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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 FRIDAY 14 JUNE, 2024

AT 1.00PM

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

THE COMMISSIONER: Right I think we're proceeding with Mr Clarke. Mr Clarke I can see. So Mr Clarke, we're ready to proceed with Mr Clarke, Ms Huxley?

MS HUXLEY: Yes, Commissioner.

THE COMMISSIONER: Could you come forward please, Mr Clarke? Now because it's a couple of days since you gave evidence, I will have the oath or affirmation readministered. Did you take an oath or an affirmation?

10

MR CLARKE: Affirmation. And your Honour, one of my ears is blocked up today and I am partially deaf in this ear, so can we get it quite loud? I can't hear very well.

THE COMMISSIONER: Yes. We probably have a hearing, do we have one of those hearing - - -

MS HUXLEY: Hearing loops?

20 THE COMMISSIONER: That's what I was trying to think of, Ms Huxley. Do we have one of those, do you know? Would you like one of those? I'm not quite sure how they work.

MR CLARKE: I don't know how they work either, but I'm, if it makes it easier for me to hear then Ms Huxley won't have to repeat stuff.

THE COMMISSIONER: I don't, we'll see if somebody knows more about it than me.

30 MR CLARKE: Sorry about that.

THE COMMISSIONER: No, no. Yeah, okay. We're looking into it.

MR CLARKE: Yeah, appreciate that.

THE COMMISSIONER: But while we do that, we may as well have the oath or affirmation administered.

MR CLARKE: Yeah, affirmation, yeah, yes.

40

THE COMMISSIONER: If you'd like to stand up, thanks.

MR CLARKE: No worries.

THE COMMISSIONER: Yes, thank you.

<JEREMY CLARKE, affirmed

[1.11pm]

MS HUXLEY: Perhaps I can start and just try and keep my voice up, and if you're having trouble just ask me to repeat the question.

MR McAULEY: Sorry Commissioner, can I just confirm that the direction made on Wednesday, the blanket objection direction continues?

10 THE COMMISSIONER: Yes it does.

MR McAULEY: Okay, perfect.

THE WITNESS: Thank you.

THE COMMISSIONER: Good.

MS HUXLEY: Mr Clarke, in the civil construction industry, what are the kind of profit margins that contractors in that industry generally have?
20 ---They would range about, depending on the job and depending how good you are at doing your job. Yeah, thank you.

THE COMMISSIONER: Right, now sorry, perhaps, now I'm not sure how this works. Would you like to just assist the witness please? Sorry.

MS HUXLEY: Is that a little bit better? Sorry.

THE COMMISSIONER: Too much, is it?---I just might turn it down a little bit.

30

MS HUXLEY: There might be a volume - - -

THE COMMISSIONER: There must be a volume control.

MS HUXLEY: You don't want me shouting at you.

THE COMMISSIONER: All right, let's try now.

MS HUXLEY: How is that?---Yeah, that's better.

40

THE COMMISSIONER: Great.

MS HUXLEY: So can you give us an idea of the kind of range that we're, that applies in that industry?---For a specialist type task you could potentially get up to 50%. For a common task, like a footpath, it could be down to 10%.

Okay. I think on Wednesday we got up to just prior to the documents being submitted. Do you remember filling out the, filling out any forms when you submitted the tender documents?---There's, yeah, there's lots of forms to fill out when you do the tenders, so - - -

10

Was that, did you fill out an online form that had prompts and questions for you?---Yeah, that's the online at - - -

Aspect?---It's a portal that you have to fill information into.

So you log in and fill out information and then you upload certain documents?---Yeah and it gives you the option of copying some previous - - -

20

Submissions.---Previous submissions and whatever else, okay.

Okay. So I'll take you to volume 31.10, page 13. So this is a response, see the top there, T5522.---Yeah.

That's the Appian Way culvert job.---Yeah.

And then it has "respondent" and that's the name GWAC there.---Yeah.

30

Do you recall filling out, and I appreciate it might not have looked like this, but do you recall these are the kinds of questions that you filled out when you submitted the tender?---Yeah.

I'll just take you page 16, and see section 11 there, "has details of staff nominated to perform the services of subcontractors."---Yeah.

40

And then it says, "Nominated staff, tenderers must provide details of the present availability of staff resources." And then at paragraph 2 it says, "Subcontractors, tenderers must provide details of any proposed subcontractors that will be utilised in the performance of this contract."---Where is paragraph 2? Oh, the second bullet point down there, yeah, yeah got you.

So that was asking you to provide details of subcontractors to be used in the performance of the contract?---Yeah.

And then the response text there is your name.---Yeah.

With your title.---Yeah.

And qualifications.---Yeah.

10

And experience.---Yeah.

There's nothing there about using a subcontractor.---No.

Why not?---I don't recall why I haven't, maybe I've missed it, but also at the time I had two potential suppliers, so - - -

I thought at the time you had one and that was Obnova?---No, no, I told you earlier that I had two and that one of them was - - -

20

But by the time you were submitting the document, because you'd already obtained prices from Obnova.---Yeah.

So Mr Cossu had already obtained prices from Obnova at the time you're filling this out.---Yeah, but Paul had also given me prices as well.

Had given you specifically prices?---Yes.

30 And so when was the decision made to use Mr Cossu and Obnova?---When Paul started not communicating with me.

When was that?---I don't know exact dates, I'm sorry to say. And he started going through some other issues. I'd worked with him on another job in Newcastle and yeah, the relationship started going sour. He wasn't paying, he hadn't paid me, yeah. It started getting messy.

You agreed on Wednesday that you read the tender documents that were uploaded to the eTendering website in order to prepare the submission.
---Yeah.

40

And that required you to identify the subcontractors.---Yeah.

And you were only able to use the subcontractors identified in the submission.---Yeah. Well - - -

So why didn't you include those names there?---Sorry, Ms Huxley, I haven't identified any of the subcontractors.

Yeah, and I am asking why not?---For, for, for the pipe supply there is about ten people who could supply me pipes and - - -

10

But Mr Clarke, when you're submitting this, when you've made this submission, you had prices that had been obtained from your suppliers, hadn't you?---Yeah, from various suppliers. Not one of them was clear - - -

So which prices did you include in the bill of quantities?---I included the best, most accurate prices I could work out from all the prices. So for the pipe supply at 40-week delivery, I was hoping that I could find a supplier who would be faster than 40 weeks. For pits I needed to find a supplier who I could make sure would supply me the pits in the time frame that I needed.

20

But at the time you submitted this submission, you, at the very least, had identified at least one subcontractor that could supply the pipes.---I identified a number of contractors.

Okay. A number of subcontractors who could supply the pipes.---Yeah.

And so on your evidence today too, that could supply the culverts.---Yeah.

30 And none of them are referred to in that.---And I didn't list Cubis for the pits either or Aus Pits so I haven't responded with any of those.

THE COMMISSIONER: Was that because you hadn't decided which one to use?---Correct. And when it came, if I win the contract then I would go back to those suppliers and try and get the best possible outcome for the business based on their delivery time and on their price.

40 Well just coming back to what Ms Huxley was asking you, when you put in your sort of, your quote in that tender, whose prices did you use?---I use, the pipes I estimated the price because I couldn't get a clear price out of one individual company, so I had different prices for different companies with supply and lead times that were all different, so I - - -

So that was the pipes, and what about the other two?---The other two I, for the pits I had two suppliers. One of them hadn't come back to me with their final numbers - - -

Which was?---Aus Pits, so I had been referred through to Aus Pits from Cubis who are their pit maker, but that - - -

10 So what prices did you put in there for the pits?---I put the best guess prices from previous jobs I've done and also from indicated prices they've given me on an estimate earlier, so it wasn't a, proper quote. I, I didn't have hard, fast numbers.

MS HUXLEY: So does this mean at the time that you submitted this you weren't actually in a position to carry out the obligations of the contract if you hadn't obtained those prices and identified those suppliers?---I don't understand your question.

20 So you put this tender submission in and by doing so you were saying you could commit to doing the work?---Yep.

But at the time you hadn't identified which particular subcontractor you were going to use?---Correct.

And you didn't have exact pricing?---Correct.

30 And so if the pricing turned out to be well below what had been included in this submission, what would you have done about that?---If the price was lower?

Yeah.---I would have kept the money. That's what - - -

And if the price was higher would you have applied for a variation?---No. I would have kept it.

40 You would have absorbed the cost, would you?---Yeah. Obviously it depends how much. If it was going to sink me, then no, that would be a problem but I made sure that the estimates were higher than the market rates.

How much higher?---I think I doubled some of the pipes because of the cost of, and the difficulty in obtaining them.

So you doubled some of the prices that you obtained for the pipes from your suppliers?---Yep. Yeah.

If I can take you to page 34. This is another document that was provided as part of the submission and this is identifying the pipe.---Yep.

10 Pipe supply, the supply is interstate.---Yep.

You didn't identify there that there was a subcontractor involved.---I had assumed that everyone knew that the pipes come from three major suppliers in Australia. A little precast concrete business like me and like most do not do - - -

Well then why didn't you include that name in the submission?

20 MR SUTTON: Excuse me, Commissioner.

THE COMMISSIONER: Yeah.

MR SUTTON: I'm sorry, I know from reading the transcript that Mr Clarke's got a soft voice but I'm struggling back here to hear him. I'm wondering if he can move closer to the microphones.

THE WITNESS: I'll, I'll bend it down a bit more.

30 THE COMMISSIONER: Yes.

THE WITNESS: Is that better?

THE COMMISSIONER: Yeah. I think it's largely you, Mr Clarke. You do have a tendency to let your voice drop.---Yep.

All right.---No, I am quietly spoken, sorry.

Yeah.---Sorry. Can you restate the question, please, Ms Huxley?

40 MS HUXLEY: I've forgotten my question. I think my question was why didn't you identify then in that passage that I just showed you?---The reason

I haven't identified is I didn't have a clear view on who the actual supplier was going to be. If I had had identified it would have locked me in, I would have thought.

So this was submitted around 24 March. Were you aware around this time that Mr Cossu made a declaration to a colleague at work that he felt like he could not be on the Evaluation Panel?---I wasn't aware that he had talked to other people about it, no.

10 Did he tell you that he had been replaced on the Evaluation Panel?---No, but he told me he had declared an interest in it. I wasn't aware he was on the Evaluation Panel to start with, so - - -

So at what point - was it around the time that you made this submission that he told you that he declared an interest in it?---Yes.

And did he tell you anything else in that conversation?---I don't recall. Sorry.

20 What did he say to you when he said to you that he declared the interest? What were his precise words?---Oh, I can't tell you the precise words. I don't know.

Well, can you tell me, did you think he declared that he had a friendship? ---Again, I don't know what he said to other people but - - -

What did he tell you that he said?---I don't know what he told me but the general - the way that I felt when he told me was that he had informed the council that he wasn't available to participate in the tender.

30

Did he mention anything about a person called Mr Dankaro taking his place in relation to the evaluation of this tender?---No.

Had you had any dealings with Mr Dankaro before this time?---Yes. I'd done a job at the Canterbury SES, just doing some landscaping works and filling in a very large hole that a previous contractor had left behind in an unsafe condition.

40 If I can take you to volume 30.14, page 25. So this is a series of messages from Mr Dankaro to you. If you can just focus on the middle one, that's dated 25 March 2022 and it says, "Hi Jeremy. Please give me a call when

you're free, thanks." So do you remember speaking to Mr Dankaro just after you submitted this submission?---I, no, I don't specifically recall that, no.

I'll take you to 38.5, page 1. So that's an email from Mr Dankaro to you, sending you a Dropbox link. Do you remember that?---I don't specifically remember it. No, no.

10 Did you speak to Mr Cossu about Mr Dankaro sending you this link?---Pass. I don't - sorry. I shouldn't say "pass." I don't know. I can't recall.

Did Mr Cossu ever tell you that Mr Dankaro was going to help in preparing documentation to help you win submissions at council? Sorry, contracts at council.---He did tell me that Nosa could be a resource. I don't know what that time was, whether it was before or after this sort of timeframe. But he said he's very clever.

20 If we can just go down to page 16 of that volume. So this is an email from you to Mr Cossu with a number of attachments. Why did you send this to Mr Cossu at his PMLV address?---Can you scroll down so I can see what's in it, please?

Sure.

MR SUTTON: Sorry, I just can't hear, Commissioner.

THE COMMISSIONER: Sorry, did you say you can't hear, Mr - - -

30 MR SUTTON: I just couldn't hear that last - - -?---Sorry.

I could hear that there were words but I couldn't hear what they were.---I just wanted it scrolled down so I could see the detail.

Oh, thank you.---Okay, sorry about that, Mr Sutton.

40 MS HUXLEY: Can you just scroll down? Sorry, can you just scroll down so Mr Clarke can refresh his memory. And keep going. Do you know why you would have been sending any of these to Mr Cossu?---if you scroll down a bit more, sorry. I'll answer in a second. There should be more pages than that. Is there another document? I think there was like ten of them listed.

THE COMMISSIONER: I think the witness would like the scrolling to continue, is that right?---Yes please, yes, thank you, your Honour. Thank you.

So sorry, I think we went past the end of the document.---No, that's okay. Some of those were the - - -

10 We're into a different document now.---No, no, that's, that is part of that document.

Oh, is it?---Yeah, yeah. So that's experience that I've had and, okay.

MS HUXLEY: Okay. But so why were you sending these documents to Mr Cossu?---Previously I'd had indications from various people in the team that some of my submissions were a bit shoddy, so I wanted to make sure that I had a good impression and so I've sent that to Pietro for a review.

20 If I can take you to page 80 of that volume. So this is an email from the tender box to you on 31 March re clarification 1. Do you remember that? If you go down to page 81 you can see the content of it.---Can you scroll up again, thank you.

If we can just go back to page 81.---Yeah.

See the question 5, "Please provide a detailed list regarding available plant and equipment. Please also clarify location and capacity of manufacturing facility." Do you see that?---Yeah.

30 And I'll take you to page 83. So then this is you providing Mr Cossu, at his PMLV address, the culvert delivery price. If you go down to page 84 so Mr Clarke can see. So was that for inclusion in the response?---Sure. I think they asked for that.

If I can take you to page 87. The bottom email there is that earlier email from tender box to you with the clarification.---Yeah.

And then you'd sent it on to Mr Cossu.---Yeah.

40 And then he had forwarded it on to Mr Dankaro.---Okay.

Did you know he was going to forward it on to Mr Dankaro?---I don't believe so.

If I could take you to page 104. This is an email from Mr Cossu to you saying, "Submit ASAP." If we go down to page 105, this is a populated response to the clarifications. Is that right?---Yeah, in red, yeah.

10 And then page 106. See in the response to paragraph 5, question 5, there's an attachment. Who prepared that attachment?---I can't see the attachment, sorry.

I'll take you down to it.---Thank you.

Page 109, that one responding to item 5 there.---That's the one, 109.

Who produced that document?---I have produced that document.

You produced that document.---Yeah.

20 You filled, you wrote the words on that page.---Yeah.

Mr Clarke, that's not a truthful answer is it?---I think it is. It's my letterhead.

I'll take you back up to page 90, page 90. That's an email from Mr Dankaro to Mr Cossu attaching the response for his review and issue. See how it says there, T255-22 GWAC clarification 1 response, then there's a reference to a project delivery plan and then there's the GWAC profile, capabilities and experience. Do you see that?---Yeah.
30

Go down to page 92. That's the first page of that response, is it?---Yeah, you showed that before.

Page 93. Do you see that there?---Yeah.

And I will take you to the document that was attached there at page 97 for item 5. It's the same as the document that we just saw that was attached to your email, sorry, that was attached to Cossu's email back to you.---So is the metadata available so you can actually see the filename and who created
40 it and stuff like that for me?

I can take you down to page 102 and 103. Page 103, GWAC profile, capabilities and experience, author Geraldine Dankaro.---Yeah. That's from my document or from the email?

That's from the document that Mr Dankaro sent Mr Cossu.---Okay.

And then Mr Cossu sent it to you.---Yeah.

10 At page 104 and I'll take you back down to page 109, which is the document attached to that email and I will ask you again, who prepared that document?---Given the letterhead and stuff I thought it was me.

Had you and Mr Cossu discussed what would be included in the response to the clarification 1?---No.

You hadn't talked at all about what should be included in your response?
---No. I - - -

20 So did he just do all of this without any direction or instruction from you?
---Look, I couldn't recall that. I thought that I'd done this question and sent it back myself.

So when there's a reference there to the GWAC production facility located in Wollongong, that wasn't quite right either, was it?---Well it's not GWAC's owned production facility.

30 Yeah. Well whose is it?---Well I don't actually know because previously I was purchasing that building and running the company Obnova that was in that building, so I don't know who actually owns it now or anything else. I know the - - -

Who operates that production facility in Wollongong?---Well I think it's Obnova Concrete Constructions.

Okay. See there it says "our production capacity".---Yeah.

So is "our production capacity" actually a reference to Obnova's production capacity?---Yes, it would be.

40 So that's misleading.---Potentially, yes.

Potentially.---Well - - -

How else could you read this document?---I know what their production facility was capable of. I owned it for a period of time.

You did not own it at the time that it made this submission or sent this clarification in, did you?---No.

10 If I can take you to volume 38.5, page 138. So this is an email from you to the tender box submitting those documents and page 140 is that actual document that we were looking at. I'll take you to volume 30.6, page 254. At the top there is a message from you to Mr Cossu saying, "Submitted. I had to print then to PDF to take away the reference to Nosakhare partner." That's on 3 April 2022. That's the same day that you submitted it to council.---Yep.

20 So you did that deliberately to conceal who drafted that document?---It was more of a question about where it had come from because most of the content in there is definitely mine.

Well, so who had you communicated that content to, Mr Dankaro or Mr Cossu?---I would have talked to Mr Cossu.

And so sitting here giving evidence today you don't remember doing that with those documents before submitting them?---Sorry, say that again? I don't remember what?

30 So sitting here today you don't remember doing that to those documents before submitting them?---As I said previously to the Commissioner I always PDF my files before I sent them in because you can't tamper with documents. So when I was there on a private meeting I said the same thing at that time, and that's what I do.

Well, I mean, if that was your practice, why are you specifically telling Mr Cossu that the reason you had to print to PDF was to take away the reference to Nosakhare partner?---Yeah, because I was surprised by that.

40 But what you're conveying there is in order to remove that reference you had to print it to PDF.---And - yeah, yeah - - -

You're not saying, that's not a message saying, "My regular practice is to print it to PDF and luckily I did so because it removed the reference to Mr Dankaro's partner".---Does it say that there?

No, it doesn't. That's what I'm saying to you.---Yeah. Well, it doesn't, I didn't say that.

I'll take you to volume 38.5, page 171. So that's council emailing a second clarification to you.---Yep.

10

On 7 April at 4.30 in the afternoon.---Yep.

If I can take you to volume 39.10. The second entry there for 7 April at 20 to 6pm, a phone call from Mr Cossu to you for two minutes and 14 seconds.---Yep.

Did you speak about the response to this clarification?---I couldn't tell you that, I don't know.

20 Is it possible?---It is possible.

Possible, sorry?---Yes. Sorry, I said it was possible, yes.

Yeah, sorry. Then if you go to page 173, you sent this onto Mr Cossu. Was that so he could help you formulate your response?---Sorry, I, I didn't send table 6.

30 Oh, sorry. Volume 38.5 page 173. And then just scroll down so Mr Clarke can see what was attached. So you sent that document to Mr Cossu at PMLV.---Yep.

And if we can go down to page 275, you attached "Clarification to response for his review." Why did you ask him to review it?---Well, he was organising the precast concrete stuff, so - - -

THE COMMISSIONER: Keep your voice up so everyone can everyone can hear, please.---Sorry. Sorry, Commissioner. He, he was organising the precast concrete works.

40 MS HUXLEY: And do you recall if he reviewed that and communicated anything to you about that?---I had organised pricing with trucks and stuff,

so I needed to know how many culverts I could put on a truck and how many truckloads it would take to deliver them all and the timeframe for producing, to deliver them.

And so he provided that information to you and then you submitted it to council?---No, actually the other way around. I gave him some, the information on that because I had done the pricing for transporting of trucks.

10 So you're saying he prepared the document?---No, I prepared the document as well, the final response but I sent it to him for review because he may have known some trucking company or something that might be able to do that work as well.

And then at page 278, you submit that later on that day. Do you recall if there were any changes made to the document?---Can you scroll up so I can see what I submitted?

20 So that's where it's submitted and then if you scroll down that's the response.---That's, that's not the response there. That's the submitted - - -

Sorry, next page, 279. If you go down to 279, thanks. And then 280.
---Yep.

Did Mr Cossu ever communicate - around early-April to mid-April, did Mr Cossu ever communicate to you any information about other tenders that had been received by council in relation to this project?---No.

30 Did he tell you where GWAC was sitting in the evaluation process at that time?---No.

Did you ask him?---No.

I'll take you to 38.6, page 38. So this is another clarification sent to you in the middle of the page, that 19 April email. Do you see that?---Yep.

And then you send that onto Mr Dankaro.---Yep.

Why?---Can you show me what the information is, please?

40 Sure. Go down to page 39, and page 40, and then page 41.---Okay. Is there another - - -

Did you want Mr Dankaro to draft there response for this?---Is there another page to it?

That was the email that you sent onto Mr Dankaro.---Okay, thank you. So I don't know whether I asked him to assist me on that or not.

If I can go down to page 42.---I sent it.

10 Mr Dankaro emails you and Mr Cossu with two clarifications, two documents, sorry. And I can take you down to page 43.---Please.

44.---Can you scroll up again please.

So did Mr Dankaro draft this document for you?---It wasn't me who drafted that document.

Okay. Did you ever offer any benefit to Mr Dankaro for his involvement in preparing these clarifications for you?---No.

20

But you understood at the time that he was doing this that he was engaged by council?---Yes, but he's a subcontractor.

Subcontractor to who?---Well, I believe he was a subcontractor and he did other work.

But his primary employment was at council as a project officer.---Mm.

30 So did you understand that he was involved in evaluating various projects at council?---He worked at council. I know that.

Okay.

THE COMMISSIONER: When you say you understood he was a subcontractor, did you realise that he wasn't a full-time permanent employee at council?---I think I did.

What makes you think that?---Because he wasn't always at work.

Right. How do you know that?---‘Cause I, I’d see him around. Like these, like, I had worked with him on the SES Project and he had also been going and doing other projects as well while I was on that job.

Right. Other council projects?---I don’t know. He didn’t tell me, but he wasn’t available some of the time when I was at the SES job.

Well, he could have been out and doing other council work for all you knew.---He potentially could have been, yeah, you’re right.

10

Yeah. I’m just wondering on what basis you concluded that he wasn’t a full-time employee at council.---Because the full-timers, Richard Auld and those sort, they’re a significant different type of employees.

All right. I’m not sure what that means.

MR SUTTON: Can he keep his voice up, please, Commissioner.

20 THE COMMISSIONER: Yes, please keep your voice up.---Sorry, I moved away from the microphone my mistake. The, the employees who were old project managers at the council tended to be older people with a lot more experience in doing the work. They handled themselves differently. There was a significant number of young people within the council who did projects, significant number, and I had been told that there was a significant number of people who were on contract because the council were changing things.

30 Who told you that?---It was common knowledge. All the project managers that I had dealt with would say that. There’s, oh, I would have dealt with 12 or 15 different project managers in the time that I was there.

Yes, Ms Huxley.

MS HUXLEY: I’ll take you to volume 30.6, page 274. Mr Cossu messages you, “Any news regarded the precast?” And then you say, “No, I’ll try again.” And then on page 275 he says, “Softly.” Was that a reference to you contacting council to see what’s happening with the award of the project?---I couldn’t tell you exactly what it was about.

40 Okay. If you go down to page 280. At the top of the page on 6 May you say, “Have done that. I also had a call from Procurement to discuss the

precast and they were working as hard as possible to ensure that the precast work is done as fast as possible.” What’s that a reference to?---That would be a reference to the tender T5522.

So was there some time urgency to the project?---From me or from them?

No, from council.---They kept asking me to give those responses back for the clarifications within 24 hours.

10 Okay.---So I’m assuming there was.

When did you first become aware that GWAC had failed the financial assessment?---When I got a phone call or something, I think, from Alan Parker.

THE COMMISSIONER: Keep your voice up, please.---Sorry. When, I think I got a phone call from Alan Parker at Procurement, or an email. I can’t remember. It was one of the two.

20 MS HUXLEY: And what did you do when you first found out?---I tried contacting my accountant.

To seek information from him?---Yep, to help me.

If I can take you to volume 30.10, page 207. So Mr Cossu messages you saying, “Any news on their financials?” and then you say, “Checked ten times. Still nothing.” And then he says, “Your financials.” So he was checking in on whether there was news on your financials, so asking whether the accountant had responded to you. Do you know why he was
30 concerned about getting a response from your accountant?---My accountant was away on a holiday at the time and I couldn’t get him. And I told Pietro that.

If I can take you to volume 38.7, page 29. So that’s an email from you to Mr Cossu. Does that set out a proposed response to Mr Parker?---I don't know whether it’s a proposed one or whether that’s what I sent.

So this email is sent on 13 May 2022 at 1.17 in the morning. I'll take you to the document that you ultimately sent, and it’s at page 41.---Thank you.
40

I'll take you down to page 42. 13 May, 10.24am. So did you speak to Mr Cossu about the proposed response before sending it to Mr Parker?---No.

You didn't?---No.

10 So you didn't send the proposed response to Mr Cossu for his review?---His evaluation? I might have sent it to him so he knew what was happening but this was definitely between me and my accountant in trying to get a, a response back that would be acceptable for Alan so that he could consider us as being able to do the job.

So Mr Cossu had no involvement in that, in reviewing that response?
---That was, that's right.

THE COMMISSIONER: Sorry.---Sorry.

20 You said that you may have sent the proposed response to Mr Cossu.---I was keeping him up to date, so I would have sent him the responses of all the stuff I was doing.

Just to keep him up to date in this case.---Yes, because he needs to know, you know, with the procurement of culverts.

MS HUXLEY: If I can take you to volume 30.10, page 209. So Mr Cossu messages you on 13 May at 7.15 in the morning, "Any news in regards of the financials?" And then you respond, "No, I sent you a model." at 7.16am. That's a reference to that earlier email - - -?---No.

30 - - - of your proposed response to Mr Parker.---No. There was a financial model that I created.

So when he says "please send it", that's not an instruction for you to send that document to Mr Parker? Sorry, that response to Mr Parker?---No. I'm talking about a financial model that I did to show - - -

40 In relation to what?---The precast culvert supply, because one of the issues that I believe I was having was a cash flow issue that was perceived by council and I then spent time and created a cashflow model for the business to make sure that I could fund the production costs and the delivery and also receive the money back from the council in the right time frame so that I wasn't cash poor and unable to produce.

So volume 38.7, page 30, if I can take you to that volume. Is that the model that you prepared?---Yes.

And then if I take you to page 33 to 34, if you can just read that email that you've, the proposed response to Mr Parker.---Sorry, was there a question there?

And then can you take him to page 34, please.---Sorry.

10

And then go down to page 35, this is again the model. Was that information in the draft response to Mr Parker information obtained from this model that you did?---Yeah.

Okay. So then if we go back to 30, sorry, I will just take you to 38.7, page 41, 42 sorry. And so there is that, communicating that information to Mr Parker. Is that right? That's you communicating the same information that was in that model to Mr Parker.---Yeah, I believe so, yes.

20

Okay. So I'll take you back to volume 30.10, page 209. So again you say, "No, I sent you a model." And then Mr Cossu says, "Please send it." That's at 9.33 and the response to Mr Parker was sent at 10.24am that day. So did Mr, by him saying "please send it", Mr Cossu is telling you to send that response to Mr Parker. Is that right?---I couldn't be sure. I don't know.

Okay.---I sent him that spreadsheet with the financial model on it.

And you also sent him a draft response to Mr Parker.---Yeah, what I was going to send, yeah.

30

And then he sends you a message saying, "Please send it."---Yeah.

And then after that, you've sent the response to Mr Parker.---Yes, so I don't know - - -

So he's telling you to send the response to Mr Parker there, isn't he?---Is he?

40 I'll take you back to your initial email if you'd like.---I, I don't know if he is. That's what I'm trying to tell you. I don't know if he told me he'd do that.

So, okay.---It was unlikely that he would tell me to do that because it was my responsibility to do that.

Well why are you sending him the model and a proposed response to Mr Parker in the first place if that's the case?---Because as I've already, as I've already said to the Commissioner directly, I was keeping him informed of all the things that were happening.

10 That answer is inconsistent with that text message exchange.---I don't know what, no, I don't agree with you.

Okay. If I can take you to volume 30.14, page 43. Mr Cossu has sent you a message with a picture, if you go to page 44 that's the picture. Do you recognise that document?---Not specifically, no.

Do you know why he sent this to you?---No.

20 I'll take you to 30.6, page 315. Sorry, 316. And there is a message from Mr Cossu to you, "Can't the accountant come back to you? And help in this mess." And that was sent a minute after that picture was sent to you. And then if I take you to 38.7, page 137.

Sorry, is that volume 38.7, page 137? 38,7, sorry. So about an hour after receiving that message you then send this to your accountant. And if I go down to the next page, page 138, that's the screenshot that Mr Cossu sent you.---Okay.

30 So you were using information obtained from Mr Cossu to try and get information from your accountant to respond to this failed financial assessment, is that the case?---Yeah. I would want Frank to look at it.

Pardon?---I would want my accountant to look at it.

40 And then page 262 of volume 38.7, you write to him saying, "FYI this is what I will send to Alan in the morning once you have had a chance to review it." So Mr Cossu's role in this was not just - you weren't just keeping him up-to-date with the course of your dealings about this financial assessment, you were asking him to review the information that you were going to provide in response to this.---As I said before, I had been providing all the information on the business and what we're doing on the tender so he

was up to speed with it. If he responded back, like he has, with an update for him to review it, I would accept it.

But all I want to know is, you were asking him to review it.---Not specifically because - - -

Well, why did you say that to him?---Frank, Frank - - -

10 Why did you say, “I will send this to Alan in the morning once you have had a chance to review it” if you didn’t actually want him to review it?---I think I have said that on most things that I send to people, to give them an opportunity to say something.

Well, you’re communicating to Mr Cossu there that you won't send this until he has had a chance to review it.---Well, I didn’t need to send it until the next day. Again, it’s information from my accountant and my accountant is the person I trust on the financials of my companies. Not Mr Cossu, not anybody else.

20 Did you know that Mr Cossu was going to forward this information to Mr Webb?---No.

Do you know why he did that?---No.

Did Mr Webb have any involvement in the GWAC side of this project?
---Absolutely not. As I said previously with Mr Webb, he is a person who is - and can be - quite prickly at times and he is a person that I stayed away from. I have no point in dealing with a man who is in the council in that role. I dealt with project officers and doing work and while I respect Mr
30 Webb from previous dealings with him, he’s not a man that I am in business with or would even want to be in business with in that respect.

If I can take you to - - -?---He scares me.

- - - volume 33.9, page 1. This is a summary of what is described as loan payments between PMLV and you and as I understand the debit columns are the loans Mr Cossu is providing you and then on the credit side is you paying back those loans. Do you see that?---Yep.

40 Why was he loaning you money between February 2022 and March 2023?
---On Wednesday I gave the answer for that question.

Well, can you please repeat it for me?---Okay. I was doing two jobs at the council and he - the Greenacre Splash Park job that council had failed to pay me a significant amount of money and were taking their time to pay many, many things and cash flow wise I was very poor.

Did Mr Cossu have a particular interest in making sure that you stayed afloat?---He is my friend.

10 I'm going to take you to volume 30.10, page 239. So on the second message there, 5 June, Mr Cossu messages you, "Morning, mate. Give me a call when you can, please." And then half an hour later he says, "I may have a way to go out of our dilemma." What dilemma is he referring to there?---I'm not sure. I had a lot of problems happening at that time.

Well, did it relate to the Appian Way culvert project?---Most of my issues were with respect to the Greenacre Splash Park.

20 And then at page 240 he says, "Don't send anything before we talk." Do you know what that's a reference to?---I was writing a really shitty letter to the council regarding my unpaid invoices at Greenacre Splash Park around that time and I was getting quite worked up and I was also getting quite sarcastic in what I was saying. He was trying to calm me down. I think that's what it would be anyway.

One of the documents that council required was a program for the culverts. Do you recall that?---Yeah.

30 As at July 2022 had the decision been made to go with Obnova?---By that time I would say yes.

And so was Mr Cossu involved in obtaining that program for the culverts from Obnova?---Yes.

40 If I take you to 39.4. So that's a program sent from Obnova to Mr Cossu on 6 July and I'll just take you down to page 3 and that's a program schedule. See at the top it says, "Obnova"? Did you remove that from that document before it was provided to council?---I would have, and I would have actually tried to fix up some of the timings on it.

So you're saying you amended this program?---Yes.

And how did you amend it?---It wasn't editable so I couldn't actually add different days in there. The sums and the totals for the job were incorrect.

On this document or on some of the documents that had been sent in relation to it?---It was this - well, I don't know if it was this exact copy of the document but some of the, it was an Excel file.

So you edited it before it was sent to council?---Yep. I had to get it right.

10

And why did you remove the Obnova name?---Because I wanted it to appear that it had come from me.

Because you didn't want council to know that you were using Obnova as a subcontractor?---I wanted it to appear that it came from me.

Why?---Because I had given them a commitment that I would be providing the stuff.

20 Yeah, but you were subcontracting that out, there was nothing wrong with engaging subcontractors on the job.---Yeah.

It's quite common.---Is it?

And so why were you worried that council would find out that it was Obnova?---I was trying to keep the source of my supply to myself.

30 Why is that?---Well if you gave away everyone who is supplying you the documents then, sorry, the products, then there is a risk that people could go directly to those suppliers and get the supply direct.

Well, and the only thing that you were involved in, the only added value that you provided this project was organising the delivery, wasn't it?
---Rephrase that question, please. I don't understand.

So you just said that council could have conceivably gone direct to Obnova themselves.---Everyone has that right, yes.

40 And you didn't want them to do that. Is that why you didn't disclose Obnova on the - - -?---That's one of the reasons, absolutely right.

THE COMMISSIONER: Can you keep your voice up, please?---Could I get some water?

Yes, sorry.---Thank you.

MS HUXLEY: And you did that in relation to some other documents requested by council, didn't you?---Yeah, I had to.

10 Was part of the motivation for removing the references to Obnova so that you could obscure Mr Cossu's involvement in the project?---It was more about my involvement with Obnova.

There are a number of issues in the delivery, the delivery of this project that ultimately resulted in a dispute with council.---If that's what you say, yes.

Pardon?---If that's what you say, yes. I don't perceive - - -

20 Well what do you say happened with this project?---I don't perceive it, I'm not sure what happened with this project with respect to the council because all of a sudden things went wrong.

Okay. Well how was this, did you deliver this project without any complications?---There was a length issue and that was discussed with the, Mr Robert Dudley and he said to carry on maintaining the production at 2.4 metres versus 2.44 metres. There was a number of emails. A couple of the them that I'd missed, but overall my focus was on the Greenacre Splash Park and there was pressure on delivering that and I may have missed a few things that was required of me to send back to them. Some QA documentation allegedly hadn't been sent to them.

30 But so was there a point in time when you were in a dispute with council about payment for this project?---Absolutely, yes.

Okay. And that was, did that start at around early 2023 or did that start in late 2022?---You've probably got that information more than I have. I don't know dates.

Okay.---It's likely to be - - -

40 Was Mr Webb involved in assisting GWAC in addressing this in early January?---Pass. I don't know that. I have started sending letters to various

people within the council to get the contract followed as per the requirements in the contract of seven-day payment terms and Mr Anderson at times would be evasive and not tell me why he wasn't paying my invoices.

But so you sent some letters in relation to that to council?---Yes.

And did anyone else send letters on behalf of GWAC to council?---I don't know. I sent them.

10

Pardon?---I sent letters to the council. I know that.

Did Mr Webb have any involvement in addressing this with council?---I don't know.

Well this is only in early 2023. You don't know if he had any involvement?---I don't know what they do inside council.

No, I am saying by this stage he'd left council.---Oh, he'd left council.

20 Yeah.---Okay.

So did he have any involvement in drafting responses?

MR PARARAJASINGHAM: Commissioner, I object. Is the question about a conversation had with Mr Webb, is it about information that came into this witnesses' mind?

MS HUXLEY: Well this witness is - - -

30 MR PARARAJASINGHAM: I mean we need a bit of precision with these questions.

THE WITNESS: Please.

THE COMMISSIONER: I think the questions is whether, to the witness's knowledge, after Webb left council, did he assist GWAC in relation to its dispute with council. Can you answer that from your own knowledge?
---I'm not aware of that.

40 MS HUXLEY: Okay.

THE COMMISSIONER: Not aware of him assisting GWAC after he left council?---No, no, no. Much later on I asked him and Pietro was involved as well about finding some legal counsel for my adjudication application against the council.

MS HUXLEY: And when was that?---I couldn't tell you exact dates.

Would it have been early 2023 or mid 2023?---I don't know. I, I don't know.

10

Okay.---By, yeah, I don't know.

At around this time, did you owe money to PMLV?---Likely.

And did you understand if Mr Webb had any role at PMLV?---No.

Okay. I'll just take you to volume 35.1, page 83. Do you see there that's an email from Mr Cossu to ben@[REDACTED], which is subject to a non-publication order, which attaches the Orsum Engineering shareholders agreement that you gave some evidence about last week?---Not last week, on Wednesday, Ms Huxley.

20

Sorry, Tuesday, it feels like last week. Do you know why he sent that to Mr Webb?---No.

Did he tell you he was going to send it to Mr Webb?---No.

If I can just take you back to the spreadsheet that we looked at on Wednesday at volume 36.3, page 73. This is the first tab of that spreadsheet. Do you remember me asking you some questions about this? ---Yeah.

30

And if we can go to page 74. So this is for the cooling tower project. So that margin there is at about a 40% margin.---I haven't worked that out.

I worked it out. It's 40%.---Thank you.

That's quite a large profit margin for a job like this, isn't it?---I wouldn't think so.

40

A 40% margin is a pretty good margin for a business, isn't it?---It is a good margin. I wouldn't say it's too much or too little.

And if we go down to the NDD, sorry, page 75. This is the non-destructive digging works. Again, that's about a 40% margin. Did you generally apply a 40% margin for the council works that you were doing?---No. I had no formula for that.

10 So how did you come up with your pricing?---You saw the workings the other day. I took volumes, bulk densities, times, material, delivery costs, all of those things into account to work out the pricings.

And then how did you make sure that you were making a profit on it?
---Sometimes I'd add a fee for overheads. Other times it was my labour charge was, included my, the margin I wanted to make.

If we can just zoom in on this document and the, just scroll down a little for me, so management fees and engineering fees of 28,600 for both.---Yeah.

20 And then if you scroll back up I've done the calculations. So total cost is at the top. That doesn't include those figures.---Okay.

And earlier this week we went to the actual - - -?---Revenue and profits.

- - - bank records where you transferred \$28,600 to Mr Cossu.---Yep.

30 And I can take you to it but there's also a transfer to one of your CBA accounts - two transfers, one of 28,500 and then another one of \$100. So same total, \$28,600. So they're not included in the costs there.---So they were in the profits.

So that's because you and Mr Cossu had a share in the profits?---There's no arrangement on that.

Well, why wouldn't you include his cost of 28,600 in the costs for the project then?---Because it wasn't a cost to the project.

40 So what is that figure doing in that - if we can just scroll down - in the spreadsheet?---It's a management fee and engineering fees. So it's my overheads.

Yeah. So the management fees got paid to you on 2 November and the engineering fees for paid to Mr Cossu on 2 November.---So me getting - - -

So what I'm putting to you is the reason they're not included in the costs part is because you were splitting the profits.---Okay. You're putting that to me. Thank you.

THE COMMISSIONER: Sorry, what's that?

10 MS HUXLEY: Pardon?---Sorry?

THE COMMISSIONER: What did you say?---Ms Huxley is telling me what I have done.

No, she's putting it to you that this was a splitting of the profits. Do you agree or disagree?---For this one project, I don't think so, no. It was many things.

20 Sorry, I'm - she's saying that the payment of \$28,600 to each of you represented a split of profits, 50% split of profits. Do you agree with that proposition or disagree with it?---(No Audible Reply)

You're taking a while to work that one out, Mr Clarke.---Yeah. I'm trying to listen to what Ms Huxley is saying and what you're saying. With respect to the profits of the business there was no arrangement with Mr Cossu to share the profits with the business. He was doing work for me and I have paid him for that work.

30 Was this just a coincidence that what you got out of it was identical to what he got out of it?---I, I couldn't answer that.

You couldn't answer it?---I, I don't know if it was or not. Like, there, in this, the numbers are the same but has that number gone to my bank account? It may have been more that's gone into my bank account than that.

40 MS HUXLEY: But, Mr Clarke, if you were paying Mr Cossu for his services in relation to this project as engineering fees, those engineering fees would be included in the total costs but they're not.---I should have adjusted my formulas.

THE COMMISSIONER: Sorry, what was that?---I should adjust my formulas in that project.

MS HUXLEY: We saw earlier this week that some of the council payments for GWAC work were going into your personal CBA account.

---Yeah. That was when I started the business, yes.

10 And so payments from council were generally made into that account for that period of time?---I think the first two projects the bank accounts hadn't been formalised.

Was that account used for all GWAC work over this two-year period?---No.

What other accounts were?---The GWAC account was used. It was only while I started the business up and I didn't have an account.

When was the GWAC account opened?---I couldn't tell you exact dates.

20 If we can go to volume 33.7. I'll take you to page 1 first. So this is a summary and if you would like to see the underlying material I can take you to it of all the payments into your personal account.---Just give me a second if you would. I'll just check the account number. Again, I hope the account numbers and stuff are suppressed or whatever you do.

THE COMMISSIONER: Yes, they are.

MS HUXLEY: They are.---Thank you. That's actually the account for GWAC, not my personal account.

30 And so all GWAC work, the invoices went into this account?---Yes.

If we just scroll down to page 3. That's the total amount that you've received from Canterbury-Bankstown Council in respect of projects being awarded to GWAC. Does that sound about right to you, that it's \$5.278 million or thereabouts?---It would be something like that, yes. It was a lot of work.

40 The vast majority of money being credited into this account is council payments. Do you agree with that?---Absolutely.

And to the extent that there are other transfers they're largely loans from other accounts of yours to GWAC?---Yep, there would definitely be some.

In your evidence on Wednesday you had said that Mr Cossu had invoiced you over this period of time for work done in relation to jobs you had during his time at council and that those were for other jobs. Do you remember saying that?---There were a number of other jobs, yes, I do.

10 And that he did not specifically invoice you for work he had given you in relation to the council projects?---Yeah. He was doing engineering management.

But he may have done some reimbursements to him in relation to the council jobs?---Yeah, that's true.

You just said there you paid him for some engineering. Was that in relation to council jobs?---No. There were some. It was for other jobs as well.

20 And which entity was carrying out that work?---It would be most likely McGoo Civil. Might be Bulk Conveying Equipment.

I'll take you to volume 33.8. This is a spreadsheet of payments from some of your entities to PMLV. And do you see there's three columns in the credit column? The middle column refers to Jeremy Clarke, CBA 4916, that's the account we were just - - -

THE COMMISSIONER: Can you just blow it up a bit? I don't know - - -?
---Yeah, I can't see.

30 MS HUXLEY: Oh, sorry, yeah.

THE COMMISSIONER: Yeah, I can't - where are we looking at the moment?

MS HUXLEY: So see the green column at the top that says "Credit"?

THE COMMISSIONER: Yes, sure.

40 MS HUXLEY: And in that middle column it says "Jeremy Clarke, CBA 4916"?

THE COMMISSIONER: Yep.

MS HUXLEY: That was the account that we were just looking at.---That's GWAC.

That's the GWAC account?---Yep.

10 So these are payments from that account to PMLV and if you can just scroll down, please, do you see there there's a figure of \$1.247 million?---Where's that? Oh, 1.247, yes.

So that's the total paid from that particular account to Mr Cossu between 2 November 2020 and May 2023?---Sorry, which one is that? The 669 account, do you see - - -

No, the 4916 account. Does that sound about right?---4916. That's what I received, are you saying?

20 No, that's what you paid PMLV.---Out of?

Out of that 4916 account.---Scroll back up so I can see the details, if you would, please? Can you go across to columns A or B or - - -

Can you just, can you move or scroll, yeah.---Sideways, yeah. Sorry, now I can't see the actual numbers.

30 THE COMMISSIONER: What would you like to look at?---Sorry. I want to be able to see the descriptions and also the numbers at the same time if I can, please.

Right.---Okay.

MS HUXLEY: And so is it your evidence that that 1.2 million related to jobs other than council jobs?---No.

So it did relate to council jobs?---Well clearly there's culverts and stuff like that on there, so it's definitely council job as well.

40 I can take you down and we can do the figures in relation to the culvert jobs.---Okay, yeah.

So if you scroll down, keep going, so if you see the credit column there that has BCE Jeremy Clarke CBA and another BCE account, it's got totals in that bottom row.---Yeah.

If you add those credit columns up, it totals \$2,428,612.

THE COMMISSIONER: Sorry what, so that's an - - -?---Hang on, sorry.

- - - addition of the three green, the three credit columns?

10

MS HUXLEY: The three green credit ones.

THE COMMISSIONER: Yeah.

MS HUXLEY: So that's payments from, Mr Clarke, all your entities to Mr, to PMLV and then the Obnova Concrete Constructions is payments made from PMLV to Obnova of \$1,179,072.40.---Okay. Can you just scroll up again so we can just check that we haven't double counted things?

20 THE COMMISSIONER: Up further I think, is it?---Oh, that's okay. It's just - - -

Is that okay?---I'm just checking whether we've double counted, whether we have money between one company and the next company to then make the payment and whether we've counted those twice to or not.

Right.---I don't - - -

30 MS HUXLEY: So you think your evidence is there may be some double counting in this spreadsheet.---Well - - -

And you can't tell because you didn't prepare it.---Yeah.

But so if you go down and do the exercise, sorry can you just scroll down to that bottom column, if you deduct the \$1,179,072 from the total that PMLV had received from those three bank accounts, you're left with a total of \$1,249,539.60. So even with payments made to Obnova for the culverts delivered, that is still a very significant sum of money being paid to Mr Cossu - - -?---Absolutely.

40

- - - merely for engineering fees.---Absolutely, yes.

And that is actually representative of profits derived by GWAC that were to be shared between the two of you.

THE COMMISSIONER: That's the proposition that's being put to you.
---Oh, okay.

MS HUXLEY: Do you agree with that?---I don't agree that we had a
shareholders agreement that said anything like that or had an agreement that
10 said - - -

I'm not asking if you had a shareholders agreement that set it out fifty-fifty.
I'm just saying to you that it was an arrangement where the two of you
would share in the profits derived by GWAC's work to council.---There was
no arrangement, as I have said previously there was no arrangement.

MR SUTTON: I'm sorry, Commissioner, the voice keeps dropping.

THE WITNESS: Sorry. There was no arrangement. Pietro would invoice
20 me for things, I would pay for them and yeah. If you can show me a
formula or something that he's used to come up with numbers, that'd be
great.

MS HUXLEY: Well, so if you accept that those figures are based on the
bank records - - -?---Yeah.

- - - you accept that they're accurate figures.---Again, as we said, I didn't
prepare the spreadsheet so I can't be a hundred percent certain of that, but I
will take it on your assertion.
30

Okay. You gave some evidence on Wednesday that you'd seen a piece of
paper that Mr Cossu had signed where he told you that he declared his
relationship with you to council. Do you remember that?---Yes.

And you said it was a typed document that he showed you where he'd said
that he knew you or knew of your entity and he had a conflict of interest on
some things, including the fact that they were working together. Do you
recall that, saying that?---I recall making a statement. I don't actually recall
saying all of those things that you've just said.
40

Okay. And I think in your evidence on Tuesday, you said that you saw this document in the year after the cooling tower project. Do you recall giving that evidence.---Yeah. I said I didn't know when.

But it was around about that year.

THE COMMISSIONER: I thought there was some reference to the Northcote job.---Correct, your Honour, that's correct.

10 MS HUXLEY: If I can take you to 35.1, page 117. Was this the document that you were talking about in that evidence?---I don't recall that totally, no.

Pardon?---I, it looks like it is, but I don't recall.

You don't recall if it is?---No.

But it could be?---It could be.

20 In that document it says, "PMLV is now consulting for CBC City", and this letter is dated January 2021, but you knew that Mr Cossu had worked at council for most of 2020. It's not clear from this that Mr Cossu actually disclosed his connection to PMLV to council.---Sorry, are you asking me to say that it is clear or isn't clear that he talked to council?

No, I am just asking you that it's not clear from this document that he disclosed his connection to PMLV to council.---That's a statement from you.

Okay.---Sorry, I don't understand your question.

30

So you don't know if this is a document that you saw.---I couldn't be absolutely certain it was the document I saw, no. It's possible.

But looking at this document now, it doesn't actually accurately disclose the nature of your relationship as at January 2021.---Sorry, are you saying that it doesn't?

40 I'm saying when you look at this document and you read it, does that accurately describe the relationship that you had with Mr Cossu in January 2021?---I still don't understand your question properly, sorry.

I am asking you to read the document - - -?---Yeah, "PMLV is now consulting for CB City and after discussions with senior management, is happy to confirm continuation of the contract with Bulk Conveying Equipment and PMLV Consulting engineering consulting works. The terms and conditions remain the same as the previous year. Look forward to continuing the works the coming year," blah, blah, blah, blah, blah.

10 So what I'm asking you is when you look back to your relationship between you and Mr Cossu and PMLV in January 2021, is that a correct description of it?---That he's been doing work for me?

No, that the continuation of contract work with BCE in particular and PMLV Consulting are civil engineering consulting works.---Yes. He's done work for me.

Well, he was paid out of the GWAC account, not the - - -?---Sorry.

20 The majority of the invoices issued to GWAC were paid out of the GWAC account, not the BCE, Bulk Conveying Equipment account.---Yeah. As was in that previous spreadsheet you showed me.

Yeah.---Okay. Now I understand what you're saying.

So that's not referred to here, is it?---Of where it's come from? No. It says Bulk Conveying Equipment.

30 And it doesn't disclose any sort of financial arrangement between you and Mr Cossu as well as his entity PMLV and your entity GWAC to be paid in connection with work done on council jobs.---No, it doesn't disclose that. It's not written there.

Okay. Thank you.---Sorry it took so long but I didn't understand what you were saying.

40 And you did in fact have an arrangement with him where he would help you win awards and you would share the profits of the work received by GWAC from council.---Again I didn't have an arrangement with him to provide him with certain numbers of the profits or things from the jobs. I don't have that arrangement now and I didn't have it then.

And that arrangement included assisting you in your dealings with council and assisting in the preparation of documentation in connection with submissions for council work.---As we've already seen he has helped me with those things and I've said previously on Wednesday and previous, he has helped me with tidying those submissions up and putting them in place. As I was new to council I relied on it.

10 Well, and not only did he assist you in that, he also assisted you by giving you information on what other people had quoted.---You showed me evidence of that previous days as well.

And you understood that he hadn't actually disclosed his connection to GWAC or receiving any money from GWAC in connection to council projects during this period of time.---As I've seen that document now I'm aware of that. I have not interpreted it that way when I've seen it 'cause I didn't see my entities as separate at that time. So I'm accepting of your - - -

20 Oh and you knew that this arrangement could either adversely effect or have the perception of adversely effecting the exercise of council functions in evaluating your submissions for a number of projects at council.---Say that again.

So you understood that this arrangement had the capacity to effect adversely the exercise of council functions in evaluating your quotes and tenders for the award of projects at council.---Yes, it would.

Pardon?---Yes, it would affect them.

30 Those are my questions.

THE COMMISSIONER: Well, you did pay Mr Cossu some money for the assistance he did provide in respect of the council work. You're nodding. ---Yes.

So how did you work out what to pay?---I didn't. He sent me invoices.

So whatever he sent you you just paid it?---Yes.

40 All right. Okay.---Okay.

MS HUXLEY: Sorry, there's just another thing at volume 30.6, page 347. There's a message from Mr Cossu to you with an attachment. And I'll just take you to page 551. And that's a receipt for, "Site extra work Mr Dankaro." Is that a payment for Mr Dankaro's assistance in connection with the tender submission and clarification process in relation to the culvert project?---No.

10 Do you know what it was for?---Nosa did some work on site at the splash park and I believed he had done that in the weekends and he was to be paid for it.

THE COMMISSIONER: What did he do at the splash park, the weekend? ---The splash park was a large project for the council and it was under a very severe time constraint.

MR SUTTON: Sorry, Commissioner. Can I ask you to keep the voice up please.

20 THE COMMISSIONER: Yes, please.---Sorry. Sorry, guys.

So what was the work you did at the weekend at the splash park?---We did a lot of work at the weekends in the splash park. That project was a high pressure project where the council were late in delivering it by more than 12 months. I got brought in to assist.

30 No. No. I just want to know what Mr Dankaro did for the \$2,000.---Oh he was labouring and a whole lot of things around the concrete works, landscaping works. There was a lot of things that he was doing in the weekends.

Is there anything further, Ms Huxley?

MS HUXLEY: Not from me, Commissioner.

All right. Well, I don't know if people want to take a short break or - Mr Sutton wants to take a short break. Right. And we've got questions from who else, from you, Mr Moses?

40 MR MOSES: Yes, Commissioner.

THE COMMISSIONER: Right. All right. How long will you be approximately?

MR MOSES: It depends on the witness. I would have thought half an hour to 40 minutes, but if he is cooperative it should be about half an hour. We'll see how he goes. Thank you.

THE COMMISSIONER: All right. Well, I think perhaps we should take a short break. So we've got Mr Moses and we've got you, Mr Sutton, and
10 have we got Mr Pararajasingham?

MR PARARAJASINGHAM: No, nothing from me, Commissioner.

THE COMMISSIONER: No, nothing from you. All right. All right. We'll just take a short break then. So we'll be back shortly.

SHORT ADJOURNMENT

[2.57pm]

20

THE COMMISSIONER: All right then, Mr Moses.

MR MOSES: Yes. Thank you, Commissioner. Mr Clarke, when did you last speak to Mr Cossu?---I think he was here on Wednesday and I said hi to him.

Have you exchanged text messages with him?---Since?

Well, let me prompt your memory. In the last three weeks?---I can't recall.
30 I don't think so.

You don't think so?---Oh, actually, no, he may have asked me on how to upload email files or something to the net via a text message.

Have you discussed your evidence in this case with him?---No.

Are you sure about that?---Yes.

And your text messages with him, you've still got them on your phone?---I
40 think so, yes.

You do?---Yeah. I can, I can pull it up.

Do you want to read out the last text message you've had with him?---Hang on. I'll just put it in and see. Sorry. The last one?

Mm-hmm.---"When can you give me a price? I have an electronic part of it."

MR SUTTON: I didn't hear the last part of that.

10

MR MOSES: "When can you"?---Yes. "When can you give me a price."

Mm-hmm.---"I have the electronic part of it." And then my response is, "I have not got the file or email. Maybe it got intercepted."

What are you referring to there? What price for what?---He had a price for putting in some - or he asked - - -

THE COMMISSIONER: Keep your voice up, please.---Sorry. I'll sit over here again. He asked me for a price to put in some lighting towers and there's piles associated with doing that.

20

MR MOSES: So you're still doing business with him, of course?---He is asking me for pricing. I didn't respond to that.

But he's holding out the prospect of you getting some work for him, correct?---Definitely.

Are you trying in your evidence here not to throw him under the bus in terms of his involvement in a scheme with you to get work from the council, is that what you've been trying to do?---No.

30

Are you sure about that?---Yes.

Because you understand, don't you, the only protection you have here is in respect of matters not associated with you giving untruthful evidence. You understand that, don't you?---Yes, I have been told that, yep.

And you understand you can be prosecuted for giving untruthful evidence? ---Yes.

40

So explain to me this, what do you understand a kickback is?---I don't know.

You don't know what a kickback is?---No, no.

You're an intelligent man, aren't you?---Moderately intelligent I would assume.

10 Well, you represented yourself in a statement that you signed off as part of the adjudication that you're very experienced in contractual arrangements and negotiations, correct?---Yeah, possibly.

Do you have a problem with your memory or are you just trying to avoid answering questions when you say "possibly", "I don't know", do you have a problem or what's the issue? Do you know how to answer a question?
---Um - - -

20 Sorry, are you trying to be smart by giving me that facial expression or are you trying to assist by giving an answer?---I am trying to give you guys the answer as I can recall the answers.

Okay, well let's start again. What is a kickback?---I assume it's money for doing work.

Yeah. It's a payment made in return, isn't it, in this context, for Mr Cossu helping you get contracts with the council, correct?---I think the definition would be something like that. Yep.

30 Yeah. You were giving Mr Cossu kickbacks because of information that he was providing to you about how to win contracts with the council, correct? That's correct, isn't it?---There would be some of that. I wouldn't say all of it.

No. And to be clear about this, in respect of your relationship with Mr Cossu, it's fair to say, is it, based on the evidence you gave to the Commission on Wednesday, is that he approached you in respect of asking whether you would be interested in doing work with the council, correct?
---Yes. I did say that.

40 I think you said you received a call, you were in a supermarket and that was the call you got, correct?---Absolutely correct, yes.

And it just happened to be at a time when you had just finished a large contract, correct, on the South Coast somewhere?---I hadn't probably finished it but it was coming up to finishing it, yes.

And I think, to be fair to you, on Wednesday, it's about page 512 of the transcript, and we can call it up if you want, I think you said there was a joking reference as to whether he would be interested in some sort of a joint venture agreement with you in respect of the work you were going to do for council, correct?---After council, I believe - - -

Well, I can bring it up on the screen for you, if you want.---Yeah, please, but - - -

Page 512. And just to be fair to you, Mr Clarke, at about line 20 through to line 30, he is basically putting a proposition to you that he doesn't have enough contractors to do the work and are you available and are your guys available.

20 THE COMMISSIONER: Is that 511 that we have there?

MR MOSES: It's 510, sorry. 510, line 20-30, my apologies. I apologise to the operator of the court monitor. Do you have that there in front of you, Mr Clarke? Between line 20 and 30.---Yes.

And then if we just go over the page, and I'm happy for you to read the whole of the intervening pages, but if we get to page 512, it's about line 30, Counsel Assisting - we might go a bit further, it's about line 25, Counsel Assisting asks you - - -

30

THE COMMISSIONER: I haven't got it up yet.---We haven't got it.

MR MOSES: Okay, Commissioner. I've got mine. Thank you,

THE COMMISSIONER: Right. I haven't got mine.

MR MOSES: So 512.

THE COMMISSIONER: Yes.

40

MR MOSES: Do you have that, Commissioner?

THE COMMISSIONER: Yes, I do, thank you.

MR MOSES: Yes. So Counsel Assisting asks you a question, I think it's about 24, "Did you have any discussions prior to starting work at the works that you did with council with Mr Cossu about a joint venture agreement?" Do you see that?---Yes.

10 Now, I'm not being disrespectful to you, sir, but you go on for a bit up to about line 36 but the crux of it is, could you agree, that you joked around and said to him, in effect, that you could go into some sort of business arrangement together concerning the work you would be doing with council? That's the effect of what you were saying there in response to Counsel Assisting, correct?---No. I said in that discussion that it was to do with BlueScope, Port Kembla Steelworks and Orsum Engineering.

20 And nothing to do with the council work?---We didn't discuss the council work with, with respect to Orsum Engineering. That was a discussion about our involvement at Port Kembla Steel.

Was that in the same conversation?---I can't recall whether that would be in the same conversation as he was asking me to come to the council.

So basically he's offering you some work and you're offering the potential of going into business with you doing something else?---Yes.

30 And was that to sweeten him up to give you more work for the council, or what was that about?---No, no. We, we would have discussed our previous lives and the fact that we were both at the steel mill and there was opportunities coming up in the steel mill where they were going to ramp up number 6 blast furnace again. There was a lot of engineering works to be done around that and - - -

And is that why you sent him the draft shareholder's agreement?---Correct. Yeah. And I had had, as I said, previously a very good experience with my business partners in Bulk Conveying Equipment using that shareholder's agreement, yeah.

40 And did he come back to you with his response to your shareholder's agreement?---No.

Did you follow it up with him?---No. It sort of went - it became a dead duck.

It became a dead duck, okay. And GWAC was formed specifically to do work for the council?---To do work in Sydney. So I had imagined it would do more work than just the council but I got very busy with the council and turned out most of the work was with council.

10 Well, are you able to tell u in terms of your work that you were doing outside of work for the council through GWAC how much of it was through GWAC?---I couldn't tell you a proportion.

Was it zero?---I wouldn't say it was zero but it would be, it would be close to zero. There, there wasn't a lot of other works that I was doing at the time.

20 Well, can I just understand just a few things, if I can? I want to put some propositions to you, see whether you agree with me on these propositions which may alleviate the need to go into some of the documents. You have accepted the proposition put my Counsel Assisting that Mr Cossu provided you with information regarding other tenders, correct?---Yes.

And that allowed you then to shape the tender that you were placing in to get work from the council. You accept that, don't you?---On occasions, yes.

Well, that would allow you to devise what quote you should put before the council to get the job, correct? Do you accept that proposition?---Some - no. Some jobs that I put in, I didn't get.

30 Well do you accept my proposition that you used information that he gave you to draft your tenders?---On some occasions, yes.

And you placed tenders in, that undercut other tenderers, correct?---I placed tenders in and they may have been less than other people.

But you know that from some of the prices that he gave you, correct? You know that.---I don't know that categorically, sorry.

40 Okay. You don't know that.---No. If he's giving me numbers then they probably were lower, but he never ever told me whether they were higher or lower than somebody else.

Okay. We'll come back to that, okay. You told the Commission that he assisted you in quote preparation, is that right?---On occasions he had.

Yeah. And that information enabled you to submit quotes which were tailored to specific council projects.---Yes. I'll give you one example. I got asked to go and evaluate a bridge that had burnt down and Pietro had asked me to go and look at that bridge. I went there and went through it all and gave him an estimate of what I thought it would be to repair the bridge, and
10 I also gave him some information about the types of materials he would have to use to do that, thinking that that project was going to happen pretty much straight away. That project then went out to tender because the materials that you needed to use are special materials and the engineering needed to be done for those projects and I believe council weren't aware of that, okay. So on a number of occasions, I was asked to go and evaluate jobs prior to the council even developing their estimates and I would assist by providing that information. On that occasion with the bridge, obviously I had prior knowledge of the work that was required because I'd helped in preparing the quote.

20

Okay. Well I'll come back to that.---Yeah.

I'm going to take you back to something that you said in your adjudication statement, but in respect of Mr Cossu, he provided you with information that assisted you to submit quotes to the council for specific council projects, correct?---For some projects, yes.

And you often sent your quotes to his personal email address at PMLV which he would then review, and in some instances, uplift significantly,
30 send it back to you, and then you would then email that to him at his council email address, correct?---There were occasions that that happened, yes.

And the reason you did that was that you were specifically embarked upon a secret arrangement with him in order to see how much money you could milk from the council in relation to these tender projects, correct?---No.

Well why would you not have sent those quotes to the council email address of Pietro Cossu? Why would you send it to his private email address at PMLV?---It was a time where I sent some things to the wrong addresses and
40 he told me after that that I needed to send all of the quotes to him prior to submitting them, which I did.

So he directed you, to be clear so we know when he gets into the witness box, he directed you to send the draft quotes to his personal email address at PMLV for him to review. Is that what he told you to do?---To him. I don't think he said to his PMLV account.

But that's where you were sending them.---Yes, I've sent them to that.

10 Yeah. And then he would - - -?---I believe he's got an iCloud account as well and some other accounts.

Correct, yeah, good memory. And then he would send them back to you, correct?---Often, yes.

Yes. And he would change them, correct?---I'm not sure if he changed them or he'd tell me some numbers to change.

20 And then you would then send a final version of it to his council email address.---Yes, on, when, when he did that, yes.

So why would you do that? Why would you have not sent the final one back to the PMLV address? Why specifically send the final version to council?---Because it had to be submitted to council specifically.

So let's walk back from that. You were submitting draft quotes to him at his PMLV or iCloud address so that he could look at it and, if necessary, change them before you sent them to him at the council as your formal tender, correct?---On occasions, yes.

30 Yeah. And that was being done so that he could have his input into the process. Correct?---By input what are you implying there, sorry?

Well I'm being direct. So that he could change the quote to meet what he wanted to get out of his cut of the action. That's basically it, isn't it? I mean let's be blunt about it rather than dancing around the edges. He changed it so that he could get his cut of the action depending on what he wanted. Correct?---I assume that was what he was doing, yes.

40 Yeah. Because as you told Counsel Assisting fairly, and this is a credit to you, sir, you conceded that in respect of some of the invoices that he was submitting to you to pay, you assumed that was because of the information

he was providing you in order to help you get the tender. Correct? You assume that's why he was issuing the invoices, correct?---Yes, and other work that he's done as well, yeah, yeah.

Yeah, okay. Now in respect of variations, do you accept this proposition, Maybe projects were initially awarded to your company at a certain cost which then ballooned out with approved variations. Would you accept that?---Yeah, that's fairly standard in the industry.

10 Yeah. But let's not get into what is standard and what is not, but do you accept that those variations that occurred were often quite significant. Would you accept that? And I can give you some examples if you'd like. ---There was some big ones and some small ones.

And I think you, there was one with the Greenacre Splash Park project. The variations totalled over \$966,000, correct?---Yes. It may even be more than that because I claimed more than that.

20 And the original contract value was about \$184,000.---No, not for that contract, no.

Not for that one, okay. You don't accept that proposition?

THE COMMISSIONER: Sorry, what did you say, I didn't catch that. What was that?---Sorry. I don't accept what Mr, sorry what's your name?

30 MR MOSES: I could tell you a number of things what my name is, but it's Mr Moses is fine.---Mr Moses, thank you. I had contracted at Greenacre Splash Park to build some water tanks and also to build a very big splash pad, okay.

Okay.---And those were the contracts that I, that I had with the splash park. I did tender on trying to do the whole of the splash pad, the whole of the splash park, but I pulled out of that tender because financially I didn't believe I would be able to fund both that and the culvert project so I pulled out formally.

40 Okay.---After that, I was still engaged to do work there and I didn't leave, but yeah, there was a lot of work to do and they kept asking me to do it.

Okay. And in relation to subcontractors, I think you've said you use subcontractors to do your work through GWAC, is that right?---Yes.

And under the terms of the contract, do you accept this proposition, that if you were to use subcontractors with your contract with council, you needed either to disclose who those subcontractors were or they need to have been approved. Correct? You knew that.---On, on occasions there was times where I wouldn't have disclosed who the contractors were.

10 Okay. Well I think on some occasions you've said in another place that you didn't even know who the subcontractors were that were allegedly being used by Pietro Cossu's company, PMLV, correct?---That's correct.

But do you accept this basic proposition, that your contract with council required you to disclose who the subcontractors were.---Well it's definitely in some of those tenders that I applied for, yes, yeah.

20 Okay.---But I thought on the variations and on the work at the splash park, I actually had an hourly rate contract with them and they would ask me to provide an excavator with GPS or something like that and I would then source that because they didn't have it.

Well what about the Appian Way contract? That had that provision in there, clause 8, that required you to disclose who the contractors were, correct? ---Yes, but the non-destructive digging part of that contract, I got all the people to come and do that work and I don't believe I disclosed who they all were.

30 Was that PMLV?---No.

No.---No, I got - - -

No, somebody else.---Five or six contractors came and helped me with that job.

Okay.---It wasn't just one.

40 Okay. Now in relation to the adjudication that you sought in respect of your dispute with council, you signed a statement in support of your claim, correct?---Sorry, to - - -

You don't recall signing a statement when you sought, when you made an adjudication application, that is GWAC?---Which, sorry, which adjudicator application, for the culverts?

How about we show you the document. I'm going to give you a folder and ask you to go to Tab 1 for me. If I could ask the Commission staff to assist me by providing that to the witness and a copy to - - -

THE COMMISSIONER: Yes, I'll ask my associate.

10

MR MOSES: A copy to the Commission. I might just provide for the moment, if Counsel Assisting will allow me just the copy of the statement to Counsel Assisting. We haven't got enough copies of the folder. But I can give a copy of the statement to Counsel Assisting, if that isn't available.

THE COMMISSIONER: Give one to the witness.

MR MOSES: I think it's been produced to the Commission under a notice, this one. Do you recall that statement, sir? Tab 1.---Yeah, I'm just, sorry, I'm just reading it.

You see, "I, Jeremy Clarke," is that you?---Yes.

Yeah. And is that your signature that appears at page 68? It's the last page.---Sorry.

That's okay.---Yeah, it looks like my signature.

Well, no. It doesn't look like. Is that your signature, yes or no?---It looks like my signature. I think it is.

Sir, you keep saying you think something is. This was allegedly signed by you on 15 January this year. Do you recall signing this document?---I have many things going on in my mind all the time so I don't specifically recall the details of each thing that I signed, but - - -

Okay. Well who drafted this for you? Do you know?---This was likely to be my lawyers that drafted this for me.

40 Likely. Okay.---I don't remember doing it, so it's - - -

Okay. Well, it's an electronic signature that appears at page 68, is that right, or do you recall signing it?---No, it definitely looks like my electronic signature. Yeah.

Okay. Did you read this before you signed it?---I would have skimmed through it.

No. No. Listen to my question. Did you read this before you signed it?---I, I guess the answer would be yes.

10

Okay. Are you hesitating to answer the questions I'm asking you because you're concerned I'm about to point something out to you in the document that is false? Is that why you're hesitating? Are you a bit worried?---No. As I said, I've skimmed through it so when, when - - -

Sorry, you read it our you skimmed? I just want to understand. You knew this was a document being presented to in effect seek that the council make payments of money to you, correct? That was as serious step, correct?

---This was - - -

20

That was a serious step, wasn't it, to file an application to seek that money be paid to your company, correct?---Yes, I've taken a lot of work to get the money paid to my company.

Yeah. And you understood when you signed the statement the contents of it needed to be true, correct?---Yes.

Because ultimately the money that was being made to your company ultimately is money that would otherwise be being spent within the council district for the benefit of the residents in Canterbury Bankstown, correct?

30

You knew that.---I assume all money that is received by Canterbury Bankstown Council would be paid and used within the council.

Yeah. So when you signed this statement you read it, correct, yes?---Yes.

And you were satisfied that the contents of it were true?---Yes.

And you were not trying to mislead anybody?---I don't believe so, no.

40

Well, when you say you don't believe so you either are certain that you weren't trying to mislead somebody or you may have been. Which? I'm

just trying to understand. Your answer is a bit weird. When you signed this, were you trying to mislead anybody or not?---I was trying to get the adjudication through the system.

Yes. You were trying to get money, correct?---I was trying to do the adjudication process.

Yeah. And Pietro Cossu recommended you undertake this process, did he?
---Actually I've been through this process a few times before and I - - -

10

So is the answer to my question no or yes? Did he recommend you undertake this process?---No. I wanted to undertake the process myself.

And he recommended the lawyers to you?---He organised a meeting where we tried to get a few lawyers and Ben Webb was on that meeting as well and I think he originally told me of a Mr Sutton who could potentially help.

20

Yep.---That didn't transpire. So then we had a discussion with Ben Webb with the lawyers I ended up using, and they had a counsel who was extremely senior in adjudication. I can't recall his name right at the moment but we had a discussion with him.

And did Mr Cossu and Mr Webb attend the lawyer's office with you?---No, it was on Zoom.

Okay. So they held a meeting with you and the lawyers, is that right?
---Yeah, we all, we all were on Zoom together.

30

Okay.---Yeah.

And did Mr Cossu receive a copy of your statement that you put in as part of this adjudication application?---I don't think so. I think this all went through the lawyers directly from me the adjudicator.

Okay. Can you go to page 12 of that statement for me. You see at paragraph 37, "Subsequently I made a phone call to my supplier PMLV Consulting." Do you see that?---Which line is this?

40

Paragraph 37, page 12. Do you have that in front of you?---Yes, I see.

Why didn't you use Mr Cossu's name there?---I could have used his name.

No, I'm asking you why didn't you use his name there. You have to listen to the question, sir.---My arrangement was with PMLV. That was the contract who we had done the work through. Pietro obviously was PMLV.

You were trying to hide his name from this document, weren't you?---Not specifically. I've just put PMLV 'cause that was the company. Like, when you're transacting stuff like this you wouldn't go through a person, an individual person. It's through a company. So to be correct on it I would
10 have put PMLV in there.

Okay. Is that a serious answer to my question?---Yes.

Well, that's just a nonsense, isn't it, what you've just said?---Why.

Well, look at your statement. You have used the name of others, haven't you, when you've referred to telephone conversations, correct?---Yep.

Okay. Well, let me go back to paragraph 37.---(not transcribable)
20

You made a phone call "to my supplier PMLV Consulting," that was Pietro Cossu, correct?---Yep.

And you said he was your supplier, correct?---Yeah, that's what I've said.

Supplier of what?---Well, it's the culverts.

So he was your supplier of culverts?---Yes.

30 And if you go to paragraph 38, regarding your relationship between GWAC, GWAC contracted with PMLV Consulting for the supply of various items including the design variation. Do you see that?---Yep.

What are the various items that they supplied to you?---So Pietro provided the culverts. There were standard culverts and non-standard culverts. There was changes to the designs on the footings. There was a number of things that he had engaged Optima Consulting, engineering company to do.

40 He actually did none of this himself. He then subcontracted to others to do the work, correct?---He, he led me to believe that some of that work he had done himself.

Oh yeah. Well, what did he lead you to believe?---So he told me that the abnormal culverts, so the special shaped ones, he had had to do the drawings and stuff so that people knew what the measurements would be to do, to make those culverts.

So he did the drawings.---That's what he told me, yes.

That's what he told you.---Yes.

10

Okay. And if you go down further to paragraph 38, "PMLV Consulting in turn subcontracted our various works to different subcontractors so that while GWAC was aware of these subcontractors in most cases, GWAC paid PMLV Consulting who then paid its subcontractors." Do you see that?---Yep.

Do you know for a fact what those subcontractors were engaged by him to do or are you basing it all on what he was telling you?---Basing it on what he's telling me.

20

Okay. Thank you. And if you then go to paragraph 39 you say, "Due to this arrangement in order to effect the respondent's direction for GWAC to carry out the design variation I worked with PMLV Consulting to calculate the price of the design as we developed it based on our knowledge and the time we expected to spend and actual time spent. Do you see that?---Yeah.

And GWAC and PMLV Consulting also worked off the rule of thumb. Do you see that?---Yeah.

30 Now were there any email exchanges between you and Mr Cossu about this?---I'm not sure about that, no.

No.---I can't recall them specifically.

See I want to put a couple of propositions to you. The first is this, you deliberately left Mr Cossu's name out of this statement because you did not want to disclose that he was the person who was receiving substantial payments from you in relation to council work. Do you accept that proposition?---I'm hearing you at, with that proposition.

40

You agree with that proposition?---Yes, you've put that proposition to me, yes.

Thank you. And you agree with that proposition?---I don't understand what you mean by that.

10 Do you agree that is the reason you didn't put his name in the statement? I mean I know you've been, no sir, sir, the question is very simple. Is that the reason you didn't put his name in the statement because you knew that it would be inappropriate for him to be doing this work with you whilst working for council?---I believe, no, I won't say I believe because I know.

MR SUTTON: I object, I just object to this question, your Honour.

THE COMMISSIONER: Right.

MR SUTTON: If I'm understanding it correctly my friend is putting to this witness that he was working at council at the time. Now it needs to be clear, this, this statement was prepared in January 2024.---Correct.

20

So - - ?---He wasn't working at council.

At the time the statement was signed, they were not working at council as I understand it.

THE COMMISSIONER: No.

MR MOSES: That wasn't the question. The question raised to the arrangement.

30

THE COMMISSIONER: No, no, no, it's all right, Mr Moses, yes. I think if we look at the context of the question, it's asking about, it's referring the witness to a conversation which appears to have occurred, looking at what occurred before and after, in July 2022.

MR SUTTON: Yes, I accept that.

40 THE COMMISSIONER: And I think that the proposition that's been put is that Cossu's name was deliberately left out of the statement because Mr Clarke realised that as at July 2022, it was inappropriate for Mr Cossu to have been working in this way.

MR SUTTON: I accept that.

THE COMMISSIONER: Is that what you were putting, Mr Moses?

MR MOSES: I thought that's what I put, Commissioner, yeah.

THE COMMISSIONER: Yes, yes, I think so. Do you understand Mr - - -?
---I understand.

10

That's the proposition that's being put. What do you have to say about that?---I understand that now that that's what he is putting to me. I thought he was meaning in 2023.

No, no.---So I am sorry, Mr Moses.

20

Well what's the answer to that?---I didn't put Pietro Cossu's name down there. I put PMV Consulting down there because I believe that was Pietro Cossu anyway, so it was the same for me. I could have put his name down there, and in hindsight I should have put his name down there by what you're saying.

MR MOSES: But you chose not to put his name there.---His name is not there. Like - - -

You chose not to put his name there, correct?---This document was prepared by my counsel and I've signed it.

30

Okay. And just to be clear, when you were giving instructions to the lawyer, Mr Cossu was present, correct?---No, I don't believe so. He - - -

You said you were on a Teams meeting with him and Mr Webb and the lawyer, correct?---Yeah, that was for the brief of me trying to source a lawyer.

40

Okay.---Okay, sorry. And then after that time, I sourced a lawyer and on one occasion, Pietro came to the lawyer's office, but that's the only occasion that he, no, he didn't actually come. It was Ben Webb who came to that, the lawyers conference, and we talked strategy on how I could go through the adjudication process in an attempt to get money from the council for failing to carry out the terms of the contract.

Okay. To obtain money from Mr Webb's former employer, correct?---Well you say that, but it's from the council.

Okay. And just remind me, of the money that you received under this adjudication, how much of it went to Mr Cossu?---Nothing.

Nothing.---No.

10 Zero.---Yes.

Anything to PMLV?---No, nothing.

Nothing. Anything to Mr Webb?---Nothing.

Okay. Where did the money go?---It went to my overdraft to pay my overdraft back.

20 Went to your overdraft, okay. Tell me this. You were shown by council assisting a summary of payments made to Mr Cossu which amounted to over \$1 million.---Yes.

In relation to those payments, how did you describe them as part of your tax returns, what were they? In GWAC, what did you describe them? Just so that we understand how you may have represented that.---Yeah, I, I'm not sure.

30 Hm?---I don't know how, I put notes on the, on the payments with respect that it's an invoice, so then my accountant then sums those up and does the tax returns for me.

Okay. Did you understand, of course, when seeking to seek deductions from the ATO, you could be committing a criminal offence by stating that something is an expense for business that relates to the supply or equipment when in fact you're paying kickbacks, you understand that's a criminal offence, don't you?---No.

40 You don't. Okay.---He is invoicing me for the work, so I've been paying the invoices, so that's how I've transacted everything.

Yeah, but you don't know how you may have recorded this in your financial accounts?---All invoices he sent through has an invoice number on it and I record that invoice number against the payments.

For what?---For the project management work.

Yeah, but you accepted the proposition that I put to you earlier that some of those payments were kickbacks.---I guess you're right.

10 Yeah. So also did you declare falsely to the ATO that there were expenses being incurred for matters that were really kickback payments, correct? Yes?---I can't, I can't say that for a fact.

You can't, okay. I just want to go back then to your statement if I can, just paragraph 5. I just want to be clear about this because I want to ensure that the Commission is not left with a false impression that you're not a sophisticated individual. You've represented in paragraph 5 that as part of your role with this particular project, you negotiated the contract with the respondent, included the scope of works and contract sum. Do you see
20 that?---Yeah.

It's true to say, isn't it, in respect of that you got some assistance from Mr Cossu about this too?---Yeah.

Yeah. You've managed and supervised the contract works on the project, do you see that?---Yeah.

You corresponded with the respondent about change to the contract program, variations, progress and other aspects of the project during its
30 duration?---Yes.

Attended site meetings?---Yes.

And assisted in the preparation and submissions of GWAC's invoices, do you see that?---Yes.

And in relation to the management and supervision of the contract works, do you accept this proposition, that if those works were in fact being done by Mr Cossu and his company through subcontractors, you weren't managing
40 and supervising works that were being done by subcontractors whose names

you did not even know. Would you accept that proposition?---Can you just restate the question so I don't get it wrong for you?

You've told us you didn't know the identity of some of the subcontractors that he was using, correct?---I don't know if I have said that or not, but yeah, if you tell me I have, I've said it.

10 Okay. No, don't take it from me. If you can go to what appears in your statement, I'll take you back to where we were before just so that you can see where I'm getting this from and you can tell me whether you accept this proposition, so just bear with me. Page 12, thank you. If you go to paragraph 38 what you said was, "PMLV in turn subcontracted out various works to different subcontractors." Do you see that?---Yes.

You wouldn't have been managing and supervising the works if you weren't aware yourself of who the subcontractors were. Do you accept that proposition?---Okay. I still don't fully, yeah - - -

20 Well okay. You said you managed and supervised the works conducted under this contract, correct?---Yeah.

But that in truth was not happening, was it?---No, it was happening. I was managing what was coming in and out of the communications. I wasn't physically on site doing work, if that's what you're meaning by that.

Well you accepted the proposition that Mr Cossu, you did not know exactly what work he was doing as for a fact, correct?---Yes, it seems that way, for sure now.

30 Yeah, and you did not know the identity of subcontractors that he was using, correct?---I thought I knew who the subcontractors he was using were.

No, but you said in your statement that you were aware of the subcontractors in most cases but you weren't aware of them in all occasions, correct?---Yeah. What I'm trying to say when I'm saying that is, if Mr Cossu chose to use somebody that I didn't know, I didn't know.

40 Because you were making the payments to him, correct?---Yes. My, my arrangement was with him for sure.

And then he represented to you he was making payments to others?---Yes.

But you did not know that for a fact?---I did not know that for a fact, absolutely right.

Thank you. And you did not know what the other subcontractors were doing, correct?---By default that was exactly the case, yes.

Because you didn't see their invoices, correct?---I didn't see their invoices, I didn't see what he had been doing.

10

And what they had been doing, correct?---No.

So do you agree with me- -?---I, I - - -

You weren't managing and supervising the works?---I, I wouldn't agree with that. There is some aspects of the work that I had to manage and supervise, like their arrival onsite.

20 Well, do you agree then that it's more accurate to say there were some aspects of the work you were managing and supervising?---Yes, that would be more accurate, yes, sorry.

Thank you. Now, I just want to go back if I can just to Mr Cossu briefly. Were there any written agreements or contracts between GWAC and PMLV outlining the scope of services and payment terms?---With respect to this contract?

30 No. All of the work you were doing for council and he was giving you assistance on, was there a written agreement between the both of you under which he would be paid?---No.

Thank you. In terms of your reference to a job up in Marulan, I think you told Counsel Assisting that Mr Cossu gave you advice about this verbally that was part of the work he was helping you with that wasn't council work. Do you recall that?---Yes. Yeah. Correct.

40 That was at transcript page 502, line 18, Commissioner. In respect of that job, what are you referring to exactly?---I mentioned this the other day. There was a very big crushing plant and I needed advice on the footings for the crushing plant. We were going, we, we were looking to install either a new crusher, which was the second-hand unit that the company had

purchased or to upgrade the one that was there and the base of the one that was there had cracked. When I went and investigated that with the General Manager of that business, we went into the pit and we saw cracks and stuff through the wall. So I was concerned that there was some potential subsidence or potential issues with that and I, I needed some advice.

So you sought that advice from him orally, did you?---Yes.

10 Do you agree with me there's no written report or documentation of this advice, correct?---No.

No. It's all on the phone, is it, and in person?---Yes.

And you're not suggesting, are you, that there's a specific invoice that's been created by PMLV that's been sent to GWAC for payment that relates to that job, are you?---There's no specific invoice for that, no.

20 No. Yeah. You were just saying that to Counsel Assisting to try and come up with some false explanation as to why payments were being made to Mr Cossu, correct?---I - - -

Sorry, do you think that's funny or no?---No. I justified that to myself that that was part of the payments that were being made.

Yeah. So you, what you were lying to yourself, were you?---I guess in the way you've put it, yes.

30 Yeah, okay, thank you.---But he definitely helped me with that and there was value in doing that.

Yeah, sure. Okay. Thank you. Can I just have a moment, Commissioner? I just want to just check something with my learned junior.

THE COMMISSIONER: Yes.

MR MOSES: Thank you, Mr Clarke. I have no further questions. Thank you, Commissioner. Thank you.

40 THE COMMISSIONER: All right.

MR MOSES: I did have one question for you, Mr Clarke, just to be clear. In terms of properties, your properties that you hold, are they all held through your name or through your companies in terms of real estate?---I believe the property that I own is through my wife and my name.

Your wife and your name?---Yes.

Thank you. And you used moneys that council paid to you to pay mortgages in relation to those properties?---Yes. That's my income, yes.

10

Thank you. And you've got no plans to dissipate those assets, have you, at the moment? You've got plans to sell those properties, have you?---No, no. I live in that property.

Okay, thank you.---Okay.

I have no further questions.

THE COMMISSIONER: Mr Sutton.

20

MR SUTTON: Thank you, Commissioner. Mr Clarke, my name is Sutton. I'm Mr Cossu's solicitor. I'm going to take you through various points in the transcript. It might seem disjointed to you and if it does and you need me to explain context or otherwise, please say so and I'll do so.---Thank you.

I just want to go first to Obnova, Mick Davidic, Davidic is that how you say his name?---Davidovic.

30

Davidovic, thank you. Was it safe to say that, notwithstanding that you and he are not on the best of terms, that you still respected his work and capacity to do the precast jobs?---Yes. He is a very good precaster.

You tell me, do you say that so far as you would be concerned, you would be satisfied that you were using someone who was competent in manufacturing those precast culverts?---Mick has built thousands upon thousands of those culverts. Mick's one problem is quality assurance and that's not the product, it's the documentation of it.

You were asked by Mr Moses, I think this is the job we were talking about, when you first received a phone call and if it's not, tell me. Something to do with shotcrete. Do you recall that?---Yes.

And you told Counsel Assisting that council were being quoted, or charged, I'm not sure which, \$900 a square metre for that. Do you recall saying that?---I do recall saying that.

10 And you were doing it for \$37 a square metre.---Yes, thereabouts.

So \$863-odd dollars less?---Yes.

Now, what's not clear to me is did you actually get that job, did you do that work?---For the council?

Yep.---Not immediately, no, no.

20 Not immediately, not at all, never, sometime?---I did one shotcrete job for the council and it was significantly more than the \$37 a square metre because there was a lot of additional works which I normally wouldn't do when I'm doing shotcrete work.

Okay. Can you just keep your voice up for me, sir?---Yeah. I'm, I'm trying. It's - - -

30 Now, you were asked questions by Mr Moses a moment ago in relation to Mr Cossu and him receiving money from GWAC. Do you recall those questions? And he suggested to you that they were at some point or some part kickbacks. Do you remember that?---Yes, he used those words, yes.

Do you accept kickbacks as an accurate term?---That's why I asked him for the definition of kickback because I don't fully understand what the definition for kickback is.

Well, receiving money for doing nothing could be?---Well, it's not that.

MR MOSES: I reject that.

40 THE COMMISSIONER: Yeah.

MR MOSES: That is not the definition of kickback.---Thank you for that, Mr Moses.

I object to that question, Commissioner.

THE COMMISSIONER: Well, yes, I don't think that – you were putting a different definition of kickback to the witness, were you?

10 MR SUTTON: Well, I was going to give a number of definitions but - - -

THE COMMISSIONER: Right. Well, Mr Moses explained, I think, what he was meaning by kickback which I think generally would accord with the common understanding of what a kickback is, but if you think this witness may not appreciate that common understanding, by all means, ask him.

MR SUTTON: Certainly.---Well, sorry, if I may interject.

No, just let me ask the question, sir.---Sorry.

20 What I want to put to you is this proposition, that rather than kickback or otherwise, that Mr Cossu provided you with value, that is that he did work and that you paid for it.---Absolutely. That is absolutely what's happened.

Thank you. In relation to some questions you were asked on Wednesday, excuse me, about, you said you believed that you saw a document that Mr Cossu had prepared that disclosed an interest with you, a conflict of interest. Do you remember saying that you had seen a document?---Yes.

30 And Counsel Assisting showed you a document today on the screen. Do you recall that?---Yes.

Was that the - - -?---Yes, sorry, yes. Yes I did.

Was that the document you were thinking of?---I, I can't absolutely recall them, that's why I said I am not certain today.

40 I want to suggest to you, or I do suggest to you, that there was no document of a conflict of interest at any time. Is that possible?---That's possible, now that I've read that document today, it doesn't say conflict of interest, so you are correct.

Thank you. Mr Moses took you to your evidence, T512, about the joking about the joint venture. Do you recall that?---Yes.

And it also occurred on another time there was a discussion about you potentially going into business arrangements with each other. Do you accept that?---Yes, definitely. There is more than on occasion. There's probably more than five occasions.

10 Right. In relation to emailing, excuse me, Commissioner. In relation to emails to PMLV or CBC email addresses, or Mr Cossu, is it the case, and please say whether you know this to be true or not, that your computer, when you type in a person's name in an email, generates automatically an email address?---Absolutely. It gives you a list of emails for those people and there's an order to those emails, yes.

Auto population.---Well yes, it comes up, what it suggests is the email. And if you reply to a message, it automatically populates that.

20 Okay. And so is it possible that in some instances, you've accepted, I think, correct me if I'm wrong, that you intended to send emails to certain addresses other times when it's just an auto population?---I definitely made errors because I would get a phone call from Pietro and others who I sent the wrong stuff to the wrong email addresses. So I've definitely made errors.

In relation to the installation at the library tower site, you were asked questions by Counsel Assisting about F3 Industries.---Yes.

30 What's your knowledge about their capacity to actually do the installation of that platform?---They were not able to do the installation.

And is that how you came to do it, because they couldn't?---Yes. And there's been a number of projects that I have done in association with them where they don't do the installation and I have done the installation work.

And it mentions Graeme, is that Graeme Kirkness?---Absolute, yes, it is.

40 You were asked about money you paid to Mr Cossu for two of his guys helping you out on the job. Do you recall those questions?---Yes.

And did he tell you how much - well, I'll put to you that you paid him \$1,000.---Yes.

And do your knowledge and belief that money was to go to the people who did the work?---Absolutely, and those people, I talked to them about what their rate was.

So you know that that rate was applicable to those people?---Yes.

- 10 And still on that job, is it the case that Mr Cossu was reimbursed by you for some money that he outlaid so that you could get the job finished?
---Absolutely, and I have said that in the thing on Wednesday.

And do you recall how much that was?---I, I can't recall off the top of my head but it is in that document that they saw, yeah.

And again he provided you with invoices to deal with that amount of money so you knew what you were spending, is that correct?---Yeah, correct, yes.

- 20 You were shown a spreadsheet of values of your business - sorry, I withdraw that. It was put to you, this was put to you, "Would you accept the evidence that he had a spreadsheet located on a USB in his house would suggest that you did give it to him", and you said, "Sorry?" And then Counsel Assisting said, "If you accept that there is evidence that he had a document similar to this on a USB located in the house, do you accept that that means that you would have given that to him?" "Yeah, well, I accept that would mean that." Do you recall that?---Yep.

Is that a yes?---That's a yes.

30

Thank you. Was that part of the discussions, joking or otherwise, about him becoming involved with you in a business so that you could see how well or otherwise your business was doing?---Yes.

And did you create a shareholder's agreement that suggested within that document that he was to be the chairman of Orsum?---I, I don't know what I've written in there but I've probably put him down as something like that. Like, it wasn't important because it wasn't factual.

- 40 It was registered anywhere or submitted anywhere, it was just a document you created, is that right?---Yeah. As I said, I had a very good experience in

a previous joint venture that I had done and that was the format of the document for a shareholder's agreement and I had sent that to Pietro in the event that in the future, if we start up this (not transcribable) at the Port Kembla Steelworks and do work there, that would be the sort of document that I would expect and that he would need to, you know, sign up for.

Sure.---And, yeah.

10 THE COMMISSIONER: Can I just ask you, I think a moment ago you agreed with Mr Sutton's proposition that - or that the spreadsheet that was on Cossu's USB that you'd said you'd provided to him was part of discussions about the two of you going into business together? Is that what you were saying?---Yes, and I think I indicated that so - my microphone is not working properly.

Yeah, but so are you saying that that was just sort of, "Oh well, this is what it might look like"?---Definitely. That was, the discussion that I had had with Pietro was the state of the business. After two or three jobs, that was the state of the business.

20

Right, but on that document there's reference to a split of \$28,600 to you and to him.---Yes.

That wasn't just what it might look like. That's what actually happened, wasn't it?---He invoiced me the next day for that, yes?---All right. Okay.

Yes, go on, Mr Sutton.

30 MR SUTTON: Thank you. In relation to the, looking at the culverts job now, in relation to the superintendent's position, is it your understanding that he was the only person prepared to work night shift and that's how he became the superintendent's representative?---Yes.

The 28,600 the Commissioner has just spoken about, are you able to break down or tell us precisely what it was that Mr Cossu did for that money?
---No.

40 Well, was it one piece of work, was it spread across multiple different jobs, was it - -?---Multiple jobs. There's no specific one task that was involved in that.

Do you know if it was five jobs, ten jobs, two jobs?---And it wouldn't have been jobs. It would have been time, and I'm assuming he was charging me for the time that he had spent helping me to do the business, get it up and running in the council, assisting in going through formatting things, preparing things, all those sort of documents, plus the likes of BLAKC tower where he has come and assisted me and, on the day to make sure that things were going okay. There's a lot of, there's a lot involved in what he was doing for me.

10 THE COMMISSIONER: Well what do you mean by assisted you on the day? You mean go out to site?---Yeah, he was, he was on site when we did the work for a proportion of the day making sure that, you know, I could get access to the building, that, you know, he was clearing roadblocks, if you want, for another word.

Well, in what capacity was he doing that? As a council worker or as a person who was assisting you?---I believe he was, he, he was a council worker but from my perspective he was adding value to what I was doing. He made my life easier.

20

MR SUTTON: Thank you, Commissioner.

THE COMMISSIONER: You've no further questions, Ms Huxley?

MS HUXLEY: I don't have any questions.

THE COMMISSIONER: All right. Now, will this witness be released from the summons?

30 MS HUXLEY: I think so. I know Mr Pararajasingham didn't have any questions, did he?

THE COMMISSIONER: No, no, he didn't.

MS HUXLEY: Yeah, 'cause I think he had to leave at 4.00.

THE COMMISSIONER: I can't see him but he did indicate he had no questions.

40 MS HUXLEY: No, I think he can be released.

THE COMMISSIONER: Yes. All right. You're released from your summons. That's the end of your evidence. Thanks, Mr Clarke.

And - - -?---Does that mean I can go home?

It does. We can all go home.

THE WITNESS EXCUSED

[4.13pm]

10

THE COMMISSIONER: All right. So we're resuming on Monday morning at 10.00, Ms Huxley. I'll adjourn.

MS HUXLEY: I should just indicate for the parties who are still here, I anticipate on Monday starting with Mr Cossu, and he might be one to two days, and then Mr Webb on Wednesday.

THE COMMISSIONER: Yes, thank you. I'll adjourn.

20

AT 4.14PM THE MATTER WAS ADJOURNED ACCORDINGLY

[4.14pm]