they were mentioned, the names meant nothing to me.  
35

MR O'NEILL: Yes.

MS HAIRE: So, I didn't recall them in any way.

MR O'NEILL: And I think, in fairness to you, what I might also do is just bring up your note of the handover, because it appears at 3.0001, and in particular at the top, 3.0002. I just want to make sure that I'm fair to you in relation to trying to refresh your memory about this.  
40

(Livestream paused)  
45

So you'll see there on the right hand side of the screen, and we've been over this but that's the Secure Local Jobs intent of code highest level and you're taking notes of what you understood Ms Cross was telling you. Now, we understand that both Ms Cross and Mr Green had discussed the major construction tenders while you were on leave, and during that period they

had - well, a view was expressed in relation to the various tenderers. The first was, in relation to Franklin they had a discussion. And I'm just going to say, did you understand - again, this is your handover note so this is happening before you had been handed over, but they discussed a company by the name of Built. Do you recall ever being told by a company called Built?

MS HAIRE: So, I've got "Built" next to Franklin and that was the company that had been awarded the tender.

MR O'NEILL: Yes.

MS HAIRE: I don't remember any specific discussion about them, but I know that I wrote that down.

MR O'NEILL: Do you recall also in the same context being told of a company called Zorna, Z-O-R-N-A?

MS HAIRE: No.

MR O'NEILL: Were you told that Built was not liked?

MS HAIRE: No.

MR O'NEILL: Were you told that Zauner - it was ambivalent, that people were ambivalent towards that company?

MS HAIRE: No.

MR O'NEILL: In respect of Campbell, were you told that Lendlease was loved or liked?

MS HAIRE: No.

MR O'NEILL: Were you told that Manteena was not liked?

MS HAIRE: No.

MR O'NEILL: Were you told, in the context then of Secure Local Jobs, that what had been communicated to the directorate was that it had been generated out of a commitment to unions to ensure that procurement was undertaken in accordance with their concerns? Were you told that piece of information?

MS HAIRE: No.

MR O'NEILL: Were you told that a view had been expressed that the directorate needed to - sorry, that in future, that is, for future projects being those capital projects there, that there needed to be engagement with unions on LERTWE requirements?

MS HAIRE: No. I don't know what that is, I'm sorry.

MR O'NEILL: Okay. You don't know what that is?

MS HAIRE: No.

5 MR O'NEILL: Were you told anything of there being a distinction between the mandatory requirements of consultation with workers and not unions?

MS HAIRE: No.

10 MR O'NEILL: And you don't recall any of those kind of matters being discussed with you on about handover?

MS HAIRE: No.

15 MR O'NEILL: Excuse me one moment. Was it possible, in the context of the discussions that you had at handover, that the word "unhappy" - sorry, I withdraw that. No. Thank you, Commissioner, they're the questions I have for the witness.

20 COMMISSIONER: Is there anyone who wishes to make an application to cross-examine?

MR OPAS: May it please the Commission, my name is Opas, I appear as counsel for Mr Green.

25 COMMISSIONER: We will get you a microphone.

MR OPAS: Sorry, Commissioner. Thank you.

COMMISSIONER: Would you mind repeating that?

30 MR OPAS: Yes, sorry, I will start again. May it please the Commission, my name is Opas, O-P-A-S, I appear as counsel for Mr Green. I'm instructed by Mr Santucci of Sneddon Hall & Gallop, Lawyers, and I seek the Commission's leave to ask questions of Ms Haire and my instructing solicitors did provide a brief written application to the Commission dated  
35 necessary, to the extent necessary, to refer to the transcript of Ms Haire's evidence at private hearings, but I stress only to the extent necessary, Commissioner.

40 COMMISSIONER: Yes. Well, I propose to grant leave, but you must understand that I will keep a tight rein on the range of questioning.

MR OPAS: Yes.

COMMISSIONER: Very well. Yes.

45 MR OPAS: Yes, that's understood. I wonder whether I might -

COMMISSIONER: If you want to be heard on that matter, Ms Morgan, by the way?

MS MORGAN: No. Thank you, Commissioner.

MR OPAS: One last request. I wonder if I might borrow counsel assisting's lectern to rest documents on. I beg your pardon. I'm grateful. Thank you.

5 <CROSS-EXAMINATION BY MR OPAS:

MR OPAS: Thank you, Commissioner. Ms Haire, my name is Opas and, as you heard, I am counsel for Mr Green in these Commission proceedings. I am going to briefly take you back initially to the handover discussion that you had had with Ms Cross after you returned from  
10 leave, and I will do my best to - just to remind you of some answers that you've given before in these proceedings, including at the private hearing which you've given evidence at.

Just to orientate you in time, you will recall of course that you returned from leave on  
15 30 March 2020. Sorry, I will just ask you to verbalise

MS HAIRE: Sorry. Yes, I did.

MR OPAS: That's fine. And you had a discussion, I understand, with Ms Cross by phone in  
20 the following week, approximately 16 March 2020; that's correct?

MS HAIRE: No. I had a discussion with her the day before on 12 March, which is what those notes refer to.

MR OPAS: I see. Thank you. And am I correct in understanding that during that telephone  
25 handover discussion with Ms Cross, Ms Cross advised you that Mr Josh Ceramides, the Minister's Chief of Staff, had requested Ms Cross to ensure that contracts were awarded to companies with excellent reputations for their equitable and safe treatment of workers; that's evidence you've given. Do you recall that?

30 COMMISSIONER: Sorry, are you asking her if she recalls her evidence or are you asking her if she recalls the conversation?

MR OPAS: I'm simply asking the witness whether she recalls having given that evidence  
35 previously.

COMMISSIONER: Very well.

MR OPAS: But if the witness is prepared to concede that she recalls the conversation, that's  
40 equally fine.

COMMISSIONER: Either way then. Can you -

MR OPAS: Shall I repeat it?

45 COMMISSIONER: What do you recall, Ms Haire?

MR OPAS: I'm happy to repeat it if you would like.

MS HAIRE: So I recall having a discussion with Rebecca which is recorded in those notes about the importance of the Secure Local Jobs policy which goes to those matters about the safe and equitable treatment of workers (indistinct), yes.

5 MR OPAS: And it wasn't just a hypothetical discussion about the - simply the general policy of the Secure Local Jobs Code, was it; it was specifically with respect to the Throsby and Campbell projects, that's correct, isn't it?

10 MS HAIRE: So, my notes indicate that it was about the importance of Secure Local Jobs policy being applied with its correct intent at the highest level - they're the words I wrote down - applied to the three projects on my list.

MR OPAS: Of those three projects, two of those were the Throsby and Campbell projects; is that correct?

15 MS HAIRE: Yes. That's right.

MR OPAS: Just to clarify, at relevant times you've been head of the Education Directorate; correct?

20 MS HAIRE: Yes.

MR OPAS: The Secure Local Jobs Code, that is not a policy which, if I can use a colloquial expression, that's not a policy document which belongs to your directorate; it's not a document for which your directorate has the immediate policy responsibility?

25 MS HAIRE: That's right.

MR OPAS: I will just turn now to your discussion with Mr Green after the discussion that you've had with Ms Cross. You recall, don't you, speaking with Mr Green shortly after that discussion with Ms Cross in which you asked Mr Green whether he and Ms Cross had spoken about her discussion with the Minister's office; do you recall that?

35 MS HAIRE: Yes.

MR OPAS: And you spoke with Mr Green because it was of - you understood that it was of sufficient significance that you should check with him that he had, in fact, spoken with Ms Cross about this issue?

40 MS HAIRE: I think I've said in evidence previously I spoke with - I took a list of items from the handover and I spoke with all relevant people to ensure that the relevant actions were being taken, which is what I do; that's why I take - the notes are for myself to then follow up on, so I treated that matter in the same way.

45 MR OPAS: Yes. Thank you. Now, are you aware that Mr Green says that on or around 16 March 2020 Mr Ceramidas telephoned Mr Green to check that you had spoken with him? Are you aware that that's what Mr Green says?

MS HAIRE: I can't recall knowing that, I'm sorry. I haven't - I looked at Mr Green's evidence a while ago, I haven't refreshed my memory on that recently.

MR OPAS: I'm asking -

5

MS HAIRE: I think you're asking me what he gave in his evidence.

MR OPAS: No. I'm putting to you that Mr Green has said in his evidence that around 16 March 2020 Mr Ceramidas called him to check that you had spoken with him about these procurements. My question - so, I'm putting to you that that is evidence which Mr Green has given in these proceedings. Now I'm asking the question whether that's a discussion that you were aware - that you are now aware occurred? Are you aware that on or about 16 March 2020 Mr Ceramidas telephoned Mr Green?

10

MS MORGAN: I object to that question. I'm still not sure (crosstalk).

COMMISSIONER: Yes, I think it is objectionable. I don't think you're suggesting that she was a party to that conversation -

20

MR OPAS: Not at all.

COMMISSIONER: - with Mr Ceramides. I must say that I thought that what you were doing was to remind her of Mr Green's evidence and then you were going to ask a question which is within her capacity to answer.

25

MR OPAS: Simply whether the witness had any awareness of Mr Ceramidas having spoken with Mr Green. It's not -

COMMISSIONER: Did you have any such awareness that Mr Ceramidas - about this time - had spoken with Mr Green?

30

MS HAIRE: No, I didn't.

MR OPAS: I suggest to you that you then asked Mr Green to keep you informed about the progress of the Throsby and Campbell procurements, and to bear in mind the matters important to the government, in other words, your evidence that companies awarded contracts had excellent representations for their equitable and safe treatment of their employees. Do you recall asking Mr Green to keep you informed about the progress of the Throsby and Campbell procurements and to bear in mind those matters?

40

MS HAIRE: I remember asking him to keep me informed and I remember passing on to him about the - what Rebecca had told me about the Secure Local Jobs Code, however expressed.

MR OPAS: Yes. And can I suggest that from time to time - correction. Withdraw that. I suggest that from around the time of Ms Cross's handover that we've just been talking about, you did take more of an interest in the Throsby and Campbell matters; do you agree with that?

45

MS HAIRE: I think from time to time - I agree from time to time I asked Mr Green about them, though I note for about - as I've said in my evidence previously, because of the pandemic and the crisis that ensued, I think I didn't ask him anything about them for about a month, from late March until about late April, and then I - I started - I realised that I hadn't had any updates for about a month, so --

MR OPAS: So from around April you started seeking updates from Mr Green?

MS HAIRE: Yes.

MR OPAS: The two of you spoke fairly regularly, didn't you?

MS HAIRE: Yes.

MR OPAS: Did Mr Green at that time report directly to you?

MS HAIRE: He did from February.

MR OPAS: From February 2020?

MS HAIRE: Yes.

MR OPAS: Through until the conclusion of this procurement process, through until a contract was awarded?

MS HAIRE: Through until about July, I think, yes.

MR OPAS: I see, thank you. In that case, I suggest that, noting your answer that you sought updates from Mr Green from around April 2020, that you continued then to seek updates from Mr Green over the ensuing months; do you agree with that?

MS HAIRE: My recollection is that April - in April or May - April, May and early June I was asking him about it, yes, and then, again, it dropped off my radar after that.

MR OPAS: Yes. Now, each Friday - you've previously given evidence about this, I'm simply asking you to acknowledge having given the evidence - each Friday the Education Directorate provided a weekly compendium brief to the Minister on projects and matters of interest to her including various infrastructure projects; you agree with that?

MS HAIRE: Yes.

MR OPAS: And that weekly compendium brief included updates on the Campbell project; that's correct, isn't it?

MS HAIRE: Yes.

MR OPAS: You saw the weekly compendium brief?

MS HAIRE: Yes.



MR OPAS: So, in other words, if the weekly compendium brief included updates on the Campbell and Throsby projects, you would have had some visibility through the weekly compendium brief as well; do you agree with that?

5

MS HAIRE: Yes.

MR OPAS: I'd now like to ask you some questions about your role in the Campbell procurement, particularly your role as decision-maker. You previously told the Auditor-General, I suggest, that you decided to become the decision-maker in the Campbell project in around May 2020; you recall telling the Auditor-General that?

10

MS HAIRE: Yes, I do.

MR OPAS: And does that remain your recollection?

15

MS HAIRE: Yes. I think it was around the middle of May as best I can recall.

MR OPAS: Yes. We can have the transcript reference pulled up, if necessary, but I will just ask you this. At the public hearing in these Commission proceedings on 29 September 2023 you were asked whether you had had a discussion with someone in the Minister's office about you making yourself the decision-maker. We might pull up the transcript reference, if that's convenient. Transcript 29 September 2023, page 751. I'm referring particularly to lines 45 to 46 on page 751. Do you see those? A question from counsel assisting:

20

25

*Did you have a discussion with perhaps someone in the Minister's office about this?*

Do you see that?

MS HAIRE: Yes, I do.

30

MR OPAS: Then over the page on page 752. Thank you.

MS HAIRE: Yes.

35

MR OPAS: Lines 1 through to 5. You say you seek clarification from counsel assisting about the decision. Answer - or question, rather, from counsel assisting:

*About you becoming the decision-maker.*

40

Your response:

*I had earlier - not - not in a - not in May.*

Do you see that?

45

MS HAIRE: Yes.

MR OPAS: What discussion did you have with the Minister's office about you becoming the decision-maker?

5 MS HAIRE: In that answer, Mr Opas, I'm referring to something I think which is elsewhere in my evidence, where I said that Ms Cross had handed over to me an opinion from the chief of staff that, for significant procurements, the Director-General should be the decision-maker.

MR OPAS: Yes.

10 MS HAIRE: And I think I also said in my evidence that it's possible, though I don't specifically recall it, that the chief of staff had also expressed that opinion to me separately. This was all in around that march period.

15 MR OPAS: If I've understood - let me just check that I've understood you correctly, please. You're saying that in a discussion in around March 2020 you had a discussion with the chief of staff?

20 MS HAIRE: I have said, firstly, that the opinion of the chief of staff on that matter was handed - was part of the handover discussion from Ms Cross.

MR OPAS: Yes.

25 MS HAIRE: Almost as a, just a by the way kind of comment, and then I think but I'm not 100 per cent sure that that opinion was also - that Mr Ceramidas might have given me that opinion himself as well in a week or so later. I'm not 100 per cent sure about that. I think that's what I said in my previous evidence, that I got it from Rebecca, and I thought that Mr Ceramidas may also have mentioned it to me.

30 MR OPAS: So you have some recollection now of a discussion, in addition to the handover discussion that you had with Ms Cross, you have some recollection, I understand, of a discussion with Mr Ceramidas about a week after; is that correct?

35 MS HAIRE: I think I've said, I think it may have happened, I'm not - I can't recall it specifically. I think that's what my previous evidence said.

MR OPAS: I'm not asking about your previous evidence now, I'm asking about what you recall today?

40 MS HAIRE: That's what I recall today.

MR OPAS: So you -

MS HAIRE: I think it may have happened, but I'm not - I can't remember it specifically.

45 MR OPAS: Yes. I'm not asking about the precise date, for example, but the context, whether it was a phone conversation or a discussion?

MS HAIRE: No.

MR OPAS: Understood. Am I correct in understanding, Ms Haire, that your decision to become the decision-maker was not - you didn't document it at the time?

MS HAIRE: That's right.

5

COMMISSIONER: I don't think it was ever documented.

MR OPAS: I understand that's correct. You're not aware of anyone else having documented it on your behalf?

10

MS HAIRE: No, I'm not.

MR OPAS: Yes. So, I think you said in answer to a question I asked you before, that you considered that you became the decision-maker in approximately mid-May 2020; you recall giving me that answer?

15

MS HAIRE: Yes, I do.

MR OPAS: Was that something that you'd made known to somebody? What was the event that you said, that's when I became the decision-maker? Did you tell somebody?

20

MS HAIRE: I discussed it with Mr Green, and I think in my previous evidence I've indicated that it wasn't a specific event, it was more my growing awareness that this process was taking a very long time, and that I had minimal insight into what was happening, and it's - and I felt embarrassed that I hadn't actually been keeping track of it in the way that, you know, in general terms as I had been asked to do, and so, that seemed to me to be the way that I could have some oversight and insight into the project which I didn't otherwise have.

25

MR OPAS: And that was despite your answer to one of my earlier questions that from - I think you said from April 2020 you were receiving or requesting updates from Mr Green about the Campbell procurement?

30

MS HAIRE: Yes, and it was taking a very long time to resolve.

35

MR OPAS: What was it that you felt was taking too long to resolve?

MS HAIRE: I didn't understand why - what was happening in detail in the process and I was - at this point by May, as I think I've said previously, I got a phone call from Duncan Edghill concerned about the length of time that this process was taking, and I think that was one of the points where I also got a phone call from the Chief of Staff asking about whether the project had been concluded.

40

COMMISSIONER: Well, why didn't you just say to Mr Green, "Why is it taking so long and when it's going to be completed" and "What's happening?", would have been simple to do?

45

MS HAIRE: I'm not sure, Commissioner.

COMMISSIONER: No. Can you think of a reason?

MS HAIRE: No. The whole thing - I was unfamiliar with the processes in the ACT and I can't think of a reason.

5 COMMISSIONER: Just correct me then if I'm wrong about my understanding of this. So you decide in May, I need to make myself the decision-maker in order to move things along more quickly and be more aware personally of what's happening; correct?

MS HAIRE: To understand where the project is up to and -

10 COMMISSIONER: Right, and?

MS HAIRE: Yeah, have some oversight of it.

COMMISSIONER: Right. Is that it? I mean, I just -

15

MS HAIRE: Yes, Commissioner.

COMMISSIONER: That's the reason. And did you then stand up, Mr Green, and say, "Why is it taking so long? Where is this at? What still needs to be done and how long will it take?" Did you ask him those questions?

20

MS HAIRE: I can't recall the specifics of conversations with Mr Green.

COMMISSIONER: Well, did you discuss progress? Who made that decision?

25

MS HAIRE: He gave me process updates when we met, I think it's recorded in my notes, every second week or so -

COMMISSIONER: So you were making the decision, had nothing to do with actually getting more reports or getting them more quickly or anything of that kind; it was simply something that went on in your head. Is that what you're saying?

30

MS HAIRE: No, Commissioner.

COMMISSIONER: Well, how - what impact did it have? I'm sorry, perhaps I'm not being clear. Let me tell you the picture that I have and you tell me if I'm making a mistake.

35

MS MORGAN: Commissioner, could I just interrupt for a moment?

40 COMMISSIONER: Yes.

MS MORGAN: I'm just concerned there is cross-purposes here because Ms Haire might think, Commissioner, you're aware of some of the material that's been handed over and I'm not sure Ms Haire's been taken to it. But there are the records where - about Campbell and Throsby in the meeting notes, and so, there's responses -

45

COMMISSIONER: No, no, no, I am aware of those things.

MS MORGAN: But in that there's -

5 COMMISSIONER: Let me - I think the best way to do this is to let me tell you the picture that I have and then you tell me, if you can, where that is a mistaken - where I'm mistaken about it. You're concerned that, as it were, you're out of touch with what is happening; correct?

MS HAIRE: I was concerned that the project was taking a long time to resolve and I didn't know what was happening with it.

10 COMMISSIONER: Right. So, those were the two: delay and what actually was happening, those were the two issues?

MS HAIRE: Yes.

15 COMMISSIONER: You decide you are going to make the ultimate decision; correct?

MS HAIRE: Yes.

20 COMMISSIONER: What then changed?

MS HAIRE: Commissioner, I'm not sure that anything changed, but in my experience when the most senior person takes a role - and I do this every day in my work - if something is taking a long time I take more of an active interest in it, I lean in to - sorry, apologies for that term -

25 COMMISSIONER: No, no, it's a perfectly reasonable term.

30 MS HAIRE: I set deadlines, I work with people on the matters, and usually because of the hierarchy of the public service, even the fact - the fact that the most senior person is asking for it has an effect of moving things along which otherwise can get stuck or delayed along with all the other things.

35 COMMISSIONER: So, did you lean in, did you take a role? What I understood you to say, just two answers ago, was that nothing changed.

MS HAIRE: I continued to ask for updates and I - within just over a month of my making that decision I got the brief. So, I don't - I can't say whether it would have taken longer if I hadn't done that, but that is the result that happened.

40 COMMISSIONER: Yes. Very well.

MR OPAS: Yes, thank you. Can I pull up transcript, with your leave, of the private hearing 9 February 2023, Commissioner, page 1146. 9 February 2023, page 1146. Thank you.

45 COMMISSIONER: Sorry, can I just go back while I think about the answer. You informed Mr Green that you were now the decision-maker?

MS HAIRE: Yes.

COMMISSIONER: And you did not - did you say to him what you expected as a result of that?

5 MS HAIRE: I can't tell you in detail. I think Mr Green knew that there was a great deal of concern across government about how long the project was taking to resolve.

COMMISSIONER: Well, obviously you couldn't make a decision until the process had been completed?

10 MS HAIRE: Yes.

COMMISSIONER: You couldn't cut it short, in short; is that right?

MS HAIRE: That's right.

15

COMMISSIONER: So you as Director-General were his boss?

MS HAIRE: Yes.

20 COMMISSIONER: Why didn't you just tell him to hurry up?

MS HAIRE: I did, Commissioner.

COMMISSIONER: Without effect. Isn't that what you're saying?

25

MS HAIRE: I was concerned - I don't know if it had an effect or not, Commissioner, but I was very concerned at how long it was taking, and I was getting phone calls, as I've said, from Major Projects Canberra and also a phone call from the Chief of Staff because there was a great deal of concern at the time because of the - we were at the end of the lockdown and there was great concern about the construction industry, and jobs, and government's role in letting projects so that employment ensued and economic activity. So, it was a general concern and that's what I was attempting to have some influence on with by -

30

COMMISSIONER: How could you have any more influence than being the boss of the whole process and telling people what to do? How did being the decision-maker give you any more authority than you already had? You were already at the top of the tree. That's what I have difficulty with understanding. Can you answer that question?

35

MS HAIRE: I'm not sure that I can.

40

MR OPAS: If I may, Commissioner.

COMMISSIONER: Very well.

45 MR OPAS: Can I pull up the transcript, 9 February 2023, page 1146. I'm going to take you to an answer you previously provided, Ms Haire, at lines 22 through to 26. You were being asked questions by counsel assisting about these issues of, why did you want to become the decision-maker or the delegate, and I'm going to suggest that in this context "delegate" and "decision-maker" are really the same thing.

MR O'NEILL: I don't think that suggestion can fairly be made. I think that's actually a conflation unfairly.

5 COMMISSIONER: Yes, I understand it was a conflation but it's the difference - it's a distinction without a difference, isn't it?

MR O'NEILL: It is. But let's maintain it if it's possible.

10 COMMISSIONER: Well, I think if there's no difference --

MR OPAS: Well, it was my learned friend who asked the question using the word "delicate."

MR O'NEILL: And I was corrected, exactly.

15

MR OPAS: Well, I'm happy to stand corrected as well and happy to maintain the distinction if counsel assisting considers that's the best way to proceed.

COMMISSIONER: Well, as long as it's clear to the witness, that's the only importance.

20

MR OPAS: Yes. Well, you will see the question that - I will just read the words in the question that was put to you:

25 *Well, that rather suggests that - I mean, what is it that is sought to be achieved by you becoming the delegate instead of Mr Green?"*

And do you see your answer there, Ms Haire:

30 *So that I could have some insight into it and so that I could identify and, in particular, because I had been asked, had the message passed on to me about the importance of the Secure Local Jobs priority.*

Do you see your answer there?

35 MS HAIRE: Yes.

MR OPAS: So, should we take from that answer, Ms Haire, that one of the reason, or at least one of the key reasons why you wanted to be the decision-maker, was to ensure personally that the outcome of the procurement achieved the policy objective which had been relayed to you, for example, by Ms Cross?

40

MS HAIRE: Yes. As I said to you just a few minutes ago, so I could have oversight of that in the light of the requests that had been made of me, yes.

45 MR OPAS: Yes. In relation to that policy?

MS HAIRE: Yes.

COMMISSIONER: Well, not oversight. So that you could - because being a decision-maker is different from having oversight, it is just making the decision. So, that's what Mr Opas's question was, that is, did you make yourself the decision-maker in order to ensure that the government policy was, in fact, applied at this procurement?

5

MS HAIRE: I think, Commissioner, as I've said - I've answered this question a number of times, that was one of the considered - that was one of the reasons, yes. Otherwise, I had no oversight of process. Perhaps I'm using the word "oversight" wrongly. I apologise for that.

10

COMMISSIONER: Well, I find it difficult for you to say you had no oversight when you were getting regular reports and you could ask for any report at any time day or night because you were Director-General. So, I just put it out there that I find difficult to accept that you had no oversight, but assuming that you're simply answering that question a bit loosely, that's not really the point. The point of Mr Opas's question and my own, which I think deserves an answer without qualification, if it can be made fairly, than is, one of the reasons you decided to be decision-maker was so you could ensure that the government policy relating to Secure Local Jobs was applied in relation to this procurement?

15

MS HAIRE: Yes.

20

COMMISSIONER: And does it follow from that, that you could not be sure that it would be applied if you left the decision to Mr Green?

MS HAIRE: No.

25

COMMISSIONER: Yes, Mr Opas.

MR OPAS: We have an answer. Thank you, Commissioner. Ms Haire, I'm now going to move on to around the time - the events around the time that the second Tender Evaluation Team provided its report in early June 2020. Now, you will recall the second Tender Evaluation Team's report that was completed in early June 2020; you recall that?

30

MS HAIRE: Yes.

35

MR OPAS: At the public hearing on 29 September 2023 you gave evidence that Mr Green told you a few days before that report was finalised, so we're talking around late May 2020, that "The panel was recommending me and Tina over Lendlease." Do you recall giving that evidence?

40

MS HAIRE: Yes.

MR OPAS: Is that still your recollection?

MS HAIRE: Yes.

45

MR OPAS: And then you've previously given evidence that on or around 5 June 2020 Mr Green told you that the Tender Evaluation Team had reached outcomes for Campbell and Throsby; could you recall that?



MS HAIRE: I can't specifically recall that now, but I - sorry.

MR OPAS: If I suggested to you that on 5 June 2020 Mr Green told you that there'd been an outcome in the form of a Tender Evaluation Team report for Campbell, you wouldn't disagree with that?

MS HAIRE: No.

MR OPAS: I'd like to then take you to the discussion that you had. You agree that on or about 5 June 2020 you had a discussion with Mr Green about this report; you agree with that, don't you?

MS HAIRE: On which date, Mr Opas?

MR OPAS: Around 5 June 2020?

MS HAIRE: Yes. Sorry.

MR OPAS: In other words, you're aware - by this stage you're aware that the Tender Evaluation Team has provided a report; correct?

MS HAIRE: Has or is about to, yes. Yes.

MR OPAS: Yes, and you're aware of who the two tenderers are and the fact that Manteena was going to be the recommended tenderer; you're aware of this at this time?

MS HAIRE: I think, Mr Opas, as I've said, the names mean nothing to me but I think it's very likely that the names were used in the conversation.

MR OPAS: Yes. Well, I'm now going to take you to that discussion. There is a - this is not a question, it's simply a statement from me, and you may well be aware - there is a different recollection of what was said during that discussion. Are you aware that there is a different recollection between you and Mr Green?

MS HAIRE: Yes. I'm aware of that.

MR OPAS: On your version of this discussion, based on previous evidence that you've given, you asked Mr Green, "how the outcome stacked up against the Secure Local Jobs issue." Do you recall - is that still your recollection of the discussion?

MS HAIRE: That's a description of the discussion, yes.

MR OPAS: Now, Mr Green's recollection of that discussion is that, firstly, you said to Mr Green, "That's not what the Minister's office wants. That's not the outcome we need to achieve. Then what are the other options?" Do you agree or disagree that you said that to Mr Green?

MS HAIRE: I don't think that I said those words to Mr Green, and I think I said - what I think I said to him was that I would seek - I will go back to the Minister's office and ask if the

Secure Local Jobs policy, or issues, remained as important in June as they had been when I was initially given this information in March.

5 MR OPAS: Yes, and there you're referring back to the handover discussion with Ms Cross, aren't you?

MS HAIRE: Yes.

10 MR OPAS: Just coming back to Mr Green's version of events. He says that, after - he says that you made the comment that I read out earlier. He then says that he pointed out an option for the decision-maker was to not take the Tender Evaluation Team's recommendation; do you recall that being part of the discussion?

15 MS HAIRE: So, I think from my recollection this relates to a different discussion.

MR OPAS: A later discussion?

MS HAIRE: Yes.

20 MR OPAS: Okay. Well, we might come to that then. He then says that - and this is during this discussion that you're having with him that he's recalling you had on about 5 June 2020 - that you replied, "How do we do that?" He says, "I would need to write you a brief", and you say, "Write me a brief." Do you say that that was not part of that discussion on 5 June 2020?

25 MS HAIRE: No, not exactly.

MR OPAS: Right.

30 COMMISSIONER: Sorry, what do you mean by "not exactly".

MR OPAS: Yes. Do you want to comment on that.

35 MS HAIRE: I think, as I've said previously, I said that I would seek advice about whether the Secure Local Jobs issues remained as important, and then I subsequently came back to Mr Green and said - conveyed, I think I've said this - that the information from the Chief of Staff was that those issues are more important than ever, and then at that point I asked him what the options were, and that's where, I think, that's - that's what I would agree, that.

40 MR OPAS: We will come to that discussion then, Ms Haire, but just coming back to the discussion that you're having with Mr Green on 5 June. Do you recall, did you have the tender - did you each have a copy of the tender evaluation report in front of you for this discussion?

45 MS HAIRE: No.

MR OPAS: Had you read it by that stage?

MS HAIRE: No.

MR OPAS: You obviously, based on your recollection of the discussion, you had front of mind the - what you say was the issue around the Secure Local Jobs Code?

5 MS HAIRE: Yes.

MR OPAS: So, you had no visibility as to what was in the tender evaluation report about the extent to which tenderers - that the two tenders met requirements of that code?

10 MS HAIRE: No.

MR OPAS: Because you hadn't seen the report?

MS HAIRE: That's right.

15

MR OPAS: And I'm going to suggest to you that at that point you actually didn't really have any knowledge about what the Secure Local Jobs Code was, did you?

MS HAIRE: No.

20

MR OPAS: But you knew that it was important and it was important - the Secure Local Jobs Code issue was important back from your discussion with Ms Cross in March; that's correct, isn't it?

25 MS HAIRE: Yes.

MR OPAS: And that's what then led you to go off - to contact the Chief of Staff in the Minister's office; that's correct?

30 MS HAIRE: Yes.

MR OPAS: Can I just clarify. I think you said it was - actually, I withdraw that. Can I clarify: it was your decision to contact Mr Ceramidas, wasn't it?

35 MS HAIRE: Yes.

MR OPAS: It wasn't Mr Green's suggestion?

40 MS HAIRE: I think I - not that I recall. I think it was my decision. I think I said that that's what I would do. That's what I remember.

MR OPAS: You then had, I understand, a phone conversation with Mr Ceramidas?

MS HAIRE: Yes.

45

MR OPAS: You didn't go and see him in person, did you?

MS HAIRE: No.

MR OPAS: And that's a - correct me if I've got this wrong - but that was not a discussion which you documented?

MS HAIRE: No.

5

MR OPAS: Your discussion with Mr Ceramidas?

MS HAIRE: No.

10 MR OPAS: Was it your practice to keep records of discussions, for example, phone conversations, with Mr Ceramidas?

MS HAIRE: I took - I take contemporaneous notes of tasks that I have to follow up on or things I have to do.

15

MR OPAS: Would an example of that be, for example, the notes that we've seen earlier of the handover discussion you had with Ms Cross back in March?

MS HAIRE: Yes.

20

MR OPAS: But you didn't - are you saying it wasn't your practice to keep written notes of discussions with Mr Ceramidas over the phone?

MS HAIRE: No. At this - during 2020, I think I've said this in my previous evidence, I was speaking to him countless times a day from - on matters to do with the pandemic largely.

25

MR OPAS: Yes. But this was a pretty important discussion with Mr Ceramidas, wasn't it? This was about you wanting to clarify, at least, his policy objectives for the application of this code; that's correct, isn't it?

30

MS HAIRE: I was wanting to clarify that with him, yes.

MR OPAS: And this was to do with a significant procurement, wasn't it, i.e. the Campbell procurement?

35

MS HAIRE: Yes.

MR OPAS: It didn't occur to you that that might be a significant thing worth making a note of?

40

MS HAIRE: No.

MR OPAS: Do you think maybe you should have?

45

MS HAIRE: In retrospect, yes.

MR OPAS: Is it possible that during your phone conversation with Mr Ceramidas, that the words "Manteena" or "Lendlease" might have actually been used in that discussion?

MS HAIRE: It's possible. As I have said a number of times, I had no knowledge of the construction industry, the names didn't mean anything to me, and I can't say whether I used them or knew them or not, but it's possible that I did.

5 MR OPAS: You certainly were aware of the names in a fashion because you'd had this discussion with Mr Green about the two - there were only two tenderers being considered, weren't there: Lendlease and Manteena?

MS HAIRE: Yes. I'm sure he used the names, so yes.

10

MR OPAS: So it's quite possible, I understand your answer to be, that you could have used those names with Mr Ceramidas?

MS HAIRE: Possible, yes.

15

MR OPAS: And is it possible that during the course of that conversation by reference to those names, that you may have indicated to Mr Ceramidas that one was - to your knowledge, one was stronger than the other against the Secure Local Jobs Code requirement?

20 MS HAIRE: I - yes.

MR OPAS: But we've established, you don't have a note of discussion, and it's a little while ago now -

25 MS HAIRE: Yes.

MR OPAS: - I take it, your recollection is not certain?

MS HAIRE: Yes.

30

MR OPAS: You then came back and had a discussion with Mr Green again after the discussion with Mr Ceramidas, correct?

MS HAIRE: Yes.

35

MR OPAS: Just before I move onto that. Just to clarify roles. Firstly, Mr Ceramidas didn't have a defined role in the procurement process in the Campbell procurement, did he?

MS HAIRE: No.

40

MR OPAS: He wasn't part of the evaluation team, was he?

MS HAIRE: No.

45 MR OPAS: To your knowledge was there anything in the procurement documentation that provided for consultation with the Minister's office before a decision was made about which tenderer?

MS HAIRE: No.

MR OPAS: Wasn't the real purpose of you going and having this phone conversation with Mr Ceramidas, wasn't it really you just checking in with him to make sure that he was going to be happy with the outcome of the tender, as in the choice of the tenderer?

5

MS HAIRE: No. I was asking him whether the bundle of issues, described as Secure Local Jobs variously, remained as important.

MR OPAS: And, I think you've already answered this, the answer was, so you say, "more important than ever" or words to that effect?

10

MS HAIRE: Yes.

MR OPAS: And at this stage you're now wearing the hat of a decision-maker; you agree with that?

15

MS HAIRE: Yes.

MR OPAS: So, if you understood that one of those two tenderers was stronger than the other against the Secure Local Jobs Code, based on your discussion with Mr Ceramidas, that didn't really leave you with a whole lot of options, did it, if you were going to satisfy Mr Ceramidas' objective?

20

MS HAIRE: I don't understand the question, Mr Opas.

25

MR OPAS: Well, let me put it a different way. You walked away from this phone conversation with Mr Ceramidas having no ambiguity about what was important to him, did you?

MS HAIRE: That's right.

30

MR OPAS: What was - he clearly conveyed to you, your recollection, is that now more than ever the Secure Local Jobs Code was the important consideration?

MS HAIRE: Yes.

35

MR OPAS: And at that stage you understood that - or you had an understanding, I suggest, that one of these two tenderers was stronger than the other against the Secure Local Jobs Code; that's correct?

40

MS HAIRE: The policy, yes.

MR OPAS: Yes, against the policy?

MS HAIRE: Yes.

45

MR OPAS: So, in other words, if you're going to make a decision that accorded with Mr Ceramidas' request, you'd have to pick the tenderer which best complied with that code; that's correct, isn't it?

MS HAIRE: I wasn't taking direction from Mr Ceramidas on the procurement, Mr Opas, which -

5 COMMISSIONER: You're not being asked that question. Repeat your question, please, Mr Opas.

MR OPAS: Yes. Thank you, Commissioner. Ms Haire, if you're going to satisfy the objective which Mr Ceramidas had made clear, you'd have to - you as the decision-maker  
10 would have to award the contract, or the tender, to that tenderer which scored best against the Secure Local Jobs Code criteria?

MS HAIRE: Could you say that again, Mr Opas? Sorry.

15 MR OPAS: Again, you understood that Mr Ceramidas's very clear objective was to achieve the Secure Local Jobs Code policy objective; you walked away from the phone conversation with him understanding that, didn't you?

MS HAIRE: Yes.

20 COMMISSIONER: Not only that, it was more important than ever, so it was even more important than when earlier in the piece you'd been told by Ms Cross that it was highest priority; do you agree?

25 MS HAIRE: She didn't say "highest priority", but yes, she passed on that message - the message to me about the intent -

COMMISSIONER: Well, that was the sense of it?

30 MS HAIRE: - at the highest level, meaning, in principle, the principle of it.

MR OPAS: And from the phone conversation with Mr Ceramidas you understood that the policy was more important than ever or words to that effect?

35 MS HAIRE: Yes.

MR OPAS: And at that point in time you knew that there were two tenderers, Manteena and Lendlease; correct?

40 MS HAIRE: I knew - yes.

MR OPAS: And you'd already had a discussion, your version of events, you'd already had a discussion with Mr Green about which one did better against the Secure Local Jobs Code; that's correct?

45 MS HAIRE: Yes. He advised me that one was much better against the code than the other.

MR OPAS: Yes. And, coming back to the question that I've now come to a few times, if you as the decision-maker were going to make a decision consistent with what you understood to

be Mr Ceramidas's policy objective, i.e. Secure Local Jobs Code, you had to award the - you would need to award the contract to the tenderer which scored best against that - the code-related criteria?

5 MS MORGAN: Well, I object to that question. The earlier question in relation to Mr Green, what Mr Green had said, was that one had scored better against the code than the other. And now my friend has introduced this idea of the criteria, so both were supposed to have the same thing at the same time.

10 COMMISSIONER: They plainly are the same thing. They're scoring against the criteria in the code.

MS MORGAN: One was the words Mr Green had used, that's all. So I just wanted to make sure whether Mr Green was talking about the criteria or understood to be talking about the  
15 criteria, or whether Mr Opas was, on purpose, using different phrasing. Because if it's the latter, I object.

MR OPAS: It's not on purpose, Commissioner.

20 COMMISSIONER: (Crosstalk) you heard that question which would have had the slightest doubt that Mr Opas was talking about criteria and that that was always the specific matter to which the code was directed in the procurement process. So, I don't allow your objection.

MS MORGAN: Commissioner, I fear that you haven't understood the objection. The  
25 objection was on the basis, and I'm sorry to make you close your eyes and sigh -

COMMISSIONER: Don't try those devices.

MS MORGAN: Commissioner.

30 COMMISSIONER: Really, it is quite objectionable.

MS MORGAN: It's very unfair what is happening here. Ms Haire has given evidence about what Mr Green said. What Mr Green said. Not about criteria. But the evidence, as I  
35 understood it, as it was put to her was that one of the tenderers scored better against the code than the other, and then we've got an introduction this time of the phrase "criteria." I just wanted to make sure in the procurement process we're talking about the same thing and Ms Haire understands that. It's a question of fairness, Commissioner.

40 COMMISSIONER: I perfectly understand the rules about fairness and I do not need to be reminded about the need to comply with them. Thank you. Yes, Mr Opas.

MR OPAS: Commissioner, I don't propose to press the question. I've endeavoured to put the question, I acknowledge that there's been different ways that I've put it, that's not intended to  
45 try and confuse the witness or confuse the question, but I'm happy to just move on to the next issue.

COMMISSIONER: Very well.



MR OPAS: Ms Haire, after the phone conversation that you had with Mr Ceramidas, you then spoke with Mr Green, and I understand from evidence you've given previously, you then asked him to prepare an advice; that's correct?

5 MS HAIRE: Yes. I asked him what - to provide me with advice and what the options were, because I was mindful of what he'd told me about the like - about the outcome and I wanted to have his advice on what the options were.

MR OPAS: In terms of roles, we were talking a few questions ago about Mr Ceramidas's  
10 role. In terms of Mr Green's role at this stage, he was not the decision-maker, that was going to be you; correct?

MS HAIRE: Yes.

15 MR OPAS: Now, he wasn't part of the Tender Evaluation Team, I don't think, was he?

MS HAIRE: No.

MR OPAS: Is it your evidence that he was still the "delegate"?  
20

MS HAIRE: I didn't understand the processes at the time that this was happening and the roles correctly. I now - that's been made clear through the Auditor-General's report and I'm acknowledged that and I regret that.

25 MR OPAS: Because Mr Green didn't really have a formal role in this particular procurement at that stage, did he?

MS HAIRE: I understand that now. I didn't understand that then.

30 MR OPAS: The only reason that you asked Mr Green to provide - prepare this advice to you was because you were concerned about ensuring that the ultimate decision gave effect to the Secure Local Jobs Code; is that correct?

MS HAIRE: Could you say that again?

35

MR OPAS: Yes. The only reason that you asked Mr Green to provide the advice to you, the written advice, was because you wanted to ensure that the tender result achieved the Secure Local Jobs Code?

40 MS HAIRE: I wanted to consider it and, if possible, ensure it.

MR OPAS: This is the last area and it will be a fairly brief one, I think, Ms Haire, so we're getting very close to the end here. I just want to now ask you some questions about the debrief with Manteena which you attended on 22 June 2022.

45

MS HAIRE: Yes.

MR OPAS: Firstly, do you - and we might pull up the Manteena note of that, please. Ms Haire, you recall, don't you, that on 22 June 2002 you, David Matthews and Kristen Laurent - have I just correctly pronounced Ms Laurent's name?

5 MS HAIRE: Yes.

MR OPAS: That you, David Matthews and Kristen Laurent met with Rod Mitton and Mark Bauer both of Manteena; do you agree with that?

10 MS HAIRE: Yes. Yes.

MR OPAS: Now, that was in June 2022. This was around six months after the ACT Audit Office report was released on 22 December 2021; sound right?

15 MS HAIRE: Yes.

MR OPAS: Would you agree that the ACT Audit Office report was quite critical of Mr Green in his role in this Campbell procurement?

20 MS HAIRE: Yes.

MR OPAS: Do you think the Audit Office report was critical of your role in the Campbell procurement?

25 MS HAIRE: It was critical of - it wasn't - it didn't make a direct criticism of me.

MR OPAS: I will just come back to the debrief meeting that you had on 22 June 2022, the one with the Manteena people. I'm showing you a document on screen, can you see that, Ms Haire?

30 MS HAIRE: Yes.

MR OPAS: It's a document headed Campbell School Meeting, Wednesday 22 June 2022. You see that at the top?

35 MS HAIRE: Yes.

MR OPAS: And I can tell you that this is a document which Mr Mark Bauer of Manteena gave evidence on 22 September 2023 that he says he took these notes during the meeting, would have done some level of checking and got Rod Mitton to check those afterwards but this is Manteena's file note of that meeting.

(Livestream paused)

45 -MS HAIRE: Yes.

MR OPAS: If you look down you can see the bullet points, I'll take you to the fourth bullet point and then towards the end of that bullet point:

*EDU (David) made several references to not knowing what was in John's head at the time?*

With a question mark. Do you see that?

5 MS HAIRE: Yes, I do.

MR OPAS: And then into the fifth bullet point which is immediately below:

10 *Katy didn't have a straight answer as to why she accepted John's recommendation and didn't question the reasons for changing the recommendation of the TET.*

You see that?

15 MS HAIRE: Yes.

MR OPAS: Do you agree that you referred to Mr Green as the delegate during the course of this meeting on 22 June 2022?

20 MS HAIRE: I unequivocally deny that --

MR OPAS: Sorry, just give me a moment -

COMMISSIONER: Please answer the question.

25 MR OPAS: Sorry, I thought Ms Morgan had something she wanted to raise.

COMMISSIONER: Please answer the question you were asked. Did you refer to him as the delegate?

30 MS HAIRE: I don't think so. I don't - I don't believe so. And in the discussion with Manteena, as our own contemporaneous notes show which have been provided to the Commission, we were - both Mr Matthews and I were very clear that I had made the decision.

35 MR OPAS: Okay.

MS HAIRE: I think it go - there is some confusion in the use of the term. I unequivocally state it was completely clear that I took responsibility that I had made the decision and did not suggest otherwise.

40 MR OPAS: Commissioner, just give me one moment, Commissioner. That's the - those are my questions. Thank you, Ms Haire.

45 MS HAIRE: Thank you.

COMMISSIONER: Are there any other matters? Did you want to -

MR O'NEILL: I just want to do two things, Commissioner. The first is, before my learned friend Ms Morgan seeks to re-examine, there's a part of the book which I wish to mark for

identification for the purposes of that, and that is from hearing book 3.0023 to 3.0038. If I can mark those for identification, Commissioner. I don't think we've marked anything for identification yet.

5 COMMISSIONER: All right. Have we yet marked anything?

MR O'NEILL: No.

COMMISSIONER: So that'll be marked for identification 1.

10

<MFI-1 DOCUMENTS IN HEARING BOOK 3.0023 TO 3.0038[.]

MR O'NEILL: Thank you. The second thing is, I was going to ask Ms Haire a question and in perhaps a more open way than Mr Opas had put it, in fairness to her, to see what her answer is to that. So, if I could do that, Commissioner.

15

Ms Haire, you were asked some questions by Mr Opas in relation to options open to you for your decision after you'd received, firstly, two pieces of information: the first one is that the Minister's office - it was more important to the Minister's office now more than ever that Secure Local Jobs Code policy be followed in procurement; and, secondly, that you knew which of the two tenderers - you can't remember the name now - but you'd been told which of the two tenderers more closely adhered to that policy. And so, I want to ask this in a more open way, and is that - does that not mean that the options available to you at that point, if it is that your decision needs to accord with the policy, that you really only have one way to turn and that is that you must award it to one of the tenderers over the other?

20  
25

MS HAIRE: I'm sorry, I - it feels like it's the same question which has - which is - doesn't quite make sense to me.

MR O'NEILL: So, if it is that what you're being asked - or, sorry. There's only two ways you can turn at this point: tenderer A, tenderer B; fair?

30

MS HAIRE: Yes.

MR O'NEILL: You know that one of them is - you've been told that one of them adheres to the policy better than the other.

35

COMMISSIONER: Would you mind answering verbally?

MR O'NEILL: Yes? You agree with me?

40

MS HAIRE: Yes. I'm sorry.

MR O'NEILL: And so, is it at that point in time that the only decision that you can really make, if it is, that decision is to adhere by the code policy, to prefer that tenderer who's been identified to you as the entity that adheres more closely with the code?

45

MS HAIRE: I agree with you that that was the decision that I had to make taking into account the government policy, the affirmation that it was more important than ever, as I've

said, and the other advice from the - from Mr Green and from the panel. That was the decision that I had to make.

5 COMMISSIONER: The risk was that, if you made a decision that favoured the other company, that that would then have disagreed with or been inconsistent with the importance of that subject matter or that criterion so far as you got it from Mr Ceramidas? In order to do what Mr Ceramidas wanted in relation to Secure Local Jobs, you had to give it to the company that best satisfied that requirement, didn't you?

10 MS HAIRE: Two things, Commissioner: firstly, I didn't consider I was taking direction from Mr Ceramidas.

COMMISSIONER: I didn't ask you that.

15 MS HAIRE: And, secondly, it was the government's policy, not the Minister's policy or Mr Ceramidas's policy.

COMMISSIONER: Well, he was conveying it to you, so -

20 MS HAIRE: Yes.

COMMISSIONER: - you understood he was conveying government policy to you?

25 MS HAIRE: The priority of the government, yes.

COMMISSIONER: That's right?

MS HAIRE: Yes.

30 COMMISSIONER: And the question's really a simple one: if you were going to accord to this procurement process the importance which Mr Ceramidas explained to you, the only available way of doing that was to give it to the company which best fitted or satisfied that criterion; that's really the point that's being made. It's a simple one. Do you agree or not?

35 MS HAIRE: So it's a hypothetical question; if that was the only thing in my mind? However, I didn't -

COMMISSIONER: I'm not asking you what was in your mind.

40 MS HAIRE: I didn't consider I was taking direction from him. I was seeking - wrongly - I shouldn't have been speaking to him about this at all, as I've said. But I was seeking advice on whether the Secure Local Jobs Policy remained as important to help me work out the next steps and which I then took advice from Mr Green on, yes.

45 COMMISSIONER: So, it was at least this: whether or not it was decisive, it was a very important factor?

MS HAIRE: Yes. It was certainly a factor, Commissioner, yes.

COMMISSIONER: No, no.

MS HAIRE: It was an important factor, yes.

5 COMMISSIONER: And if you were going to give it the importance ascribed to it as you understood by the government, it followed, did it not, that you would have to give it to the contractor who best satisfied that requirement?

10 MS HAIRE: I didn't feel that I had to do anything, Commissioner. I knew it was my decision.

15 MR O'NEILL: And in arriving at that decision, though, the pathway, if it is that you are going to decide to accord with government policy or the priority, that decision's already made, that pathway is already made, there's only one way forward on that and that is to choose that tenderer who most closely coheres with that policy[]; do you agree with me?

MS HAIRE: I'm not completely sure that I understand the difference in the question, Mr O'Neill.

20 MR O'NEILL: Well, you already know that one - this is prior to the decision being made - you've already been told by Mr Green which tenderer is closer - more closely coheres to that policy than the other?

MS HAIRE: Yes.

25 MR O'NEILL: So, it's a two-horse race?

MS HAIRE: Yes.

30 MR O'NEILL: So, if it is that you are going to make the decision to cohere with the government decision as a priority, you know the answer to the outcome, in your decision making?

MS HAIRE: As part of the consideration.

35 MR O'NEILL: Yes?

MS HAIRE: Yes.

40 MR O'NEILL: And so, you and Mr Green spoke about that, that is, well, we need - and that's when you sent him away for him to give you advice, the written advice about that?

MS HAIRE: On whether, within the procurement rules, that could be achieved or not, yes.

45 MR O'NEILL: And I've taken you through that, I don't want to go back to that.

MS HAIRE: Yes.

MR O'NEILL: And that is the way you made your decision, based on those pieces of information before you?

MS HAIRE: Yes.

5

COMMISSIONER: Yes, very well. You wish to re-examination, I think -

MR O'NEILL: Can I just correct the MFI? It should be MFI-C.

10

COMMISSIONER: Very well.

**<MFI-C (CORRECTION) DOCUMENTS IN HEARING BOOK 3.0023 TO 3.0038.**

MR O'NEILL: Thank you.

15

MS MORGAN: Two quick things, Commissioner, if I may. One is if MFI-C could be brought up on the screen.

20

COMMISSIONER: Just for clarity, would you mind - because this is now some transcript, would you mind identifying yourself for the transcript?

MS MORGAN: Of course. My name is Morgan, and I am appearing for Ms Haire with Ms Kearney.

25

COMMISSIONER: Thank you.

MS MORGAN: And if document 3.0023 could be brought up on the screen, also identified as MFI-C.

30

**<RE-EXAMINATION BY MS MORGAN:**

MS MORGAN: Ms Haire, you gave some evidence about these documents the last time we were here at transcript 786, and in particular on that occasion you were taken to page 3.0031, but we will just start at the beginning with this document.

35

MS HAIRE: Yes.

MS MORGAN: Could you just explain again to the Commissioner what this document is?

40

MS HAIRE: This is from a computer program called OneNote which I use to record lists of items and then actions - as you can see - topics, items and actions from my meetings with my direct reports.

45

MS MORGAN: And it says up there:

*Routine - week of 20 April.*

Does that mean this note applies to the week starting the week of 20 April?

MS HAIRE: Yes.

COMMISSIONER: Even though it's dated -

5 MS MORGAN: I'm getting to that.

COMMISSIONER: On Friday is the date you make the note, but it concerns matters commencing on the 20th; is that right?

10 MS MORGAN: I was getting to that, Commissioner, yes.

COMMISSIONER: So, that's how we understand this document?

MS MORGAN: You have to say "yes", Ms Haire.

15

MS HAIRE: Yes, that's correct.

MS MORGAN: We have second column four rows down we have:

20 *Campbell High contract and others.*

Do you see that?

MS HAIRE: Yes.

25

MS MORGAN: And so, that was an item that you inserted into this document on Friday, 7 April in anticipation of a meeting in the week of 20 April; is that right?

MS HAIRE: Yes.

30

COMMISSIONER: It's "Campbell Primary School" though. Is there a difference?

MS MORGAN: I was going to ask that question, Commissioner.

35 "Campbell High" listed there on 20 April reflects your lack of knowledge in relation to that school; is that right?

MS HAIRE: Yes.

40 MS MORGAN: And it was, in fact, Campbell Primary School?

MS HAIRE: It was, yes.

MS MORGAN: And then you've got:

45

*Raised by KH.*

That's you; is that right?



MS HAIRE: Yes.

MS MORGAN: And who would you have raised that with?

5 MS HAIRE: With Mr Green.

MS MORGAN: And is this the note of a meeting with Mr Green or with others?

10 MS HAIRE: This is a note of a meeting with Mr Green.

MS MORGAN: And so, in relation to the Campbell contract, you've raised it as an item with him on the week of the meeting of 20 April; that's right?

MS HAIRE: Yes.

15 MS MORGAN: And then:

*Actions update.*

20 What's that?

MS HAIRE: That's my contemporaneous notes in the meeting, so I'm writing down what he told me or facts from the meeting.

25 MS MORGAN: So you've put it in in this meeting as something to follow up with him, and that's what he's told you will happen in relation to Campbell, which is two weeks from the decision; is that right?

MS HAIRE: Yes, that's right.

30 MS MORGAN: In that week commencing 20 April can you recall now what that decision was that he was talking about?

35 MS HAIRE: So, that would be the decision for the contract, yes. This is prior to my deciding to become the decision-maker, so yes.

MS MORGAN: And so, if we could then go to page 3.0025. So, he's told you it's going to happen in two weeks and then we have a slightly different format here; could you explain the different format, Ms Haire?

40 MS HAIRE: Yes. So, it's still the same computer program but it's not using the template because I think I hadn't worked out how to fit the template in.

45 MS MORGAN: And in this one you've got the week of 4 May, but the date at the top of 7 May; can you assist the Commissioner in explaining that date discrepancy?

MS HAIRE: I expect that's because my meeting with Mr Green was later in the week, and so, I - I always create the documents consistently with all my direct reports in relation to what it is the week of, but the date underneath reflects when the specific document was created.

MS MORGAN: And so, does this mean that this is still a document only in relation to Mr Green?

5 MS HAIRE: Yes.

MS MORGAN: And the first - again, you're still calling it "Campbell High", unfortunately; is that right?

10 MS HAIRE: Yes.

MS MORGAN: Is that you asking him a question or him giving you information about Campbell?

15 MS HAIRE: That's him giving me information.

MS MORGAN: And, as I read that, he's saying:

*The recommendation will be in approximately five weeks.*

20 Is that right?

MS HAIRE: I think it is week 5 of the term.

25 MS MORGAN: Right. Of the school term?

MS HAIRE: Of the school term, yes.

30 MS MORGAN: So we'll have to work out where that fits in the second term, or you probably know that?

MS HAIRE: The first for that year school went back immediately after Anzac Day, so this would be week 2, so week 5 would be in three week's time, so it's a couple of weeks later than the previous note indicated.

35 MS MORGAN: Earlier today we had some confusion about the idea of a recommendation. The final decision you made is actually crafted as a recommendation because it goes to another part of the ACT Government to then enter into a contract; is that right?

40 MS HAIRE: Yes.

MS MORGAN: And so, even though he's used the word "recommendation" here, that's still him making the decision in week 5; is that right?

45 MS HAIRE: Yes.

MS MORGAN: If we could then turn to the next page, 3.0026. This is another record of a meeting with Mr Green; is that right?

MS HAIRE: Yes.

MS MORGAN: And here we have:

5 *Campbell primary contract.*

So that's just the procurement item; is that right?

MS HAIRE: Yes.

10

MS MORGAN: And telling you that he's expecting the draft tender evaluation report next week; is that your recollection?

MS HAIRE: Yes.

15

MS MORGAN: So that's the week of 11 May. If we could then turn to page 3.0028. So this is the week of the 25 May document dated 27 May. You can see there it's got:

*Campbell procurement - JG to advise.*

20

Do you recall what was discussed at the meeting with Mr Green on or around 27 May?

MS HAIRE: I think that that's the meeting where he advised me on the outcome from the TER. That's my recollection.

25

MS MORGAN: And you've recalled there he's to advise; he's to advise you of what, do you recall?

MS HAIRE: I'm not 100 per cent sure of the chronology, but that might be the point at which I asked him for advice following the discussion with the Minister's office.

30

MS MORGAN: If we turn then to page 3.0030, this was the page - no, it wasn't - 3.0030, the week of 9 June, Tuesday, 9 June. Here we've got a new format, just boxes with some ticks in it. Could you explain to the Commissioner what this was?

35

MS HAIRE: So, this is the same - this is a list of topics that came up at the meeting, that - it looks like I created the list on the same day as the meeting on this one, as you can see, so I may have even been writing - I think this looks like to me that I was writing it contemporaneously with the meeting.

40

MS MORGAN: So, rather than the first one we say, which you'd put items in before the meeting, this is happening at the same time?

MS HAIRE: Yes. This is happening at the same time.

45

MS MORGAN: And there you've got:

*The Campbell Primary update - this week or next week at the latest.*

Do you recall in the timeline what that would be a reference to?

MS HAIRE: No. No, I don't. Well, I think that that would be about the advice from Mr Green, yes. Sorry.

5

MS MORGAN: And then if we go to 3.0031, this is the page you were taken to at transcript 786. So, the foot - this is a bit different because it's got a reference to you in it. So this is still, though, a note of a meeting with Mr Green; is that right?

10 MS HAIRE: Yes.

MS MORGAN: But you've got:

*Campbell Primary project - KH to do today.*

15

Do you recall what that was a reference to?

MS HAIRE: I think - so, as you can see from this one, it was created on 18 June, so I would have put probably the headings in and the bits after the dashes are the actions, and so, I think at that point I had received the advice from Mr Green.

20

MS MORGAN: So, would this be right: that putting the dates at the top to one side - I withdraw that. They were the only questions I was going to ask about that but I would seek that to be - at least those pages -

25

MR O'NEILL: I'll do so.

MS MORGAN: You will do that? Thank you. Can I have document 2.1448 brought up on the screen. So, this is the email that you first saw in January 2021?

30

MS HAIRE: Yes.

MS MORGAN: Do you recall what Mr Edghill said to you when he rang you to tell you that they had found this document?

35

MS HAIRE: I don't remember precisely, Ms Morgan, but he rang with concern that this document had been - had - that this document had come to light and he was concerned that it raised allegations, or that it recorded views that related to the role of the Minister and the unions in one of our procurement projects, and so, he was concerned about that.

40

MS MORGAN: And so, he then gave you a copy or his staff gave your staff a copy; do you recall how that occurred?

MS HAIRE: I can't - this was never an Education document. We didn't ever have it as part of our FOI, so it was found through MPC.

45

MS MORGAN: But you were provided with a copy after your conversation with Duncan Edghill, I think you gave that evidence this morning?

MS HAIRE: Yes.

MS MORGAN: But you don't recall whether he gave it to you or from his staff?

5 MS HAIRE: No, I can't remember.

MS MORGAN: And when you saw it, did you recognise who Phil Morton was, for example, when you read this email?

10 MS HAIRE: No.

MS MORGAN: Did you know who Kelly Young was?

MS HAIRE: No.

15

MS MORGAN: Did you know what a BAFO was?

MS HAIRE: Yes.

20 MS MORGAN: And had you discovered that through your review of Mr Green's original briefing note on 22 June?

MS HAIRE: No. I knew what a best and final offer was prior to that, but I didn't know about this specific BAFO until much later in the process.

25

MS MORGAN: And by "later in the process" do you mean the process before you made the decision, or do you mean later in the process after the FOI request?

MS HAIRE: I knew about the BAFO as part of the advice in June.

30

MS MORGAN: And so, when you read this email - sorry, I withdraw that. Do you recall, when you read this email, thinking to any of the steps in the process that you were involved in and whether this email impacted on any part of that process?

35 MS HAIRE: No. I thought that this was about the process that took place over February and March. I noted the date, that it was in fact sent on the morning that I returned from leave prior to my having any knowledge or oversight of the project.

MS MORGAN: And so, do I take it from -

40

COMMISSIONER: The difficulty I have with this is this: this is a suggestion that Mr Green was influenced by something from the Minister of Education. The allegation is against Mr Green, "This may be why John Green is pushing for a BAFO", do you see?

45 MS HAIRE: Yes.

COMMISSIONER: So it's suggesting that, as it were, if I can use this expression, he was putting a thumb on the scale because of what he - the message he was getting from the Minister of Education or the Minister's office. That's the imputation, do you agree?

MS HAIRE: Yes, that is the imputation.

COMMISSIONER: He was also advising you, or had also advised you; correct?

5

MS HAIRE: Yes.

COMMISSIONER: Did it occur to you that maybe that - if this was true, that maybe his advice to you was influenced and not truly independent?

10

MS HAIRE: I didn't think that at the time, Commissioner.

COMMISSIONER: Really?

15

MS HAIRE: This - when I saw this email for the first time I had not heard about - I was deeply surprised and shocked by this.

COMMISSIONER: No, quite. But you have to think about what it says, don't you? And isn't it obvious that the imputation is that Mr Green has been influencing the process for ulterior reasons; that's the suggestion here?

20

MS HAIRE: Yes, that is the suggestion.

COMMISSIONER: And are you saying you never thought that the same would not apply, or the same might apply to the advice that he was giving you, namely, that also was influenced by the Minister's office rather than a truly independent view?

25

MS HAIRE: I didn't think that at the time, Commissioner.

30

COMMISSIONER: I see. Very well.

MS MORGAN: No further questions, Commissioner.

COMMISSIONER: Thank you. Anything further then?

35

MR O'NEILL: No, thank you, Commissioner.

COMMISSIONER: No. I think it's likely that this ordeal has finished for you at the moment, Ms Haire, but I'm afraid I cannot guarantee it. There are still some lines of enquiry which are open and which must be undertaken. So I cannot release you from your summons, nor can I release you from your confidentiality notice though, of course, you are entitled to discuss anything that's come out in the public arena.

40

Again, you can be entirely candid with your counsel and entirely candid with any professional help that you consult with, should you feel that necessary. If, however, short of that you wish to consult with some other support person I would be very likely to allow you to do that, it's just that we need to know who it is, so I can't give you carte blanche on that.

45

If all you wanted to talk about is what's already in the public domain, then I should think that if you wanted to undertake that course you would not likely be limited in the matters that you would wish to discuss. So, all that needs to happen is for some communication with the Commission and I would give it immediate consideration and likely agree.

5

MS HAIRE: Thank you.

**<THE WITNESS STANDS DOWN**

10 COMMISSIONER: Very well. Now, we commence with Mr Matthews tomorrow or -

MR O'NEILL: Yes, Mr Matthews tomorrow. I will also indicate, Commissioner, that Minister Berry will be called at 2 pm regardless of that.

15 COMMISSIONER: So, we will interpose her if -

MR O'NEILL: Interpose her if we haven't finished whoever we've finished, but as I understand it will be Mr Matthews and Ms Young.

20 COMMISSIONER: Very well, I will adjourn.

**<THE HEARING ADJOURNED AT 4.00 PM TO TUESDAY, 5 DECEMBER 2023 AT 10 AM**