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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE HELEN MURRELL SC
COMMISSIONER

PUBLIC HEARING

OPERATION MANTIS

Reference: Operation E22/1852

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 12 JUNE, 2024

AT 2.00PM

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

<JEREMY CLARKE, on former affirmation

[2.07pm]

THE COMMISSIONER: All right, we'll resume Mr Clarke's evidence.
Thank you, Ms Huxley, when you're ready.

MS HUXLEY: If I can take you to volume 33.13, page 3. Or perhaps if we can go to page 2 first. Do you recognise that?---No.

10 Well is that your name?---Yeah, it's my bank statement I think.

For a Commonwealth Bank account?---I'm assuming so, yeah.

Is that the account that council would pay the invoices to, do you know?
---I doubt it.

If I can take you to page 3, on 8 October there's a direct credit for
Canterbury Bankstown, sorry, Canterbury Banks C-bury B-town for
\$36,080.---Yeah.

20

And do you recall that that was the invoice that you were issued in respect
of the Blacktown cooling tower, the cooling tower works?---Yeah, that's the
right amount, right, yeah. I think that's my personal account though, versus
- - -

But so - - -?---And you've got my bank account number showing up there as
well.

Pardon?---Up on the to there, my bank account details are actually showing.
30

THE COMMISSIONER: Yes, they will be suppressed in due course. Is that
what you're concerned about?---Yeah, yeah, yeah.

Yes.---Yeah, because that's not a good thing to have scammers try and get
your bank account details.

No, no, no.

MS HUXLEY: There's a suppression order over that.---Sorry?
40

There's a suppression order that prevents that from being published to the public. So, so do you accept that that is a payment for the works that you did at the cooling tower?---Yeah, it looks like that, yeah.

And then if we go down again to the, to the 29 October entry it's another credit of 212,000.---Yeah.

And so the source, at least, in October of 2020 of your income into that account was the Canterbury, the council works that you were doing?
10 ---That's the source of the income, yeah, according to that.

THE COMMISSIONER: So that 212,000, which, would that relate to the Appian Way job would it, or what's that, what was that - - -

MS HUXLEY: I think that was the non-destructive digging.---I'd have to look at the invoice.

THE COMMISSIONER: Oh, that's the non-destructive digging.---Yeah, non-destructive digging, so it is an Appian Way job, yes.
20

MS HUXLEY: And then if we go down to page 5, just above the highlighted part, there's a transfer to bank, CommBank app invoice 20001 of 28,600.---Yeah.

Would that have been a payment to Mr Cossu?---I don't know. I'd have to look that invoice number up.

If I can take you to volume 39.3, that's an email from you to Mr Cossu at his PMLV address.---Yeah.
30

You said, "I am reconciling the job so far and I am after your invoice for the work done." What's that in relation to?---Again, I'd have to look that up.

THE COMMISSIONER: Sorry, can you speak up please?---Sorry. I would have to look that up. I'm not sure.

MS HUXLEY: And you say, "I have totalled it to being 26,000 including GST. If your numbers confirm this, please send the invoice."---Yeah.

40 And that was for (not transcribable)? Conveying Equipment.---Yeah.

And you don't have any recollection, sitting here, what that amount was for?---No, yeah, it's a long time ago so I don't know.

Then at volume 37.1, page 1, Mr Cossu then sends you the invoice.---Yeah, 20001, yeah, that lines up.

And then you go down to page 2.---(not transcribable)

It says, "Work done as per agreed quote."---Yeah.

10

So does that assist in determining what - - -?---Yeah, well that's the invoice, the invoice numbers I've put on as a reference so it's definitely that one.

So you paid this invoice on 2 November, as we've just seen?---Okay.

From the bank account.---You'd have to back through the bank statements, so if it was the - - -

20 You want to go back to the bank account?---Oh, I will take your word for it. if it's 2 November, I paid on 2 November, that's this invoice statement.

Yeah. And so you paid that from an account which had received funds that at least the majority of those funds were related to council project work?---I assume so yeah, that's my incomes.

And so this invoice related to work done in respect of those projects?---I don't know. I need to look at those.

30 Look at what?---I need to look at my details, what I, what I've done.

What details?---In my, in my spreadsheets and stuff.

Can you just speak up a little bit?---Oh, sorry.

What, in your spreadsheets?---Yeah, I, I can't recall this off the top of my head. I'd need to look on my computer at what it was, sorry.

40 Well if we can go back to volume 36.3, page 73. Do you see the bottom two rows where there are a number of columns, that it's got JC and PC? ---Yeah. There's 26,000 written in a column there.

Yeah.---Yeah.

And this is a spreadsheet in relation to project works?---Yeah.

So do you accept that that invoice was paid to Mr Cossu for his role in performing work for you in respect of those projects?---Those three projects, yes, I guess so. I, I can't say anything other than that. And again, I can't remember what other work he may have done for me in that time anyway.

10

Do you recall if PMLV continued to invoice BCE over the 2021 and 2022 period?---There's definitely been invoices to BCE from PMLV, PLMV, whatever it's - - -

And did those invoices correspond to work done in connection with council contracts?---A lot of them would be to work that he's done for me.

Done for you in relation to the council contracts?---Maybe. Maybe other stuff, I don't know. I can't, I can't tell you each individual invoice, what it's for.

20

Okay. I'm going to ask you some questions about the non-destructive digging project at Appian Way. Do you remember being awarded that project?---Yeah.

And can you recall how that came to pass?---I can't recall how it came to pass, but it was an extensive project. It required a lot of work - - -

30

THE COMMISSIONER: No, excuse me Mr Clarke, can you please keep your voice up? I'm just not sure whether, you might like to reposition your seat so you're a bit closer to the mic, but I don't know if that's going to make much difference.---Sorry.

Because I don't know that the mic amplifies, does it, it just records. Anyway, just keep your voice up because I'm struggling, Ms Huxley is struggling, and I hate to think what your legal representative is doing about it, so just keep your voice up.---He hasn't objected yet, so he can't be hearing me.

40

Yes, keep it up. So we're on the non-destructive digging.

MS HUXLEY: Sorry, could you - - -?---Sorry about that, I speak quietly anyway, so - - -

So you said they're extensive works. How did you first hear about the project?---There was markings on the ground I think when I was at the BLAKC Project and I would have seen some markings and there would be discussions in the, around the traps when we're doing the other work. So I don't know exactly the details of that, how I've come to do it, I don't recall.

- 10 If I can take you to volume 36.2, page 125. So that's an email from Mr Cossu at his PMLV address to you.---Yeah.

And it attaches two images and a scan. If we go down to page 126 and then 127 and then 128. Do you recognise what those drawings are?---Those are a discussion about some trenches that needed to go across the roads.

So did this relate to the non-destructive digging works?---Yeah, they definitely do.

- 20 So do you know why he was sending this to you in August 2020?---I don't know why. I've got experience in doing that sort of work, so I'm assuming he was asking me questions about that.

Did you think that he was asking for a quote for the works?---No, I don't think at that time, like, I don't think so.

If we go to volume 36.6, sorry, 36.3, page 38. Do you recall that document?---Yeah.

- 30 What is it?---That's a quote for the workings that I used in an attempt to try and price digging the trenches across the road, I had to work out volumes and - - -

THE COMMISSIONER: Your voice, please, this is - - -?---I'm sorry.

- - - sorry, a quote, sorry what, would you mind repeating that?---So that's my workings to work out what's involved in digging the trenches across the roads. So the drawings that you just had, there was only three, but I think in the end it was 16 or 20 slot trenches that needed to be dug across the road.

40

MS HUXLEY: But so you would have had regard to drawings in relation to the proposed project to come up with these figures?---I've gone out and measured the road widths and things like that.

Yeah, so this is a quote for the non-destructive digging works.---No, it's my preliminary workings I think.

Okay. So it's preliminary workings in relation to the non-destructive digging works?---Yeah, yeah.

10

If I take you down to page 41, this is the metadata for the document. That shows that the last time it was saved was 16 August 2020, so that's three days after Mr Cossu sent you those attachments.---Yep.

And so did you understand when Mr Cossu sent you that email, that he was asking you to start putting together a quote for that work?---I've started putting together the quote. I don't know if he asked me. I can't recall any discussions.

20

So he just sent you two images and some drawings and you decided off your own bat to go and start figuring out how much, what the pricing might be? ---No, I wouldn't have gone and done work for nothing, for no, for no reason so - - -

30

When you were sent this did you understand Mr Cossu was asking you for a quote or for you to start doing pricing in relation to it?---I'm experienced in digging across the road and stuff, and I know that Pietro and other engineers had come to me for pricing on what it would be, ballpark numbers, to dig across the road and to do non-destructive digging works. With respect to that spreadsheet, I needed to know volumes. I needed to know bulk densities. I needed to know the types of materials to go in the hole, and I needed pricing for that. I would have thought that somewhere between when he sent me those first drawings and when I've done that work, I would have seen the spreadsheet or the schematic of what might be happening in the areas. And as I said I think there's 16 trenches that had to be dug across the road, so I don't know how I've gone from that first drawing to that spreadsheet, the working spreadsheet there to get the volumes.

40

Do you remember speaking to Mr Cossu about it around this time?---I don't remember, sorry.

Do you remember any conversation in which Mr Cossu may have told you the price that had already been received from council in relation to these works?---No.

Is it possible that you had a conversation where he told you that?---No, I've gone and - I've had to work it out. I've had to go and get pricing and, from all the suppliers. I've had to go through and work out the volumes, cost of sucker trucks, excavators, saws, so many things. I don't recall anyone giving me a price.

10

THE COMMISSIONER: So do I understand this correctly, Mr Clarke, that based on the documents you've just been shown on 13 August Mr Cossu at PMLV sent you two images and a drawing apparently relating to this non-destructive digging, and then on 16 August three days later you were doing some preliminary working working out of what would be required, and you therefore infer that sometime between 13 and 16 August you must have received some more information that enabled you to do those workings out, if you like, on 16 August, is that correct?---Yes.

20 And at this stage you can't recall where that further information came from. ---No.

But do you think it came from Mr Cossu?---Most likely. I can't guarantee that.

No. No.---I can't recall, Commissioner.

Okay.

30 MS HUXLEY: Who else were you dealing with at council at this time?---I had been dealing with Anthony Luu. I had been dealing with the designers. A lot of people would phone me up regarding what's involved and how much time it would take to dig those trenches. I forget the designer's name.

In August 2020?---Yeah, around that time. I, I honestly can't tell you the dates again.

Did Mr Cossu ever tell you that this had actually gone out for quote and quotes had been received?---No.

40

And they were assessing those quotes?---No.

If I can take you to volume 36.2, page 145, this is an email from yourself to yourself with an image attached. If I go to the next page. Do you recognise that?---Yep, that's the one.

What is it?---I recognise that, yeah.

What is it?---It's a photograph.

10 Of?---The non-destructive digging areas I think.

Do you know who produced that document?---Well, I've, I don't know who produced it. I've taken a photograph of it.

Well, can you see in the bottom right-hand corner of that photo there's a name called Durkin?---Yeah, it's an engineering company, yeah.

20 So did you understand when you saw this picture that Durkin had taken, had produced that document?---I didn't look at any of that, to be honest.

So who took this picture?---I've taken that picture.

When did you take it?---I don't know. You had it on the previous slide. So I, when I take pictures I send them to myself so I can get them onto email.

Okay. But so why did you take this picture?---Because obviously I haven't got that document and if I'm going to work out numbers and stuff I need something, and that's, I think, the missing piece from what I said before.

30 So who provided you access to this document?---I'm not sure. Most likely Pietro. I don't know.

Do you know where that photograph was taken?---No.

Did Mr Cossu bring it to you or did you go to council to look at this document?---Don't know.

40 Did Mr Cossu tell you that this was a document produced in relation to Durkin's quote?---No.

Did you ask him what role Durkin had in the works?---As I said just before, I wasn't aware that Durkin, of the Durkin drawing. I just took it as a drawing.

Does Durkin, is that a company that does works like this?---I think they were an engineering company, so they do design work.

10 Then we go to page 152. That's an email from you to Mr Cossu at his PMLV address with an attachment in relation to the non-destructive digging works. And then if we go down to page 154, that's the quote that you give for that. That's your estimate for the works.---Yep.

So did you understand you were providing Mr Cossu with the quote?---Yep.

And you provided it to his PMLV address.---Yep.

Why?---I don't know why.

20 You understood these were Canterbury Bankstown Council works?---Yep.

Yeah, so why did you provide it to his PMLV address?---Because I send things to him.

Were you sending it to him to review before you submitted it to council? ---Pass. I don't know.

30 If we go back up to page 152, that email sent on 16 August 2020 at 23.07. If you go down to page 155. Five minutes later it's sent to his council address. Did you have a communication with Mr Cossu between those two emails?---I'm not sure. I don't know.

Did Mr Cossu give you his approval to send that to his council address?---I don't know. Have you got a - - -

40 THE COMMISSIONER: To your understanding what was Mr Cossu's role in relation to the non-destructive digging?---I'm not sure. At that time I don't know. I've seen in the transcript that he was responsible for it on your discussions over the last few days. As I said I was new to council so I didn't know the full ins and outs of all the workings at council.

After you sent this quote to Mr Cossu did you have any further conversations with him about the quote?---I imagine I would have.

And did he say what was happening with the process in council?---I don't recall.

Did he tell you whether the project scope was going to be amended and a new request for quote was going to be issued?---I don't recall.

10 So I'll take you to volume 36.2, page 163. Do you recall receiving this email?---I don't recall it, but - - -

Do you recall before receiving this email, Mr Cossu saying anything about who the request for quote was going to be issued to?---Sorry, say that again?

Do you recall any conversations with Mr Cossu where he said to you who the request for quote was going to be issued to prior to this email?---Who the competitors might be?

20 Yeah.---No.

Did Mr Cossu say anything about him doing what he could at council to ensure that GWAC would be included as prospective contractor in relation to this request for quote?---No, but I'd hope he would do.

That was your expectation that he would?---Well I hope everyone at council, if I've done good work, then they would give me repeat business.

30 If I can take you to page 175, you then forward this to his PMLV address. Why did you do that?---Not sure.

Is there a reason you used his PMLV address as opposed to his council address?---No. I don't know why I would.

Well did you send it to him at that address because you didn't want people at council to know that he was involved in a PMLV capacity?---If that was the case, he would already have that document, so I don't understand why.

40 So you don't know why you sent him that?---No. No idea. And he should already have it, you'd think.

So that email is dated 16 September.---Yeah.

If we go to volume 36.15, page 1, you have a conversation with Mr Cossu on 20 September.---20 September.

The first one is at 13.56 and then there's another conversation at 14.02.---Yeah.

10 The first one is four seconds long and the second one is four minutes and 29 seconds.---Yeah.

Do you know what you talked about in that conversation?---Unfortunately I don't know.

Would it have been about the non-destructive digging works?---I don't know.

20 I'll take you to 36.2, page 118. Sorry, 188. At the bottom of the page, you'd emailed CMB asking for pricing in relation to Bankstown work.---Yeah.

Was that in relation to the non-destructive digging work?---Yes, but in general I would have been trying to get prices. Matt, Matt and I did a lot of work together and he's got a lot of equipment that I use.

And that was at 20 September 2020 at 3.00pm.---That's when the email was, yeah.

30 Yeah. So an hour after you'd spoken to Mr Cossu on that day.---Yeah.

So did Mr Cossu in that conversation tell you to go and get pricing from CMB?---No. I've worked with CMB and Matt for many years. I'd be getting pricing from them for their equipment.

But did Mr Cossu say this is a task that we have to go and do?---I can't tell you that, I don't know.

40 Do you recall if CMB were ultimately contracted by GWAC on this project?---Absolutely were, yeah.

They were.---Yeah.

THE COMMISSIONER: They were contracted?---They were, yes, I used them, yes. A very good, a very good contractor.

MS HUXLEY: If I can take you down to page 192, there's an email from you to Mr Cossu and then if you go down to page 193 to 194, that's the original, that's that earlier quote that you'd prepared in relation to the works.---Yeah.

10 Why were you sending him that?---Sorry? I don't understand.

Why did you send him that email?---Probably because he asked for it, I don't know.

Why would he be asking for it?---So, go back and show me the date. I don't know.

Page 192. It says 22 September 2020.---Yeah.

20 Does that help?---Yeah, I can see that now. It's 22 September, yeah, it's after the thing's come out.

And so why did he send it to, why did you send it to him?---Pass, I don't know why I've sent it to him.

THE COMMISSIONER: Sorry, what was that?---Sorry, your Honour, I don't know why I've sent it to him. I have.

MS HUXLEY: So that email is at 6am, or 6.06am.---Yeah.

30

And then if we go back to volume 36.15, page 1, and at the entries for 22 September, there's a number of conversations there.---22 September, okay. One.

One is at close to 8am.---Six, yeah.

That goes for three minutes and 44 seconds.---Yeah.

And you have another one at 2.40, about 2.40.---Yeah.

40

It goes for five minutes and 17 seconds. And then there's another one at 15.42 for 58 seconds. I'll ignore the next entry because it's only zero seconds, but then there's another one at quarter to 7pm for four minutes and 13 seconds.---Yeah.

And then another one at 22.15 for almost six minutes.---Quarter past 10, yeah.

Quarter past 10 in the evening.---Yeah.

10

Do you know what you spoke about in any of those phone calls?---No, I don't know what I spoke about in any of those phone calls, sorry.

So that last one is at 22.15. Now I take you back to volume 36.2, page 195. That's an email from you to Mr Luu who worked at Canterbury Bankstown Council attaching BOQ and a timeline. Was that you attaching your quote for the work?---I would say so, yes. Timeline.

20 Did Mr Cossu tell you to attach a timeline for the work?---Pass. I don't know. (not transcribable)

If you go down to page 197.---No, it says on the document that I needed to provide a provision program, so when Anthony sent that previous one out, so I've provided that timeline for him.

If you go down to page 197.---So I'm 196, Ms Huxley.

30 We can go back to 196.---Yes, if you would. 195, then. Can't scroll. So on 195, down the bottom, it says, "Council requires response by - of the completed BOQ and a provisional program."

Yeah.---So that's what I've sent through.

Then if we go down to page 197. Did you create this document?---No, that's a council standard document.

Did you fill in the prices yourself?---Yep, in theory.

40 Did you do that in consultation with Mr Cossu?---I don't believe so.

If we go down to page 201, that's the total amount, excluding GST?---Yeah.

Had you discussed that price with Mr Cossu?---No.

So in any of the conversations you had with him on 22 September, you didn't discuss this?---Well, I've got down two trenches there, trench A and trench B and the scope is way different than that.

I'm just asking if you'd spoken to Mr Cossu about this on 22 September? We saw you had a number of conversations.---I don't believe so, I don't
10 know. To be honest, I do not know.

Is it possible that you spoke to him about this quote?---I don't know.

THE COMMISSIONER: That means it is possible?---I, I don't know, your Honour.

MS HUXLEY: So you can't - - -?---So I can't say yes or no.

You maintain that you don't know, even though we've just seen that there
20 are a number of emails passing, you know, you sent him an email at 6am or close to 6am, with your original proposal for the works, and then later that evening, close to midnight, you email Mr Luu with the proposal, and there's a number of conversations with Mr Cossu on the - - -?---During the course of the day.

So is it a possibility, when you consider it in that context?---It's a possibility, yes. But I don't recall having that discussion.

If we can go to page 206? This is the program attached?---207.
30

And then 207 - I can take you to 207 if you like, and then page 208 is the last page. Do you recognise that?---I don't specifically recognise it, but it's a Microsoft Project output.

And is Microsoft Project the program that Mr Cossu would use in relation to programs?---Yes.

Whereas you used Excel?---Generally, yes, I - - -

So is that a document that Mr Cossu provided you?---Likely. I think I had upskilled to Project by that time or I'd bought a copy, I don't - or got a copy. Spelling mistakes - - -

If I can take you to page 209? This is an email from you to Mr Cossu at his PMLV address, attaching what had been sent to Mr Luu. There you say, "I'm rusty on project and it shows in the timeline"?---Yeah.

Is that a reference to the timeline document that had been provided?
10 ---Yeah, I've tried to do it, as I sort of said, I, I got a copy of Microsoft Project and I tried to do the timelines, the way the council likes them.

So why did you send him this email?---Sorry?

Why did you send him this email?---I'm assuming that I've sent him that email so he could just give me some pointers on the timeline.

Okay.---As I said, I'm rusty on it.

20 If you go down to page 228, Mr Luu emails you, seeking clarification in relation to some of the items in the submission and that's at, the first email, sorry, is 12.02, to you?---Yeah.

And then you respond at 12.32?---Yeah.

If we go back to volume 36.15, ignore the first entry for 23 September, because there were zero seconds, but then there's one at 14.08 for four minutes and 19 seconds and then another one at 17.53 but only for three seconds. Do you recall what you spoke about in those conversations?---No.
30 No, I didn't, I don't know what I talked about in these conversations.

Do you think you spoke about Mr Luu's request for clarification?---I don't know.

Is it possible?---It's possible.

Did Mr Cossu tell you about any of the other quotes that had been received?---No. I didn't know anyone else was quoting.

40 You didn't know anyone else was quoting?---No.

You didn't think they were obtaining other quotes for this work?---I assume they would but I wasn't aware.

If I can take you to 36.2, page 232? It's an email from Mr Cossu at PMLV to you on 23 September, with a copy of the Appian Way BOQ. And then he says, "Dear Anthony, we are happy to review the quote, complete the sections and reply to your queries. Please find attached revised BOQ. I will need to have another look and talk to you personally in regards of the program. With the information we have, it is difficult to change the program." Is Mr Cossu there suggesting a response to Mr Luu?
10 ---Yeah.

And if we go to page 233, so this is a copy of the bill of quantities that he attached to that email. If you go down, I can take you through each page, if you like, 233 and then 234.---235.

Then down to 236. So there, the total lump amount is now \$104,509.50, excluding GST. How did that change come about?---From the previous BOQ?
20

Yeah.---Obviously, I've tidied the numbers up and looked at it a bit better.

Well, this is a document Mr Cossu sent you?---Yeah.

So why do you say you tidied the numbers up?---I would have looked at the numbers more realistically. I don't know what the detail is and how he's adjusted or I've adjusted or whatever.

So are you saying you would have looked at the numbers and then
30 communicated that to Mr Cossu?---Pass. I don't know.

Did you just say "pass"?---Yeah. I - - -

Why do you say "pass"?---So I don't know, I - you, you know, you're telling me something that I did and I don't know if I did it.

I'm just asking you if you did something or not.---No. You're trying to put words in my mouth.

40 THE COMMISSIONER: Well, counsel's just putting a proposition to you.
---Okay. If she's putting a proposition - - -

You can't actually pass on it.---Okay. I'm not going to pass on it.

You have to agree with it or disagree with it.---Yeah.

Or make some other more substantive response.---Okay.

Yeah.

- 10 MS HUXLEY: So if I can take you to volume 36.2, page 241? You say, "I've reviewed the pricing and found an error in my calculation which allowed me to offer a three and a half per cent discount if awarded as a package." Do you remember what that error was?---No. But I've got to say, I'm trying to do things very quickly when I'm doing this, 'cause I've got a lot of other things happening. And I have, and I do, make errors.

And this is quite late at night, too, this email?---Sometimes that happens, yeah.

- 20 And so is the document there that you provided to Mr Luu the same document as what Mr Cossu had sent to you earlier?---Don't know.

You don't recall changing it?---No. It's a long time ago. Sorry.

Did you know if Mr Cossu was on the Evaluation Panel for this work?---No.

Did you understand if he had any role in recommending who would receive this work?---at the time, I wasn't aware of the Evaluation Panel.

- 30 But you understood that there was a process at council by which people who - the quotes would be assessed and then the job would be awarded to a particular person.---At some stage in the council that would have to have happened, yes.

So did you understand if Mr Cossu had any role in that?---I didn't understand whether he had a role or not.

THE COMMISSIONER: Keep your voice up, Mr Clarke.---Sorry. Sorry, your Honour. I'll move closer to the microphone.

40

MS HUXLEY: I'll just take you to volume 36.3, page 19. This is an email from Mr Luu to you informing you that you had been awarded the project and that Mr Cossu was the superintendent's representative.---Yep.

At that time did you have an understanding that Mr Cossu would have an ongoing role in this project?---Beyond the non-destructive digging?

In relation to the non-destructive digging project. He is identified there as a superintendent's representative.---Yeah.

10

Did you think at that point that perhaps he had had something to do with the project prior to the award?---I hadn't thought about that. I was under the belief that the superintendent's representative, as in Pietro, was the only person that could do nightshift and that's why he was on the, on the job.

If I can take you to volume - - -?---That's what I was told.

- - - 36.3, page 9, it's an email from you to Mr Luu, and it forwards a email from yourself to yourself in relation to a meeting that had occurred on 1
20 October. Was that a meeting with Mr Luu and Mr Cossu?---I'd say so, yes.

So that occurs a week before you were awarded the contract?---Yeah, I assume that's the case.

So the fact that Mr Cossu is presented at a meeting, did that suggest to you that he had a role in assessing the quotations received in relation to the non-destructive digging?---He was involved in it. I didn't understand the arrangement within council, who looks after the award of the contract.

30 Well, did you understand that he had at least the potential to influence the decision-making process?---He has input into the project, yep, definitely.

And you understood that at the time?---Sorry?

You understood that at this time?---He was, he was at the meetings, so, you know, I'm assuming that that was the case at that time.

40 Okay. And here there's a discussion about, is this in relation to additional works that had be done in relation to the non-destructive digging?---Say that again.

Is this email and the meeting, did that refer to additional works that had to be done in relation to the non-destructive digging?---Sorry, does the email refer to additional work?

Sorry, yeah, see that email in the middle where you say, "I just want to confirm the following," and then you set out four points.---Yep.

10 And then see point 3, "The cost of each additional 12 by 3 trench is the same as for trench B," so is that a reference to additional work that was required for the non-destructive digging project?---I'm not sure if it was additional work but I've spent some time going out and looking over the road to make sure that things were happening correct and the pavers and things like that, which potentially when I had done the original pricing I hadn't gone in detail with. But, yeah, I'm not, I can't confirm or deny that.

And if we go down to page 34.---Sorry.

20 And that's an email about the Appian Way acceleration, and you had had some pricing for a sucker truck.---Yeah.

And then you've suggested handling it as a variation.---Yep.

And that's because the project had already been awarded to you.---Yep. And typically that's what you would do.

Why's that?---Well, it's a change to the scope.

30 But it had been discussed at that meeting prior on 1 August?---That it wants to be accelerated?

Yeah.---The pricing I've got for that - - -

We can go back to volume 36.3, page 9, item 4.---Yep.

So that's before you were awarded the contract.---Yeah, that's clarifications that they were asking for.

40 And you say, "I'll confirm once I get the pricing back for the additional gear." Do you know why the contract was awarded before you had that pricing back?---No, I don't know why.

Did Mr Cossu talk to you about that at all?---I don't recall.

What was your understanding in relation to the process required by council to get a variation approved?---That's an internal council thing. I don't know.

Did you think the superintendent's representative had anything to do with it?---Absolutely would. He's the one who would be recommending that.

10 Yep. So he had the ability to question the need for any variation?---Yes, that's his role.

Or negotiate with you what the scope of a variation would be?---Yes, that's his role.

And also communicate the need for a variation with council.---That's his role.

20 And if we go to page 36, this is, I'm just looking at the earlier email from Mr Cossu to you from his council address discussing the three more excavations, "And we accept your values as per BOQ. Please include this extra work in the program." And then refers to V01, V02, V03. Does that sound correct, variation 1, variation 2 and variation 3?---Yes.

Yeah, so he's communicating to you that council's decision is to accept those variations.---Yeah, he's asking me that, isn't he.

30 If we go to page 54, so that's an invoice for the works. And if you go down to the next page, it lists it there as \$212,081.45, and that includes GST, and that's a figure that we saw entering your, the CBA bank account earlier. Is that a yes?---Yes.

Just for transcript purposes, thank you.---I've made an error on that. Should be a V05 looking at that. I haven't done it right.

If we go to volume 36.3, page 73, and this is the spreadsheet. It says, "Appian Way NDD," is that a reference to these works?---20-04, I think it's the same project number in my system, yes.

40 And then it's \$89,154.54.---Yep.

Is that revenue or profit?---I'm not sure. I've made a mistake before on the thing when we looked at it previously so it may be one or other, I don't know. I'll just have to check.

So then if we go to page 75, maybe zoom in a little bit at the top box, so that says, "Total revenue \$212,081.45," and then there's a net result.---Yep.

So it's profit.---So that's the result. So that's the same number.

10 And then when we go down into the spreadsheet on the five columns on the right-hand side, who paid? What's MC a reference to?

THE COMMISSIONER: Sorry, where is this?

MS HUXLEY: I'm sorry. Not that column. Keep going to the left. Yeah. Who pays?

THE COMMISSIONER: Oh yeah. Okay.

20 MS HUXLEY: MC. Is that a reference to, do you understand that reference?---Yeah, I think I do.

What is it?---I think it's McGoo Civil.

Okay. And then J in the next column.---Would be Jeremy.

And then P.---P, Pietro.

And then C.---I'm assuming that's company.

30

And then what's the MC column at the end?---McGoo Civil.

Okay. And so is that recording that the payments have come from McGoo Civil?---I think at the time the reason that those things have gone into my personal bank account, I didn't have the bank account properly opened for GWAC, so McGoo Civil has paid for a lot of the stuff while we were getting the bank account up and running.

Yeah. If you can just - - -?---So that's what the reference is.

40

- - - scroll down. And the bottom two rows, management fees and engineering fees. Was that included in the costs, the total costs for the project that we saw at the top of the document?---I'm not sure. I'd have to look at the formula for that.

Okay. That 28,600 is the same amount that you paid Mr Cossu on 2 November.---Yeah.

10 So is that a reference to, is one of those line items a reference to that?
---Pass, I don't know, I can't recall what I did at that time.

You went on to win some other jobs at council. You went on to win more work from council.---Yeah. Yeah.

If I can take you to volume 30.6, page 158. It's a message from, at the top of the page, a message from Mr Cossu to you on 1 December 2021 and he says, "Don't change your price." You don't know what that's in relation to?---No I don't.

20 You say, "I won't." And then he says, "I'll look into it." Was Mr Cossu giving you advice on what prices to include in your quotes for council?
---Look, I'd have to see what that price was for, that he was meaning and what work was happening at the time. I don't know. 1/12/21. I don't know what job I had then.

If you go up to page 157, there's an image there, I'll just see if I can find that image. That image appears on page 474. Do you recognise that?---No.

30 Do you recall if that's a council job?---Yeah, it's the council BOQ document.

Pardon?---It is a council BOQ document. I just don't know what the heading is, if, can you scroll up so I can see?

Oh, no that's the only, that's the image.---Oh.

Yeah.---So road base SL72 (not transcribable) concrete, survey set out.

40 So if we go back to - - -?---(not transcribable)

Reading it now, does it give you any idea of what council job it related to?

---No, I don't, I still don't know.

If we go back to page 157 then, so Mr Cossu sent that to you on 1 December and then you say "thanks" and then at page 158 he says, "Don't change your price." So was that a reference to a price that you'd put in in relation to that job?---Possibly. I don't know. I don't know what the job is, so I can't really tell you for certain.

10 Okay. At page 165, Mr Cossu sends you a message on 13 December 2021 at 11am, "37,600." Is that him telling you what price to include in a quote to council?---He's telling me a number. I don't know what that means.

Well you say, "In your inbox." Do you know what that's a reference to?
---Sorry?

Your response is, "In your inbox." Do you know what that is a reference to?---Again I don't.

20 Had you sent Mr Cossu a document that set out a quote for that amount?
---Without going through my computer I couldn't tell you.

And then Mr Cossu says, "Send it in PDF to council."---Yeah.

That's at 11.53. Then we go to volume 36.11, page 5. It's an email from you to Mr Cossu at his council address attaching the quote for purlins to undertake the inspection. And if we go down to the next page, page 6.
---Yeah.

30 The price there is 37,500.---Yeah.

So it's 100 out from the instruction given to you by, sorry, the text message sent to you by Mr Cossu.---Okay.

And so looking at that, that text message exchange, do you accept that Mr Cossu was telling you what price to include in a quote?---I can't be certain that's the case.

40 So what's the other explanation for him sending you 37,600 and then you saying "check your inbox" and then him saying "send it to council"?
---Yeah.

Or "Send it in a PDF."---So if I've already sent it to him, I'm, yeah, I don't know.

Well this is sent to his council address - - -?---Before or after?

- - - after, no, at about the same time, 12.06.---Yeah.

10 Can I take you to volume 30.6, page 169. So at the top of that page, you send an image to Mr Cossu. That image is at page 478. Do you know what this document is?---So it looks like it's outstanding invoices that the council hadn't paid me.

And so is that your writing?---Yeah.

So you're sending him a picture showing those outstanding invoices owed to you by council.---Yeah.

20 Why are you doing that?---I'm getting frustrated that I'm not receiving my money.

And you thought he could do something about that?---Yeah.

If I can take you to page 207. You send Mr Cossu a screen, a screenshot, I'll take you through that in a minute and that response doesn't, that message from Mr Cossu doesn't look like it responds to that message. So then if we go to page 491, that's the screenshot. What's this in relation to? ---Terry. So that's the guy I subcontracted to who was working for a guy who was subcontracted to the council.

30 So was this in relation to a council job?---Not direct with me.

So can you explain that for us?---So there was a commissioned artist who was doing a job for the council. This guy, Terry, did the fabrication for the work.

THE COMMISSIONER: Can you keep it up please, Mr Clarke.---Sorry. So Terry did the fabrication of the artwork and he'd asked me to quote for the price of the artwork, installation of the artwork.

40 MS HUXLEY: Okay. So that wasn't a job that you had directly with council?---No.

And so is he saying, "I will deal with Ben", who is that in reference to?---He knows Ben Webb, yeah.

Okay. So that's him just saying to you, I will deal with him so you don't have to.---He's trying to extract extra money out of the council.

Okay. So that doesn't relate into work that GWAC won from council, that text message?---Not at all.

10

Okay.---No, work that I had won through, from Terry.

If we go back to page 207. Mr Cossu sends you a text message saying, "Send me the account number, I will do it now." And that's on 4 February 2022. And then the next page, page 208, you send him an image and he responds, "Worse than mine." And then you say, "Yes." So if I take you to page 492, you might need to zoom out. So that's you sending him your bank details. Why was he transferring money to you?---Because I had a cash flow issue, all those invoices hadn't been paid.

20

So are you saying, so that, if you go back to page 169, 23 December, when you'd sent that image with the outstanding invoices, they hadn't been paid over January?---I can't tell you when they were paid or weren't paid.

If you go to page 210.---Commissioner, is it possible to get this bigger? I can't, I can't see.

THE COMMISSIONER: Yeah, it's very hard to see. Yes, thank you.---It's impossible.

30

MS HUXLEY: So Mr Cossu says, "BCE working account" and then goes "Done." Did you understand that to be a reference to paying into that, paying money into that account?---Again, I, I don't know if it is or not. He's just said that statement, so - - -

So see, sorry, that he's sent you a PDF prior to the message saying "Done." ---No.

Do you see that?---No, I can't see that.

40

So, sorry, see "BCE working account" - - ?---Oh, it's there.

- - - and then it says "attachments" and then there's a PDF underneath that.
---Yeah.

So then if you go to page 493, he's transferred \$25,000 to you.---Yeah.

To help you with cash flow. Is that what you say it was for?---Correct.

Was it the expectation that that would be repaid to him at some point?

10 ---Yes.

Why was he concerned with your cash flow?---He's my friend, so I had a cash flow because I hadn't had the invoicing done so I like need the money to pay my employees.

Well was there anyone else you could have asked for that?---I'd already taken some money out of my mortgage, so there really wasn't anyone else.

20 Do you have any other friends?---No, I generally work.

Is the reason he, you felt comfortable asking and he provided it to you is because you had an arrangement where he would help you get work from council?---No.

And he had an interest in you getting work with council?---He had a discussion with me one day about his tax bill and I had a discussion about my wages.

30 Was that around this time?---I don't know. But he offered to give me some money to tide me over so I could pay my guys which was really nice of him.

Was part of the reason he provided that to you is because he also had an interest in you staying afloat?---I don't believe that would have been his, well maybe that was his motivation. It wasn't mine.

If you go to page 246.

THE COMMISSIONER: What volume is this?

MS HUXLEY: Sorry, volume 30.6. And then just scroll down please. So do you see that there is a message, the bottom left-hand corner, a message on 18 March 2022. It looks like it's a screenshot.---Yeah.

And then if you go to page 500 of that volume, that's the screenshot that he sent you. Do you know why he was sending you this?---No. Asking me if I've seen it.

10 If you can go back to page 246 and go down to page 247 and he says to you, "Call me" and then he says, "Call me, no one around please." Do you know why he asked you to call him on that day?---No, I don't.

Would it have been to discuss the screenshot of that tender that he'd sent you earlier?---I don't know.

Do you understand that him saying "Call me no, around please" indicated he wanted to have a private conversation with you?---Yes.

20 If I can take you to volume 30.14, page 20. Perhaps if I can take you to page 19. This is a text message exchange between you and your wife, and on 18 March she asks you, "What does Pietro say?" And then you respond, "Next week we get 43 K from Downer and 40-ish from the council." Is that a reference to an anticipation that you're going to be paid outstanding invoices?---Yes.

Not just from council, including from other people.---Yes.

30 And then if you go down to page 20 it says, "Pietro is going to put ten in today." Why was he going to put ten in?---My wife was stressed about money, feeding our family.

But so the question was why was Mr Cossu putting ten in?---Because I needed some money.

So you'd asked him if he could lend you some money?---Yes.

Then - - -

40 THE COMMISSIONER: Ten presumably refers to \$10,000.---I'm assuming that's the case, your Honour, yes.

MS HUXLEY: Then your wife says, "It was supposed to be 60-ish from council today," is that a reference again to \$60,000?---Yes.

And then she says, "What if Ben Webb doesn't release it next week?"
---Yep, she's stressed.

Why would she think that Mr Webb wouldn't release it?---Because we've had a history in the last, in that period of time where the council hasn't paid invoices which they were due and they've been due for some period of time,
10 like months.

But did you think Mr Webb had anything to do with that?---The reason that that reference is there is because my wife and I believe that Ben Webb has some approval in the process of approving invoices.

Okay.---Which I believe is true. Is that correct?

For some projects. I'm going to ask you some questions now about the Appian Way culverts. When did you first hear about this part of the
20 project?---You mean as in the tender?

Well, that there was going to be a culvert project.---Okay. I'm an engineer and I did the non-destructive digging for the works. I've worked out there's going to be a very large project going through the middle of Bankstown Council.

Okay.---Okay.

If I can take you to volume 30.6, page 20, the second message down. That's
30 a message from you to Mr Cossu saying, "I need the other culvert drawings." Had you spoken to Mr Cossu about the culvert project around April 2021?---I don't know. Timewise I don't know.

Do you know why you'd need these drawings at that time?---Say that again.

Why would you need these drawings at that time?---Don't know.

If I can take you to page 21, Mr Cossu, there's an attachment there, and if you then go to page 383, that's the attachment. It's four pages. Are they the
40 culvert drawings?---Yep.

Do you know why you'd need to see this at April 2021?---Why do I need to see it? I probably don't need to see it.

Did Mr Cossu say anything to you at that time about it being a project that might come up for tender?---I knew it was going to be a project that came up for tender.

10 And did you speak to Mr Cossu about putting in a tender submission for this project at that time?---Right in the Appian Way time I even talked about it but I knew it was well outside my scope.

What do you mean by well outside your scope?---It's 18 to \$20 million. It would require 100 people to do the job. I'm not that person.

Did you and Mr Cossu talk about potentially getting quotes from precast fabricators to manufacture the culverts?---I talked to him about that.

20 And who did you talk about getting quotes from?---Well, a guy Paul Gallo and myself had done precast work together. Pietro knew him as well. And there was another precast-er in Wollongong, Mark, who also would do the work. So we had had a discussion about, you know, what happens if Paul and I got together and did the work?

Did you also talk about engaging Obnova with Mr Cossu?---Yep.

Had you talked about the practicalities of that given your history with Mr Davidovic?---Yes.

30 And what had you discussed about the practicalities?---It wouldn't be practical.

Was there a solution found in relation to that?---At that time no.

Okay. When did that solution present itself?---When Paul was unavailable to produce the culverts I had no choices.

And what period of time was that?---(not transcribable) I don't know the exact date Paul had issues.

So had you and Mr Cossu discussed in 2021 that you would try to get this project?---I, I had a discussion about the fact that I would like to do the project but it was outside my scope. It was too large.

If it had broken up it obviously would become within your scope.---Well, given what I've done and my experience, then some parts of it would be. I still wouldn't be able to do the whole scope.

10 Do you recall any discussions with Mr Cossu about this job in early 2022, say January?---I can't tell you dates or anything else. I don't know what dates we would have had discussions on it.

So I'll take you to 38.1, page 425. That's an email from a person called Mr Dankaro to a number of people including you, yours is the last email address there. Do you remember receiving this?---Yep.

And if you go to page 426, the initial email from Mr Dankaro is there at 10 to 10 on a Saturday morning, 19 February.---Who did it get sent to, sorry?

20 So it was sent, it doesn't say it was sent to, but given that, if you just go back up to page 425, you're included in that, do you recall if you were included in the earlier email?---Yes.

So do you remember, did you speak to Mr Cossu about the project before this, before you received this?---I cannot tell you that. I don't know.

30 What about after? Did you speak to him about it after receiving this email? ---I definitely would have talked to him afterwards, but how much after, it might be months after or days, I don't know. Can't tell you again, 21 days.

Had you met Mr Dankaro before this?---Sorry?

Had you met Mr Dankaro before this?---Yeah, I think I did the SES building upgrade with Nosa.

Did you know if he had any connection with Mr Cossu?---No.

40 You didn't know that he was engaged at Cossu through Mr Cossu's company?---No.

Do you know what his role was in relation to this project?---No.

Did you understand that given that he had sent the request for quote that he would have some role in the project or in the assessment of the panel?---I assume he would.

The assessment of the project?---No.

Pardon?---I wouldn't. I, I had no knowledge that he would be involved in the assessment of the project.

10

Sorry, in the assessment of the tender submissions or the quotes?---In the tender submissions or quotes, I had no knowledge of that.

Okay. So do you recall, if you just go down to page 426, there's reference there to two documents attached, a bill of quantities and tender drawings. See that?---Yeah, I see that document, yeah.

20

Then if I can take you to volume 38.1, page 250? You've emailed Mr Cossu at his PMLV address a precast BOQ and North Terrace tender issue 03. Do you see that?---Yeah.

And then if you go down to page 251, there's a bill of quantities, and 253 is the culvert upgrade and roadworks?---Yeah. Am I meant to see the drawings now?

If you'd like to, we can take you to - - -?---No, no, no.

- - - is it - - -?---It just, like, scrolled up, but I didn't catch the last page of that other one.

30

Of the bill of quantities?---Yeah. Okay. Got that.

So why did you send Mr Cossu these documents?---To confirm that they were the ones that we'd been talking about and they were the right issue, I guess? I - no, sorry. I don't know.

40

Why did you just give an answer and then say you don't know?---Because I don't know if my answer was truthful or not. I can't be sure of the actual reason why I sent it. I'm not denying I sent it but I just don't know why I've sent it.

This was a significant project?---Sorry?

This was a significant project?---Yes.

And the - - -?---Yes.

- - - prospect of, there was a prospect of making a profit off it?---Well, hopefully, any work you do, you make a profit.

10 So you don't know why you sent these documents to Mr Cossu?---I can't tell you the exact reason, no.

Can you recall any reason that you may have had at that time to send these - - -?---Yeah. A reason I might have sent it to him was to confirm, which is what I was saying before, that that was the same.

Were you hoping, in sending these to him, that he'd help you in preparing your submission?---No.

20 At this point in time, had the alternative supplier for culverts been ruled out?---Yes.

So were you hoping that he would be able to contact Obnova?---Yes.

So you were expecting him to help you with the submission?---No. He would help me with the delivery of the project - - -

Well, you needed the prices - hold on. You needed the prices from Obnova in order to fill out this bill of quantities, didn't you?---Yes, he would - - -
30

And the only person that could get them for you - - -?---I was hoping he would give me that information.

- - - is Mr Cossu?---Yeah. Hoping he would give me that information.

So you hoped that he would help you fill this document out?---Okay. That's true.

40 Did you have an understanding with Mr Cossu that he would then send this to Mr Davidovic?---I left a hundred per cent up to Pietro because I was not dealing with Mr Davidovic.

But you understood that he would need to speak to him or at least communicate with him to get the prices from Obnova for these items?
---Yeah, he doesn't have a magic wand.

So if you go back to volume 38.1, page 425. This was a notification that it was now going to be a formal open tender process. Had you been through one of those processes with council before?---Yes.

10 And that required submissions being put through an online eTendering platform?---Yes.

Do you know why it changed from a request for quote to an open tender process?---No.

Can I take you to volume 38.2, page 13? Sorry. I'll start with volume 38.2, page 1.

20 THE COMMISSIONER: So 38 point?

MS HUXLEY: Sorry. Just give me a second. I'll just try and find the first page, 38.2 page 5. Do you recall seeing this document?---Yes.

This is part of the tender package for that eTendering process that we had seen from that earlier email?---That's the download from the eTendering portal.

30 Yeah. And did you download a document like this or did you just review it online?---No, you have to download it. You can't review it - - -

You have to download it. And then once you downloaded it, did you review it?---Yes.

The document includes conditions of tender?---It includes everything.

And for the tender to be considered, you had to comply with the conditions for tender?---Yeah, complying tender requires that.

40 So if we go to page 13, do you see there, there's a reference to code of conduct and probity?---Yes.

And it says, "All tenderers must comply with the terms of the code and ethics when dealing with council concerning this request for tender and any breach may result in a tender being disregarded." So you understood that at the time?---Yeah.

And then in relation to probity, it says, "Tenderers must not engage in any corrupt practices, such as bribery or offer or give other inducements to council staff or advisers or engage in any conduct whose purpose or effect is to create the appearance of an unfair advantage"?---Do you want some
10 water?

Pardon?---Do you want some water?

No, I've got some, thanks. So you understood that at the time?---Yeah, I've seen that and I've had to read that.

And then the next page. So in providing a submission, at subparagraph 3 there, "The tenderer warrants that it has not had corrupt access to information, information technology or other resources of the council which
20 may have given the tenderer an advantage over its competitors in bidding for the appointment to provide the services to the council." Do you see that?---Yeah.

So you understood that was, in effect, a condition of the tender process, that you had not engaged in that conduct?---Yeah.

And then, "It has fully and accurately disclosed to the council in writing prior to submitting its tender, the existence of any relationship between the tenderer and other council personnel which may cause the council and the
30 tenderer to interact on other than an arms-length basis." Did you think that required you to disclose your relationship with Mr Cossu?---I had a discussion with him about that.

But this places the obligation on you, not on Mr Cossu. So did you understand that you had to disclose that to council?---I, up until this moment, I haven't realised that. I thought we had to have disclosed that information.

THE COMMISSIONER: I beg your pardon?---I thought that Pietro needed
40 to disclose that information, so - - -

MS HUXLEY: And you thought him disclosing that there was a friendship - is that what the document said?---Sorry?

So you referred to a document earlier. What did the document say, that it was a friendship with Mr Cossu - - -?---Which document?

- - - that Mr Cossu - the document that Mr Cossu showed you, that you understood to be his disclosure to council, what did that say?---No, that was a different document.

10

So how did you understand that Mr Cossu had disclosed that in relation to this?---I believe he'd told council specifically that he couldn't be involved in the Appian Way Project culverts because he had, he was helping me.

Do you know when that happened?---I don't know the date that that happened, no.

The material available to the Commission says that happened after the submission went in.---Okay.

20

So do you want to qualify your answer, then?---No. Again, it's the same answer. I thought he had disclosed the interest.

If I can take you to page 51. See that reference to subcontractors there? --- (not transcribable) performing services, yeah.

30

So you understood that you had to disclose which subcontractors to provide the services included in the tender, otherwise you wouldn't be able to use them. At that time at the very least you were going to subcontract the fabrication to Obnova.---So I was going to subcontract all of the procurement.

So what do you mean by procurement?---So all of these items need to be manufactured by someone. No precast concrete company manufactures all of those items.

40

Okay.---So I was going to be getting pipes from Civilcast or a number of their suppliers because not all suppliers have those grades and sizes of pipes. The pits had to be done from Aus Pits, but through Cubis, which I have used before, and they referred me back to their local supplier and then the

culverts themselves were another supplier which was Obnova. So no person could do any of this work themselves.

Okay. But so you had to use a subcontractor.---Everyone has to use a subcontractor.

When, when the tender submissions were being put together was it, had you and Mr Cossu, obviously Obnova, you didn't want Obnova to know that you were the main contractor for the works.---Sorry, say again?

10

So you didn't want Obnova to know that General, GWAC, or you, were the main contractor for the works that they were providing the culverts for.---I didn't want to talk to Obnova at all.

But you didn't want them to know that you were involved in the job?---I didn't want them to know that I was involved.

And so the solution for that was for Mr Cossu to engage them as a subcontractor to PMLV.---Yes.

20

And for PMLV to then subcontract to GWAC.---Yes.

And that was the solution that had been formulated at least during the tender process, prior to the submission.---It had gone through my mind. It wasn't my preferred tender response. It was to have Paul do it. Things weren't going well with him.

At this time, did you have any understanding that there was an evaluation panel process that had to be undertaken?---There's always going to be an evaluation process undertaken for tenders, so yes.

30

Did you understand that that was done by a panel?---Yes.

Made up of a number of people.---Yeah, it wouldn't be one person.

Did you understand at that time that Mr Cossu was nominated as a member of that panel?---No.

If I can take you to volume 30.14, page 4. At the bottom of that page you say, "Well I was too, but I'm feeling successful today and feeling stronger.

40

I had a talk with Pietro and he said the council will help.” Do you know what that was in relation to?---No.

Was that in relation to a conversation you’d had with Mr Cossu when he said that council would help GWAC win the culvert job?---No. I would say that that would actually be to do with non-payment from the Greenacre Splash Park, at which stage they owed me over \$900,000.

10 If I go down to page 6. So at that time you were having money, around 17 March, money problems and you said you were getting to the bottom of it, and then you go to page 7, and then page 8, and you say there, “Pietro giving me some advice.”---Yeah.

And your wife says, “Do tell.” And you say, “Just in what to put in emails et cetera to help our case and make them look” word for bad---What was that last word?.

20 So was that, were you telling your wife there that Mr Cossu was advising you in relation to what to put in the tender?---No, absolutely not.

What was it in relation to then?---Just Greenacre Splash Park, they had not paid me a lot of money when multiple invoices, and I had been waiting for months for those invoices to be paid and between the Greenacre Splash Park and the culvert job, I was financially stretched.

So saying there “make them look bad”, is that “make them” as in council look bad as opposed to make the other tenderers look bad?---Nothing to do with the tendering process.

30 Okay. My wife was not interested in tenders. She’s interested in money in the bank and food.

THE COMMISSIONER: Could we just come back for a moment to something that you were talking about a little bit earlier, Mr Clarke, which was regarding your obligation under the tender document to disclose relationship with council personnel and you said that, at the time, you thought the obligation was on the council personnel, on other words Mr Cossu, is that right?---Yes.

40 And you also said that you believed Mr Cossu had told the council that he couldn’t be involved as he was helping you.---Yes.

Helping you with the tender.---Helping me to get the delivery of the culverts, so yes, the, the tender and the culverts, right.

Both the tender and the delivery.---I couldn't do the tender without culverts.

Right. And so he was helping you to sort out your culvert problem, which came down to your Obnova problem.---Yes. Or it was, I had two suppliers.

10 Yes, I understand - - -?---One of those suppliers was becoming a very big problem very quickly and so the alternative was Obnova.

Sure. And Mr Cossu was helping you in that regard.---Yes.

And that's why he, in your mind, would need to notify the council.---Yes.

And in your mind, he had done so.---Yes.

20 And what caused you to believe that?---Because we'd had a discussion on that front, Pietro and I.

What were the terms of the discussion?---That if he's, if he's to help me then he obviously can't be involved in the tender.

You said that?---We, we both discussed that.

You both discussed that.---Yes.

30 If he was going to help you, he couldn't be involved in - - -?---Yeah, because my solution, I had no other solution.

Yes, all right. And so was it after that that he told you that he had notified the council of his situation or - - -?---Yes. It was after that.

So there were two conversations?---Well yeah, it was an ongoing conversation I guess, if you like.

40 Well certainly, are you saying that at some point you had a discussion and you both sort of agreed that he couldn't be involved from the council end. ---Yes, yes.

You both agreed on that.---Yes.

And then it was an ongoing conversation which involved one or more further conversations where he told you that he had actually sorted the problem out and notified the council.---Yes.

All right. And what did he say he'd done by way of notifying the council?
---The words that I took it as being was that he declared a conflict.

10 He declared a conflict.---Yes.

Did he tell you if he'd done that in writing or verbally?---No.

Did he tell you who he had declared the conflict to, in other words, any particular individual on the council?---No. He just told the council, so it was the council in general. I don't know what the person's name or anything might be. And I don't know who he would have had to do that to, assuming it's his boss, whoever that was, Ben or Anthony Vangi or Michael Stewart or whatever his name is. I don't know who.

20

In any event, Mr Cossu made it clear to you that he appreciated that he did have a conflict?---Yes.

And then he told you he'd done something about it?---Yes. Yes.

And the nature of that conflict was his relationship with you and the fact that he was helping you?---Correct.

Right, okay.---Yes.

30

Yes.---He had to disclose that. There's no way he could have done his job and been involved with the culvert work and been on the culvert panel or anything to do with that culvert procurement process.

Because of the extent to which he was assisting you?---Yes.

40

MS HUXLEY: Now, if I can take you to volume 30.6, page 250. So there you've sent a message to Mr Cossu saying, "I just need the pipe prices and culvert ones." So you needed - he was getting the pipe prices?---No, I was getting the pipe prices.

So why do you say there that “I just need the pipe prices”?---Because I needed to fill that information in. So my suppliers couldn’t give me pricing for pipes. The delivery time was 46 weeks and they couldn’t commit to a price for those pipes. So I was having to estimate prices and that’s what I’m indicating. I need the price for pipes ‘cause I’m still waiting for them to come back and the culvert prices. But - - -

10 So was he getting pipe prices from other people?---No, he had no involvement in pipes.

Okay.---I did the pipes solely. He was doing the culverts.

So I don’t understand why you say to him, “I just need the pipe prices,” as if that’s something he needs to supply to you.---No, it was just a status on where I am with the project, right.

Oh, I see.---That’s what I’m - - -

20 Yeah.---Yeah. That’s how I would operate.

Okay. So then at 38, volume 38.4, page 18, Mr Cossu at an iCloud address has emailed you with a copy of T5522 precast BOQ.---Yep.

And then if we go down to page 19, either he or someone else who has arranged for those prices to be included in that bill of quantities. Do you know where he got those figures from?---So those numbers have come from the prices. Those are the prices of - - -

30 So are they the prices he would have obtained from Obnova?---For sure. Those are the prices I used in the invoicing and everything.

Okay. And at this point the arrangement was that you would engage PMLV as a subcontractor and then so PMLV would engage Obnova?---Yes. As you can see, the pits and the pipes are not populated in that.

Was there any discussion about whether PMLV would have a margin in relation to the Obnova quote?---No.

40 So there was no discussion?---(NO AUDIBLE REPLY)

So there hadn't been any agreement about whether Mr Cossu would be paid in relation to that subcontracting role?---No. And in hindsight, I never asked him to verify what the price of each one of those culverts was. I didn't ask him. I just took it on his word.

So there was no discussion that he would be paid for that work. Did you expect that he would just be doing this to help you out?---That's what I was hoping.

10 If we go back to volume 30.10, page 178. Mr Cossu messages you on 24 March 2022, saying, "No message, please. I am with your friend." Do you know what that's a reference to?---Don't message him.

But who's "your friend"?---Well, obviously my friend would be someone who I'm not friendly with.

Okay. So potentially Mr Davidovic?---Potentially, yes.

20 Then the next message he says, "Call me when you send it," and then "Please, he wants to see it." Do you know what that's a reference to?---No.

Do you know who "he" would be a reference to?---Sorry?

Do you know, see in that last message he goes, "Please, he wants to see it"? ---Yeah, I don't know what it's a reference to.

30 Okay. We go to volume 38.4, page 24. That's another version of the BOQ. And if then you scroll down to page 25, that includes the pits. Is that information you would have put into that document?---Yes.

Based on the price that you'd obtained from your supplier?---Yes.

And then at page 27, on 24 March, again on 24 March there's another updated bill of quantities. And if you go to page 28, this now includes the pipes. Again, is that information that you've put in?---Yes.

So you've sent through these documents. Do you know if Mr Cossu's showed them to anyone?---No.

40 Okay. And if I just go back to 30.6, page 250 to 251.---251.

Do you recall if this was around the time that the submission was submitted? Do you remember?---Sorry?

See when you said, "Call me when you can, please?"---Yep.

Was that a reference to the submission of the tender submission?---No.

Okay.---Pretty certain it wasn't. That would be to do with the invoicing and non-payment of invoices by the council for the splash park work.

10

Okay. Commissioner, that might be a convenient time.

THE COMMISSIONER: Yes. Now, just - - -

MS HUXLEY: I think the plan was to come back on Friday to finish Mr Clarke and Mr Dankaro.

THE COMMISSIONER: Yes. Yes.

20 THE WITNESS: Sorry, I wasn't on the list for Friday.

THE COMMISSIONER: No. There's been some discussion about it. I guess we assumed that your legal representative may have been aware of that but perhaps he wasn't. Yeah, is there some difficulty about Friday? ---I'm working night shift, Commissioner.

On - - -?---All this week.

30 Right. Well - - -?---So I'm working Thursday night and it's on the Smart Motorway here. So I will be absolutely so tired.

All right, well, maybe we can make it - how much longer do you think we might need, Mr - - -

MS HUXLEY: I think the difficulty is Mr Sutton will also need to question him.

THE COMMISSIONER: Yes.

40 MS HUXLEY: And can't do so until Friday.

THE COMMISSIONER: Yes, oh, that's fine. I understand that. But I'm just wondering about timing on Friday.

MS HUXLEY: Yeah, I think I will be perhaps another hour, hour and a half.

THE COMMISSIONER: All right. Well, if we made it not 10 o'clock but some later time on Friday, would that be better?---That would help.

10 Yes. Well, I was going to say 2 o'clock but we might be cutting it a bit fine depending on the questioning from Mr Sutton and anyone else. So, sorry, there's something wrong with the atmosphere in this building.---Yeah. I'm getting, everyone is getting a bit tired and raspy.

All right. Now, what if we were to make it a bit earlier, like, I don't know, 1.00 or 1.30, do you think, or - - -

MS HUXLEY: I'm content with that. I'm not sure - - -

20 MR PARARAJASINGHAM: If it assists the Commissioner, I don't anticipate to have any questions of this witness. I don't know if that helps timing.

THE COMMISSIONER: All right. So what about council?

MS ALDERSON: I anticipate, Commissioner, perhaps some short questions but not very long.

THE COMMISSIONER: Yes. All right.

30

MS ALDERSON: Thank you.

THE COMMISSIONER: And of course we've got no idea how long Mr Sutton might be. So I think we might need to allow two and a half hours, to be on the safe side. So if we were to say, what time should we say then, 1.00 or 1.30, to push it back? You'd like it pushed back as far as - - -?---As much sleep as I can get. That's obviously a requirement but - - -

MS HUXLEY: I think 1pm I think if that's possible.---1pm.

40

THE COMMISSIONER: All right. If we could make it 1 o'clock for you.
---Okay.

Good. Okay.

MS HUXLEY: And, Commissioner, and then we'll have Mr Dankaro in the morning.

10 THE COMMISSIONER: Yes. Yes, we will. How long do we anticipate would be required for Mr Dankaro? It may not be terribly long. We don't know at this stage.

MR PARARAJASINGHAM: No, I'm still waiting on that transcript from yesterday afternoon, Commissioner.

THE COMMISSIONER: Yes. Yes.

20 MR PARARAJASINGHAM: But subject to that, again, I don't think I would have much of anything.

THE COMMISSIONER: Probably can allow an hour or so absolute outside, do you think, Ms Huxley?

MS HUXLEY: I think so.

THE COMMISSIONER: All right. Well, so if we're going to make it, what did we say, 1 o'clock for this witness, then what if we, what time did you want to make Mr Dankaro?

30 MS HUXLEY: Well, I mean, if we wanted to move it so it was close we could take the luncheon adjournment from 12.00 to 1.00 and do him from 11.00 to 12.00.

THE COMMISSIONER: 11.00, all right. I think it's better rather than have people waiting around for a long period in between times.

MS HUXLEY: Yes.

40 THE COMMISSIONER: It doesn't make any difference to me 'cause I'm here anyway, but if you wanted we could make it 11.30 if you wanted on the basis that Mr Dankaro might only be half an hour and if he was an hour we

will just take a shorter lunch break, but it's up to you we're only talking half an hour.

MS HUXLEY: I think maybe just in case - - -

THE COMMISSIONER: 11.00, all right.

MS HUXLEY: I think 11.00 might be, just I'm not sure how much questioning.

10

THE COMMISSIONER: All right. Well, we'll then adjourn to Friday to reconvene at 11 o'clock for Mr Dankaro and at 1 o'clock for Mr Clarke. Is there anything else before we break? No? All right. Would you please not discuss your evidence with anyone else, Mr Clarke, that would be good. Very well. I'll adjourn.

THE WITNESS STOOD DOWN

[4.03pm]

20

AT 4.03PM THE MATTER WAS ADJOURNED ACCORDINGLY

[4.03pm]