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TRANSCRIPT OF PROCEEDINGS

THE HON MICHAEL F ADAMS KC, COMMISSIONER

THE ACT INTEGRITY COMMISSION - OPERATION KINGFISHER

PUBLIC HEARING

DAY 12

THURSDAY, 7 DECEMBER 2023 AT 10.03 AM

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

COMMISSIONER: Yes, Ms Morgan.

<JOHN GREEN, ON FORMER AFFIRMATION</p>

5 < CROSS-EXAMINATION BY MS MORGAN CONTINUED:

MS MORGAN: Thank you, Commissioner. Could I ask that document 2.1454 be brought up, please. Mr Green, you will see from that email that that's the email dated 16 March 2020, dated time just after 1 o'clock in the afternoon from Ms Young that was sent to Mr Morton and Mr Jacobi as the other two members of the original Tender Evaluation Team; do you see that?

MR GREEN: Yes.

MS MORGAN: If we could then go to 2.1455, and then if we could travel to the signed page, please. So you can see there at item 10, the recommendation is the best and final offer, and Ms Young has signed it but hasn't dated it; do you see that?

MR GREEN: Yes.

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MS MORGAN: So, you can see from that email and the attachment that this was provided to your team on 16 March 2020?

MR GREEN: Yes.

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MS MORGAN: Could I ask you then to be shown document 3.0232. And could we go to the last page in that email chain. Now, Mr Nakkan, can I just check - so the date on this is 13 March 2020; that's right? At the bottom, the first email?

30 MR GREEN: Mr Nakkan's email, yes.

MS MORGAN: Mr Nakkan was acting in your position as Executive Branch Manager in Business Services; is that right?

35 MR GREEN: Yes.

MS MORGAN: And "MWB" in the subject line means "Minister's weekly briefing"; is that correct?

40 MR GREEN: Yes.

MS MORGAN: And "ICW" is "infrastructure capital works"; is that right?

MR GREEN: Yes.

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MS MORGAN: And that's part of business services in the Education Directorate; correct?

MR GREEN: Yes.

MS MORGAN: So, Mr Nakkan, is this right, that the ministerial - the Minister's weekly briefing collects information from all different parts of the Education Directorate and the different parts of the directorate settle their bits of that information that then goes to the Minister's office?

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MR GREEN: Yes.

MS MORGAN: And this is -

10 COMMISSIONER: Sorry, I don't quite understand the process that you're outlining. Are you saying, bits and pieces are collected, they go to some person in the directorate to put together a briefing that ultimately goes to the Minister; is that right?

MS MORGAN: That's correct.

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COMMISSIONER: And this was part of that initial collection of material for the purpose of the briefing?

MS MORGAN: Correct.

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COMMISSIONER: Can I just ask, who was responsible for the ultimate briefing?

MS MORGAN: I think Ms Haire may have given evidence about this?

25 COMMISSIONER: I just don't recall. Do you know?

MR GREEN: Each branch prepared a section, it was collated, and I think the Director-General signed off on it before it went to the Minister.

COMMISSIONER: Right. I should think that there was some - if I may just - because part of the problem, I can tell you, Ms Morgan, although you might already be aware of it is, we've sought the briefings, your client has referred to them quite reasonably, but from quite early we don't have them. We understand that, because of COVID, briefings with the Minister may have been much more informal. Do I correctly say the position, Mr O'Neill?

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MR O'NEILL: Yes, Commissioner.

COMMISSIONER: So that's why I just want to ask this question.

40 MS MORGAN: Of course.

COMMISSIONER: I assume that the briefings would be relatively - you don't want to give the Minister a volume of material, so there would have been rules - perhaps "rules" states it too highly - but a practice of attempting to encapsulate material in an easily digestible form so that the Minister could usefully gather what was necessary to be informed about. Does that fairly put it?

MR GREEN: Yes, Commissioner. There was generally maybe a paragraph on issues that the Minister just received a general update on, but sometimes there were some voluminous pieces

attached to it, but it generally was fairly succinct and, if you like, dot points for the Minister just to (crosstalk) -

COMMISSIONER: So who's responsible - the final form of the briefing? Do you know? If you don't know ...

MR GREEN: It was collated by the Director-General's office.

COMMISSIONER: Office, right.

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MR GREEN: I don't know the process. I know that in this - looking at this email chain, one of my assistants would collate all of the bits from business services and that would be provided to the Director-General's office.

15 COMMISSIONER: Office.

MR GREEN: And I don't know -

COMMISSIONER: The purpose, in one form or another, being included in a briefing to the Minister?

MR GREEN: Yes.

COMMISSIONER: All right. Yes, thank you, Ms Morgan.

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MS MORGAN: We've just found, Commissioner, the reference in Ms Haire's reference. I will just give you the transcript -

COMMISSIONER: Would you put it on the record now for assistance?

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MS MORGAN: Yes. No, exactly. So, transcript 727, I don't think you need the line.

COMMISSIONER: No, thank you.

MS MORGAN: So transcript 727 Ms Haire explains the process. This email might assist you, Commissioner, in terms of how it happens.

COMMISSIONER: Right.

MS MORGAN: In you look at the email from yourself, Mr Green, on 17 March 2020 at 9:10, which is in the middle of the page, and take a moment just to read what you've written. No. I've been told to correct that transcript reference, it's 699.

COMMISSIONER: Thank you.

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MS MORGAN: So, is this right, Mr Green, what you've done is you've reproduced in the italics what's in the briefing draft and then you've given some comments underneath that; is that right?

MR GREEN: Yes, that's correct.

MS MORGAN: And you will see the first line. You haven't raised any issues about the first line:

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The Tender Evaluation Report has been received by EDU and submitted to the delegate for further discussion.

Do you see that?

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MR GREEN: I see the first line.

MS MORGAN: And so, as at 17 March 2020 it's correct, from the email I've just shown you, that the EDU has received the Tender Evaluation Report; that's correct?

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MR GREEN: That's the comment from Mr Nakkan?

MS MORGAN: No, I'm asking you a separate question, Mr Green, in relation to the first line?

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MR GREEN: Yes.

MS MORGAN: It is correct that as at 17 March you had - the Education Directorate had received the Tender Evaluation Report?

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MR GREEN: Yes, the Education Directorate had received the report.

MS MORGAN: That's right. And in this comment it also says it has been submitted to the delegate, which is you, for further decision. That's what that says, that's correct?

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COMMISSIONER: Well, you're just being asked to agree -

MR GREEN: Yes.

35 COMMISSIONER: - that's what the comment is. You're not being asked yet whether the comment was correct.

MS MORGAN: Yes, I thought my question was quite clear, Commissioner.

40 COMMISSIONER: I thought so.

MS MORGAN: But there was a significant pause, that's true, but Mr Green -

MR GREEN: So, the statement says it has been submitted to the delegate for further discussion.

MS MORGAN: And you have not drawn out any comment in relation to that sentence; that's correct?

MR GREEN: No, I have made a comment below:

Would it be better to say a TER than DTR.

5 So I have made a comment about "the" and "a".

MS MORGAN: And if you go on to see the rest of that, you are talking about the second TER that will follow after the BAFO submissions are received; that's correct, isn't it? So when you said that you changed "a" to "the" you were trying to change what you - what actually happened in this email, weren't you, Mr Green?

COMMISSIONER: I don't think it's recommending a change from "a" to "the", but rather from "the" to "a" or do I miss -

MS MORGAN: Thank you, Commissioner. That obviously wasn't the point I was trying to make, but I will try again.

COMMISSIONER: Yes.

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MS MORGAN: Mr Green, you can tell from your email that you had had no comment in relation to the first sentence that reflected that the TER had been submitted to you for decision; that's right, isn't it?

MR GREEN: Yes, I had no comment on that statement.

MS MORGAN: And a moment ago when you said, "Well, no, I said we should change 'the' to 'a", was an attempt to say that you had made a comment on that statement; is that right?

MR GREEN: Sorry, I'm now lost.

MS MORGAN: Mr Green, I withdraw the question. If we could travel further up the email, please. A bit further up to the previous page. Maybe have those two pages together in that sneaky way. Thank you. So, Ell Stewart works in the director's office; that's right?

35 MR GREEN: Yes.

MS MORGAN: So she has circulated your comments - she sent your comments on to Mr Blom and Mr Player; do you see that?

40 MR GREEN: Yes.

MS MORGAN: And has asked them to take that into effect to amend, in effect, the -

MR GREEN: Yes.

MS MORGAN: Yes, that's correct. And it was their responsibility to do that; is that right?

MR GREEN: Yes.

MS MORGAN: And then Mr Blom says in the next email in the chain on the 18th that he's made the edits to clarify the points that have been made by yourself; do you see that?

MR GREEN: Yes.

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MS MORGAN: And then Mr Nakkan sends it on to you:

The new paragraph by Dylan reads ...

And he reproduces the paragraph that is going to go into the Minister's briefing; do you see that?

MR GREEN: Yes.

MS MORGAN: Again you will see that that first sentence says:

A Tender Evaluation Report has been received by EDU and submitted to the delegate for further discussion.

20 Do you see that?

MR GREEN: Yes.

MS MORGAN: And so, other than changing the first word from "the" to "a", you haven't otherwise - no-one's changed that first sentence, have they?

MR GREEN: No.

MS MORGAN: And if you travel up the page then, please, to the beginning of the email chain, you're then asked by Ms Stewart to - sorry, Ms Stewart has circulated the Minister's weekly briefing with the changes requested from you; do you see that?

MR GREEN: Yes.

MS MORGAN: Sorry, at the very bottom of the page, Mr Nakkan has approved the wording at the very bottom of the page and then Ms Stewart circulates it, you get sent that by Ms Martinez; that's right?

MR GREEN: Yes.

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MS MORGAN: And you clear that language; do you see that?

MR GREEN: Yes.

MS MORGAN: So as at 18 March 2020 your position was that you had received the Tender Evaluation Report and it had been submitted to you for further discussion; that's right?

MR GREEN: No.

MS MORGAN: And, why is that not right?

MR GREEN: Because this is a Minister's weekly brief which is detailing the ICW input for the week of 13th of 19th, so we are actually projecting ourselves to the end of the week at that point, and we regularly did so on the Minister's weekly briefs. We went for what we thought our position would be on the Friday, which is the 19th, and if you know, I'm clearing this on the 18th, so the dates seem wrong. But essentially, the brief was sent to the Minister on Friday so we projected forward what our position would be current on Friday. So, we - yeah, regularly projected our way forward. So I'm saying that on the date that that brief goes to the Minister I expect that I've got a Tender Evaluation Report, has been received by EDU, and it had by that stage, and had been submitted to the delegate for further consideration. So I'm not actually stating that on the 18th I had that brief.

MS MORGAN: Mr Green, are you just making all that up while you sit there?

MR GREEN: No.

MS MORGAN: Could I take you -

20 COMMISSIONER: Sorry, can we just clarify that then, what you're saying is that you cannot tell from this document that you had received it by the 18th, but you can say that you were expecting to receive it - if you hadn't received it you would have expected to receive it by the 19th?

25 MR GREEN: Yes, Commissioner.

COMMISSIONER: Is that what it is?

MR GREEN: Yes. Before we discussed this Minister's weekly brief with the Minister on the Monday morning, that says that I expected -

COMMISSIONER: Events would have taken - would have been brought up to the 19th?

MR GREEN: Yes.

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COMMISSIONER: So, when this is drafted, on the assumption you had not received it by the 18th, it was anticipating receipt on the 19th?

MR GREEN: Yes, or by the 19th.

COMMISSIONER: Or by the 19th, yes.

MS MORGAN: Is this right, Mr Green, that around this time, 19th, 20th of March, you knew that the Tender Evaluation Team had recommended that it go to - that the tender go to a best and final offer process; is that right?

MR GREEN: Yes.

MS MORGAN: And you knew that as part of their Tender Evaluation Report you had scoring from Manteena and Lendlease that was quite disparate; is that right?

MR GREEN: Yes.

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MS MORGAN: And if I could take you then to transcript 138, please, line 45. Now, could you just read - Mr O'Neill has asked you:

Did you place pressure on the team to change the scoring so the evaluation would become closer?

Do you recall that these questions were about the evaluation of Manteena and Lendlease in this period, in the March period?

15 COMMISSIONER: I'm sorry, which is your question now?

MS MORGAN: When Mr O'Neill has asked you a question about "the evaluation would become closer", you recall that these questions were about the evaluation in the Tender Evaluation Report of Lendlease and Manteena in March 2020? We can take the next page up if that would assist you?

MR GREEN: Yes.

COMMISSIONER: I think we can be a little clearer. Ms Morgan, if you look at the middle of the page, this is the second team, isn't it?

MS MORGAN: Commissioner, can you please let me ask these questions, and if they're not clear. Mr Green -

30 COMMISSIONER: Well, it wasn't clear to me.

MS MORGAN: This is the issue. The very issue I'm -

COMMISSIONER: I thought I was being helpful. I'm just reading the transcript.

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MS MORGAN: No, Commissioner, I'm actually trying to identify and fix this exact piece of evidence. So if we could do it step-by-step, I just wanted to check first then when Mr Green is talking about re-evaluating something, he's talking about the scores given to Manteena and Lendlease.

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COMMISSIONER: I see.

MS MORGAN: And I'm happy for the second page to come up so you can have a look at what happened next and that may assist and then I've got some questions about that. So, if you go over the page you've said:

I asked the team to have a look at the tenders.

That was that re-evaluation; do you see that?

MR GREEN: Yes.

MS MORGAN: And I'm happy for you to read on until about line 18 just to get a sense of what the evidence was that you were giving. You've had a look at that?

MR GREEN: Yes, I have.

MS MORGAN: So, the reference in "scores" in line 6, do you see that?

MR GREEN: Yes.

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MS MORGAN: That's the score in the signed Tender Evaluation Report from the first Tender Evaluation Team; that's right?

MR GREEN: Yes -

COMMISSIONER: The divergent scores -

20 MR GREEN: The divergent score is -

COMMISSIONER: Let me just - the divergent score that you have referred to in this evidence is the scoring arrived at by the first team; that's your point, Ms Morgan, am I right?

25 MS MORGAN: Thank you, Commissioner, yes.

COMMISSIONER: Right. And the answer's yes?

MR GREEN: Yes.

MS MORGAN: So in line 5 where you say:

I asked the team to have a look at the tenders, that was that re-evaluation.

You asked the first team to have a look at the scores; that's right?

MR GREEN: No, I don't think so. Looking at that - the preceding pieces, the tenderer, the names I'm talking about are the second team.

40 MS MORGAN: So, can you explain to the Commissioner then the chronology that has occurred at this point?

MR GREEN: At this point in the transcript?

45 MS MORGAN: No, no, at this point -

COMMISSIONER: No, no, at this point in the sequence of events?

MR GREEN: Sorry, the chronology of?

MS MORGAN: You received the BAFO signed by - your team has received a BAFO signed by the Tender Evaluation Team; that's correct?

5 MR GREEN: As about 18th of -

COMMISSIONER: Ms Morgan, please. The difficulty here is, as we know, there are two teams and there are two recommendations for a BAFO. It would be helpful to me if when you're asking about a team or a recommendation of the BAFO you specify which of the two you're talking about.

MS MORGAN: Of course, Commissioner.

COMMISSIONER: Thank you.

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- MS MORGAN: Thank you for that. On 16 March 2020 your team received the tender evaluation report from the first Tender Evaluation Team that recommended a BAFO; that's correct?
- MR GREEN: Sorry, the language is a little bit different. Can I restate that? On the 16th the email that you showed me says shows the chair of the Tender Evaluation Team sending that report to two other members of the Tender Evaluation Team who were in the Education Directorate.
- MS MORGAN: And you knew as at 20 March that the first Tender Evaluation Team had all signed the Tender Evaluation Report recommending that the procurement go to a BAFO; that's correct?
- MR GREEN: I cannot be 100 per cent certain I knew that or signed on the 20th, there may be a document to show that, but on the 20th I expected as by what the Minister's weekly brief said, that the team had signed it and that report was on its way to me if it hadn't already arrived to me.
- MS MORGAN: I'll show you a document that might assist. Could we have up 2.1560.

 Hopefully you remember this text exchange with Ms Power. I understand you worked closely with Ms Power; is that right?

MR GREEN: Yes.

MS MORGAN: And if we go through this Ms Power has asked you on the 20th at about 1 o'clock:

Have you seen the new Tender Evaluation Report for Campbell?

You say you haven't seen it. And then if we go to the next page, she says:

It was sent over on Monday apparently with John.

That's John Nakkan; is that right?

MR GREEN: Yes.

MS MORGAN: And that would mean it's come up the quality assurance chain and all three members of the Tender Evaluation Team have signed it and it's on its way to you; is that correct?

MR GREEN: Yes.

10 MS MORGAN: And then you say:

I know it's over here. I've seen it and noted that it's "sensitive in confidence".

You dealt with a little bit of this in your evidence previously where you've explained that they'd used the wrong template but you'd seen it on Mr Jacobi's screen which you explain in the next message; is that right?

MR GREEN: Yes, that's correct. So, just to go back to your previous question, counsel. I had - I knew it was there and I had seen it, if not been officially - come up to me in the chain.

MS MORGAN: Okay. So, if we could just get the transcript back up, please, of pages 138 and 139 next to each other. So, what I was asking you was, in the chronology, Mr Green -

MR GREEN: Yes.

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MS MORGAN: - and what I'm trying to understand is, having received the recommendation that the matter - that the procurement go to a BAFO from the first Tender Evaluation Team, all three members had signed up to that recommendation, that came to you through John Nakkan, it was on its way to you. I'm asking you about the re-evaluation step. Do you understand the line of questions I'm asking - the topic I'm addressing?

MR GREEN: Yes, I understand the topic.

MS MORGAN: And you've said that team you're talking about at page 139 is the second Tender Evaluation Team; is that right?

MR GREEN: In line 5, yes.

MS MORGAN: And I was asking you, why - sorry, I withdraw that. You asked the first Tender Evaluation Team to re-evaluate the scores; that's right?

MR GREEN: I don't think I asked the first Tender Evaluation Team to re-evaluate the scores. I think this statement's saying I'm asking the team, the -

MS MORGAN: I'm not asking you about what you've said here. I'm asking you as a matter of fact whether you asked the first Tender Evaluation Team to re-evaluate the scores?

MR GREEN: I don't recall asking the first Tender Evaluation Team to re-evaluate the scores that they assessed in either - yeah, in their Tender Evaluation Reports.

MS MORGAN: Could I ask for document 2.1595 to be brought up, please.

COMMISSIONER: Ms Morgan, just remind me, if you wouldn't mind, did Ms Young give evidence that they were asked to re-evaluate the scores?

MS MORGAN: Yes. She did. I'm getting to that, Commissioner. So, you will see here, Mr Green, Ms Young says to you directly:

As the education delegate [meaning you] has requested a re-evaluation of the Campbell PS Modernisation Project to D&C tender the original Tender Evaluation Team will be replaced.

Do you see that?

15 MR GREEN: Yes.

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MS MORGAN: Now, having seen that, do you now recall that you asked the first Tender Evaluation Team to re-evaluate the scores?

MR GREEN: No. I think this is Ms Young poorly describing the BAFO as a re-evaluation. Whereas a BAFO was actually getting a second - a best and final offer second bid from the two tenderers and that second bid would come in and be evaluated, so I think "re-evaluation" as she's put it there is actually a poor choice of words. It's not what they were asked to do. They were asked to - sorry, under a BAFO they were going to be asked to evaluate the new pieces of the bid and certain elements would not be re-evaluated.

MS MORGAN: Mr Green, I want you to think about your answer and look at the date on that email and reconsider whether you're telling the Commissioner the truth.

30 MR GREEN: I've considered it. I believe that my evidence is the truth.

MS MORGAN: So, explain to the Commissioner how, having Ms Young sign a recommendation in the first TET's TER on 16 March recommending a BAFO, how this has anything to do with her issues in relation to the BAFO?

MR GREEN: I am thinking of the chronology. So, with the first tender - sorry, the Tender Evaluation Report coming through recommending a BAFO, this came after it. This, I think, is Ms Young not wanting to take place in the BAFO. So, she was describing the BAFO as a re-evaluation of the tender, whereas in my understanding of the process the BAFO requires the - or required the Tender Evaluation Team to evaluate the best and final offer that was submitted by the tenderer and elements of that were - well, it was a new bid and that was what the team was going to be evaluating.

MS MORGAN: Mr Green -

COMMISSIONER: Well, it was implicit in there being a BAFO that additional material would be provided by both tenderers?

MR GREEN: Taking into account the issues that had been raised with them to address in their BAFO. So, to me it's not a - it's a re-evaluation of a bid from Manteena, if you want to put it that way, but it's not a re-evaluation of the same material because there would be new material coming in so that the Tender Evaluation Team would be evaluating an updated bid from the tenderer, which is the BAFO.

MS MORGAN: Mr Green, by 27 March you agree that Ms Young has already signed up to the Tender Evaluation Report recommending a BAFO; do you agree with that?

10 MR GREEN: Yes.

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MS MORGAN: I thought you had agreed with that?

MR GREEN: Yes, I agree with that, yes.

MS MORGAN: So you would agree that what you are describing now is completely inconsistent with her having recommended the BAFO; do you agree with that?

MR GREEN: No.

MS MORGAN: Mr Green so is your explanation that - sor

MS MORGAN: Mr Green, so is your explanation that - sorry, I withdraw that. So, if Ms Young has given evidence to this Commission that the Tender Evaluation Team, the first Tender Evaluation Team was asked to re-evaluate the scores in the tender evaluation -

- 25 COMMISSIONER: I'm sorry, Ms Morgan, and it may be a failure of my own recollection, but that is not how I recall the evidence, and I think for precision well, the problem, and there are a number of problems with it. But I do not recall that as being the effect of her evidence.
- 30 MS MORGAN: Okay. So, I'll put what I understand the evidence was. Ms Young says she was called into a meeting -

COMMISSIONER: Can you state the page? Is that possible.

35 MS MORGAN: No, it's not. We don't -

COMMISSIONER: You don't have that page?

MS MORGAN: We don't have that transcript.

COMMISSIONER: Right.

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MS MORGAN: She had been called into a meeting with Ms Power and told that the Education Directorate wanted a re-evaluation:

I was asked to re-evaluate and I said, "On what grounds? There was no new information. We had done an evaluation and reached an outcome. There was no reason to re-evaluate".

So, are you saying that Ms Young, in her understanding, that you were seeking a re-evaluation of the scores was mistaken or otherwise not telling the truth?

MR GREEN: I think Ms Young was mistaken about the BAFO process and what the re-evaluation, what she calls a re-evaluation, was to be an evaluation of the best and final offer when it came in from the tenderer. But I wasn't at that meeting; I don't know how it was described to her.

COMMISSIONER: It is somewhat difficult to - what you're asking this witness is about evidence given by Ms Young about a conversation with Ms Power in relation to which this witness was not a participant, so it's rather second, if not third-hand.

MS MORGAN: (Crosstalk) -

15 COMMISSIONER: I don't have a problem with you putting the matter directly at all. It's calling in aid, as it were, other material. I'm making that observation, I'm not stopping you.

MS MORGAN: Commissioner, I'm just trying to give Mr Green every opportunity to explain his very, very strange chronology which has not been properly explained at this point and is contrary to the documentary chronology. But we've heard what he's saying, he's maintained this position in the face of the chronology and we, I feel, have sufficient to make appropriate submissions to you, Commissioner, taking in line your rules in relation to submissions that may be made as to - in relation to witnesses.

- 25 COMMISSIONER: No, I understand, you're perfectly entitled to make such submissions as you think the evidence justifies. No, I'm not stopping the questions. All I'm pointing out is, there are some difficulties in asking a witness about what is said or understood to follow from a conversation to which that witness is not a party.
- 30 MS MORGAN: I understand.

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COMMISSIONER: They're just inherent evidentiary difficulties, that's all I'm saying really.

MS MORGAN: They don't seem to have been difficulties that have been of concern in this Commission generally, but I hear what the Commissioner -

COMMISSIONER: Now, that's quite an unfair observation, Ms Morgan. All the evidence is taken into account. I'm entitled to be informed under the Act in such way as I think it's appropriate. Sometimes things which look like they're informative turn out not to be informative and there are inherent limitations in the length - the extent of information that's available. I'm simply pointing out that asking a witness about what another witness has said about what another reasons has said or another person has said -

MS MORGAN: Ms Power -

COMMISSIONER: - has its inherent problems.

MS MORGAN: Thank you, Commissioner, I understand the point.

Mr Green, is there anything other than your recollection that you're aware of that records in some way that, despite the recommendation of the first Tender Evaluation Team to go to a BAFO, that records in some way their refusal to continue with that process?

- MR GREEN: I casting my mind, I'm not sure whether there's texts between Ms Power and myself around the need to find a new Tender Evaluation Team. There was certainly conversations before Friday, 17 March sorry, before that email on Friday, 17 March 27 March -
- 10 MS MORGAN: 27 March, you mean?

MR GREEN: Yes, sorry, and I don't know what documents there are about that. I would - if I looked somewhere - if I was to look somewhere I would look for text messages between Ms Power and myself.

MS MORGAN: And what would those text messages say?

MR GREEN: Something like, I know Kelly doesn't want to continue, or something like that, would be my speculation - totally speculation.

MS MORGAN: But that's what you mean consistent with this email?

MR GREEN: Yes.

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25 MS MORGAN: That's your point. And if there is no text message of that kind?

MR GREEN: It would have been a conversation.

MS MORGAN: Right.

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MR GREEN: I was aware of this before I got this email. Sorry, I was aware that there was a need to change the Tender Evaluation Team before I got this email, because the previous Tender Evaluation Team did not want to continue.

MS MORGAN: But you disagree with the characterisation that the re-evaluation in this email is the same re-evaluation in the transcript that I took you to at transcript 139?

MR GREEN: Yes, I disagree with that - that those two re-evaluations are the same.

MS MORGAN: We will move on to another topic. Now, you've given evidence about a conversation with Ms Haire when she returned from leave in March 2020, and we will take you to that at transcript 102, line 27. So, the conversation had had two points to it. Hang on. No, 101, I'm so sorry, the previous. Could I have 101 and 102 up on the same screen, please, Michael? Thank you. So, at line 27 in page 101 you say that she said:

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

So that was the first part of that conversation - the evidence you gave about that conversation; do you agree?

MR GREEN: Yes.

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MS MORGAN: And then the second part of the conversation, if you look at page 102, line 12:

I will be final decision maker on this process.

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And then you say at a slightly different way at line 16:

I've been told I will be the final decision maker on this process.

15 And do you recall giving that evidence?

MR GREEN: Yes.

MS MORGAN: And you know that Ms Haire denies that she says she was summonsed to the Minister's office and she denies she said anything about Manteena or about being the decision maker; you're aware of that?

MR GREEN: Yes.

- MS MORGAN: Would it surprise you to know that there is no evidence before the Commission that Ms Haire was summoned or otherwise attended the Minister's office at this time or indeed ever about Campbell?
- MR GREEN: I don't know how Ms Haire kept her diary and whether it was marked as a Campbell meeting or whether it was some other meeting with the Minister, sorry.

MS MORGAN: I think what I'm proposing to you is that, would it surprise you to know that there was no meeting between Ms Haire and the Minister about Campbell at this time or ever?

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COMMISSIONER: I'm sorry. He has given specific evidence and what you're asking is, would it surprise you to know that you're telling a lie? That's what your question is.

MS MORGAN: I'm getting to that.

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COMMISSIONER: Well, that's not a way of putting a question, "Would it surprise you to know." You can put to him that he's telling a lie and you can put it in half a dozen ways -

MS MORGAN: I'm trying to -

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COMMISSIONER: - but frankly, I do not see that that is an appropriate way of putting such a point.

MS MORGAN: I'm trying to be fair, Commissioner, so that he knows the Commission doesn't -

COMMISSIONER: Frankly -

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MS MORGAN: - have any evidence that there was such a meeting and there wasn't such a meeting.

COMMISSIONER: Well, there may be and you can make submissions about what inferences might draw. But you can't expect him to know what enquiries we've made. You can't expect him to know where the Commission has looked and what responses have arrived at by the Commission. You can make a perfectly reasonable suspicion - sorry, submission about the absence of evidence, but I don't see how you can ask this witness about the significance of the Commission's investigation in any particular -

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MS MORGAN: That's not the point I'm making, Commissioner. I'm (crosstalk) -

COMMISSIONER: No.

COMMISSIONER. NO.

20 MS MORGAN: I'll withdraw the question, Commissioner. Can I get transcript page 60 up, please.

Mr Green, you've used that same language of someone being summonsed to the Minister's office in your evidence about a conversation with Ms Cross. Does that sound familiar to you?

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MR GREEN: Yes.

MS MORGAN: And you will see that at transcript 60, line 15 and line 20 that:

30 She had been summoned down to the Minister's office to discuss Campbell.

And:

I have been summoned down to the Minister's office to talk about Campbell.

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You see that at line 15 and line 20; you see that?

MR GREEN: Yes.

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MS MORGAN: You know from questions you were asked yesterday that Ms Cross did attend a meeting at the Minister's office with the minister and her staff and that was a scheduled meeting on 24 February; you know that now?

MR GREEN: The MINSET meeting, yes.

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MS MORGAN: The MINSET meeting, that's correct. And just to be - you know that - you may not know - Ms Cross said, and this is at 512 at line 33, that she doesn't recall saying those words about being summonsed. That what he said was that she had a meeting - she told

you she had a meeting with the Minister and her chief of staff. Does that - so she agrees that she told you that; do you understand?

MR GREEN: Yes.

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- MS MORGAN: Now that I've taken you to what you said about Ms Cross, could it be that you are mistaken in relation to Ms Haire and you've used the same language saying "she was summonsed in the Minister's office"?
- MR GREEN: Yes, I could have been mistaken about the language of the word summoned summonsed.

MS MORGAN: Well, more specifically, that Ms Haire even went to the Minister's office or was at a meeting and said - and told you that; you are mistaken about that?

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- MR GREEN: I don't think I was mistaken. I recall the conversation about, that she had a meeting on that matter.
- MS MORGAN: So that's your recollection?

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MR GREEN: Yes.

MS MORGAN: That's what she said. Now, you've also given evidence in this conversation that Ms Haire said that she would be the decision maker, that's - I took you to your transcript a moment ago; that's right?

MR GREEN: Yes.

MS MORGAN: Now could I just go through the chronology with you and then I'll ask you a question about it. Now, the draft Tender Evaluation Report that had been prepared by the first Tender Evaluation Team recommending a BAFO that was prepared as you as the decision maker; that's correct?

MR GREEN. It was prepared with me as the delegate?

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MS MORGAN: Which is the decision maker; is that right?

MR GREEN: Yes.

- 40 MS MORGAN: And the text messages I took you to with Ms Power on 20 March in relation to the Tender Evaluation Report that was extant at that time was that you were the decision maker; is that right?
 - MR GREEN: Yes, I was the delegate.

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MS MORGAN: And if I could ask for document 2.1594 to be brought up. And that's from Mr Piani. Now, he's Major Projects Canberra; that's right?

MR GREEN: Yes.

MS MORGAN: And he's asking you:

Have you been able to reach a decision on Campbell?

So that's on 27 March 2020?

MR GREEN: Yes.

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MS MORGAN: So at that point everybody is considering you as the relevant decision maker; that's right?

MR GREEN: Yes.

- MS MORGAN: And if I could ask for 2.1595 to be brought up, and this is the email we looked at earlier, and again, Ms Young is asking for your approval because you're the relevant decision maker in relation to the Campbell PS Modernisation Project as at 27 March 2020; is that right?
- 20 MR GREEN: Yes, I'm acting as the delegate.

MS MORGAN: And there's no suggestion in any of this material there's been any change to the process; you'd agree with that?

25 MR GREEN: Yes.

MS MORGAN: And then on 8 April 2020 you accepted the second Tender Evaluation Team's recommendation to proceed to the best and final offer; is that right?

30 MR GREEN: Yes.

MS MORGAN: Could I have 2.1742 brought up, please. In the middle of the page is your email circulating the signed Tender Evaluation Report; do you see that?

35 MR GREEN: Yes.

MS MORGAN: And you've authorised the BAFO but you expect a further Tender Evaluation Report; do you see that?

40 MR GREEN: Yes.

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MS MORGAN: And that's to explain that it's going to be in two steps: we need the BAFO first, the tenderers respond to the BAFO, and then there will be a further evaluation and a decision following that; is that right?

MR GREEN: The re-evaluation, as we were talking about before by whoever it was is - would take the form of a Tender Evaluation Report.

MS MORGAN: Well, I didn't use that form of words but the Commissioner and yourself used that form of words, so let's just stick with my form of words. The second Tender Evaluation Report would be an assessment of the BAFO responses from the tenderers and a recommendation to the decision maker; is that right?

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MR GREEN: Almost. The next Tender Evaluation Report would be, because there had been a number of Tender Evaluation Reports by that time.

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MS MORGAN: So the further Tender Evaluation Report that you're referring to in your email of 8 April is the Tender Evaluation Report of the best and final offer submissions?

MR GREEN: Yes.

MS MORGAN: And that goes to the decision maker; is that right?

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MR GREEN: Goes - yes.

MS MORGAN: And at this point, from this email, you would - you are the decision maker; that's correct?

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MR GREEN: I am the delegate, yes.

MS MORGAN: No, you are the decision maker at this point? Because of your title you have the appropriate delegation and this email is consistent with you being the decision maker as the delegate?

MR GREEN: Yes.

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MS MORGAN: Now, Ms Power is someone you had a close working relationship with through this Campbell process; that's correct, isn't it?

MR GREEN: Yes.

MS MORGAN: And you communicated directly with her; is that right?

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MR GREEN: Yes.

MS MORGAN: And you didn't just allow your respective staff to communicate with each other; you two had a working relationship that you communicated directly; that's right?

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MR GREEN: Ms Power and I communicated directly, yes.

MS MORGAN: And you would pass on matters that you thought were important in relation to the Campbell project directly to her; is that right?

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MR GREEN: Yes.

MS MORGAN: Could I have document 2.1589 brought up, please. This is the email chain - maybe put page 2 up as well, please, Michael. This is the email chain that Mr Edghill proposes a decision-making in around March 25 to Ms Haire. There's evidence that you have given in relation to this and there's other evidence around this. I'm not asking you about the substance of Mr Edghill's email, I'm just asking you whether this is an example of you receiving an email here. You are copied on the email of 26 March 2020 and you've forwarded that on at 8.44 am directly to Ms Power; do you see that?

MR GREEN: Yes.

MS MORGAN: And that's an example of your working relationship. You've passed something on that you think will be important for her to know in relation to Campbell; is that right?

MR GREEN: Yes.

MS MORGAN: Could I have document 2.1786 brought up, please. Mr Green, you can accept it from me that this is a file note of Ms Power's. I don't know if you know her writing, but that's her file note. Can you accept that?

MR GREEN: Yes.

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MS MORGAN: And you will see it's dated 15 May 2020 and she said:

Campbell BAFO - high level of scrutiny delegate is Katy not John.

25 Do you see that?

MR GREEN: Yes.

MS MORGAN: Now would you accept that what's likely to have happened is sometime around 15 May you were told by Ms Haire that she'd be making the decision in relation to Campbell and you passed that on to Ms Power straight away?

COMMISSIONER: Sorry, there are two questions there. I think your first question is whether he knows the source of this information, isn't it? The note doesn't say who the source is.

MS MORGAN: I'm asking a different question, Commissioner.

COMMISSIONER: Well, I'm sorry, the problem is, Ms Morgan, you're asking two questions. Can you please confine your questions to one at a time.

MS MORGAN: Mr Green, do you recall talking to Ms Power on or around 15 May 2020 and passing onto her the information that Ms Haire would be the decision maker in relation to Campbell?

MR GREEN: I don't recall the date of a conversation. I recall having a conversation with Ms Power that Ms Haire would be the final decision maker on Campbell. This date - I don't remember this date or in particular that, but I recall having a conversation with Ms Power that Ms Haire would be the final decision maker on Campbell.

MS MORGAN: And did you tell her - Ms Power, sorry - did you tell Ms Power that as soon as you found out?

MR GREEN: I don't recall whether I told her as soon as I found out or not.

MS MORGAN: It's an important issue in relation to the Campbell process; you agree with that?

MR GREEN: It's important to know who the final decision maker will be, but I - sorry, I do not recall whether I told Ms Power immediately after finding out or not, I -

MS MORGAN: I've taken you through the chronology and the background which, at least until 8 April, the various communications point to you being the final decision maker; do you agree with that?

MR GREEN: No. The chronology shows that I was making decisions about steps of the process.

MS MORGAN: So, looking at this file note from Ms Power -

COMMISSIONER: I don't think it is a file note. I don't -

MR GREEN: This note.

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25 COMMISSIONER: It's a note, certainly.

MS MORGAN: Looking at it, certainly, Commissioner. Nothing was meant by that. Looking at this note -

30 COMMISSIONER: I have a feeling that in the public service somehow words like "files" and perhaps like "direction" have certain magic of their own, that's all. I'm just being cautious.

MS MORGAN: So, Mr Green, what I want to suggest to you is that what occurred on 15 May, or just before, is that you were told by Ms Haire that she would be the decision maker and that you told Ms Power of that on or around that time; does that sound like what could have happened in May 2020?

MR GREEN: My recollection, and I think my evidence is, that Ms Haire told me she'd be the final decision maker earlier. But from this note it looks like that Ms Power and I had a discussion about that on and around 15 May. I'm unaware - I cannot recall whether that was a first discussion about that or whether it was a reminder of a previous discussion, or whatever, but it appears to me from this note that Ms Power and I had a conversation about it at or around 15 May.

MS MORGAN: And, given the nature of your working relationship and noting that we're now more than three years after this time, would you accept that it's more likely that you told Ms Power as soon as you found out that you were no longer the final decision maker?

MR GREEN: It's - it doesn't - it seems - sorry, I'm really searching back three years ago. I may have known for some time but I might not have needed to tell Ms Power that Katy - sorry, Ms Haire would be the final decision maker and I may have just done again here to remind her. So, I expect that I would have told her at some point when it became relevant to the - to the conversation.

MS MORGAN: But you accept it was a fundamental change in what you understand was going to happen; that's right, isn't it?

MR GREEN: Yes, it was a change - yeah, a large change that the final decision would not be made by the delegate.

MS MORGAN: And so, I'll just ask you again, keeping that in mind, do you think given the -

15 COMMISSIONER: I think three times is enough, Ms Morgan.

MS MORGAN: Noted, Commissioner.

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Mr Green, in relation to your evidence that Ms Haire said to you in March 2020 that she would be the decision maker, do you think, now that I've taken you through the chronology including this note, that you may have been mistaken that that was the conversation in which she said that?

MR GREEN: My recollection is still that that conversation that I was advised - or sorry, she said that she would be the final decision maker happened in the same conversation around the Minister's office and the process which, to me, is the meeting after she came back from holidays.

MS MORGAN: Could I suggest that this is what you discussed with Ms Haire when she returned from leave: you discussed that you had already spoken to Rebecca Cross about Rebecca's meeting with the Minister's office; that's right?

MR GREEN: That's - yes.

35 MS MORGAN: And you told Ms Haire that you knew about Secure Local Jobs; that's right?

MR GREEN: Yes.

MS MORGAN: And you told Ms Haire you knew who the good construction companies were in Canberra; that's right?

MR GREEN: Yes.

MS MORGAN: And by that what you meant, were the ones who actually complied with the Secure Local Jobs Code as a matter of substance; is that right?

MR GREEN: The union's views on those. The other part of the good construction companies are the one about the track record of companies, so there's two issues with good - or sorry, two elements of good.

MS MORGAN: And, Mr Green, I want to suggest that you are mistaken in relation to Ms Haire ever saying to you in March 2020 that the Minister's office had a view that Manteena should not get the Campbell job?

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MR GREEN: I do not believe I was mistaken.

MS MORGAN: Mr Green, when you found out on or around 9 June 2020 that the second Tender Evaluation Team had recommended Manteena as the preferred tenderer, you told Ms Haire that result; that's right?

MR GREEN: I told Ms Haire sometime around then that that was what the Tender Evaluation Team was going to recommend or had recommended. I can't recall whether I - there was a valuation report at that time, but I was hearing from the Tender Evaluation Team about what their recommendation would be.

MS MORGAN: And that's when you told Ms Haire that Manteena didn't have the better track record on Secure Local Jobs compared to Lendlease?

20 MR GREEN: That would have been part of that conversation.

MS MORGAN: And do you recall that Ms Haire said she'd have to check with the Minister's office to see if the government priorities remained the same?

25 MR GREEN: I don't recall that - that line.

MS MORGAN: But do you recall you had another conversation with Ms Haire in or around that time?

30 MR GREEN: Yes.

MS MORGAN: And in that conversation Ms Haire said that, "The Minister's office still had the view that the Secure Local Jobs values were the priority"?

35 MR GREEN: Yes.

MS MORGAN: And she asked you for your advice, based on your experience, as to whether it was possible to make a different decision from the Tender Evaluation Report's recommendation in order for her to take into account the Secure Local Jobs principles?

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MR GREEN: I don't recall all of that conversation, but I recall the substantive piece, that she asked for advice, or a brief, on how to make a different decision from the TER.

MS MORGAN: And part of that was to take into account the Secure Local Jobs principles?

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MR GREEN: I don't know if she said that but I assume that's what she meant.

MS MORGAN: Could we have Exhibit 8 up on the screen from yesterday, please. Now, this is your statement that was in response to Mr Ceramidas' statement, and if we could have

paragraph 13. Mr Green, can you see the end of paragraph 13 when you refer to Ms Cross? Do you see that, the second part of 13; do you see that paragraph?

MR GREEN: Yes.

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MS MORGAN: And you see the last sentence there you say:

As a result of that I thought there were concerns raised by the union.

10 Do you see that?

MR GREEN: Yes.

MS MORGAN: And as I understand that paragraph and what you said yesterday, you accept that you introduced the issue of the unions because of the combination of the reference to Secure Local Jobs and Manteena; is that an accurate description?

MR GREEN: Yes, I think that's what I said yesterday, yeah.

MS MORGAN: And is it possible, Mr Green, that you interpreted the exchange with Ms Haire in June 2020 where you said Manteena was recommended but they did not have a good track record on Secure Local Jobs, and Ms Haire confirming the Minister's office wanted the values and principles of Secure Local Jobs applied, as her telling you that Manteena should not get the job?

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MR GREEN: Sorry, say that again.

MS MORGAN: Because you had referred to Manteena and that they didn't have a good track record on Secure Local Jobs, and Ms Haire came back to you and said -

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COMMISSIONER: That's not what the witness said. What he said was, the unions - as I recall his evidence, what he had told Ms Haire was that it was a union view of Manteena, or am I mistaken about that, Mr Green?

35 MS MORGAN: I don't think that's the evidence. Commissioner.

COMMISSIONER: Can you recall what you said?

MR GREEN: No, I can't, sorry. I can't recall the precise details of what I said in that meeting.

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MS MORGAN: So, all I'm trying to ask you is, you had brought up Manteena was the recommended tenderer?

MR GREEN: Yes.

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MS MORGAN: And that that meant that the outcome proposed by the Tender Evaluation Team was in relation to the contractor that didn't have a good track record on Secure Local Jobs, and when Ms Haire came back to you and said, "Secure Local Jobs are important, the

values and principles", you interpreted that as her telling you, Manteena should not get the construction - the procurement job?

- MR GREEN: No, I think we had a more direct conversation than that. I think we he had a conversation where the names of the tenderers, Lendlease and Manteena, were discussed. And then that also included my passing on to Ms Haire the union's views on those two contractors and their and their compliance with the real intent of Secure Local Jobs, to use the language that the unions used about Secure Local Jobs, as opposed to "code compliance".
- MS MORGAN: Now, Mr Green, you knew that any suggestion by Ms Haire that a tender should be awarded simply because the Minister or the Minister's office didn't want a particular contractor to win was inappropriate and improper?

MR GREEN: The Minister's not the decision maker, yes.

MS MORGAN: But you knew that - I'm asking you a more specific question - that the suggestion by Ms Haire that a tender should be awarded simply because the Minister or the Minister's office didn't want a particular contractor to win, that that was inappropriate and improper?

MR GREEN: That the tender evaluation - so, yes.

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MS MORGAN: You struggled with that idea, Mr Green; why was that?

MR GREEN: The tender evaluation process has criteria to be addressed and the - you know, it - it's awarded against those criteria and that's up for the decision maker to make a decision based on those criteria.

MS MORGAN: I'm asking you a different question, Mr Green, and you seem to be struggling with it, and the question is a more fundamental one, that if Ms Haire -

COMMISSIONER: Best if you avoid commentary, Ms Morgan.

MS MORGAN: If Ms Haire told you that the Minister or the Minister's office didn't want a particular contractor to win, that that was inappropriate and improper; that's correct, isn't it?

COMMISSIONER: You're not being asked why. You're being asked - yes.

MR OPAS: Commissioner, is that the proposition that's being put to the witness, that that was the statement by Ms Haire to (crosstalk) -

COMMISSIONER: I understand not. I think what Ms Morgan is saying: had that been told to you, that would have been improper. Is that right, Ms Morgan?

45 MS MORGAN: Thank you, Commissioner.

COMMISSIONER: Sorry. Are you saying, yes, that's what you intended?

MS MORGAN: Yes, Commissioner.

COMMISSIONER: Thank you, yes. Now, you're not being asked why, you're being asked whether your view was that the intimation to you that the decision should be made - in effect, the decision could be made in accordance with the opinion of the Minister was improper; do you agree?

MR GREEN: Sorry, I'm - are you - is it a question about what was said or a question about the principle behind the decision making?

10 COMMISSIONER: No, it's not so much a question about what was said, it's a question of principle about whether saying such a thing was improper or may have been appropriate.

MS MORGAN: Thank you, Commissioner.

15 COMMISSIONER: So, accepting for the sake of the question that what you say is correct, did you understand that to be improper or wrongful in some way?

MR GREEN: I understood it would be improper for the decision to be made solely on the basis of the Minister wanted a particular outcome.

COMMISSIONER: Only solely?

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MR GREEN: If there was alignment between other evaluation criteria and what the Minister wanted, that would be serendipitous.

COMMISSIONER: Well, let me put it this way: the point is, is it not, whether or not it was proper for any opinion of the Minister to have affected the process? Of course, if it was an opinion that simply reflected the evaluations then on that basis it would not have affected the process. Would it be proper for an opinion of the Minister to affect the procurement?

MR GREEN: I don't think that was proper.

MR GINGES: Commissioner, sorry, Ginges for the Commission. If I might just ask: is your Honour's question directed to broadly the Minister and the Minister's office, given that the evidence may be that in fact opinions -

COMMISSIONER: I think, not unreasonably, Ms Morgan had put it at the highest.

MR GINGES: Correct. But I wonder whether -

COMMISSIONER: But this is hypothetical -

MR GINGES: Yes.

45 COMMISSIONER: - so I don't think it's a problem. There's no need here to distinguish between the two for the purpose of this question.

MS MORGAN: I did distinguish between the two. I said "the Minister or the Minister's office".

COMMISSIONER: I hadn't recalled that.

MS MORGAN: So -

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COMMISSIONER: But at all events the point of your question is there's no - it's a distinction without a difference. Yes.

MS MORGAN: Correct. Thank you, Commissioner.

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Mr Green, you were a very senior executive - sorry, you're a senior executive acting up in a very senior role, that's right, at this time in June 2020?

MR GREEN: Yes, I was (crosstalk) -

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MS MORGAN: Sorry?

MR GREEN: I was a senior executive.

20 MS MORGAN: And you were acting in a very senior rule in June 2020; that's right?

MR GREEN: Yes.

MS MORGAN: And you're very experienced in requirements of probity and transparency in relation to procurement; that's right?

MR GREEN: Yes.

MS MORGAN: And you knew how Secure Local Jobs Code worked and how it informed the tender process; that's right?

MR GREEN: Yes.

MS MORGAN: And you could have explained all of that to Ms Haire, and you could have said to her "the values and principles of Secure Local Jobs were already part of the process"; that's right?

MR GREEN: Yes.

40 MS MORGAN: Now, you didn't do that, did you, because you -

COMMISSIONER: No, let's first ask, did you do it or not? Did you do it or not?

MR GREEN: At that time, no.

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MS MORGAN: Do you say you did that in the executive brief?

MR GREEN: No.

MS MORGAN: No. Sorry, Commissioner, that threw how I was going to end this point, so let me just regroup.

You could have - let me just go back. You agree that you could have explained to Ms Haire the values and principles of Secure Local Jobs were already part of the tender evaluation process; that's correct?

MR GREEN: I believe I did that in the brief, if not earlier, that Secure Local Jobs had already been evaluated.

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MS MORGAN: So you say that's in the executive brief?

MR GREEN: And also I think so in previous conversations with Ms Haire about how Secure Local Jobs operates and with Ms Cross earlier in that earlier period.

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MS MORGAN: Now, is it right - sorry. Excuse me a moment.

COMMISSIONER: Do you still need this up on the screen?

20 MS MORGAN: No, I don't. Thank you, Commissioner.

COMMISSIONER: Yes. Remove it from the screen, please.

MS MORGAN: Mr Green, you've already said in evidence that you thought Lendlease was the better contractor for this - was the better contractor; do you recall giving that evidence?

MR GREEN: Yes.

MS MORGAN: And is it right that it suited you for Ms Haire to take over the decision-making because you didn't think, in your position you could have reached a different decision in the face of the recommendation of the Tender Evaluation Team?

MR GREEN: I think my evidence has been, if I was the final decision maker on that I would have accepted the second Tender Evaluation Team's recommendation.

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MS MORGAN: So - no, I won't, I withdraw that. And then, I've just got the final topic, Commissioner, it'll take about 10 minutes, so I'll finish before the morning tea adjournment.

Could we have the Auditor-General's transcript at 33 brought up on the screen, please. I'm making trouble this morning.

COMMISSIONER: I think you rather enjoy it, Ms Morgan.

MS MORGAN: You can see straight through me, Commissioner. Mr Green's

Auditor-General transcript at page 33. I thought I was cross-examining on Tuesday, so the warnings were given to the team several days ago, and we've had a lot more documents since then, so it's my fault.

COMMISSIONER: That's all right, we can be patient.



MS MORGAN: Mr Green, we can start in the middle of page 33. You will see that Mr Stanton refers to "a curious email", and then you say:

5 Kelly said, Phil said?

So I think we can take it from that, that the email they're referring to is Ms Young's email for herself. I won't go to it but for the transcript that's at 2.1448. Do you accept that that's what this question is about, or do you recall that that's what this question was about?

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MR GREEN: I don't recall, but I saw that email yesterday, so I accept that that's - would make sense.

MS MORGAN: And so, if you drop down, Mr Stanton forensically asked you:

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What's that about?

And then you then answer. And taking it step-by-step, you say about that email:

20 So that reflects, in my view, Kelly's view, that Manteena would be obviously preferred tender because at that point of the job she just wanted to engage Manteena, to which I wasn't keen.

Now, that was a true statement when you said that to the Auditor-General; is that right?

25 MR GREEN: Yes.

MS MORGAN: And then the next bit:

The conversation that I know I had with my crew was very much around, "I'm not happy with the idea of going and having a conversation with our political masters, the Minister and co, around getting extra money for a job for Manteena knowing that the union hates Manteena." So, that's absolutely where I know I had a conversation with my crew, and this is passing on my experience from Secure Local Jobs and knowing the views of the various contractors from the union and knowing that that wasn't going to be a popular conversation anywhere near a Minister and that's what I would have said along those lines, so. I don't know the exact words that I said but if the conversation was something along the lines of, "No way I'm going near the Minister, no way the Minister will be happy with Manteena getting that and a certain hand of extra money", probably said something along those lines.

So that's an accurate description of how you were communicating with your team in the period March to June 2020?

MR GREEN: Yes.

MS MORGAN: And then, if we go over the page to page 34, at the top of the page you say:

But I've never asked the Minister for her views on who should get the procurement and never got the views of the Minister about who should get the procurement.

And then you say:

I can tell you exactly what the union thinks about the contractor though.

5 That's a true statement as well; that's right?

MR GREEN: Yes.

MS MORGAN: And -

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COMMISSIONER: Well, sorry, which is the true statement?

MR GREEN: The second one:

15 *I can tell exactly what the union thinks about the contractor.*

MS MORGAN: So, going up to the top one, you've never asked the Minister for her views on who should get the procurement; that's right?

20 MR GREEN: Yes.

MS MORGAN: That's true?

MR GREEN: That's correct.

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MS MORGAN: And you've never got the views of the Minister about who should get the procurement; that's true?

MR GREEN: Yes. But I've been very precise about the wording there.

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MS MORGAN: And what does that mean, Mr Green?

MR GREEN: So, I don't know about the views of the Minister. I understood I was getting the views of the Minister's office.

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MS MORGAN: And so you consciously, during this Auditor-General report, knowing that you had sworn to tell the truth, you consciously left something out; is that right?

MR GREEN: Yes, I -

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MS MORGAN: And what you left out, you're saying, is that you left out being directed by Ms Haire of what the Minister's office wanted; that's right?

MR GREEN: Yes. I was being careful around Minister versus Minister's office.

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MS MORGAN: And you kept - you maintained that position even when you were given an opportunity to check the - sorry, when you were given an opportunity to raise anything else after this examination; that's right?

MR GREEN: I didn't correct this part of the statement.

COMMISSIONER: The fact of the matter was this: you had, by your affirmation agreed not only to tell the truth, but the whole truth; that's correct, isn't it?

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MR GREEN: Yes, Commissioner.

COMMISSIONER: And you did not tell the whole truth, did you?

10 MR GREEN: No, Commissioner.

MS MORGAN: And you were given an opportunity to review the draft report; that's right?

MR GREEN: The draft report of the Auditor-General?

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MS MORGAN: Yes?

MR GREEN: Yes.

20 MS MORGAN: And you said nothing to the Auditor-General about any direction or suggestion from the Minister's office; is that right?

MR GREEN: I didn't.

MS MORGAN: And you were confronted, in December 2021, with the public criticism in relation to the final Auditor-General report; that's correct?

MR GREEN: Yes.

30 MS MORGAN: And your current version of what occurred with Ms Haire in relation to the Minister's office has developed through four private examinations with the Commission and this public hearing; would you agree with that?

MR GREEN: Yes.

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MS MORGAN: Could I ask you to look at page 128 of your first private examination. So, from about line 9, this is the Commissioner asking you this question. Can you just read that to yourself, Mr Green, to line 18.

40 MR GREEN: Yes, I've read it.

MS MORGAN: Now, you've said there to the Commissioner:

I think what you're asking me to do, you think I should have told the Auditor-General that the Director-General had already made her view on what that outcome was going to be beforehand.

What is it, Mr Green, that you - why you thought that the Commissioner was asking you to say something specific?

MR GREEN: I think the Commissioner was pointing out to me that I hadn't told the complete truth to the Auditor-General, and I think I was exploring what I should have told the Auditor-General at the time.

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MS MORGAN: But you've said something quite specific there:

I should have told the Auditor-General that the Director-General had already made her view on what the outcome was going to be beforehand.

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I'm asking you why you thought that that followed from the question the Commissioner asked you?

MR GREEN: I don't know. I can't put myself in that conversation.

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MS MORGAN: So you can't recall the May 2022 -

MR GREEN: I can't recall all of my comments in that. I'm reading it here, but I can't recall what my headspace was at the time when I answered that question.

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MS MORGAN: Mr Green, isn't this the case: first of all, you've been told at various points that Secure Local Jobs was important - we can take the transcript down - you'd been told at various points that Secure Local Jobs was important to procurement, you'd been told that by Ms Cross and Ms Haire; that's right?

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COMMISSIONER: You mean, important to government?

MR GREEN: To government?

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MS MORGAN: To the government, yes.

COMMISSIONER: Ms Morgan, the point is to government?

MS MORGAN: Yes.

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MR GREEN: Yes, I'd been told that.

MS MORGAN: And you had information and your own opinions about the various construction companies; that's right?

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MR GREEN: Yes.

MS MORGAN: And in your opinion Lendlease was the better contractor than Manteena; that's right?

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MR GREEN: Yes.

MS MORGAN: And what you ultimately wrote in the briefing note to Ms Haire, you believed; that's right?

MR GREEN: Lendlease was the better contractor.

MS MORGAN: I'm asking you a separate question. What you wrote in the briefing note, the opinions that you expressed in the briefing note, were opinions that you honestly held; you gave that evidence earlier in this Commission to Mr O'Neill?

MR GREEN: Yes, the comments about the performance of the contractors and their record, yes.

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MS MORGAN: That's right, yes. So, armed with all of that information you took the following steps: first of all, you made it clear in February 2020 that you would not accept the first Tender Evaluation Team's recommendation to value manage with Manteena -

- 15 COMMISSIONER: I'm not going to accept questions along that line. You're implying that the reasons for his making those decisions was the opinions that he expressed in that report. Now, I don't mind if you ask him directly that those were opinions that led him to make those decisions, but you must ask it directly and not indirectly.
- 20 MS MORGAN: Well, Commissioner, I -

COMMISSIONER: You started out by this, "Armed with those opinions" -

MS MORGAN: Yes, and I -

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COMMISSIONER: Do you see, that's suggesting that those opinions were the cause of his actions. Now I think, in order to be fair, and indeed so that we understand the answer, you need to put that - if this is the purport of your question - that "the reason that you made", that is, not the reason he gave, but the reason was that he held those opinions. If you make that clear, then that's a perfectly fair question.

He's given extensive evidence as to why he made those decisions. Now, you're entitled to put to him, "That's not true." I think in substance you have, because I think in substance you have put to him that he is not being truthful or at least reliable about what he says Ms Haire conveyed to him. And it must follow therefore, if that's not true that those things were conveyed, that those things being conveyed could not be the reason for his making the decisions that he did; that follows. But the difficulty is that your question conflates the whole problem of causation without doing it directly.

40 MS MORGAN: Commissioner, I'm content, noting what has fallen from you, to not pursue that course. I have sufficiently put forward -

COMMISSIONER: Your case.

45 MS MORGAN: - my case -

COMMISSIONER: I understand your case.

MS MORGAN: - and won't be criticised for not giving Mr Green an opportunity to address that case, then I don't need to torture everybody any further on that issue.

COMMISSIONER: No, no -

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MS MORGAN: I understand what you say, Commissioner.

COMMISSIONER: - you must be entitled, especially since this is a public hearing, you must be entitled to put your case and I have allowed, I think - well, at least by my lights - a fair range of questioning -

MS MORGAN: Certainly.

COMMISSIONER: - given the serious accusations that this witness, in effect, has made against your client. But you're not bound by the need to put any particular case -

MS MORGAN: Yes.

COMMISSIONER: - those rules don't apply in this forum.

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MS MORGAN: I saw that, yes. Thank you, Commissioner. I've got a couple more questions and then I'll be done.

COMMISSIONER: Yes.

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MS MORGAN: Mr Green, do you agree that - sorry, I withdraw that. When you drafted the executive brief to Ms Haire, that was drafted to achieve the objective of identifying Lendlease as the recommended tenderer; that's correct?

30 MR GREEN: Yes.

MS MORGAN: And you'd agree that when you were examined by the Commissioner on 5 May 2020, that was when you embraced the narrative that you had been told what the specific outcome should be; that's right?

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COMMISSIONER: What do you mean by "embraced the narrative"?

MS MORGAN: That that's when you began this version of what occurred in relation to Ms Haire, we first heard of that on 5 May 2020; that's correct?

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MR GREEN: So, was that the date of my first private examination?

MS MORGAN: 5 May 2022, that's correct, that I took you to.

45 MR GREEN: Yes, that's when I told the Commissioner the whole truth as I know it.

MS MORGAN: And that's the narrative that you have maintained since that time; that's correct?

MR GREEN: Yes.

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MS MORGAN: And that narrative that you've developed in relation to Ms Haire's so-called direction is a false one; that's right?

COMMISSIONER: It's being put to you that you're lying.

MR GREEN: I didn't lie.

- MS MORGAN: And it was developed in order for you to avoid responsibility for your own actions in the period February to June 2020 in relation to this procurement; that's right, isn't it, Mr Green?
- MR GREEN: I didn't sorry, I think that's a negative question. So, I didn't make up that a story to avoid responsibility for my actions.

MS MORGAN: No further questions, Commissioner.

COMMISSIONER: Yes, thank you. Now, I'm sorry, are there any other? No.

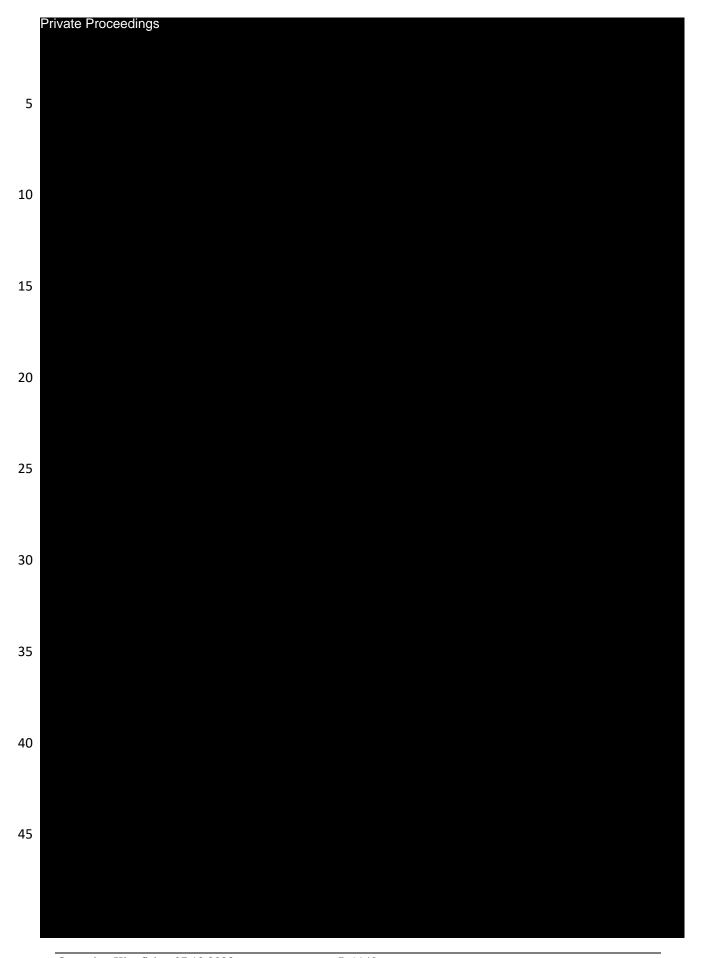
MR OPAS: I'm just trying to get my instructor's attention. Sorry, Your Honour, apologies. Unless my instructor gives me a -

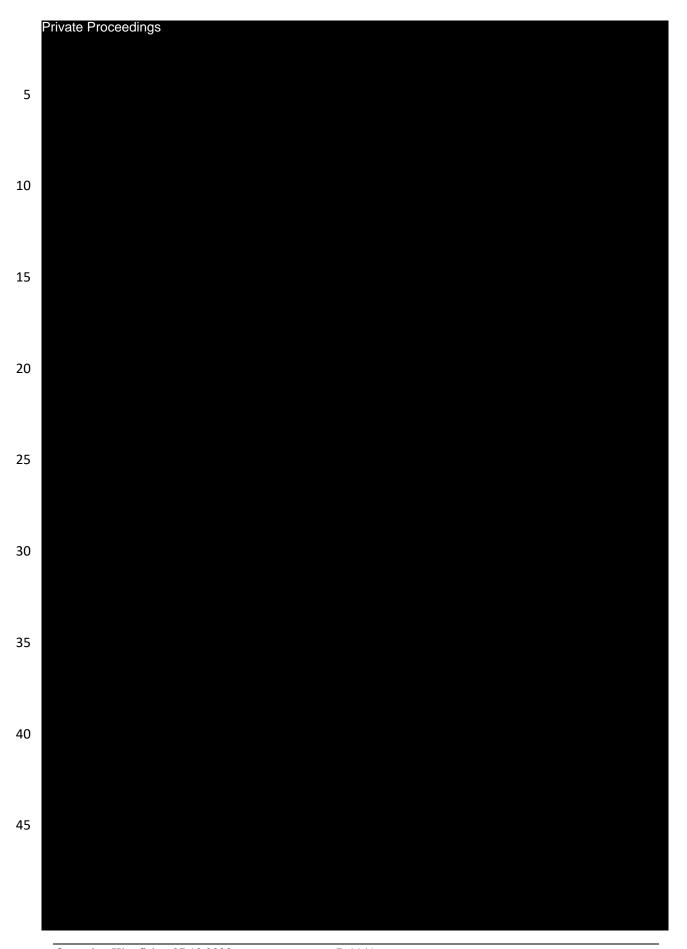
COMMISSIONER: I think he's giving you a nod.

MR OPAS: - a nod, there's no re-examination.

COMMISSIONER: Very well. So, we do have some nuts and bolts matters to discuss. Can you please turn off the streaming.









<THE HEARING CONCLUDED AT 11.48 PM

