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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE HELEN MURRELL SC
COMMISSIONER

PUBLIC HEARING

OPERATION MANTIS

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 12 JUNE, 2024

AT 10.00AM

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This transcript has been prepared in accordance with conventions used in the Supreme Court.

THE COMMISSIONER: Good morning, everyone. I think we're ready to resume with Mr Dankaro. Now, before I forget, I did receive a communication through Mr Baine regarding Mr Stephen McAuley being unavailable or wishing for his colleague Mr Bernard McAuley to be authorised to appear for Mr Clarke, and I grant that authorisation.

MS HUXLEY: Thank you, Commissioner.

THE COMMISSIONER: All right. So are we ready for Mr Dankaro, Ms
10 Huxley?

MS HUXLEY: Yes, Commissioner.

THE COMMISSIONER: Mr Dankaro. I'll ask my associate if she can go and see if she can locate him. Here we are. Mr Dankaro, can you return, please.

THE COMMISSIONER: Mr Dankaro, I think you took, was it an oath or an affirmation yesterday?---An affirmation.

An affirmation. You're still bound by the terms of that affirmation to tell the truth. Yes, Ms Huxley.

10 MS HUXLEY: Mr Dankaro, I'm just going to take you to your signed conflict of interest declaration at volume 38.4, page 40. You see that there? ---Yeah.

So you sent that to Ms Ho on 24 March.---Yep.

Just after 4.30pm.---Yes.

20 And if I take you now to page 45, so that's the completed form there. And you've declared, "No interests that could be construed as having any influence or perceived to have any influence on the proper and objective performance by me of my duties." Do you see that there?---Yes.

And then at paragraph 2 you say you agree to "keep all information and documents relating to this matter confidential and not to disclose or communicate the same to any person or persons without the prior written consent of the General Manager of Canterbury Bankstown Council." ---Yeah.

30 Did you read that at the time?---I think so, yeah.

And you understood that information and documents relating to the matter were confidential.---Yes.

Not to be communicated to any person or persons without the consent of the General Manager.---Yeah.

So that would include Mr Clarke.---Yes.

40 Mr Cossu wasn't on the Evaluation Panel, so would that have extended to Mr Cossu?---Not to my understanding at that point.

THE COMMISSIONER: Sorry, you didn't - what did you say?---Not to my understanding at that point. My understanding was he was a part of the project and he - - -

MS HUXLEY: So it could be disclosed to Mr Cossu for the purposes of the Evaluation Panel process?---For the purposes of the project, yes.

But that wouldn't extend to disclosing it to him so that he could communicate it to another person.---Not, definitely not.

10

At paragraph 4 you acknowledge "receipt of the copies of the tendered submissions and agree to not make any copies of or take extracts from them, except as may be necessary and essential for the due and proper performance of your duties."---Yeah.

And that was a reference to your duties as part of the Evaluation Panel. ---That is correct.

20

Paragraph 7, you've agreed to "immediately declare to the council any changes which may occur that relate to the matters stated in clause 1 of this declaration from time to time."---Yeah.

So you understood you're under an obligation, a continuing obligation to disclose those matters?---I did not understand that at that point.

How did you not? You said you read this document before you completed it.---Not the particular paragraph, didn't register, I guess.

30

Which paragraphs did you read?---It's been a while. I can't remember.

I think you accepted yesterday that you didn't disclose or declare the interest that you had in relation to Mr Clarke or GWAC. Is that - - -? ---Yeah.

Do you maintain that?---Yeah.

And you were required to disclose that at the time that that interest arose? ---Practically, yes, but not, it didn't seem to apply in the situation.

40

Why not?---Because he was my boss.

Who was your boss?---Pietro.

Mr Cossu was your boss?---Yeah.

As in Mr Cossu was your boss - - -?---Was my employer.

- - - in relation to PMLV?---Yes.

10 Did you regard Mr Cossu as your boss for all your council projects?---Give
or take, I would say no. Well, in terms of getting paid, I guess, or keeping
my job, he was my boss.

So you acted on Mr Cossu's instructions.---Yeah.

Even when they may have conflicted with other obligations that you had to
council.---Yes.

20 In relation to this Evaluation Panel did you take instructions and direction
from Mr Cossu?---Yes.

Were you concerned that if you didn't take Mr Cossu's instructions and
directions that you would lose your job at PMLV?---Yes.

Did he say that to you?---Not directly.

Did he say it indirectly?---Yeah.

30 What did he say?---Well, there was a point where I tried to find out what
PMLV was getting paid from council and he was not happy about that.

When was that?---I can't remember the point directly but I reached out to
Ben Trapman and asked for what the rate was and he found out and he was
not happy.

And what did he say to you?---He said he could get rid of me and nothing
will happen.

40 Okay. Did that happen prior to this Evaluation Panel or after this
Evaluation Panel?---I can't remember.

So you completed that on 24 March 2022.---Yes.

Sorry, before moving on, I'll just take you to page 48, and that sets out how conflicts should be resolved. Was it your understanding at the time that generally speaking if you declared a conflict, that you would be removed from the Evaluation Panel?---I didn't have a, much understanding of how the conflict of interest process worked.

But you knew you had to sign a conflict of interest declaration before you could be included on the panel.---Yes.

10

And the purpose of that was so that they could assess your - if you held interests in other entities.---That's correct, yes.

And if one of those entities related to the subject matter of the Evaluation Panel, you understood that you would be removed from that panel.---I guess so.

On 26 March, so two days later, you set up the Dropbox, and I'll just take you to volume 38.5, page 3. So it was within a matter of days of signing that conflict of interest declaration that you set up this Dropbox.---Okay.

20

So that production of a standard suite of management plans and templates could be adjusted to suit different panels or tender applications. So did you understand that was for GWAC applications or tender submissions?---I understood it was for GWAC but not for that particular project.

But so you were aware that GWAC at the time was one of the submissions under consideration for that.---Yes.

30 And here you are setting up a Dropbox link so that they can participate in other applications, and you didn't think at that time that you had an interest in - - -?---Like I said I was just following instruction.

So you did understand at that point that you were now, had an interest that should have been declared?---Yes.

And you were concerned that if you didn't do this, that you would lose your job?---Give or take, yeah.

40 THE COMMISSIONER: I'm not sure what you mean by give or take.---So it wasn't explicit but you - - -

It was implied, in your mind.---Yeah.

MS HUXLEY: And that's because Mr Cossu and you had an employer-employee relationship.---Yep.

And you'd signed a contract with PMLV.---Yeah.

10 THE COMMISSIONER: Did you think there was anyone at council you could discuss this dilemma with?---Not really, not at that point.

MS HUXLEY: I'll just take you to volume 38.5, page 87. So this is on 1 April, Mr Cossu sending you the clarification request from GWAC.---Okay.

When you received that did you understand what he wanted you to do in relation to it?---He wants to give me a call or something.

And what did he say to you?---I can't recall at this point.

20 Well, did he provide you an instruction to draft the response to the clarification?---Must have, yes.

And you knew that you would be considering GWAC's response to that clarification as part of your role at council - - -?---Yes.

- - - on the Evaluation Panel?---Yes.

30 And in performing your duties in relation to the Evaluation Panel it was necessary for you to bring an impartial mind?---Yes.

But by engaging in this process you weren't able to bring an impartial mind to that assessment?---I guess you could say so.

When you say I guess you could say so, do you accept that that's the case? ---Not in entirety 'cause I was like the lowest ranking member of the Evaluation Panel so I didn't have a lot of say or input, so to speak.

40 But, I mean, you were included on the panel and - - -?---Well, just as a warm body, so to speak.

As a warm body. Okay. So that was on 1 April, again not long after completing the conflict of interest form.---Yeah.

And you had a conflict of interest at this time too?---Mm.

You said yesterday that before clarification 1 had been issued to GWAC you had already formed the view that GWAC was best for the job.---Yep.

10 And that was based on a conversation you had with Mr Cossu.---I believe so. I might be wrong.

So that would have occurred prior to 31 March 2022.---I guess so. I'm not sure about the dates.

So within a week of you completing the conflict of interest form, Mr Cossu and you were talking about GWAC being the best place for the job?---I guess so.

20 THE COMMISSIONER: When you say you guess so, do you think that is correct, that within about a week of you joining the panel?---It's been, it was a long ago. I can't accurately remember this time.

Well, to the best of your memory, how long after?---Probably another week, even more.

How much?---It's hard for me to accept.

30 MS HUXLEY: Well, you said yesterday that you had formed that view before clarification 1 had been issued, and you said that because that was your explanation for why you had agreed to help GWAC prepare clarification 1.---Must have been wrong.

So is it the case that it occurred prior to clarification 1 being sent to GWAC?---I guess it is.

At that point, did you think Mr Cossu had access to the other submissions at the time of that conversation?---No.

40 So he was telling you, without access to any of those other submissions, that he thought GWAC was best for the job?---Yeah, I guess so.

And at that point, obviously GWAC hadn't submitted their clarification in response to the request for clarification 1.---Not yet.

And that clarification related to, amongst other things, the location of their production facility and capacity of their production facility?---Yeah.

And so why were they the best placed for the job at that time?---Well he's spoken to his experience with them.

10 You said yesterday that you had no involvement with Mr Clarke at the beginning.---Yes.

And at the time when you sent that Dropbox link to Mr Cossu, you hadn't had any conversation with him?---Not at that point, not that I recall.

Can I take you to volume 30.14, page 25. In the middle of the page there's a text message from you to Mr Clarke.---Yeah.

And that text message is on 25 March 2022.---Yeah.

20

That's a day after you signed the declaration of declaring no conflicts of interest.---Yeah.

So why did you send this message?---I can't remember to be honest.

So when you said that you hadn't had any involvement with Mr Clarke, that wasn't correct?---To my recollection, to the best of my recollection.

30 So, and if I can take you to 38.5, page 1 to 2. So this was an email from you sharing a Dropbox folder with Mr Clarke.---Yeah.

And that was on 26 March 2022.---Yes, but we ended up not using any of that, so there was really no one - - -

But it was set up so, consistent with that earlier email, so that documents could be saved there to assist in the application for tenders.---Yeah, but not this particular project, like I said, yeah.

40 Yeah. Did you tell any of your colleagues on the Evaluation Panel that you were assisting GWAC at this point?---No.

You didn't tell them that you had drafted the response, GWAC's response to clarification 1?---No.

And is that because you wanted to keep hidden that you were helping GWAC?---I guess so.

Were you concerned that if Mr Cossu had found out that you'd told people, that he would end your employment?---Yes.

10 Did Mr Cossu ever tell you not to tell anyone about this arrangement?---It was sort of implied, that.

Can you tell us how it was implied?---Well at first when we started it was made clear that we're not to tell anyone that we worked for PMLV, so everything else from there was kind of, you know - - -

So to the extent that he was asking to do work in a PMLV capacity outside council, then you understood that wasn't to be disclosed to people at council.---Yeah.

20

THE COMMISSIONER: Sorry, you said that, right at the beginning when you started work for PMLV, Mr Cossu made it clear that you shouldn't mentioned PMLV.---Yeah.

Can you tell me a bit about that, how that came about?---I don't know, just like if anybody asked you just say you're from Spinifex and not (not transcribable)

At what stage did he say that to you?---Prior to starting.

30

Prior to you starting.

MS HUXLEY: Did you know if anyone else worked for PMLV at council?---Yeah.

How did you know that?---Well you could sort of tell.

How could you tell?---Well because, it's hard to explain, but yeah, you could.

40

Would Mr Cossu have a greater number of interactions with people who were his PMLV employees?---Yeah.

So is that one way you could tell?---Yeah.

If I can take you to volume 38.5, page 278. This is an email from Mr Clarke to Ms Tran on 8 April 2022 attaching the response to clarification question two. If I take you down to page 279, that's the attached document. Did you assist in drafting this document?---Yes.

10

And did you draft the entirety of it?---No. I got the information from Pietro I believe.

From Mr Cossu?---Yeah.

And you input that into the response.---Yeah.

If I can take you down to page 285, sorry, yeah 285 of that volume. So that's an email from Ms Tran to the Evaluation Panel and at the bottom, sorry, at the bottom of that first email it talks about the preferred contractors for each separable portion. Do you see that?---Yeah.

20

And GWAC is only identified for separable portion one at that point. ---Yeah.

And do you see underneath the date of the email, there's a reference to an attachment?---Yeah.

And if you go to page 289, that's the start of the attachment. Do you recognise that document?---Yeah.

30

And can you tell us what that document is?---It's the evaluation score sheet.

THE COMMISSIONER: Sorry, the?---Evaluation score sheet.

Oh, I see. The evaluations.

MS HUXLEY: So does that set out the price, the comparison of the price for each of the quotes received, the tender submissions received?---Yeah.

40

And if I can take you down to page 304, the last, the bottom row is summary notes. Do you see that?---Yeah.

And that's a summary of where each of the contractors were placed at that time.---Yeah.

And in the GWAC column, there's a reference to the delivery of the culverts from the production facility in Wollongong and then there's a breakdown of delivery costs.---Yeah.

10

So was that information, that was information from clarification 1 and clarification 2?---I believe so.

And that was information that you put into a document to be supplied to the Evaluation Panel.---Yeah.

To assist GWAC in winning this project.---Like I said, the information came from, would have come from Pietro or - - -

20 Yeah, but I'm asking you why you did that.---'Cause I was instructed to.

Because you understood Mr Cossu wanted to help GWAC win the contract.---Yeah.

If I take you to volume 38.6, page 1, so that's an email from you to Mr Cossu at his PMLV address with an attachment. And if I can take you to page 2 that's the first page of the attachment.---Mm-hmm.

30 And is that the document that we were just looking at that had been sent to you by Ms Tran?---Yeah.

And that document had been sent to you as part of your role on the Evaluation Panel.---Yes.

And sending this to Mr Cossu meant he could now see the other tenderers pricing.---Yes.

40 And where everyone was placed as part of the evaluation process at that time.---Yes.

And that was information that was meant to be confidential.---Yeah.

And you knew that Mr Cossu at that time was helping GWAC in its bid for this work.---Yes.

And so why did you send this to Mr Cossu?---I can't recall the conversation that we have. There must, there must have been a request for it.

Do you know what he did with this information?---No.

10 Did he tell you what he was going to do with this information?---No.

If I can take you to page 38 of that volume, this is an email from Mr Clarke to you attaching the clarification 4 documents. Do you know why Mr Clarke sent this to you?---It must have been to help with it.

And then at page 42, that's an email from you to Mr Clarke and Mr Cossu at his PMLV address, and at page 43 there's the document that was attached. So did you draft that document?---Yes, I must have.

20 And again was that based on information that Mr Cossu had conveyed to you?---It could have come from either him or Clarke, I'm not sure.

So at that point Mr Clarke was also providing you information?---Yeah.

At this point had you told anyone on the Evaluation Panel that you were assisting GWAC in responding to these clarifications?---No.

30 And at page 53 that was sent by Mr Clarke to the Tender Box. And would you have reviewed that document as part of your role on the Evaluation Panel?---Yes.

At page 58 of that volume it says there, "Please see response to clarification 2," but the document attached is clarification 4. And then there's a reference to a meeting scheduled at 11.00. Do you remember that meeting? ---Not off the top of my head.

But you would likely have been discussing this clarification?---Most probably, yes.

Did you understand at the time that you were assisting, sorry, during this clarification process, how GWAC would be obtaining the culverts and the pipes and the pits?---No.

Did you know that there was another company involved in the fabrication of those items?---No.

In any part of the Evaluation Panel process did you become aware that there would be a subcontractor providing those items?---No.

10

If I can take you to page 90. You weren't involved in this email but it's an email to Mr Webb from Ms Bhuiyan attaching a file note regarding the panel's decision to set aside tenderers from consideration.---Yes.

Do you recall being involved in those discussions to set aside tenderers?---I would have been, yeah.

20 Do you have any recollection of the reasons why certain tenderers were being set aside for the separable portions?---I think one reason would have been not able to, they hadn't provided a price for all of the items.

Yes.---Another reason would have been their terms and conditions, and that's the main two I remember at this point.

If I just take you to the file note at page 95. So separable portion 1, set aside Cadia Group because they're unable to supply all items. That accords with your memory?---Yes.

30 And the same with the precast pits.---Mm.

So they've confirmed that, "They do not comply with our specifications for the pits." So it was important from the Evaluation Panel's perspective that the pits be manufactured to the specifications indicated in the bill of quantities.---Yes.

And if they couldn't it would result in being set aside.---Yeah.

40 And if you were set aside it meant that it didn't qualify to be awarded the project.---Yeah.

In relation to separable portion 3, there's set aside BCP based on the contractual obligations that they had specified.---Yeah.

And the financial and time risk associated with noncompliance for the precast culverts is one that council couldn't absorb. And then on page 97, apologies 98 there the Evaluation Panel had agreed to not return to BCP Precast or reconsider the terms and conditions because it would likely be a protracted negotiation process. So does that accord with your memory as to why BCP was set aside?---The first two reasons, yeah, but this one, no.

10

Okay. In your meetings with the Evaluation Panel would you advocate for GWAC to be awarded the project?---How would you describe advocate?

Well, strongly encourage that the Evaluation Panel members look favourably on GWAC?---Not exactly, no.

So in the evaluation process you assisted GWAC in answering these qualifications.---What qualifications?

20 Sorry, the clarifications, sorry.---Yes.

And you never disclosed that to your fellow members of the panel.---Yeah.

And you didn't disclose that to the supervisor.---Yeah.

You never declared a conflict of interest.---Yeah.

30 And by failing to declare that conflict of interest, you were, in effect, representing that the Evaluation Panel recommendation had not been subject to any external influences?---I don't understand that.

So by saying, by not declaring the conflict, that meant you continued to participate in the Evaluation Panel process.---Yes.

And it was important for the Evaluation Panel process to be an independent and impartial evaluation of the submissions?---Yeah.

40 But because you were assisting GWAC behind the scenes, that had the capacity to influence, or at least be perceived to influence, the tender Evaluation Panel process?---Be perceived, yeah.

And you didn't disclose that because you wanted to remain on the panel?
---No.

So why didn't you disclose it?---Because I wanted to keep having a job.

So you wanted to keep Mr Cossu happy.---Yeah.

And you knew that Mr Cossu wouldn't be happy if you were no longer participating in the Evaluation Panel process.---Yeah.

10

And that's because he wanted GWAC to receive the work?---Yes.

And to be paid for that work.---I guess so.

Did you think that Mr Cossu was also receiving a benefit for this assistance?---At that point, no.

At what point did you think that he was receiving a benefit?---When this Commission started.

20

So why did you think he was helping Mr Clarke?---I thought, yeah, I don't know, out of friendship or, I don't know.

It was a significant contract, wasn't it?---Yes it was.

Over \$2 million.---Yeah.

And you think he was just helping a friend to win a \$2 million contract.---I tried not to speculate.

30

Okay. Did you become aware that GWAC failed the financial assessment?
---Informally, yeah.

Informally from who?---It would have been probably from Faiza or around the office.

Were you involved in the panel process insofar as it related to the financial assessment?---No.

40

Did you have access to the financial report that indicated that it had been, that GWAC had failed the assessment?---No.

When you were doing, assisting with these document, was this during your council working hours?---No.

Did Mr Cossu pay you separately for the work you did in relation to these clarifications?---No.

Did you ask him to?---No.

10 Why not?---I felt like he would, if he wanted to he would do it out of his own volition.

You thought he would offer it to you if it was something, if he expected it. ---Yeah.

Did you ever discuss the Appian Way project with Mr Webb?---No. Oh, yes.

20 And what were the nature of those discussions?---That was just at one point where I was, when I was instructed to test the market and see what the suppliers would, how many suppliers are interested.

So that was prior to you being involved in the Evaluation Panel?---Yes.

Did you do any other , aside from working at council and assisting in this process, did you do any other work for PMLV or Mr Cossu?---How would you describe other work?

30 Well did you perform any other tasks for Mr Cossu or PMLV?---Yeah, yes.

And what was that?---Anything he wanted me to do, I guess.

Would that relate to council work or would that relate to other businesses he had at that time?---It would be other businesses.

Have you done any work with Mr Cossu since leaving council?---Not directly.

40 So indirectly?---Yes.

And how, what type of work is that?---Well I worked for Project W.

Pardon?

THE COMMISSIONER: Sorry, for what?---I worked for PMLV again. I went back to PMLV after I left council, but he wasn't in charge anymore.

MS HUXLEY: So do you recall who was in charge?---Ben.

10 And so what date, when did you leave council again?---That would have been May of 2023.

So you went back to work for PMLV and Mr Webb was in charge.---Yes.

Did Mr Cossu have any involvement in the business at that time?---He was physically involved. I can't tell how much his, him working on it was, yeah.

Yeah. And do you still work there?---No.

20 Okay. When did you leave?---December 2023.

And what kind of work were you doing for them?---Project management.

Did you have anything to do with GWAC while you were working at PMLV?---At what point?

Pardon?---At what point?

30 Or during the year that, during the six months that you worked for PMLV, did you have any interactions with GWAC?---Yes.

And what were the nature of those interactions?---I guess helping to put documentation together or something.

In relation to what kind of projects?---Different kind of projects.

40 And so what was your, while you were working for PMLV and assisting GWAC, did you understand that there was a connection between PMLV and GWAC?---Yes.

Can you tell us any more of what your understanding was?---I had none.

Did Mr Webb tell you about what the association was?---No.

Did Mr Cossu?---No.

Who directed you to do the work for GWAC and assisting them to prepare documents to win work?---It was, it would have been either Ben, yeah.

Okay.

10

THE COMMISSIONER: Sorry, what was that, I didn't catch it.---I said it would have been Ben.

Ben, right.---Yeah.

MS HUXLEY: Those are my questions, Commissioner.

20

THE COMMISSIONER: Can I just ask you, Mr Dankaro, I think you said that when you were still at council, or Mr Huxley asked you whether you'd done any other work for Mr Cossu other than what she's been asking you about and I think you said that you did do some work for other businesses, other businesses of Mr Cossu's.---Yes.

What other businesses were they?---Well not, not primarily other business, more like PMLV, it was more at the point he wanted to do like branding, for example.

Right.---Yeah, and so I helped him put together a brief for that.

30

A what?---A brief.

A brief footer?---Yeah, a brief for, to do branding for PMLV.

Oh, a brief for branding.---Yeah.

A marketing tool.---Yeah, yeah.

40

Anything else?---There was like other applications that he would talk about and say oh, maybe there's a position here that might suit you and I'll put together a CV and send it to him and stuff like that.

For yourself or for other people?---At that point for myself, yeah.

Sorry, for?---For myself.

For yourself.---Yeah.

All right, thank you. All right then. Just stay where you are, Mr Dankaro.

10 MR PARARAJASINGHAM: Commissioner, I don't have any questions for this witness, subject to one matter.

THE COMMISSIONER: Yes.

MR PARARAJASINGHAM: Yesterday I had to leave the Commission at 4 o'clock, I had a conference back at chambers and I didn't understand that we were going to sit until 4.30.

20 THE COMMISSIONER: No, no, I don't think any of us did, but anyway it happened, sorry about that.

MR PARARAJASINGHAM: No, no, it's not a criticism. I'd intended to read the transcript from 4.00 to 4.30 yesterday evening but I don't think that's, as of five minutes ago I don't think that's up as yet. Could I make this inquiry, I assume it will be up shortly or within the, before lunch, or it might not, maybe - - -

THE COMMISSIONER: Has anybody, yes, Ms Aielli thinks that it will be.

30 MR PARARAJASINGHAM: So if it is to be up before lunch, could I just have the opportunity over the lunchbreak to review it and if I've got questions, and I might be in a position to do so, I don't think I will, but I am just mindful that if, Commissioner, you release this witness from his summons then that might cause some problems.

THE COMMISSIONER: Sure.

MR PARARAJASINGHAM: So I'm just asking for an opportunity to - - -

40 THE COMMISSIONER: No, that's fine. That's fine. So Mr Dankaro, Mr Pararajasingham wasn't here for part of your evidence. He wants to have a

look at the typed record of it, so will I ask Mr Dankaro to sort of be on call for this afternoon, Ms Huxley, or - - -

MS HUXLEY: So I understand Mr Dankaro will be required on Friday because Mr Sutton had an obligation.

THE COMMISSIONER: Oh, right.

MS HUXLEY: So perhaps, and that would give - - -

10

MR PARARAJASINGHAM: That's fine.

MS HUXLEY: - - - Mr Pararajasingham plenty of time so - - -

THE COMMISSIONER: All right.

MR PARARAJASINGHAM: Yes, so he can be released for the day, that's fine.

20 THE COMMISSIONER: All right. All right. Now, is there anyone else who - - -

MS ALDERSON: No questions on behalf of council, no. Thank you.

THE COMMISSIONER: - - - has some questions at the moment? No. Good. All right. There might be a few questions for you. Would you please come back on Friday, what, 10 o'clock on Friday, in case there are questions. Now, if people decide they don't have questions, would you please notify Mr Baine or Ms Aielli of that, please? Notify the Commission
30 so we can advise Mr Dankaro. But if you don't hear anything can you please be here at 10 o'clock on Friday, thank you. Very well. You're free to go for the moment. Thank you.---Okay. Thank you.

THE WITNESS STOOD DOWN

[10.50pm]

40 THE COMMISSIONER: Did you want to take a break now or do you want to start with Mr - presumably Mr Clarke's here? How would you like to proceed, Ms Huxley?

MS HUXLEY: Maybe just a short adjournment, then we can start without having to take a break for lunch - sorry, short adjournment now and then we can start Mr Clarke when we come back from the adjournment and then that way we're not breaking again.

THE COMMISSIONER: Oh no we won't break again.

MS HUXLEY: Yeah.

10 THE COMMISSIONER: I was thinking we would take a morning tea break now. We'll come back. Take like a 15-minute break now. We'll come back, take like a 15-minute break now. We'll come back and we'll go through to lunchtime.

MS HUXLEY: Great.

THE COMMISSIONER: All being well. Okay.

20 **SHORT ADJOURNMENT**

[10.51am]

THE COMMISSIONER: All right, Ms Huxley, are we ready to commence with Mr Clarke?

MS HUXLEY: Yes, Commissioner.

30 THE COMMISSIONER: Can you come forward please, Mr Clarke? Just take a seat, Mr Clarke. You're probably aware of this, but just in case I want to give you some information. At this public enquiry, you must take an oath or make an affirmation to tell the truth. You must answer all the questions that are put to you and you must produce any document or other thing that you're required by summons to produce or that I require you to produce. You must answer and produce, even if your answer or production may tend to incriminate you, however you may take an objection to answering or production, and if so, your evidence or production can't be used against you in, I think relevantly in your case, in any criminal proceedings. This protection, however, would not extend to any prosecution under the ICAC Act, for example giving false evidence to ICAC, nor would
40 it extend to, sorry, proceedings for contempt of ICAC. To gain the benefit of the protection, you don't need to object to every question or every request

to produce. You can take a blanket objection at the outset which will provide the protection throughout. Now I am assuming you would like to take the blanket objection?

MR CLARKE: Yes, your Honour.

THE COMMISSIONER: All right. So I declare that all answers given by the witness and all documents and all things produced by the witness will be regarded as having been given or produced on objection by the witness.

10

DIRECTION AS TO OBJECTIONS BY WITNESS: I DECLARE THAT ALL ANSWERS GIVEN BY THE WITNESS AND ALL DOCUMENTS AND ALL THINGS PRODUCED BY THE WITNESS WILL BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION BY THE WITNESS.

20 THE COMMISSIONER: Now I'm sure, Mr Clarke, you understand that if you can't understand what a question is getting at, you need to seek clarification. If you haven't heard it, you need to ask for it to be repeated to ensure that you know exactly what it is that you're answering. If you need a break at any time, let me know. Do you have any other questions at this stage?

MR CLARKE: No, Commissioner, no.

THE COMMISSIONER: All right. Now would you like to take a religious oath or an affirmation?

30

MR CLARKE: Affirmation.

THE COMMISSIONER: I'll ask my associate to administer the affirmation.

THE COMMISSIONER: Yes, Ms Huxley.

MS HUXLEY: Mr Clarke, can you just tell the Commissioner a little bit about your work background?---What context? Of what I do or - - -

10 Yeah, so what your experience is and what industry you work in.---Okay. I'm a, I'm an engineer. I've worked in heavy industry my whole working career. Steel mill. A big proportion of it as project manager, construction manager, engineering manager, maintenance manager, operations manager for businesses, safety systems and computing. Okay.

And how long have you worked in this, in the, is it heavy works industry? ---Heavy industry. Since I was 20 years old.

Okay. So many years.---So what's that, 34 years or something like that.

20 Okay. And you control a number of companies.---Yes, that's correct.

And can you tell us what those companies are?---So I have a company called Bulk Conveying Equipment which is a leftover business that I had from when I had a contract with Port Kembla Coal Terminal, loading ships with coal and coke, where I had a leaseback arrangement with the coal terminal, I designed and implemented some equipment there and that entity exists as, I guess, my holding company, where I have equipment that I use for, you know, other businesses, it is held there. So I've got a screening plant, some trucks and whatever else that's owned by that business. The
30 second business I've got is called McGoo Civil. That does civil construction work predominately with tier one contractors and on the South Coast of New South Wales, so Fulton Hogans, Downers, those, you know, big tier one contractors where I do concrete works, specialist works.

Can you just explain to me what a tier one contract is?---So a tier one contractor is probably a contractor who is dealing with contracts over \$500 million.

40 Okay.---Okay. Very, very large contracts. So for me, I'm just the subcontractor doing, you know, a small specialist part of that job.

And so what kind, and so is that concreting or a range of services?
---Unfortunately I am a generalist in my engineering skill, so you know, I'll say concreting today, but last night I was on the smart motorway between Anzac Bridge and the Harbour Bridge installing big steel gantries on the side to do your smart motorway project. I pretty much do anything with respect to building, engineering and construction.

And any other companies?---Yeah, General Works & Construction, which is the company that is here and that business was set up so that I could be doing work in Sydney and differentiate it from the other businesses on the South Coast, yeah.

10 The work that you do on the South Coast, is that government work or council work or private industry work?---90% of the work that I have been doing is for Transport for NSW or government work, but I am not directly affiliated with the government. I am working as a subcontractor to the head contractor, so you've got someone who's got the contract, Downer or someone like that, and then they will need someone to do drainage or pits or something like that, so I will be the guy that's doing those things as a subcontractor, their main contractor.

And as part of that, do you have to supply them with a particular certification or documentation about insurances and things like that?
---Yeah, yeah.

20 And is that through, is that a requirement of your subcontracting arrangement with them, or is it a requirement of their contract with Transport NSW, for example?---No, no, that's part of the tender and engagement process that those companies have, okay. I think they're standard across all industries, well I, I don't know, I only know the industry I'm in, but everyone needs to have workers comp, everyone needs to have, well generally needs to have liability insurance and then the rest of the insurances after that are all project based, whether you do or don't need them, but those are the basic insurances you need.

30 And so do you have to provide them, you provide them with proof of that?
---For sure, yeah, yeah.

Yeah. And then does that get provided to Transport NSW so that they can ensure that their subcontractors have the appropriate insurances?---I don't believe so.

Okay.---I, but I, I don't know.

You don't know.---Look, I'll just say, I don't know. I don't know.

Okay. So you've got three different companies.---Yeah. Well I've actually got another one which is the trustee company for the, for the entities. That's called Clarke Services.

So that holds, sorry - - -

THE COMMISSIONER: Sorry, what's it called?---Clarke Services.

Oh, okay.

10

MS HUXLEY: And so that holds the, does that hold the shares in all the three companies?---It's the trustee acting for those companies as the managing company for those entities, so the shares are held by the family trust and it's represented by Clarke Services is the trustee for the family trust.

Yeah. And you and your wife are the director of Clarke Services?---Yes.

20 And are you and your wife the sole beneficiaries of that trust?---I think so. I can't remember whether the kids are listed or not as beneficiaries, but yeah.

Yeah, so it's either trust for your benefit or your family's benefit.---Correct, yeah.

30 Yeah. So you've obviously got three companies that do different kinds of work and you said that Bulk Conveyancing Equipment is a holding company. Is that also the company where the majority of the money is, like the money that is made is held?---Not necessarily. I, just directly, that business was turning over about 3 or \$4 million a year. Well it's a bit more than that actually, but the bank account and the facilities for that business were a lot larger and a lot more involved. These other businesses are, you know, a step down from that and given that the whole, all the businesses are joined together, I use it as like the umbrella company, but it's, it's not, they're all standalone entities.

Yeah, they're all separate entities that - - -?---Yeah, yeah.

40 Yeah. And as with all group companies, there is usually one that becomes the main company thorough which business is conducted. So you said you had a facility, so was that for cash flow purposes in operating that company?---Yeah, yeah.

So if, let's just say if McGoo Civil received an invoice, would you pay out of McGoo Civil's bank account or would you pay out of Bulk Conveying Equipment bank account?---I'd pay out of the company the invoice was sent to, so generally it was McGoo Civil. There had been occasions where, well I probably shouldn't answer that yet, you're going to ask me the question in a minute, but there was some very large amounts of money that McGoo Civil's bank account doesn't allow more than a \$20,000 a day payment, so Bulk Conveying Equipment has the facility to pay up to \$1 million a day, so
10 from the previous life of that company it had a lot of cash coming in and, or work coming in and out, so it has the facility there and I can transfer money into that entity to pay larger invoices if I needed to.

And then would you transfer money out of the BCE account into the relevant company's account?---Yeah, yeah.

When did you first meet Mr Cossu?---Look, I've come across Mr Cossu back in the 2000s at the steel mill, so I don't, I didn't have a really personal relationship with him. He was in the coke ovens doing work for a company,
20 WGE, and yeah, I was an operations manager for a company called Multiserve at the steel mill, so we ran over, you know, we crossed paths a few times.

And more recently you've had involvement with him?---For sure, yeah.

And so how did that come about?---We were at B-Line. I was the construction foreman for the, the, yeah, construction foreman for Fulton Hogan on the B-Line project and Pietro was a, I forget what they called him, anyway you know they'd come around checking on the work to make sure
30 that things were happening and the OH&S stuff was being correctly and all those sort of activities.

And when was the B-Line Project, or when were you working on the B-Line Project?---I can't remember the exact dates, but I think it was like 2018, somewhere around there. It might be a bit later, I can't remember dates.

And at around, did you keep in touch once you finished up at B-Line?
---Yeah, we had a few discussions. We had some common friends, or not friends, but people we knew, who we both knew, who were interesting
40 characters, so we would have a chat about those people every now and again, yeah.

On the telephone or by email or how would you communicate?---Coffee, email, telephone.

So would you regard yourself, you were friends at that point in time?
---Yeah, yeah, say, I wouldn't say, you know, we lived at each other's house or anything like that, but you know, we were work colleagues.

10 Yeah. And at some point in around 2020, did you understand that Mr Cossu obtained a role at council?---No I didn't - - -

At Canterbury Bankstown Council.---I didn't know that he got a role at council. I got a phone call from him asking if I was still doing shotcrete.

Sorry, short, shortcrete?---Shotcrete.

20 Shotcrete.---Which is a spray on concrete process. I was in a supermarket with the kids and he asked me if I was still doing that and if there was any chance that I'd be interested in doing it for the council and he gave me a number where people had been quoting council \$900 a square metre and he says, you know, "I think your rates are probably lower than that, is it?" And I said "Absolutely." And, yeah that was the discussion.

What was your rate at the time?---I'd just done 21,000 square metres of it for Downer and I was doing it for \$37 a square metre.

Does quantity affect the price?---For sure.

30 Yeah. So if it's a smaller quantity, it tends to cost more per metre, per square metre.---Well it'd be, it'd be an establishment, right. So if it's a one day job versus a six month job, if it was one day of work then you've got all this gear to bring down to actually process it and prep it and do all the work, versus me who is coming in with all the gear sitting there and someone's prepped it and I just start spraying, so - - -

Yeah. I mean it's just, you can justify why there is a difference depending on the basis of the job.---Oh, absolutely. Look you can do that with anything, right.

40 Yeah. So do you recall when that phone call was?---No, no.

So at that point, he spoke to you about a job, if you were interested in doing a job for the council, but you didn't think he worked at council or is that when you became aware that he worked at council?---That's when I became aware he worked at council.

Okay. And obviously he came, started doing work for council in about June 2020, so that must have occurred before that date.---Yeah. Yeah.

10 In that phone call did Mr Cossu tell you what kind of work he was doing at council?---I can't recall. He must have mentioned that he was doing some project management or something, but, yeah, I don't, I didn't specifically ask. I was more interested in, about the opportunity to do shotcrete work.

And so what was the next interaction that you had with him?---I think I probably got a phone call to say there's some work coming up. Council are ramping up. Was I interested in coming and actually doing the work? So originally that shotcrete thing was, I took as a bit of an inquiry really, and then he asked me if I was available to do work, because obviously I've got other clients, and I was. So I can't recall how that happened. I can't
20 remember it was a phone call or whether we bumped into each other or something else. I don't know. I can't, can't recall that at all.

Did he tell you what kind of work was coming up?---Well, I already knew the sort of stuff that council does because of all the history and experience I've got on the roads and everything else. So I assumed that it was going to be, you know, footpaths, kerb and gutter, parks, you know, minor structures. I already sort of knew what it was going to involve. And it was. You know, the things that I had done for the council, probably 80 or 90 jobs I've done for the council since, and it's all in that realm.

30 Yep, with perhaps one exception.---Sorry?

With perhaps one exception.---Mm?

The Appian Way culverts job.---No.

Do you regard that as a small job?---Oh I've done jobs like that before.

40 Okay.---When I had the Bulk Conveying Equipment business I spent five and a half million dollars on equipment and designed it and whatever else. I

designed a \$50 million business for the steel mill. I used to design all the scrap handling businesses. So, \$250 million projects. It's not, it's - - -

Yeah, I mean, in the world that you're in a two and a half million dollar project might not actually be that much when you're working on projects that - - -?---That's correct, yeah.

- - - are worth hundreds of millions of dollars.---That's correct.

10 So you said you understood he was kind of in project management. Did you understand that part of his role entailed, like, evaluating quotes that were coming in?---Yeah.

And making recommendations as to which contractors to proceed with?
---Well, every project manager would do that, yes.

In that conversation did he say anything about, you know, helping you win council work?---No.

20 What was your financial situation like at that particular time?---I think it was, it was okay. I had just come off the B-Line Project. I'd been working for Downer, so there was, you know, there was money there. We weren't, we weren't hard up.

Have you heard of a company called PMLV Invest and Const?---Yes.

And how do you know of that company?---That's Pietro's company. He invoiced me for - - -

30 He employs yeah?---Yeah, he invoiced me for work that he had done for me that I had to pay through that company.

Sorry, can you just explain that relationship for me.---Well, it's the same as any relationship you have with business, you know. If someone does work for you, then they will invoice you for the work that they have done and then you pay for that. So in that case there was some engineering work Pietro had done for me and I paid him for it.

40 And what jobs was that on?---He gave me some advice on a job up in Marulan. He's given me some advice on retaining walls. He's a certified

civil engineer. I'm not. So when it came to the civil engineer stuff, then I deferred to him.

What was the job in Marulan?---It's ag line. It's an advisory thing. I needed a very large crushing machine which turns rock, limestone, into, what do you call it, fertiliser. So it's, I forget what they call it, but it's ag line for want of another word, where the farmers would spread it across a paddock, and there's a ball mill, and so there's a foundation that goes with that ball mill. I just needed to check engineering stuff on that because the
10 company had asked me to go and do process engineering for them to look at upgrading or increasing the throughput or fixing their current plant.

And so he gave you some advice in relation to that.---Yeah.

How was that advice delivered to you?---Verbally. We spent a lot of time talking about things.

How much time did you spend talking about it?---I couldn't tell you. I don't know.
20

One hour, two hours?---It would be more than an hour or two.

Would it be more than eight hours?---Yeah, possibly. I don't know the exact number.

I'm just trying to understand the range, how many hours roughly he did on that.---It was over a period of time, so I really don't know. Like, I don't even remember how many hours of consulting work I did for that company myself so - - -
30

Well, do you know how much you charged them for it?---I was on \$1,000 a day rate to that company. It was more of an interest thing for me. I like doing process engineering and seeing different industries and working for different stuff, so - - -

And so do you recall roughly how many days you would have spent on that consulting role?---No, I couldn't tell you. I'd have to go back and look in the records. I don't know.

40 Would it be more than a week?---Yeah. Yeah, I'd say it would be at least - -
-

At least a week?---Quite a bit more. I flew down to Tasmania with them and just some other stuff as well, so it was quite a lot of work. And I did a lot of work, you know, mapping processes and things like that. It was a lot of work.

THE COMMISSIONER: What was the name of the company you were working for?---Apline.

10 Apline, L-i-n-e?---Yes.

MS HUXLEY: And you mentioned there retaining walls. Where were the retaining walls?---So it's private houses, commercial properties.

And retaining walls are very common, aren't they?---A lot of houses have them, right.

So you said that you spent time talking to him, or he assisted you with, was it advice in relation to retaining walls or was it - - -?---Yeah.

20

- - - doing the - - -?---No, a lot of advice. He'd also find private jobs and ask me if I could work on those private jobs with them, the retaining walls or, you know, just general civil stuff around houses and, for his friends.

I mean, what does it cost to rectify a retaining wall?---I appreciate it's probably a range, but what's the range?

I priced one the other week that the flood had knocked down and it was only 20 metres long, but it was \$55,000 as a result of access to the retaining wall.

30

Yeah.---You know, and removing rubble. So it really does depend on the type of wall, what it's trying to hold up.

Is 55,000 like probably towards the more expensive end for rectifying or constructing a 20-metre retaining wall?---No. It's probably in the middle, but, you know, because of access issues, it would be about where it should be.

With the retaining walls, were they, what company was doing that work?

40 ---McGoo Civil, typically. I had another guy (not transcribable) working for me. He did some for me as well.

And so you said that he invoiced you for that kind of work.---Yeah, it's project management engineer, project engineering work.

And what period of time was that?---It was during the time at council.

Pardon?---It was during the time at council, because we would talk about different jobs. He was, he was very good at finding people, finding work.

10 So during his time at council you were engaging him with respect to engineering work on other, on jobs that didn't involve council?---Yeah, on occasions, yes.

Pardon?---Yes.

Did he invoice you for work that, or advice that he had given you in relation to projects at council?---Yes, not specifically but I guess there is money from the council that I've got and he was involved in some of those projects.

20 So you're saying he did invoice you for that work or he didn't invoice you for that work?---Well there was one occasion where, it was the very beginning of the work, where he went and got some stuff for the job because we had a, a problem, and he went away and got the stuff, so he invoiced me afterwards for reimbursement of the parts that he'd brought. I was working on assembling the thing and he actually went away and got pipes and other bits and pieces because it was a safety shower for some employees and I couldn't leave it undone, so he invoiced me for those sort of things. And I, you know, I've paid them.

30 Do you know over the, between 2020 and 2022, how much you paid Mr Cossu or, is it Mr Cossu or PMLV or were they one in the same?---It was PMLV invoiced me, probably 3 or \$400,000. I don't know the exact number.

And so that was one in relation to a job at Marulan, the ag line job and then a number of jobs relating to retaining walls.---Yeah.

And then occasionally, or advice in relation to council - - -?---Yeah, there was reimbursements through council.

40

- - -limited to reimbursing him for the safety shower.---Yeah, all the other bits and pieces, yeah.

What are the other bits and pieces?---I got a few emergency jobs where they called me in at like 5 o'clock at night to install toilet blocks or things like that that needed to be done before the weekend and it's the case of trying to get all the parts and equipment to do the work, so yeah, Pietro would go and get bits and pieces, or others, like it wasn't just Pietro who I was working with. I worked with many of the council project managers.

10

Did you have an understanding that Mr Cossu supplied a number of the project managers to council through his PMLV company?---I did find that out, yeah, and I, I actually, he asked me about one guy once, well if I knew of any engineers or a safety person he was looking for, I think, and he wanted someone who could work night shift and I, I couldn't find anyone who would work night shift, but I knew of an engineer who was very good at works previously and I, I recommended Pietro get in touch with him and he did start at the council.

20 Do you remember that person's name?---Yeah, Sam Hadad.

And so when did you first become aware that Mr Cossu supplied workers to council?---When Sam, or when he'd ask me about that, you know.

Do you know what time of year that was?---I don't know. And I didn't, I wasn't aware that it was going through his company at that time.

Yeah.

30 THE COMMISSIONER: So sorry, you weren't aware that it was going through his company, but you were aware that he himself was supplying the workers to council?---He was placing people in council, like as in he was looking for people for council to work at council, so I didn't know whether Sam was going to be working for Pietro himself versus working directly for council. I didn't know that detail.

You didn't know one way or the other.---No. I'd just given him the name and the phone number for that guy. He's a good guy.

40 MS HUXLEY: So during this time that you're paying him these invoices, you understood that he worked at council.---Yeah.

And he was responsible for evaluating submissions and quotes that came into council?---Yeah.

And recommending contractors.---Yes, yes I did.

And he's receiving, over a two-year period, 300 to \$400,000 from you? ---Yeah.

10 Was that consistent over that two year period?---No, it was on and off.

It became greater as time went on?---Yeah, yeah, very much so.

And more frequent as time went on?---No, I think I paid him less and less over time.

Okay. Did you not think that was problematic, that you were paying him money, albeit in relation to jobs, other jobs, that he was involved in decision making at council that, for work that you were submitting for?---So I, I had
20 asked him that and he told me that he'd declared a conflict of interest with the council.

When did you have that conversation?---I don't know exact dates, but I'd seen a piece of paper that had that written on it that he'd signed. You know, someone said to me after that, you know, once I've been to this ICAC stuff that did I verify that with council and I didn't verify that with council, so I really, you know, have failed a step there with it, where he was, had or hadn't declared that, I don't know. But he did tell me that he'd declared it with council.

30

Do you know, sorry, did you know when that happened?---No, I don't know when it happened, I just said that.

Is that, well did it happen before you submitted for your first contract with council?---No. It would have been during that, during the time of being, working for the council, so I don't know exact dates, I really don't know. It wouldn't have been at the beginning, but it would have been, you know, sometime through the first year.

40 THE COMMISSIONER: All right. So sometime during the first year. Are we talking, which year are we talking there?---The first year that I was

working for, with, associate with the council, so was that 2020, it would be sometime during 2020.

So in 2020, at some stage, what happened?---So Pietro had shown me a piece of paper where he had declared an interest. Well not, not an interest
- - -

But how did all this come up? Was there some prelude to this or did it just -
- -?---I can't remember. I can't recall, sorry, your Honour.

10

All right. Go on.---And so I saw a piece of paper where he'd said that he knew me or knew of my entity and he had a conflict of interest on some things with that.

And was this a typed or handwritten document?---I think it was typed.

How long was it?---Not long. It was only a few sentences.

20 Where were you when you were shown this?---I can't, I can't recall the location either.

Could you remember anything that preceded it, that you know, gave the impetus for this to occur?---No, I don't, I'm not sure.

And the conflict that was declared was simply that he knew you.---Yeah, yeah and that he knew me and that we'd done work together before.

Well he probably knew half the people in the construction industry, wouldn't he?---Absolutely he would, yeah.

30

Well - - -?---Well the fact that we were working together. I, I actually think it might have been when we were doing the, one of the parks. I'm trying to remember the name of the park. Northcote Park.

Right.---And it started out as just a, a small knockdown of a wall and then after that we got more and more work on that one job and Pietro and Anthony Luu came over to, to the job site, you know, and we were actually putting some bricks and stuff, rebuilding the wall of this amenities block.

Was Mr Luu present when you were shown this document?---No. No but that was, it was around the time of that park, sorry, that's what I am trying to say, Commissioner.

Sorry, Ms Huxley. Go on.

MS HUXLEY: Do you know of a person called Mr Webb?---Yeah.

10 How do you know Mr Webb?---The first time I met Mr Webb he fired me on B-Line. I wasn't going to deliver the project as quickly as he wanted in a safe manner, or he wanted me to do an unsafe thing and try and do it in one weekend which was impossible and I told him so and he says oh, I will find someone else, you know, whatever. He worked for Transport as the construction manager and he had a reputation for long his - - -

MR PARARAJASINGHAM: I object. This was not the question. The question was about meeting Mr Webb, and now we're getting evidence about his reputation, Commissioner.

20 THE COMMISSIONER: All right. Probably right, we don't need to know about his reputation, just your dealings with him.---Okay. So yeah, he was the construction manager on the B-Line Project.

MS HUXLEY: And around 2020 did you understand that he worked at council?---I found that out after I started at council, so I wasn't - - -

So after your first job at council you found that out?---Yep. Yep. I wasn't aware of that before then.

30 How did you find that out?---His name came up as the superintendent's rep.

Mr Cossu hadn't told you that he was working there?---Not at that time, no.

Even though all three of you had worked on the B-Line Project?---Yep. Well, we were, I don't know whether this guy is going to object again, but Ben's reputation - - -

MR PARARAJASINGHAM: I object.

40 THE COMMISSIONER: No. No. No. He is going to object to his reputation.---Okay.

Just your dealings with him. Not what other people might think.---Ben's a, Ben's a prickly character. I don't, I don't have a lot of time to talk to Ben, okay, so I wasn't interested in Ben Webb.

MS HUXLEY: Well, did Mr Cossu know that around the time you were working on B-Line?---I don't know. Does Mr Cossu, I don't know that.

10 You hadn't spoken to Mr Cossu about Mr Webb's conduct towards you at B-Line?---We all, we all talked about Mr Webb and his - - -

No, I'm just asking conversations that you had with Mr Cossu. Did you speak to Mr Cossu about that conversation you had with Mr Webb at the B-Line Project?---Where I got fired?

Yes.---Yes, everyone talks about being fired. If you hadn't been fired by Ben Webb then you - - -

20 MR PARARAJASINGHAM: I object.

MS HUXLEY: So Mr Cossu knew there was some sort of conflict between you and Mr Webb.---It's not directly with me and Mr Webb. Mr Webb had conflict with many people.

Okay, but Mr Cossu understood that there was an interaction that you had with Mr Webb.---Mm, and it would blow over in five minutes as well, I must say.

30 And he didn't say to you whether he was at council, "Oh Mr Webb works here"?---No. I wasn't interested. I just wanted to work for my company. That's what I was interested in.

And run a profitable business.---That's why you go to work.

So you first became aware that Mr Webb was involved as a superintendent in some role.---Yeah.

40 Do you recall what job that related to?---I think it might have even been the very first job, the BLAKC tower.

Did you speak to Mr Cossu about that?---Yeah, after I saw his name. I said, “Oh is Ben here?”

And what did Mr Cossu say to you?---And he was, well, I don’t know exactly the words that he said to me but it would have been along the lines of, “Yeah, he’s a superintendent for the council.”

Did Mr Cossu tell you that he and Mr Webb worked closely together around that time?---Yeah, it makes sense that he would because he’s a project
10 manager for Ben, so - - -

Did you understand that Mr Webb had a role in approving recommendations for particular contractors to be used?---Sure.

So at some point in mid-2020 you had a conversation with Mr Cossu about being involved in council projects. Was it a discussion in relation to a particular project or was it a discussion that, you know, we would like to get you involved in a number of upcoming projects?---I had just finished a large
20 contract on the South Coast with McGoo Civil. I was looking for more work. At that time COVID and everything else, the construction industry was going through a bit of a hurdle and so I was very interested in picking up a large government-based client because private clients don’t pay you but the government-based clients, there’s a guarantee that you will be paid because you can go via the contractor to the government. So I was interested in doing that, and when Pietro said, you know, “We’ve got a project” - sorry, “Our budget is ramping up. We’ve got shitloads of work. We can’t, we don’t have enough contractors to do the work. Are you available, and your guys available?” And that’s really where it all started.

30 Did you have any discussions with Mr Webb after that first job when you first became aware of his involvement about being awarded council projects?---I never had a discussion with Ben at all. It was probably, probably even a year after I started there before I even saw Ben on a job - no, it would have been Northcote Park. He came out to look at some of the work that was done on the park. That would be the first time I saw Ben and even had a discussion with Ben in the council.

Okay. Did Mr Cossu say to you at the time when he spoke about this increase in council projects that he would be able to help you win these
40 contracts?---Well, I was looking for him to help me because I hadn’t dealt with local government before, so, you know, I was obviously hoping that his

guidance would help me to get work within the council. Ultimately I had been hoping to get on what's called a panel with my business, because that would mean that I'm, I guess, a preferred contractor for the council and so I get opportunity to do a lot more regular work for them, versus just being a contractor where you end up getting, you know, whatever is left over for jobs that they don't have anyone to do. So, you know, my goal was to try and get there. And I made that known to Pietro, that I would like to be on a panel, so, you know, whatever work he needs to me do, I'll do it, and I know what I'm doing, and I can do all of them, and he knew that.

10

Did you apply to be on any of the panels?---None of the, none of the panels that I wanted to be on came up during that period of time that I was there.

So what's the process of getting on the panel?---The panel gets renewed every period of time, and so I don't know what the Minor Construction, Civil Construction Panel was. I think it was five years. So you had to wait pretty much for five years to get an opportunity to go on the panel, unless panel members left, or what I perceived, and, you know, I don't know whether I'm right or wrong, but if the workload increased significantly, then they would be forced to have to put additional contractors on the panel.

20

THE COMMISSIONER: So the panel you were interested in was the Minor Construction Panel.---Civil Construction Panel, yes.

Sorry, what's it called? The Minor Civil Panel.---Minor Civil Construction Panel. So it's work under \$1 million typically.

Okay.---And I find that that's a good size for me. I don't get too bored on it. I don't, it keeps me excited and whatever to go to work.

30

MS HUXLEY: You spoke about hoping that Mr Cossu would give you some guidance. What kind of guidance were you hoping he could give? ---So, you know, when it comes to council versus the tier 1 contractors, I needed to provide a big OH&S spiel. I needed to provide different tendering and quoting arrangements where they would come out with stuff based on RMS, Road and Maritime specifications, and the council specifications are different, so some are lesser, some are more, and so I needed, you know, just some guidance on, on those sort of things when I'm doing the work, because I, I, if I bid as if it's a Roads and Maritime job, then the outcome of those bids would be, I wouldn't get a single job because they are far more involved. The level of OH&S, the level of quality, the level of

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work that you do is at a much, much higher standard than what you do for the council, and their drawings reflect that. The council drawings are a step down. Let's just say that.

And you couldn't prepare the more detailed documentation?---Yeah, but I don't, I don't know where to find them. So, you know, at the time I was brand new to local government work so I didn't know that they had intranet websites that I could access. I didn't know any of those sort of things. And I'd ask Pietro about things like that. Where do I find this information?

10 How do I get this information?

To enable you to provide a quote or provide a tender submission?---Yeah, for sure, or do the work or whatever it is. Like, even if I've already got a job and I need to do a driveway, I need to know what the width of the driveway is, standard. RMS will tell me it's 600, or council say 600 and the other one says 900. I've got to work out which is which 'cause I can't go and put an RMS driveway in some public street when the council doesn't want that. So - - -

20 Yeah, but, I mean, if you didn't have a friend like Mr Cossu, how would, you know, there would be other ways of finding that information out, wouldn't there?---Yeah, there is, yep. Yep.

Did you have any discussions prior to starting work at, the works that you did with council with Mr Cossu about a joint venture arrangement?---I had. We, we'd, from our steel mill experience, the steel mill was going through quite a redevelopment as well and Pietro got some information about a big construction job within the steel mill around the raw materials area and you know, he rang me and says, "Would you be interested in going in with me on that?" and I said I would and I'd had a previous business that was very successful, the Bulk Conveying Equipment, and I had a shareholders agreement from that business and I filled it out, I joked around and said to him, you know, we could call it Orsum Engineering or something like that, and yeah, we, we talked about it. It didn't come off. Nothing actually happened out of it.

When did that, when did that opportunity present itself to you?---I couldn't tell you dates. I really don't know. Like I, I spitball with a lot of people on potential jobs and potential scenarios, you know, there's lots of people who want to do work and they're looking for skilled, skilled people, so I get a lot

40

of approaches about starting up businesses together, doing work in construction, I get that all the time.

THE COMMISSIONER: So we're talking about the Port Kembla steel mill?---Yeah, but not just the Port Kembla steel, there's other times when - -
-

No, but - - ?---Oh, sorry.

10 But you mentioned about a steel mill going through some sort of restructure.---Yeah, Port Kembla steel mill, sorry, yes.

Port Kembla, right.---Yeah.

And he asked whether you'd be interested in going in with him on that.
---Yeah.,

Was this while he was at council that that conversation occurred?---I don't know. It would have been before I, I started working at council anyway. I
20 didn't know if he was at council that time.

Okay.---It was before I started at council, though.

MS HUXLEY: And sorry, can you just explain again like what the business opportunity was?---So it was engineering and project management work within the steel mill. So they do a lot of upgrades throughout the steel mill all the time, right. Repairs and maintenance work, upgrades and it was to do with some engineering work within the steel works.

30 So was it consulting, a consulting role or was it a - - ?---No, no we're - - -

- - - performing of works yourself?---I don't, I don't generally do consulting work. I, I do it for one or two jobs, but 99% of the time I like being hands on and so the discussion would have been, or it was, that going in together, Pietro would have done some of the management stuff and I would have run the crews doing the actual construction work. But Pietro is also versed in doing the hands on too, so you know, it would be complimentary.

I'll take you to volume 35.1, page 50. Do you recognise that document?
40 ---Yeah. It's come from my email. Orsum Engineering, yeah.

So that's around June 2020.---Yeah.

And that's actually about a month before you win the first job at council.
---Yeah.

And so can you just, if you would like to read through the agreement you're more than welcome to, we can scroll down, but what, to your understanding was the effect of this agreement?---I didn't know, so that was me trying to show Pietro that if we set up a company together, then I would want to have
10 a full shareholders agreement signed off by both parties. The, my successful business, you know, with Bulk Conveying Equipment, I had the shareholders agreement with my business partners at that time and it was very, it was very good. It was clear. We could understand what each other's roles were within the, within the partnership of the businesses and for me, if I was starting another business up with someone, I wanted to have a shareholders agreement of that description in place so that I don't have an issue with a fallout or some other thing that may arise that I haven't actually
20 got some legal position in before we start the entity. So that there was the shareholders agreement that I had for BCE and I adapted that for, you know, Orsum Engineering, or potentially if we were going to go into business to do Orsum Engineering at the steel works.

At some point you instructed your accountant to set up GWAC, if I can call it that, and so why did you instruct your accountant to set that up?---I had some previous businesses in the past. I don't know if you've got those on record or not. Southern Cross Precast Concrete, Blue Sky Services, Obnova Pty Ltd, and those entities were affected by me doing a change in my business at the time. So I wanted to do two things. One, sterilise any future
30 businesses from the businesses that are successful in running and two, if I got to a point in time in the future where I wanted to sell the entity, I could do that without impacting on the other entities, okay. So when I was taught about this sort of stuff, it was called an SPV, special purpose vehicle, that you set up an entity for, for new businesses and new contracts, and that way incrementally you can grow your whole group of companies, versus tie them all up and if one falls, the whole lot falls. I didn't want that. I had been through that in 2015 and I really did not want to go back to that sort of world.

You'd mentioned there a company called Obnova. Can you just explain
40 your involvement in that?---So I owned a company called Obnova Pty Ltd

and that was around 2015 time that I owned that company. It was, it did precast concrete.

And what happened to that company?---We ended up in the Supreme Court for nearly two years fighting over some money.

Who were you fighting over money with?---Mick Davidovic.

10 And what was the nature of the dispute?---He was trying to manipulate the outcome of the company to get money paid to himself versus to Obnova who was the company that should have money.

So at the time you were, were you the director of Obnova?---I owned Obnova, yes.

And you were the shareholder?---Yes.

20 But there's a difference between being a director and a shareholder.---It was my company.

You own a company through shares and you control a company as director, so you were both the owner and controller of the company?---For sure.

And what was Mick Davidovic's role?---Technical manager. He had no entity. He was declared bankrupt - - -

So he worked for you?---Yes. He was declared bankrupt at the time.

30 And he was trying to get money, you were fighting over money that he said he was owed?---Yeah, do you want me to answer all of that with the detail from the Supreme Court or not or you just wanted, do you want to be specific?

No, I just want to under, like just have a broad understanding of what his role was at the time, like what his role in the business was at the time.---So he was technical manager.

So then at what time did you cease being the director of that company?
---When I shut it down.

40 So you shut Obnova down.---Yes.

And what happened to the shares?---I kept them.

You kept them.

THE COMMISSIONER: Sorry, what was that?---I shut them down, so I shut the business down.

MS HUXLEY: Was it deregistered?---I think it was.

10

And did you have a - - -?---Oh, it actually might not have been registered, I might have just let the registration lapse versus deregistration.

Did the company own a plant facility or any property?---So I was in the process of purchasing the building that we were operating out of. Parsons, so - - -

And where was that?---In Wollongong, Unanderra.

20

And so that, do you recall what year that was shut down?---I don't exactly know because it was all tied up in the legal proceedings that went on and on and on, so - - -

So some, maybe two or three years after 2015?---Yeah.

And then we'll come back to Obnova a bit later, but you, through the Appian Way culvert job, Obnova was subcontracted to provide the culverts.---Yes, but it wasn't Obnova, it's Obnova Concrete Constructions. So it's not, it's - - -

30

So it's trading as Obnova but it's got a different company name. Is that correct?---Yeah.

And is it operating out of the property that you're trying to purchase when you were - - -?---Yes (not transcribable) yeah, yeah.

And that's a company that is owned and controlled, to the best of your knowledge, by Mick Davidovic?---I think it's Malenka. I don't think it's Mick.

40

Okay.---I think Mick's a, a, a discharged bankrupt, so I don't think he can be a shareholder or a director.

Can I take you to volume 34.2, page 2? Now, this isn't obviously your document but do you see how there it has GWAC 30% ?---Yeah.

And to the right of that, it says "PMLV"?---Yeah.

Which is Mr Cossu's - - -?---And W Projects, yeah.

10

- - - entity. Do you have any explanation as to why that would say GWAC 30% ?---I definitely was asked by Pietro whether I wanted to do work for Ben Webb's company when he left the council, and I said yes, because, obviously I want to do work for people and get paid money.

But what was Ben Webb's company?---Well, I think it's W Projects, isn't it? That's what I thought it was, anyway.

20 And what kind of work were you doing for them?---Well, I haven't done any work for them, but I was hoping to do civil construction work, which is - - -

And so why would that result in 30% GWAC? Would W Group take a 30% in GWAC?---I was hoping that that means 30% of the work that was coming in would come to me.

So 30% of the work coming in to W Group would go to you?---Yeah. Like, this was all speculation, 'cause I don't know what that is, so I really - - -

30 So did you have any discussions with Mr Webb or Mr Cossu that referred to 30% of something?---Where I'd give them 30% of my company? Is that what you're saying?

No. I'm asking if Mr Cossu or Mr Webb had said anything to you about a 30% stake in something or receiving 30% of work or if you ever spoke to them where they mentioned the number 30% ?---No, I don't recall 30%

40 So you said that GWAC was set up as a special purpose vehicle. So what type of work did you anticipate it doing?---Exactly what it did.

Council work?---Civil construction work.

So not limited to council contracts?---Sorry?

So not limited to council contracts?---Not necessarily, no.

What percentage of your workload in that two year period was council work?---A very large percentage.

10 90% ?---I don't know the number. I, I couldn't tell you whether it was 90 or 92 or whatever. But it was a large percentage of it. We were quite busy doing council work.

Did you have any discussion with Mr Cossu early on, when you started doing council work, about him having an interest in GWAC?---We did have a discussion about that - - -

20 When was that?---It would have been relatively early on. But we were joking about him leaving council. So I said to him, "When you leave council, you can come and work for me and I'll give you half of the company." That was the, the, the way that we had our discussion.

And when you referred to giving him half of the company, does that mean half of the profits that the company was receiving from its operations or half of an interest in the company?---Half the interest in the company. So for, Pietro's role would have to be he brings work in and I do the work, 'cause, like, I'm very good at doing the work, the hands-on stuff. And sometimes I'll focus on doing the work and not necessarily see that I'm running out of work and then that hurts me, so - - -

30 And that was consistent with how the relationship had developed to date? He would bring the council work in and you would do the work?---Well, all the project managers at the council would contact me to do potential work for the council and ask me to quote on jobs. So it wasn't just Pietro, it was very, it was a lot of them.

40 Well, who was the first one?---Well, the first one was Pietro, then after that, I had, well, Richard Auld, Michael, who was the ward manager for central area, I had, there's so many of them, I, I couldn't, couldn't tell you the order or whatever, what it was, but it was a lot of people.

Can you say if Mr Cossu was involved in the majority of that work?---When we were working over in the Canterbury area, he was, he was involved in a lot of the jobs.

And what proportion of the GWAC work was the Canterbury area?---
Probably 50%

10 So he was involved in at least 50% of the projects that you were winning from council?---Pietro, you say, was involved? No. There was other, there was other project managers in that area. So Kevin Jain, I forget the project manager's name for Ewen Park. There was a lot of people involved.

So at some point in mid-2020, GWAC was awarded the cooling tower works at the Bankstown Library and Knowledge Centre?---Yeah.

Can you recall how that came about?---Pietro said to me that there was a job to do and the installing of some steel, structural steel works and was I interested? It had to be done on a weekend.

20 Why was that?---Because there was public in the area, so you couldn't work.

So he said it was installing structural steel works. Did it also include the fabrication?---Initially, it didn't and then company F3 Industries had quoted, but couldn't do installation.

And so were you aware Mr Cossu was working at council at that time - - -?
---Yeah, well, that was - - -

30 - - - he mentioned this work to you?---That was the first job. So that was where he introduced me to the council, which - you've already asked that.

If I can take you to volume 36.1, page 2? So this is an email from Mr Cossu to you, referring to a discussion the day before, with a picture of the pump room and a note indicating what was required for the platform?---Yeah.

40 Does it say anything there about installation?---Well, I'm assuming installation when I've read that. When you build something, you're going to install it. And to go and have a look at where the pumps were, that was, to me, I was installing it.

Did you know if Mr Cossu was obtaining quotes from other people at the time he sent you this email?---No.

If I can take you to page 17. And is that your quote to Mr Cossu?---Yeah.

Why did you send it to his PMLV email address?---Because that was the address I've had for him.

10 But the email that he'd sent you was from his council address.---Pass. I didn't see what that was.

Pardon?---I didn't see on the previous slide what that was so I don't know.

I can take you back if you like.---No. You can tell me.

I'll go back to page 2.---Okay, yeah. CBC and I sent it back to his personal one.

20 Well, is there a reason why you sent it to his personal one as opposed to his council one?---Not specifically. Like he sent it to one of my email addresses, the Bluesky one, so, you know, I don't normally use that one.

Well, when you sent this email this was your quote for the job that he'd asked - - -?---Yep.

- - - you to do and you said, "I hope this price is successful."---Sorry, I didn't see where it says that.

30 Sorry, go back to page 17.---Yep, I've written that.

And then total price is \$16,890 excluding GST.---Yep.

The earlier email we saw didn't expressly refer to installation so why did you include that cost?---Because I went and had a look at the job with him and we talked about, you know, having to install the structure.

Okay. So the time of that email is 1.03pm.---Yep.

40 I'll take you to volume 36.15.---It's disappeared.

It'll come back up.---Or maybe not.

Oh, sorry. Volume 36.15, page 1. So these are the call charge records showing telephone conversations between you and Mr Cossu and on 17 July after 1pm there's, well, there's three records there.---Yep.

The first one doesn't seem, didn't go for any seconds so we can disregard that. Then you did speak to Mr Cossu at 14.27 and you spoke to him for one minute 19 seconds. Do you recall what that conversation was about?
---No. No idea.

10

Was it about this quote?---Sorry?

Was it about this quote?---I don't know. I don't know what that conversation would have been.

And then later at 16.38 there's a 48 second conversation. Do you recall what that was about?---Not at all. I get hundreds of phone calls a day so I don't know.

20 Go back to volume 36.1 and page 18. So this is your quote again. You're sending a quote to Mr Cossu.---Yep.

This time you've used his CB City address.---Yep.

Why?---Probably because I should have used that in the first place. I don't know why.

If we go to the next page. Is this your quote for the air conditioning, sorry, the cooling tower?---Platform. The platform.

30

The platform.---Yep.

Looks a bit different to the quote you sent earlier.---Yep.

If you go to the next page. It's a total cost supply deliver and install of \$27,980.---Yep.

40 What had changed between, in that four-hour period?---Pietro would have said to me have you included, you know, for safety have you included for access to get it up there. I'd assumed I could use the lift. There was a lift in the building and it was a large lift and it turns out there's three levels in the

building with no lift access so we, I had to have people to carry the thing up, up the stairs. So carrying steel structures up stairs it's heavy and hard so there was more cost in doing that.

But you'd had a site visit before providing the quote.---Yeah, we walked up and looked at where the valves were.

You didn't check to see if there was a - but you said there was a lift there.
---Yep.

10

And so you'd assumed that you'd be able to use the lift?---Yep.

And so was it he that told you that you wouldn't be able to use the lift?---He said, he was the one who said, "Do you realise the lift doesn't go all the way up."

So you hadn't had that discussion - - ?---I hadn't had that discussion.

- - - at the site visit?---No. And I didn't, I didn't see that.

20

Even though you understood that the request for quote included installation?---Yep, but it was more, I was focused very much around in the plant room which was I guess high up through an electrical switch room to get to it. There was a lot of obstacles that you had to work around within the plant room to install the structure and I was focused 100% on that. I didn't think about delivery of the stuff to the site. I didn't think about anything else. It was my first job at the council and I was very much thinking about the type of work I'd been doing on the South Coast where the goods were already in the yard, just had to install them.

30

Did Mr Cossu tell you what figures to put in?---I don't think so.

Did you speak about any - - ?---I, no, I, I've done these - - -

- - - of the other quotes that he'd received?---I've done these myself, those numbers.

If I can take you to volume 36.1, page 15. So that's a quote from Steelbiz.
---Okay.

40

And do you see the cost breakup there?---Yep. I can see what is here.

Quite similar to the cost breakup that you ultimately included in your quote.---Yep.

Can you explain why they are so similar?---No.

Sorry. So the quote that Steelbiz has is 2,200 for design.---Yeah.

10 If we go back to page 19 your design there is 2,080. So were you told to put that figure in as the cost for your design?---No. I've put - - -

And then we go next one - - -?---I've put that figure so I don't know.

- - - structural materials.

THE COMMISSIONER: Sorry, what were you saying, Mr Clarke?---I don't know. I don't know.

20 You don't know if you were told to put that figure in?---No, it wasn't that what I was saying. The design cost versus their design cost, why they're similar, I don't know.

MS HUXLEY: Is design cost different to design certification?---Sorry?

Is the cost for design in your quote different to design certification?---An engineer would certify the structure.

Because in the earlier quote design certification was 1,200.---Yep.

30 And so does this correspond to that part of your quote, earlier quote?---I'm not sure. I can't remember the details of what I did at that time I'm sorry.

Then you have structural material, sorry, materials there is 4,086.---Yep.

And if you go back to page 15, 4,540. So you come in just under that as well. Do you have an explanation for that?---No.

40 And we look at galvanising there, 3,900, and then you go back down to page 19, and it's 3,210. So another instance where you end up being just a little bit cheaper.---Mm-hmm.

Can you explain that?---No.

Was Mr Cossu telling you what prices to put in?---No. He's advising me on, as I said before, have I considered these things, have a considered this, have I considered that.

10 So you went away and considered these extra items and ended up with a quote about \$3,000 cheaper, and you knew that if you had a lesser quote that that would mean it was more likely for you to be awarded the project.---I didn't know what other people were quoted.

Mr Cossu hadn't told you?---No, I don't think so.

Even though your original quote, he called you not long after you had sent it to him?---As I said I don't know what that conversation would have been about on the phone. I can't tell you. The first phone call was zero minutes so I don't know. We're talking four years ago. I don't have that good a memory.

20 THE COMMISSIONER: So, Mr Clarke, I think you said that you don't think that Mr Cossu told you what other people had quoted. I think that they were your words, that you don't think that happened. And you also said that you don't think that Mr Cossu said what figures you should put in.--Correct.

So that means you're not ruling that out, either of those things.---I, I'm unsure.

30 You're unsure.---Whether he's told me or, or whether there's a number, or whether this, he's indicated that, have I considered it properly, he may have been hinting at going up or going down, I don't know. That's what I'm trying to say here.

All right.---Because I, it was my first job and it was very green when I was quoting for the council, as I said earlier, so, you know, I was hoping he would give me some guidance to come up with pricing, because I didn't know whether I was going to get work. I really wanted to have work in the council.

40 MS HUXLEY: And the guidance he gave you resulted in an increase in your quote to council.---Well, obviously I hadn't considered some stuff, so

it definitely should have been increased. So I appreciate the fact that he did that because I would have lost money on the job.

So Mr Cossu was the person who sent you the request for quote. Did you know that Mr Cossu had responsibility for deciding who the project would be awarded to, or for recommending who the project would be awarded to? ---I wasn't sure what the council processes were at that time, and as I said it's the first job I did with the. I was, you know, relying on his guidance. I didn't know the systems within council.

10

Did you know if Mr Cossu had disclosed that he was assisting you with putting the quote together, disclosed to council that he had assisted you in putting the quote together?---I don't know if he disclosed that or not. I don't know. As I said, he disclosed, and I've seen a document later in the year after those projects. He's definitely shown me a document where he's disclosed his interest or his knowledge of me and whatever, but I'm not sure on this one.

I'll take you to page 35. This is an email from Mr Luu to you informing you that GWAC had been awarded that contract and that Mr Cossu is a representative for that project.---Yep.

20

Seeing this did you have any understanding that Mr Cossu had been involved in recommending you for the project?---No, it doesn't say that anywhere.

See there it says that you need to provide a construction program.---Yep.

Did you know what a superintendent's representative was at the time?---Not really, not in the context of the council.

30

Did you ask Mr Cossu?---I'm assuming it was a supervisor, so I've taken that as being what it was.

And what's your experience of supervisors generally in the construction industry? What do they do?---They run the project. You know, they look after the projects.

So they make sure that the work is being delivered to program and they do quality assurance.---Yeah, and they make sure the work gets done.

40

And they assess whether there's a need for any variations.---Yep.

They'll push back on the contractor in relation to - - -?---Yep.

10 - - - certain variations and the necessity for them. Did Mr Cossu send you F3 Industries' quote for the fabrication of the platform?---He possibly did. I don't know. I do recall seeing something from F3 Industries and I did end up talking to Graeme at F3 Industries directly to make sure that what he was designing and building could be installed up on the platform, so I talked to Graeme about it.

And I take you to page 39. And so that's an email from you to F3 Industries.---Yep.

Raising two jobs.---Sorry?

Sorry, saying, "I've got two jobs I'd like to work with you on."---Yep.

20 And the first seems to work to some fabrication of three bridges.---Yep.

And then the next page, page 40, that's a reference to the access platform at the cooling tower.---Yeah. Yep.

If I can take you to page 59, get an email from Mr Cossu at his PMLV address to you attaching a platform fabrication and installation. Do you remember receiving this email?---I don't recall the email specifically. There's not a lot of detail there.

30 So if we then go to page 60, this is the attachment. Do you recognise that?
---I don't recall it but it's a project timeline so - - -

And is that one of the documents that council had requested you provide?
---Yeah, I typically do it on Excel so Pietro has fixed that one up for me.

And then at page 61 you provide that to council.---Oh I can't see this.

And this time to Mr Cossu's council address.---Yeah, this - - -

40 I'll take you to page 62. This is - - -?---Is that program there?
Pardon?---Is the program there on that, attached there?

Yeah, the next page. That's the program that was sent.---Okay.

It's identical to the one that you received from Mr Cossu.---Obviously, yeah.

10 So had Mr Cossu prepared that for you?---As I said I typically do it in Excel with dots, and so I know Pietro fixed a few of them up for me, the, 'cause he can run Microsoft Project, where I'm not very good at Microsoft Project. I use Excel.

So did you ask him to fix it up for you?---I can't remember whether I've asked him or not, but I was trying to have a professional image to the council so - - -

20 And you were asking for Mr Cossu, a contractor at council's assistance to do that?---Well I'm asking for his guidance on how I can make sure I win the work, yeah. So he's obviously come back with it, I can't recall details, no, sorry.

So just down the bottom right-hand corner there's a 3-09, is that a reference to 3 September?---That's what that is when you look at the timeline, yes.

So the timeline was receive order on 4 August, and then there's a timeframe for each of those categories and then anticipated handover 3 September. ---Yeah, that's what that says, yeah.

Yeah. And that's the timeline you provided to council?---Yeah.

30 So after sending this to council, what work did you do to progress this job? ---I've talked to F3. He's obviously built the platform and then I've had to organise a day where we're going to receive it and install it in the weekend and get some labour.

I'm going to take you to page 67. So on 9 September, Mr Cossu emails you the quote from F3 Industries.---Yeah.

40 Do you know why he's emailing that to you on 9 September?---I don't know. I needed to talk to Graeme though. Well - - -

So this is six days after the anticipated handover of the project.---Obviously I haven't done the work. I don't know.

And page 71, this is you, well the first email is from you to Mr Kirkness attaching the purchase order for the design, certification and fabrication of the platform.---Yeah.

10 And then you've asked him to send you a copy of the platform drawings. Why did you need a copy of the platform drawings?---I needed to be able to review it.

And for what purpose?---I'm going to be doing the install.

Okay. So you needed that for your, to plan the installation.---Well I need to do the work, yeah. I'm assuming that's what, at the time, it is, I don't know.

20 But so when you attach the purchase order, is that basically an indication to Mr Kirkness that he can go ahead and start the fabrication process?---It's a commitment to me, from me to him that I will pay him for the work.

But at that point, he hadn't started doing that work?---I don't know.

Why don't you know? Had you told him to do the work earlier?---No.

Pardon?---No. I haven't talked to him. I talked to him before, but I haven't talked to him about starting the job. I've given him the purchase order there to do it.

30 So the purchase order is you basically saying to him, you can start the job? ---That I've committed to pay him for the job.

And is the practice in the construction industry to start work without a commitment from someone that they would be, to pay them for that work? ---Often you'd do that for speed, but yeah, it's not what you should be doing because you put yourself at risk.

Well did you know if he'd started the work or not?---I didn't know that.

40 Why had it taken you so long to issue a purchase order?---Probably because I had other commitments on, I was probably doing some other things, I don't know. I don't know.

That was not in keeping with the program that you'd sent to council.
---Yeah. In a way, I shouldn't say this because it makes me look bad, but when you do a program, it's to tick a box in the process and once the council decide they're going to actually do the work, then you have to re-do the whole program anyway because it doesn't always reflect on when you're given the start date. The start date can get adjusted a lot.

10 But you provided that after you'd been awarded the contract, so how does that fit in with that explanation?---There's times where you don't get access to the building. There's times where you don't get access to various locations. You don't have labour. There's a lot of things that come into delivery of a project.

It's not unusual for a project to go over, to be late, delivered late.---I've never heard of one being delivered late yet, right, never.

20 I'll take you to page 74. I might start, sorry, on page 73. See down the bottom there's an email from you to Mr Cossu on 14 September, and if you then go down to the next page at 74, this is you setting out the need for a variation to the contract.---Yeah.

See how it says, "Acceleration of the installation work, working Sundays double time and I need to have the guys paid at their penalty rates."---Yeah.

Why was there an acceleration of the installation work?---Because he wanted it done straight away, like that weekend. So I hadn't done the work
- - -

30 So because you've taken so long to - - -?---Yeah.

- - - engage F3, and so why was that a cost that council should bear?---Well typically I would have taken a few weeks to do, you know, bits and pieces, the install or prep it or whatever, but he started putting pressure on me to get it done on that Sunday, or the Saturday and the Sunday. I wouldn't normally work a Sunday.

40 Well, so did he indicate to you that council was happy to cover that cost at that time?---He probably said just, you know, make it done. I don't know. Sorry, I, I don't know what he'd do.

Well you say, "As discussed over the last few days, the following items need to be addressed." So you'd had a discussion about those items.
---Yeah, that I have to work a Sunday.

And when you raised that you'd have to work Sunday and pay double time, did he say put that in as a variation?---He said write down, and he always says, write down any issues you've got, any variations you've got. All the project managers do that, so whenever you're going through the projects with them, if there's a variation that you need to ask for, you, you write it
10 down and you ask for it.

And when you wrote this down and sent it to him, was it your understanding that he would approve it? Oh, sorry, he would recommend that that cost be approved for council?---I'm hoping he would.

Well did he say anything to you in relation to it?---No.

He didn't say I will recommend this as a variation when you were talking about it?---I don't know specifics on that. It's a long time ago, as I said. It's
20 quite - - -

There's a reference there to the eye wash station relocation.---Yeah.

Was that a change in the design?---No, it was a conflict that wasn't anticipated with the ladder.

Who hadn't anticipated that conflict?---All of us when we did our design and whatever.

30 Who is all of us?---So that was Graeme, myself, Pietro, when we all went up and looked at it we missed that and - - -

But that's a contract, that was an obligation that had been placed on you as part of the project?---No, I would have thought, no, it's, it's a variation because it's a safety shower that required relocating and we never talked about that, where it would be put. I thought that it could stay right where it was, but you had to access it underneath the ladder and that meant if anyone ever needed to use it, they wouldn't be able to get access to it properly, so safety-wise it was not acceptable, and there's an Australian standard for
40 clearance around the eye wash station for those people and it didn't comply

and so I was, you know, I was, I screwed up on that and the design should have been accommodated.

And so that, but submitting it as part of the variation, that was something that you thought council should have to bear the cost of?---Yeah, or extending the pipe and whatever else, yeah.

And then the stair grip treads.---Sorry?

10 The stair grip treads.---Yeah.

Why was that a variation?---Because we never put it in our design in the first place and the council said that they wanted to have grip treads on the ladder rungs.

When did they first say that?---That was when we were doing the installation work on it. He said, "Where are the grip treads?" and I was like, "I don't have any."

20 So Mr Cossu hadn't raised that with you before that?---I don't think so.

Are stair grip treads kind of standard with these kinds of platforms?---Not necessarily, no.

Not from a safety standards perspective?---No. It would depend on the environment, so if you're in a slippery environment or something else then you might need, because it had very sharp garnet on it, where people just climb up a normal ladder. And bright yellow versus, just, galvanised grey, too.

30

Is it your practice to only issue an invoice after you've completed the work?---Typically. Sometimes I'll do it as a progress payment.

But if it's for the total amount that was quoted, that tends to suggest that you had done the work?---Yeah.

And so at the time you submitted this variation, had you done that work or had you not done that work?---Some of the bits I'd done. So the eye wash station I'm pretty certain we'd done that at that time. The stair tread grips, I
40 had to purchase them and get them in, to install them.

Was the variation submitted at a time when you were doing the work or before or after?---Can't recall.

And then page 75. This is an email from you to Mr Cossu, attaching the invoice. And then if you go down to the next page, that's your invoice. So that total there includes the variations?---Yeah.

So does that suggest that you had done that work beforehand?---Yeah.

10 So the variation was submitted a day before you sent this invoice?---Okay. That's what the dates say.

So - - -?---I, I, I can't recall that in detail, I'm sorry.

Okay. Did you pay Mr Cossu any money for helping out on this job?---Yes. he had two of his, two guys that he knew came and helped me on the job and he needed to pay those guys. I didn't have their details.

20 And so how much did you pay him for that?---Can't recall that, specifically. You might know that number? I don't know what the number is.

Can I take to volume 36.6, page 73, sorry, 36.3, page 73. Do you recognise that document?---That looks like a spreadsheet of mine.

Of yours?---I think so.

And what does it mean?---I think it's a running total of all the jobs that I was doing at council, where it was up to.

30 And so 20-01 BLAKC tower would refer to the cooling tower works?
---Yeah, those are my, the year and the project number.

And then, so revenue, what does that mean, the revenue - - -?---Total money coming in.

So is that the profit that you made on that job?---No, it's revenue.

So what's the difference?---Sorry?

40 Can you just explain what the difference is?---Between revenue and profit?

Mm.---Well, one's what I invoice for and the other's what I have clear at the end of it.

But, so, didn't you invoice \$36,080 for this?---Yeah, I think I did on the other page.

Yeah, so why isn't that the revenue number?---'Cause I've got it wrong? I don't know.

10 Can we go to page 74?

THE COMMISSIONER: Sorry? What volume is this?

MS HUXLEY: Sorry. Volume 36.3. And does spreadsheet refer to that particular job, BLAKC tower?---Yeah, it looks like it does, yeah.

And there at the top, it says "total revenue"?---Yeah.

And then total costs?---Yeah.

20

And then the net result?---Yeah.

And that's the same figure as what was in the revenue column earlier?
---That's true.

Can you see on the right-hand side, there's an expense breakdown?---Yeah.

What does J stand for?---Well, I'm assuming that's me, I think, yes.

30 And what does P stand for?---Pietro, P.

And what's C stand for?---I assume it's company.

And so that sets out what all the expenses were?---Sorry?

That sets out the expenses of the job?---Yeah, yeah. Yeah, it would do.

And so does that, \$1,000 for labour, 200 for materials from Mr Cossu?
---Yeah.

40

So why was Mr Cossu, why had Mr Cossu expended money in relation to that job?---So, as I said earlier, he provided the money to the employees, the two guys that I had helping me, and materials, pipe fittings, yeah. So it was the eye wash station, it was leaking water while we were doing the install, 'cause I had to cut the pipe to install the ladder. And he went away and actually purchased the pieces of pipe and materials for me while we were trying to do the install. But we had limited time to do the install.

10 If we can just go back to the earlier page, it talks about, it says "revenue" but do you accept that that's actually your profit?---Yeah, yeah. I've obviously missed - - -

Yeah. So you were keeping tabs on the profits that you were making from the council projects?---I, I did. I, I remember making this document after that.

THE COMMISSIONER: I think we haven't gone back to the previous page.

20 MS HUXLEY: Sorry. Page 73. So you were keeping tabs on the profits that you were making?---Well, attempting to, yes.

Did you give this document to Mr Cossu?---I'm not sure if I did or not.

Would you accept that evidence that he has that spreadsheet located on a USB in his house would suggest that you did give it to him?---Sorry?

30 If you accept that there's evidence that he had a document similar to this on a USB located in his house, do you accept that that means that you would have given it to him?---Yeah, well, I accept that that would mean that.

Why would you have given it to him?---I was asking for - my overheads were higher than what I had anticipated they would be in the council. And so I was having a discussion with him about the future prospects of the business and I wanted more money.

40 What were those overheads related to?---I had some other costs that were coming in to the company and I needed to try and offset them. I quoted things in a way that I wasn't getting all the money back out that I wanted.

So why were you talking to him about that?---‘Cause I was trying to keep my price down and I was going to end up increasing my prices to him.

And were you saying that to him in the hope that he would still help you try to get contracts from council?---I wasn’t specifically asking him that, but it was always assumed that I was going to get more work from the council, hopefully.

That was an understanding that you and he had?---Sorry?

10

That was an understanding that you and he had at the time?---I’m not sure. Understanding is a big word.

So there was an expectation that that would occur, from your perspective at least?---I was hoping that I was going to get a lot more work from the council. I was - - -

Is the reason why you were keeping tabs on these profits and had given it to Mr Cossu was because both of you were keeping tabs on the profits derived from this arrangement?---I don’t believe so. I, I was going back to an original conversation that I had when we talked at Orsum Engineering and that we had a fifty-fifty business in the future and that was really to demonstrate that.

20

So that Orsum agreement, even though it was sent in June 2020, that was in anticipation of a business that would be in the future.---Well, obviously that business didn’t come off, Orsum Engineering, but Pietro, as I think I’ve already said, is very good and finding leads, very good at finding jobs, so when he left the council I said to him, you know, “Maybe we go into business together then,” and as it transpired he left council and he has helped me a lot since that time.

30

So just prior to winning the first job at council you send that agreement. ---We’ve had the discussion, yeah. Yeah, for sure.

But you say in respect of a different business.---Yep.

And then immediately after he leaves council there’s work being done by GWAC for PMLV.---Yep.

40

Is it the case that Mr Cossu or PMLV have a 50% stake in your business now?---No, he didn't have a 50% stake.

Well, any stake?---No, he had no stake in the business.

Okay. Commissioner, that might be a convenient time to take the lunch break.

10 THE COMMISSIONER: Sure. All right. We'll be back at 2 o'clock if you would like to step down, and if you please not discuss your evidence with other people, that would be helpful, thank you. All right. I'll adjourn until 2.00.

LUNCHEON ADJOURNMENT

[1.01pm]