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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION TUNIC

Reference: Operation E13/1800

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 29 MAY, 2015

AT 10.07AM

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THE COMMISSIONER: Yes, take a seat, Mr Inskip. The section 38 order I made yesterday continues to apply. Perhaps you should be re-sworn if you wouldn't mind.

MR INSKIP: Sure.

<KEVIN BRIAN INSKIP, sworn

[10.07am]

10

THE COMMISSIONER: Thank you. Yes, Mr Naylor.

MR NAYLOR: Thank you, Commissioner. Mr Inskip, thank you for coming back today. Just a few more questions?---Sure.

Yesterday I had asked you some questions about a quote in relation to a job at 33 York Street and the – your answer was that that was the cover quote that you've been asked to do by Mr Bullock?---Right.

20

There are a number of other similar documents, eight in fact, that I need to put similar questions to you. One is in relation to a job done at 71 Greenacre Drive – just pardon me for a moment. I'll withdraw that, Commissioner. I'll take a slightly different approach. Sir, you provided a quote in respect of a job at 42A King Street, Tahmoor dated 25 October, 2007. This is Exhibit T54, page 309. Perhaps that can come up on the screen. What I want to do, sir, is just show you a number of these documents on the screen. If you need the hard copy let me know?---No.

30

But it might be easier for you on the screen. So this is another quotation by Plantac on letterhead. If you go over to the next page there's a quotation by A&DJ Building Services and the Commission has heard evidence from Mr Salmon to the effect that he was asked by Mr Bullock to add a secret commission in relation to his quotation and that was a similar situation in relation to the 33 York Street job that I asked you about yesterday?  
---Ah mm.

40

Is this quote by Plantac, 25 October, 2007 at page 309, is that a cover quote?---Is, who actually did the job? Because the actual job, it doesn't ring a bell.

All right?---Did Dave Salmon - - -

All right. I'll tell you, sir, just bear with me. In fact, it seems, sir, that you were successful in obtaining that particular work. So that wasn't a cover quote, is that what you're saying? Because you obtained the job it couldn't have been a cover quote?---Yeah, exactly.

Right?---If that's, we did the work, yeah.

Okay. All right. You can go please, to another similar looking document, Exhibit T54, page 543. What's going to come up on the screen, sir, is what appears to be a Plantac quotation dated 25 October, 2007, in respect of works done or a job to be done at 42 King Street, Tahmoor. See that?---  
Yes.

And it seems Mr Salmon was successful in obtaining that work?---Ah hmm.

10 And Mr Salmon's given evidence that he was asked to add an amount of money to his quotation and later his invoice by Mr Bullock. Is that – was that a cover quote by you or?---It would be.

Yes?---Yes.

Thank you. Pardon me. If you can go next please, to the same exhibit, page 901. This is another quote provided by Plantac, sir, this one's dated 4 January, 2011 in respect of a property at 8 Stuart Street, Tahmoor and this was a job that Mr Salmon won. And once again, there was evidence from  
20 Mr Salmon that he was asked to add on an amount of money by Mr Bullock into his quotation and invoice. Was this a cover quote as well?---It would've been, yes.

Yes. Pardon me. And next please, page 1025, the same exhibit. Sir, this is a – what appears to be a quote by Plantac dated 25 October, 2007 in relation to works to be done at 42C King Street, Tahmoor and the evidence is, sir, that Mr Salmon also put in a quotation that he won the job and was again asked by Mr Bullock to add an amount of money to be shared between themselves in respect of his quote and then later his invoice. Was this a  
30 cover quote?---Yes, it would have been.

Yes. Next please, sir, page 1113 of the same exhibit. It appears, sir, to be another Plantac quote. This one is dated 4 November, 2009 in respect of works to be done at 21 Fraser Street and the evidence is, sir, that Mr Salmon also put in a quote and he was asked to add to his quote an amount of money, asked by Mr Bullock, and that was intended to be a secret commission to be shared between Mr Salmon and Mr Bullock. Was your quote a cover quote?---Yes, it was.

40 Next please, sir, page 1358 of the same exhibit. This appears, sir, to be a quote by Plantac. This one is dated 5 October, 2012 in respect of works to be done at 71 Greenacre Drive, Tahmoor. The evidence is that Mr Salmon put in a quote, Mr Salmon won the job and Mr Salmon was asked by Mr Bullock to add an amount of money to his invoice which he and Mr Bullock were going to share. Was your quote a cover quote?---Yes.

Next, page 1549. Sir, this is a quote apparently submitted by Plantac dated 29 October, 2009 in respect of works to be done at 43 Abelia Street,

Tahmoor and once again the evidence is that Mr Salmon submitted a quote as well. He was asked by Mr Bullock to add an amount of money to his quote. The same amount of money appears to have been included in the subsequent invoice. This was of course after he won the job. Was your quote a cover quote?---Yes.

10 Next please, sir, page 1607. It appear, sir, to be a Plantac quotation in respect of works at 23B Abelia Street, dated 7 September, 2011. The situation is the same as what I've asked you about in respect of the other documents, that is a quotation was submitted by Mr Salmon, Mr Salmon won the job, Mr Salmon was asked to include in his, in this case a variation quotation, an amount of money. That request was made by Mr Bullock. Was – this is slightly different in the sense that this is in respect of the original contract price, not the variation. Was this a cover quote?---Dave did the job.

Dave did the job?---Yes, it would have been, yes.

20 Right. Okay. All right. Sir, if you can be shown page 1665, Exhibit T54. I'm sorry – Exhibit T1. Remember, sir, you gave some evidence yesterday about submitting a cover quote in the name of MAB Building Services?---Yes.

And you did so at the request of Mr Bullock?---Yes.

This is in relation to a different property, sir. This is at 45 Brundah Road, Thirlmere. It's up on the screen?---Yes.

30 Did you submit this document as a cover quote as well as the other one that I asked you about yesterday?---Yes.

Right. And that was at Mr Bullock's request?---Yes.

All right. Did you prepare the document on your computer?---Ah - - -

Or was it prepared for you?---I didn't personally do it, no. Um, I'm not sure whether Craig did it or whether it was done in our office, actually.

40 Who is Craig?---He, he's the um, owner of the company. Of MAB.

All right. Well, I'm a bit confused now I'm sorry. I thought you were saying that you submitted this as a cover quote?---No, this isn't the - - -

- - - at Mr Bullock's request?---Yes. If I asked him – if I've asked him to give a cover quote because I was asked to by another company - - -

Yes?--- - - - then he either gave it to us or he gave us authority to do it on his letterhead - - -

I see?--- - - - put a cover quote and then I handed it over to Darren.

Oh, I see?---Yeah.

So Mr Bullock asked you to do a cover quote and then you asked Craig - - - ?---Yes.

10 - - - to do it up on his letterhead?---Yes. Yes.

I see. And does the same situation apply to the other document, similar looking document that I showed you yesterday?---Yes.

I see. Sir, did you provide cover quotes at Mr Bullock's request on other letterheads at any other time that you can remember?---I think, I think we did, yes.

20 Yeah. All right. Do you have a memory of what other letterheads were used when you were providing cover quotes at Mr Bullock's request?---Not a 100 per cent sure but I think Vari Plan Homes would have been one.

Yes?---Let me think. I'm just trying to think of a name. All Hands On Deck.

Yes?---And that's all I can think of.

All right. Thank you, Mr Inskip. I don't have any further questions.

30 THE COMMISSIONER: Now, does anyone have any questions of Mr Inskip? Mr Chee.

MR CHEE: I have one matter to put to him. Mr Inskip, I appear for Mr Bullock?---Yes.

Yesterday you were giving evidence about a meeting at – a site meeting in Abelia Street with Mr Bullock and also Mr Salmon. Do you recall that evidence?---Yes.

40 And I believe you said that at that site meeting Mr Bullock told both you and Mr Salmon word or words to the effect "15,000 each". Do you recall that?---Yes.

Could I put it to you that that never occurred?---Yes, it did.

Sorry, one further question if I may. Arising from the evidence you just gave in respect of MAB, the MAB quotation?---Mmm.

Is it your evidence that Mr Bullock gave you instructions to provide the cover quote by MAB?---No, just if I could get a cover quote.

So it would be your idea to speak to the owner of MAB?---Yes.

Okay. And that applies also to Vari Plan and All Hands On Deck. Is that correct?---Yes.

Okay. Thank you, Commissioner.

10

THE COMMISSIONER: Anyone have any other questions for Mr Inskip? Mr Oates, do you have anything?

MR OATES: Nothing, Commissioner.

THE COMMISSIONER: Thank you. Thank you, Mr Inskip. You may step down. You're excused?---Thanks, Commissioner.

20 **THE WITNESS EXCUSED**

**[10.28am]**

MR NAYLOR: Commissioner, I think in the circumstances having regard to the evidence that Mr Inskip gave late yesterday and today it might be necessary for Mr Bullock to return very briefly to the witness box.

THE COMMISSIONER: Yes. Can Mr Bullock come forward please. There's just some further short questions. Take a seat, Mr Bullock. The section 38 order continues to apply. Could he be reaffirmed please.

30

MR NAYLOR: Mr Bullock, just by way of follow up to the evidence that Mr Inskip has given I need to put to you, sir, the following propositions. That you requested Mr Inskip to provide a cover quote in respect of works to be done at 42 King Street, Tahmoor. That's right isn't it?---No.

10 You requested Mr Inskip to provide a cover quote for works to be done at 8 Stuart Street, Tahmoor?---No, I didn't.

You asked Mr Inskip to provide a cover quote for works to be done at 42A King Street, Tahmoor?---No.

You asked Mr Inskip to provide a cover quote for works to be done at 23B Abelia Street, Tahmoor?---No.

20 You asked Mr Inskip to provide a cover quote for works, pardon me, works to be done at 43 Abelia Street, Tahmoor?---No.

Pardon me. You asked Mr Inskip to provide a cover quote for works to be done at 71 Greenacre Drive, Tahmoor?---No.

You asked Mr Inskip to provide a cover quote for works to be done at 21 Fraser Street, Tahmoor?---No.

You asked Mr Inskip to provide a cover quote for works done at 42C King Street, Tahmoor?---No.

30 You asked Mr Inskip to provide a cover quote for works done at 45 Brundah Road, Thirlmere?---No.

All right. Pardon me. Sir, the situation is, isn't it that, in relation to all of those cases you asked Mr Inskip to provide a cover quote in circumstances where you had an arrangement with Mr Salmon to include a secret commission in his quotation and invoice and the arrangement was that Mr Inskip would provide a cover quote on his letterhead. That's the situation, isn't it?---No.

40 And it's also the case, isn't it, that at the site meeting at 47 Abelia Street, you asked not only Mr Salmon but Mr Inskip as well to add \$15,000 plus \$15,000 to each of their tenders. That's right, isn't it?---No.

Could the witness be shown page 1665 of Exhibit T1. It's going to come up on the screen, sir?---Right.

See that document?---I do.

Did you sign that document?---No.

And if you could next be shown please, from Exhibit T1 as well page 2055. It's a similar looking document, Mr Bullock. Did you sign that document?--  
-No.

Purporting to be Craig Jones?---No.

10 And I ask the same question in relation to the other document I've just shown you, that you've signed the other document purporting to be the name of the signatory, Craig Jones?---No.

All right. Yes, no further questions. Thank you, Commissioner.

THE COMMISSIONER: Anything arising out of that? No? Yes?  
Nothing, Mr Chee?

MR CHEE: No, Commissioner.

20 THE COMMISSIONER: Thank you, Mr Bullock. You may step down.

MR CHEE: May Mr Bullock be excused?

THE COMMISSIONER: Well he may, yes, if he wishes to be excused but there may be something that concerns him in the evidence of Mr Cole-Clark.

MR NAYLOR: Ah hmm.

30 THE COMMISSIONER: Yes, Mr Naylor?

MR NAYLOR: Excuse me. As you suggest, Commissioner, there may very well be matter arising - - -

THE COMMISSIONER: Ah hmm.

MR NAYLOR: - - - from Mr Cole-Clark's evidence so I would be reluctant for Mr Bullock to be excused just at this time.

40 THE COMMISSIONER: Yes. I think you should take a seat at the back.

MR NAYLOR: Yes.

MR CHEE: (not transcribable).

**THE WITNESS STOOD DOWN**

**[10.35AM]**



MR NAYLOR: Pardon me, Commissioner. I call Greg Cole-Clark, Commissioner.

MR OATES: Commissioner, I apprehend that Mr Cole-Clark's evidence won't concern my client or that of Ms Hargreaves. If you'll excuse Mr Harris and I from the bar table?

THE COMMISSIONER: No. Absolutely. Thank you, Mr Oates, it won't concern you. Same for you Mr Roff, thank you.

10

MR ROFF: Thank you, Commissioner.

THE COMMISSIONER: Yes, Mr Griffin?

MR GRIFFIN: Commissioner, can I raise two matters?

THE COMMISSIONER: Yes.

MR GRIFFIN: Can I formally seek a section 38 declaration?

20

THE COMMISSIONER: Yes.

MR GRIFFIN: But I can also remind the Commissioner that Mr Cole-Clark has a hearing disability.

THE COMMISSIONER: Ah. Thank you. Thank you, Mr Cole-Clark. Just take a seat for the time being if you wouldn't mind. If you have difficulty hearing anyone at any stage could you let us know?

30 MR COLE-CLARK: Thank you.

THE COMMISSIONER: You appreciate that the order under section 38 protects you from the use of your answers against you in civil or criminal proceedings but does not protect you if it's found you've given false or misleading evidence to the Commission?

MR COLE-CLARK: I do, your Honour.

40 THE COMMISSIONER: Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

**PURSUANT TO SECTION 38 OF THE INDEPENDENT  
COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT  
ALL ANSWERS GIVEN BY THIS WITNESS AND ALL  
DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS  
DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS  
PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN  
GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO  
NEED FOR THE WITNESS TO MAKE OBJECTION IN RESPECT  
OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR  
10    **THING PRODUCED****

THE COMMISSIONER: Would you like to be sworn or affirmed?

MR COLE-CLARK: I'd like to be sworn, please.

THE COMMISSIONER: Yes, Mr Naylor.

MR NAYLOR: Sir, your name is Greg Cole-Clark?---That's correct, Mr Naylor.

10 And you are currently the chief executive officer of the Mine Subsidence Board?---Yes.

You've held that position as I understand, sir, since 1994, that's right?---Correct.

Yep. And in February, 2012 you were appointed to a five year contract as the CEO of the Mine Subsidence Board under what was then the Public Sector Employment and Management Act, that's right isn't it?---I believe that's correct, yes.

20 All right. Commissioner, I tender two documents as a bundle, one being a letter from Mark Paterson, Director General, Department of Trade and Investment dated 2 March, 2012 annexed to which is the letter of appointment in respect of the contract that I've just referred to, together with a copy of the contract for the period 1 August, 2011 and then for the subsequent five years.

THE COMMISSIONER: Yes. Those documents will be Exhibit T64.

30 **#EXHIBIT T64 - LETTER DATED 2 MARCH 2012 FROM MR PATERSON TO MR COLE-CLARK WITH MR COLE-CLARK'S EMPLOYMENT LETTER AND CONTRACT OF EMPLOYMENT DATED 1 AUGUST 2011 ANNEXED THERETO**

MR NAYLOR: And while I'm tendering documents, sir, you've provided a statement of information, have you not, in response to questions asked of you by ICAC staff?---Yes, I did.

40 Yes. Right. I tender a copy of the statement. It's marked, sir, as draft but may we take it's a final document? I'll show the document to you?---I'll have to accept your guidance. It's rather, rather thick, Mr Naylor.

THE COMMISSIONER: I wonder if we can tender the document at this stage and then if there's a problem with it, Mr Griffin, we could always substitute the concluded statement. But I think that that is probably a concluded statement.

MR GRIFFIN: That approach is acceptable to us.

THE COMMISSIONER: All right. Exhibit T65.

**#EXHIBIT T65 - COPY OF STATEMENT OF INFORMATION OF  
MR GREG COLE-CLARK**

10 MR NAYLOR: Sir, before you were appointed CEO of the MSB in 1994,  
what was the job you were doing immediately before that?---Immediately  
before that I was Acting General Manager, and, ah, prior to that a Mine  
20 Manager for Coal and Allied Operations.

And I understand that your qualifications are as a mining engineer. That's  
right?---Ah, correct. I also have a Master of Business Administration.

All right. I suppose that in the position of Acting General Manager this was  
of a mine. That's right, was it?---Yeah. It was a group of mines that were in  
20 the process of being sold.

Okay. And for how long did you occupy that position?---Ah, difficult to  
recall - - -

All right?--- - - - ah, Mr Naylor. But I'm guessing for some months.

Okay?---That's all I can say.

I guess what I'm coming to is this. Prior to being appointed the CEO of the  
30 Mine Subsidence Board what was your experience and indeed your  
qualifications in relation to holding senior management positions?---Ah, the  
mine manager, um, Mr Naylor, was a senior, a very senior management  
position.

Yes?---In those days you were responsible for all operations. The mine, um,  
and financial, budgeting, staffing, um, every aspect. Nowadays there tends  
to be a lot of other people supporting it, but in those days the whole box and  
dice, industrial relations, everything.

40 All right. And how many staff would you have had at that time, roughly?---  
Look, it's again difficult to say because mining operations are large  
operations but the staffing wasn't large operations. So there might've been  
three or four people on each shift from under managers to, ah, electrical  
engineers, ah, mining engineers. So I guess you might have had again 20 or  
30 staff, probably 30 staff in an operation that might've looked after, you  
know, 250, 300 people.

I see. All right?---That's, sorry, Mr Naylor, that's directly reporting staff obviously. There was other layers as it went down.

Yes. Sir, you've, you're familiar, are you not with the evidence that has been adduced for the Commission during the public enquiry in relation to the activities of Mr Bullock when he was the district manager, Picton, at the Mine Subsidence Board?---Yes, in general.

10 All right. And, so you're aware are you not, that there's been evidence of Mr Bullock requesting Mr Inskip who was a building contractor with the firm Plantac Pty Limited, you're aware that – of his evidence that he was asked by Mr Bullock to add secret commissions to variation invoices?--- Yes, I'm aware of that now.

And you're aware, sir, that over a period of about seven years from about 2008 to 2014 the Commission has received evidence to the effect that the value of those secret commissions exceeded about \$300,000?---I have to accept your advice on that, Mr Naylor, but there seem to be a number of occurrences, yes.

20 And more recently, sir, during the current sittings the Commission has received evidence to the effect that Mr Bullock asked David Salmon of A&DJ Building Services to add secret commissions to quotations and invoices that he had rendered in respect of a number of properties, about 44 properties in the Tahmoor area from 2007 to 2014. You've heard, you've heard that evidence or you're familiar with that evidence?---In general, yeah.

30 All right. And you're familiar, sir, with the evidence that Plantac was asked to provide cover quotes in respect of a number of jobs where Mr Salmon was, was also involved and indeed won the job and was asked by Mr Bullock to include secret commissions within the quotations and invoices that he had rendered. You're familiar with that evidence?--- Mr Naylor, I think you said I'm familiar with it or something. No, I'm definitely not.

40 Well, I'm just summarising?---But I understand, I understand your general – they were the accusations. You must appreciate, Commissioner, it was rather disturbing reading these things and I must say I struggled to get through a page reading them.

I'm doing my best, sir, just to summarise the main - - -?---I understand. I understand.

- - - the main import of the evidence that the Commission has received. Now, in relation to those matters in which Mr Salmon had been asked by Mr Bullock to include secret commissions in quotations and tenders, as I say, that was in respect of some 44 properties within the Tahmoor area over

the period 2007 to 2014 but it would appear from monthly reports submitted by the Picton District Office to the Board that as at October, 2014 there were in excess of 400-odd properties in the Tahmoor area upon – in relation to which repair works had been done and there were another 40-odd properties in relation to which repair works were either being done or they were in process. So that is to say, there are a lot more properties that haven't been examined by the Commission but are Tahmoor-related properties during the period of Mr Bullock's term as district manager at Picton which there's been no examination of. You understand that?---Yes,  
10 Mr Naylor.

All right?---I think in summary there – from about 2004 there may have been 800 claims from there to about 2014.

All right. One can't – do you agree with this proposition, one can't rule out at least the possibility that in respect of all of those other properties that haven't been the subject of inquiry before this Commission that there's at least some possibility is there not they might be similarly affected, that is to say, that Mr Bullock had asked contractors to add, in particular A&DJ  
20 and/or Plantac, to add on secret commissions?---Mr Naylor, that is purely speculative. I can't agree with that or say that at all. I can – all I can say is there's 800 claims in there, some were refused, and I can't speculate on that. I mean - - -

I'm not - - -?--- - - - I trust it's not the case but, no.

It's a possibility isn't it?---I guess if the Commission say it's happened on some there's a possibility it may have but - - -

30 Let me - - -?--- - - - I can't speculate on it. I really can't.

Let me put it a different way, sir. It warrants further inquiry does it not?  
---That's not for me to determine. I'm – in all honesty I, I spent a great deal of time providing information to assist the Commission as best I can and, yeah, I just can't speculate on that. If the Commission felt that was the case by all means that's something to be done. I can't answer it.

Sir, you - - -?---I'm not sure what you're asking me, sorry, to answer you.  
40 Do you know what I'm saying.

Let me try to put it a different way?---Yeah.

You're the chief executive of the Mine Subsidence Board?---Yeah.

And ICAC has received evidence to the effect that in respect of some 44 properties in the Tahmoor area in relation to which repair work has been done by the Mine Subsidence Board secret commissions were added or Mr Bullock had asked that they be added to invoices and quotes submitted

by A&DJ the total value of which exceeded \$200,000. That's only in respect of 44 properties. It would appear from monthly reports that in excess of 400 properties have been dealt with - - -?---Yes.

- - - by the Mine Subsidence Board - - -?---Correct. Yeah.

- - - during the same period?---Yeah.

10 It warrants inquiry does it not as to whether or not any of those other properties might be similarly affected by the same kind of behaviour?

MS HOGAN-DORAN: Commission, I object. Perhaps if Counsel Assisting could clarify inquiry by whom. I think the witness and Counsel Assisting are at cross purposes.

20 THE COMMISSIONER: Well look, I don't know that we need to dance around this. What's been suggested, Mr Cole-Clark, as I understand it is that the circumstances that have been exposed by this inquiry would suggest would they not that the Board should undertake an audit of all of the files within the Picton office and perhaps within other offices under the control of the Board to ensure that there isn't more widespread wholesale disregard of policies and procedures. That's the essence of what's been suggested?---  
Yeah, thank you, your Honour, for putting that so succinctly but yes, I'd agree you'd want to draw a line that those things are clear, yes.

30 MR NAYLOR: All right. Sir, I want to take you to just a selection of some of the property files that have already been examined by the Commission and just get your reaction and ask you some questions about aspects of them. So if we can go first of all to a job done at 21 Fraser Street, Tahmoor – and what I'll – there are a great many documents so what I'm going to try and do is just summarise the situation for you and just get your reaction if a may? But by all means look at – I'll take you to the relevant documents. Hopefully they'll be brought up on the screen, it will save some time if we look at them on the screen. But if you need the hardcopy let me know. So – pardon me. So if we can go first of all, as I say, there's a property at 21 Fraser Street, Tahmoor in relation to which repair works were done. Go to Exhibit T54, page 1112. Now, so this a minute that has, that was prepared by Mr Bullock, 4 November, 2009. It's come up to you recommending that a tender be accepted from A&DJ Building Services. See that?---Yes.

40

All right. And - - -?---Was it a question?

Yes?---I'm sorry.

And the documents would also seem to show, sir, that at this particular time, 4 November, 2009 there was a requirement to obtain three quotes in relation to works of this value. Now, to be fair I should take you to the claim investigation report as well. So go, please, to page 1122 and 1123 and 1124

– and I'll draw your attention, sir, to page 1123. See the estimated costs, \$20,000?---Yes, I see that.

Right. And as at November, 2009 it was necessary was it not to obtain three quotes in order, in relation to works proposed to be performed where the value of the estimated works was going to be \$20,000, you don't disagree with that proposition do you?---I, I think – yep, yep, yep.

10 All right. So when we go back to the minute paper at 1112 and we see there that only two quotes have been obtained. One from A&DJ Building Services and one from Plantac. See that?---Yes, I see what you're saying, yeah.

20 And the question is why were you prepared to sign off on Mr Bullock's recommendation where it's obvious that a third quote hadn't been obtained?---I think, Mr Naylor, it's, it's, I should say, but at the time, and I still do, right, I consult widely with my staff, my senior staff and that. So when these matters came to, let's say office, and I'm assuming this one, ah, I would normally discuss it with a Subsidence Risk Engineer or other people who have got expertise in this. Ah, I would've spoken possibly to the, um, um, manager of mines and admin and I may also have even spoken with the chair of the board at some stage. I'm not sure of the circumstances. It goes back, um, some time that I can't recall. But, um, ah, it was signed off for whatever reason, and I think the decisions would've always been made in, you know, the best interests of the, ah, what we believe the best interests of the Board and the, ah, the, um, claimant who's having stuff dealt with, because every claim is different.

30 Are you, are you essentially saying, sir, I don't mean to – if I misapprehend what you're saying let me know. But, are you saying, sir, that in circumstances where there was a requirement to obtain three quotes you could absolve yourself in one sense of that requirement if you consulted with others, other senior people including the Subsidence Risk Engineer, the secretary of the board and perhaps Board members or the chair of the Board and having had those consultations you could satisfy that, in this particular case, for example, you could obtain relief from the requirements for three quotes. Is that what you're saying?---I don't, I'm not saying, um, Mr Naylor it's relief. There may have been issues that, ah, I've seen issues in more recent times where someone sought a third quote and a third quote hasn't  
40 been forthcoming. So they've gone out to three quotes and three haven't been received. I am just nothing that this sometime ago. You know, these quotes and, ah, I can't recall the exact details, I'm just giving you, ah, advice of how I manage these things and I continue to manage them. Um, you know talking to, ah, staff and discussing them. I think it's important to point out that a CEO, I'm not the claims manager. I don't sit there, you know, doing claims every day. I do a large amount of, ah, corporate work and I normally only see claims that are, are a problem claim. Ah, where there may have been a difference of opinion, ah, at the office and I've had to



step in, ah, delegations, ah, or claim reviews. So that's basically, ah, my response. I can only give you my best and honest answer at the time.

Well, let me come to the point?---Yeah.

I can take you to a number of files, sir?---Yeah.

Where there is a similar document?---Yeah. I agree.

10 Where you have signed off on a claim recommended by Mr Bullock where there have only been two tenderers and where the rules at the relevant time, your policies and procedures require three tenderers. And I'm trying to understand how it is in quite a number of files, you've been prepared to sign off in circumstances where it looks like there's been a failure to comply with the requirement to get a third quote. And I want to understand why you were prepared to do that. Not just on this occasion, but on a number of occasions. And I can take you to the other files if necessary?---No. No, I understand what you're saying and I'm giving you my answer of how it was done at the time. I mean there's two here, I've signed off. I'm saying it's  
20 most likely I was, I consulted, I was satisfied that that met the requirements in the best interest of the Board and I, um, ah, they were approved at the time.

And it would be reasonable, would it not, to be expect that if you're going to relieve yourself essentially of the requirement to get a third quote and you do so by consulting with others who have some relevant expertise. And on the basis of those consultations you satisfy yourself that a third quote is not necessary and you can make a decision as to whether or not to accept the recommendation based just on two quotes. You would expect to see, would  
30 you not, it's reasonable, you would expect to see something on the file to say "Look I spoke to the Subsidence Risk Engineer, he said "Look these quotes seem reasonable and I propose to proceed even without a third quote and to authorise the acceptance of the tender that has been recommended".?---Mr Naylor, there's several things you may have seen, there may have been Cordell's or some other estimate that's not a quote that would've been provided. There may have been advice from people who've got a high level of expertise. And I mean everyone certainly valued Mr Bullock's advice and that. So these people, who my staff all have clerk work certificate, it may have been that, as you just said, I went to these people and they looked  
40 at this information and provided advice. I said "Look, they're satisfied and I am". If there's a note on it, correct, but I wouldn't say there would always be a note on it. You know, I do that now. I give someone a, um, file to look at to give me some advice or discuss it and I'll sign it off. But there's not necessarily a note made on every, on occasions, no.

Why not?---Hmm?

Why not?---There, there wasn't or isn't. I mean other files – I'm sure you've seen many files have got a note on them but I'm saying that's not the case in every, every occasion.

But where, where there's a clear requirement under the policies to get a third quote - - -?---Yeah.

10 - - - and there's no third quote you would expect to see some explanation on the file as to why that requirement has not been complied with. If a decision has been made deliberately not to comply with that requirement you would expect it to be documented wouldn't you?---Mr Naylor, there's never been deliberate things not to do things for the Board or not to work in their best interest. I'm, Commissioner, giving you my best advice and recollection of it. That's all I can say.

All right.

20 THE COMMISSIONER: Mr Cole-Clark, see the difficulty from our point of view if I can put it in these terms is that – and I know you haven't been here throughout this inquiry, I mean perhaps Mr Griffin on your behalf has informed you of some of these things. But the difficulty is from our point of view, we have had almost two weeks of evidence of wholesale disregard of policies and procedures by the manager at Picton and an explanation which has been forthcoming from him to the effect that nobody ever did work at the Picton office in any way consistent with the policies and procedures, that they were ignored on a wholesale basis, that the emphasis was on getting the job done and that, to be blunt, you and the Board in Newcastle knew that that was happening and that you gave the manager at Picton imprimatur in effect to continue to ignore those policies and procedures because the  
30 emphasis was simply on getting the repairs done to a satisfactory standard. Now, that's a very broad but reasonably accurate summary of what we've been told. Do you appreciate that?---I appreciate what you're saying but - - -

Right?--- - - - I totally disagree with - - -

Well - - -?--- - - - the supposition.

40 But you see, that's our problem, you see?---Yeah, I understand that, yeah.

Our problem is that we and – we now have examples of where on the face of the file, and I accept it's on the face of the file, but we have numerous examples where on the face of the file you have also not complied with the then relevant policy and procedure insofar as you've signed off on a tender where there's only been two quotes. So what we're trying to understand is, from an organisation perspective there may well be a relationship between the Board not complying with its own policies and procedures and the behaviour of staff in your office who read from that some imprimatur from

the Board to similarly ignore policies and procedures and that's what we're trying to appreciate from the point of view of corruption prevention?  
---Yeah, I understand.

Do you understand my - - -?---Yeah, I understand, yeah, yeah.

Right. So that's where we're coming from?---Yeah. Can I – maybe – am I able to provide some response to that?

10 Yes?---The situation is with the district officers right, they were trained. They had advice. I'm sure the Commission appreciates I initiated reviews and other odds and ends to make sure that we had some rigour in our systems. We are, Your Honour, a quality certified organisation which is one of the few organisations government bought that in. I bought that and introduced that when I came into the Board and as far as I'm concerned all actions and all training and district officers under the district office delegation was very, very clear of what they had to do. Clear, unequivocal, clear they've been advised that. The ones that exceeded delegation right, that had to go to me or the Board or something needed to be assessed as it  
20 was and on their merits and that's the way it had been done, Your Honour, so - - -

Can I go back, sir, to something that you said a few moments ago? The effect of what you said was that you didn't routinely have to deal with claims. You're the CEO, you had many other things to do as part of your job. But you dealt, from time to time claims came up to you and I think your word was "they're the problem claims." Is that, am I paraphrasing your evidence correctly?---Ah - - -

30 MR GRIFFIN: Well, with respect, Commissioner, I think he said - - -

MR NAYLOR: No.

MR GRIFFIN: - - - that they included problem claims but they were also claims - - -

MR NAYLOR: Yes, all right.

THE COMMISSIONER: Yes.

40 MR GRIFFIN: - - - outside delegation.

THE COMMISSIONER: The delegation, yes.

MR NAYLOR: Quite – I don't mean to - I guess the point is this, sir, that – and let's stay with this 21 Fraser Street, Tahmoor matter just for the time being just for the purpose of an example. Tenders have been received from A&DJ and from Plantac and certain amounts have been quoted and a

recommendation has been made. It doesn't appear from the file that there's any supporting documentation to justify the recommendation. It doesn't appear that there's any reasoning for the recommendation. But you as the CEO, it comes up to you, you're nevertheless asked to make a decision as to whether or not to accept it – and if you're not dealing routinely with claims I'm just wondering to what extent you regard yourself as having sufficient expertise to make an informed decision as to whether or not these tenders or either of the tenders are suitable for acceptance?

10 MR GRIFFIN: Commissioner, I object to that question. What ought to happen is preliminary question should be what information did this witness have because the evidence - - -

THE COMMISSIONER: Well, I think he's - - -

MR GRIFFIN: - - - the evidence of Mr - - -

20 THE COMMISSIONER: Yes, no, I know. I think he's already given evidence to the effect that if, by way of example he signed off on that one that he may well have sought the advice of other engineers and then to the Board.

MR GRIFFIN: Oh yeah, but you'll recall the evidence of Mr Bullock was that there were three different categories of matters that went up. In the first category the whole file went to head office, in the second category an extract of the file went, and in the third category an email was sent. That can be important as a fundamental basis to what my learned friend is asking.

30 THE COMMISSIONER: All right. Well let's stick to the files for the time being. Is that suitable for your purposes, Mr Naylor?

MR NAYLOR: Of course. Of course. You may or may not have a memory, sir, but let's focus on if we may on the 21 Fraser Street, Tahmoor job which – and you've got the relevant minute paper in front of you. The file can be made available if needs be. The whole of the file is available to the Commission and you can be provided with a copy of it. But what I'm trying to understand is in circumstances where this kind of minute comes up to you it comes up with the file as well?---It may not come up with a file. It may not come up with the whole file.

40 All right?---See Mr Naylor, without going into too much detail to bore the Commission there's a process that's followed from an initial inspection, there may be photographs - - -

Sure?--- - - - I may have done site inspections down there. Not at this property, but site of inspections of the general area with Mr Bullock. I mean, to suggest I'm sitting up in my office ignorant of maybe what's happening down around an area, although I'm saying I'm not the claims

manager, is incorrect I'm sorry. But you know, I have a reasonable – because the community's giving feedback, there's community consulting committees giving feedback. So what I'm saying is that I don't remember the detail of this exact file. I've given you genuine succinct answer as best I can recall it but – but I am say there's processes, there may have been photographs and other matters ascertaining this is a reasonable thing to do.

You don't know what documents came up to you when you were asked to make a decision on this particular minute?---I don't know.

10

Right?---I can't say.

There wasn't a particular process

There wasn't a particular process that the Board had such that you needed to be provided with certain kinds of documents when this kind of minute came up to you?---Obviously I needed to be provided with sufficient documentation to enable me to make a decision.

20

Yes?---And if it wasn't the whole file and it didn't all come up then obviously I would request that and say, "Listen, I've only got one page." I'm not going to sign off on one page without having supporting detailed documentation, without probably discussing it with the person who sent that to me – because I regularly do that, or people who have had a great deal of experience within the Board such as engineers or financial people.

30

Well were there particular kinds of documents that you would routinely require when asked to make a decision about this minute?---Supporting documentation that would be able to give me some idea – I'm not the building, I've got to rely on other people who've got the expertise but supporting documentation, Mr Naylor, that would satisfy me that there has been damage for a start, you know, to the property, you know, well - - -

Well, I don't mean to interrupt, I'm sorry?---No, you're right. Please go.

40

What supporting documentation?---Ah, there could be a, a um, scope of works that says what sort of damage has occurred, maybe some photographs of what damage has occurred ah, I may have and know subsidence information, the degree of subsidence that's occurred in the area, there may be a history of houses along that street or in that area being damaged so it doesn't come as a, a surprise that other houses are damaged there. There's a number of factors of which you consider um, and the knowledge you have in dealing with claims in specific areas.

What about the claim investigation report?---Ah, that, yeah.

That would be a pretty important document to have would it not - - -?---  
Yeah. Yeah.

- - - when considering whether to accept Mr Bullock's recommendation?---  
I'm including all those in it but initially - - -

Well you didn't, that's all, I - - -?---No.

10 I - - -?---Sorry. It goes without saying, Mr Naylor, I'm trying to say to you whatever supporting documentation I need to make a decision on, right, to enable me to assess this, this page on itself wouldn't be enough, and there's a number of documents – in this case I may have seen the whole file. I may have seen the whole file. But there's documents that I have to use to ensure that I know it's a reasonable expenditure, Mr Naylor.

Let me take you to another document. This is in the same exhibit, T54 – and let's go please to page 308 to begin with. Have you had a chance to read that, sir?---No. Yes.

20 All right. That's another similar document. That's a minute that has been signed off by you, a recommendation made by Mr Bullock in relation to two tenders and you've approved the recommendation by Mr Bullock that one of them be selected – and again, sir, this minute is dated at a time when it would appear according to the Repairs to Properties Policy and Procedures there was a requirement for three quotes but in this case you've been prepared to sign off even though no third quote was obtained. Do you – is your explanation for that the same as the explanation that you've just provided?---I think if it assist the Commission, Mr Naylor, and give you the best information I can, yes, that's the way it was.

30 Okay?---Thank you.

All right. And would it be fair to say based on the evidence that you've just given that you probably received the claim investigation report when this minute came up?---It's quite probable I'd imagine that would be coming - - -

Well, just go over to that document which starts at page 318. It goes 318, 319. It's a document prepared by Mr Bullock on 10 October, 2007 and you see the estimated costs there, \$10,000?---Correct. Yes.

40 And when I go back to the minute paper 308 that records of course that the amounts which were quoted by the two tenderers were more than double the estimated costs that Mr Bullock had come up with in his claim investigation report?---Can you just go back to the original – the other document, the claim investigation report.

Page 319 it was?---Whatever it was, Mr Naylor. Yeah.

See that, and there doesn't seem to be any documents on the file which say words to the effect well, even though Mr Bullock had originally estimated the costs at 10,000 we've reviewed that estimate and the costs are likely to be much more. There's no document to that effect on the file. All we've got is the claim estimate in the claim investigation – sorry, the repair estimate in the claim investigation report and there are the tenders of course but then there's this minute paper and that records the two tenders and you sign off on it. I want to try and understand how it was that you signed off on a document where the tenders were more than double the estimated costs?--Mr Naylor, was there other documents on that file? I haven't seen the file but I'm relying upon your assistance. You know, was there scopes of works, photographs - - -

Yes?--- - - - other odds and ends on that file?

Yes, of course. There's a scope of works on - - -?---Okay. All right. That's fine. Yeah.

- - - on the file at 311 - - -?---Yeah. Okay.

20

- - - through to 314?---Yeah.

There's the quote which was put in by A&DJ Building Services and there's the quote which was put in by Plantac and the next document that appears on the file in relation to the claim approval process, that's the first part of the process of course, is this minute paper and there doesn't appear to be any note or document explaining why, for example, the – either of the quotes which are more than double the estimated value of the works should be accepted and can you explain that?---May I just have a look at that to see what it is.

30

Of course?---Just so I'm assisting the Commission to the best of my ability.

If you need the hard copy?---No, no, no.

If that would help?---No, it's not going to – you've said there's a process, you've told me there's other documents which I appreciate and what I'm saying is it's – the damage right, particularly in areas like Tahmoor right, but the damage can increase markedly from what is initially estimated when you go do let's say site inspections or other odds and ends and you get into the details. These are an estimate and I must say it would be the – they're only 10,000. It wouldn't surprise me if that had been increased and sometimes it increased significantly. I mean I've relied upon the, the expertise and the knowledge of my staff down there and the expertise and knowledge of builders who are inspecting it.

40

THE COMMISSIONER: Mr Cole-Clark, just in relation to that, can I just ask you this, When you see a number of claims coming from the Picton

office which have a number of features in common, consistently in common, what I mean by that is the claims manager is Mr Bullock. The matter would ordinarily require three quotes but there's only two and those two quotes consistently come from a company called Plantac and A&DJ Building Services and those quotes exceed by a significant margin the original estimate of the costs of works, so can I ask you to assume all of those factors are actually present in a large number of these documents that have been approved, would that combination of consistent circumstances, would that ring any alarm bells?---Not necessarily, Your Honour. I'm not seeing, you know, no.

You don't - - -?---No.

You don't have concerns in relation to those factors being present on a significant number of occasions in that form that I've described?---I think there was 800 claims I said, Your Honour, down there.

Yes?---And these are - - -

20 But of the ones that you saw I'm talking about?---I know, but these are the few that I see.

Yes?---And I would see a mixture of them. I mean you're obviously giving me the selection of those that, you know, Mr Bullock and been given in evidence here. There would have been other claims that had different things. There were claims dealt with at district office. There was a number of claims dealt with so no, my concern was, Your Honour, and I can say I spoke to Mr Bullock on at least a couple of occasions to make sure and ask him to make sure he's rotating people and using different contractors and he

30 assured me he was doing that.

MR NAYLOR: Would I be right in saying, sir, that the estimate of the repairs that is put in the claim investigation report, the estimate of repairs, in this case \$10,000. Am I right in saying that well it's always prepared by the district manager or a district supervisor, is it not?---Yes. Someone with the expertise and knowledge and qualification to do that. Yes, Mr Naylor.

And if, if – so if the documents come up to you and someone with expertise has assessed the value of the works at \$10,000 but you're presented with a minute which shows that two tenders have been received for more than

40 double that assessment, you'd have to wonder to yourself, wouldn't you, whether those tenders – whether either of them should be accepted?---I think you must appreciate and what isn't maybe been appreciated in the room here is that the damage there can vary greatly. Right, not a little bit, greatly. And when you start doing inspections, site inspections, looking at footings, looking at brick work, the thing can increase markedly. The estimate is an estimate to my opinion, and it's only my opinion because there would be a thing saying I think this is five grand or fifty, fifty grand.



It might be fifty grand and come out to thirty. But in the Tahmoor area there was significant damage. There was increasing levels of damage. And I went on inspections of the area on occasions to ascertain and understand the damage to get an appreciation of what the community was dealing with and get appreciation of what sort of magnitude we're having in that area. So, no, it doesn't surprise me when there was a detailed, um, an assessment and a scope of works out and people give it, that there was a variation. And because the initial variation might've been a, um, what do you call it, a, ah, just a general inspection, if you know what I mean. Saying "I think this is ten grand", and then when you've gone out and done the scope and looked in detail, it's come up as more. So it doesn't surprise me, Mr Naylor, that is distinctly not only possible, that was what happened. And at times when you did an inspection, without trying to hold the Commission up, you'd find there wasn't, ah, hang on, there's movement on the damp proof course that we didn't see, like that much, ah, 15 mls, and it was picked up. So, yeah, those things make a big difference.

10  
20 Sir, I very much appreciated that the cost of works can vary - - -?---Yeah, exactly, massively.

- - - after the initial assessment, but that's what my question is directed to. That in this particular case there was no variation or even a tender addendum or any kind of amendment to the claim investigation report between the time that that report was prepared and when you were asked to sign off on the selection of a tenderer. It's not a variation job?---I didn't say it was a variation, Mr Naylor.

No?---Sorry, but I didn't say that.

30 I'm pressing it because I still don't have a good understanding as to how it was that there can be no documentation to explain why the tenderers, and one of them has been selected, why the tenderers have put in quotes more than double that which have been, at which is the estimate of a suitably qualified person in the district office? I don't understand?---I can only repeat again to help you out, Mr Naylor.

All right. You don't need to repeat. You don't need to repeat?---Well, I'm sorry but you may not understand it but that's, that's what happened.

40 THE COMMISSIONER: No, no. I think we understand the peculiarities of the Tahmoor area and I don't think that that's, that that's being disputed. But can I just ask this, accepting that the area did have these problems, what was the point of anyone doing an estimate of repairs, if it varied so widely, if the estimate bore no relationship to the tenders that were ultimately submitted, what was the point of doing an estimate at all?---In the first instance, your Honour, the estimate provided some idea of the amount of funding you may need for an area in general, right. The Mine Subsidence compensation fund has to cover these things, so we needed to make sure we

got enough money, I, as CO need to make sure what we raise every year is covering that, so that puts some estimate on it. And many of these increase markedly. There's some that would've dropped, but overall, you know, in order to manage and be efficient and understand we've got sufficient funds, ah, you put an estimate on it.

10 So the estimate that came in with these claims, the estimate that was provided, for example, in that last document that you were shown which was \$10,000, that actually didn't do anything at all to assist you to determine whether or not the two quotations in the order of 21,000 were reasonable or unreasonable?---initially it would have given me the idea that someone thought there might have been \$10,000 worth of damage but following the more detailed investigation or assessment, from what I'm being told and my reliance upon the district managers and others with the skills the damage to repair that was going to be greater than that, yes.

20 But in order to reach that conclusion you were relying upon the advice given to you by the claims managers in that area, in the Tahmoor area?---Yeah, they have the expertise, knowledge, clerk of works certificates. That's all I can go on plus, your Honour - - -

Right?--- - - - what I might see on the file.

30 Well, then let me come back to this – in the absence of anything on the file such as Mr Naylor described to you i.e. in the absence of documentation about the discovery of new or unappreciated damage that went beyond the scope of the original estimate, so in the absence of any documentation of those things like as you say the moving dampcourse or the, or additional brickwork damage that hadn't originally been appreciated – in the absence of all of that you're relying solely on what the claims manager tells you in relation to the reason for those quotes being so far above the original estimate?---The claims manager, the people who put in the estimates who've got the expertise, who are quoting for the estimates, and what I might have seen or know from background or on the - - -

All right?--- - - - or on the file from the area.

But that's what I'm trying to - - -?---Yes, I agree.

40 - - - that's what I'm trying to ascertain. You're relying on the word of those people who are in the area and who are managing the claims?---Yeah, sure.

And all of that I'm assuming in the absence of documentation would have been oral or by email exchange or something like that. Is that how that would have been communicated to you, for example in relation to that particular matter?---Your Honour, they are some of the ways but like I said there may also have been photographs or other information, as you said,

with emails or other things to try and, to add some veracity to the fact there was damage.

Right?---I mean, I can say, obviously how hard - you don't turn around and go, "I just signed this off," and never know there's damage. There's a history. In the first instance there may have been funding applied to these claims which I'm sure you've seen, right, where there was a funding before it even went out to tender – because you had some idea at that time, I would have seen photographs or other information. So this is kind of the end of a,  
10 end of a process, not the beginning. Thank you.

MR NAYLOR: But let me come at it from a slightly different perspective. My understanding, sir, and tell me if I'm wrong – there's a number of parts to the process, a claim gets received, it gets assessed, the works get, the damage gets photographed, and a claim investigation report gets prepared, and then a person with a suitable financial delegation, assuming the damage is caused by mine subsidence, a person with an appropriate financial delegation approves the claim. That's the first part of the process in terms of the financial delegations?---(No Audible Reply).

20

That's right isn't it?---yes.

That's right? You agree with that?---I think that's right again, though it's only general.

Yes?---Because every claim is different. There's a process.

Yes?---But there could be emergency repairs, temporary repairs, I'm sure you're aware of that.

30

Sure?---But that's a process you're telling is part of, one of the process - - -

Let's just stick with the rectification works example where a claim is received from a house owner. They claim there's damage which is caused by mine subsidence, it gets assessed by the Picton District Office?---Yep.

40

A claim investigation report gets prepared. The author of that document assess the damage as having been caused by mine subsidence and puts a figure on how much the repairs are going to cost and – so the first part of the financial, the first part of the financial process is for a person with a suitable financial delegation to approve that claim, that's right isn't it?---(No Audible Reply).

In terms of the exercise of financial delegations that's where the first delegate comes in to the process?---I agree all accept that you made a comment I believe, and I'm not picking on words because you're the, the legal person with expertise but I think you said something about the claim, that inferred the amount they put on was exact.

No, no, I don't - - -?---The amount put on is was – as long as that's the case I accept that.

No, an assessment is made by the district supervisor if he or she is preparing the report - - -?---Yeah, no. Okay.

- - - or the district manager about – it's an estimate as to how much - - -?  
---Yeah, exactly.

10

- - - the costs are going to be?---I agree. Thank you.

And then – but then a person with a suitable financial delegation needs to approve that claim. Yes?---Yes, I think we've done that, yeah.

Yes. And the next part of the process is what I would describe as the tender process. Having – the claim having been approved what happens next is usually that a scope of works gets prepared - - -?---Yeah.

20

- - - and that tender invitations get sent and that tenders get received?  
---Yeah.

Those tenders get considered and a selection is made as to the appropriate tenderer. That's right isn't it?---They may be tenders, they may be quotes, they may be estimates.

Yes?---Depends very much on the delegations, yes.

30

All right. Whether they're tenders or quotes a decision needs to be made about who is going to perform the works. That's right isn't it?---That's correct, yes.

And that's where, that's, that's where the next financial delegate becomes involved. That's right isn't it?---(No Audible Reply)

That's the next phase of the process where a financial delegate becomes involved because - - -?---In accepting the tender to do the work?

40

Correct?---Yes.

Correct. And I guess I'm just wondering how – what's the purpose of the first part of the process, what's the purpose of a financial delegate approving the claim if the next financial delegate when it comes to the tender selection has no regard to the first decision, because I want to put to you this proposition. The first decision was in a sense a cost-control decision and it was an important decision for that purpose. It doesn't make any sense does it that the second financial delegate comes along and in a sense just wholly disregards that first exercise of a financial delegation?---I'm sorry,

Mr Naylor, but I don't – I'm trying to understand what you're saying but I don't kind of understand what your, your – what you're suggesting to me. I know there's a claim process. As I said, I - - -

Yes?--- - - - see part of the claim as CEO and there is – my understanding there's an estimate and I've given, you know, the submissions to assist the Commission of what the flow of these processes are.

10 I'm being less than clear and I apologise. Let me try to rephrase it. Let's – and let's focus on this particular job in relation to which the claim estimate was \$10,000 and you're presented with a recommendation to select a tenderer who has quoted more than \$20,000. What is the purpose of the first part of the process where the claim has been approved with an estimate of \$10,000, what's the purpose of going through that process if later another financial delegate says oh no, we'll spend more than \$20,000 on this?---In, in the first instance that's a recognition that there's mine subsidence damage and there's a, a cost associated with it.

Okay.

20

THE COMMISSIONER: Is that a suitable time for a morning tea adjournment?

MR NAYLOR: Yes.

THE COMMISSIONER: We'll just take a 15 minute adjournment and we'll resume at 10 to. Thank you.

30 **SHORT ADJOURNMENT**

**[11.33am]**

THE COMMISSIONER: Yes, Mr Naylor.

40 MR NAYLOR: Thank you, Commissioner. Sir, just one last short series of questions in relation to this same minute. This is the minute concerning 42A King Street and your approval of the recommendation of a tender that was more than double the estimate in the claim investigation report. See, this occurred on 26 October, well Mr Bullock's recommendation rather was 26 October, 2007 and your approval seems to be on 5 November, 2007. Do you see that?---Yeah.

All right. Now, at this time as I understand, and I want to seek some clarification about this please – if you can be shown – it might be easier if the witness is provided with the hardcopy volume to have it available at the same time. Volume 1 of T1. I'm hoping that's the right volume – and go, please, to page 449?---449, yes.

449, sir, hopefully you're looking at the same document as I am which is a policy statement, an MSB policy statement regarding repairs, date of issue 12 January, 2005. See that?---Ah, yes. Yes.

All right. And it sets out what the process was at that particular time concerning how to go about attending to repairs in relation to damage caused by mine subsidence. It sets out a process. Yes? Do you accept that?---Yeah, thank you.

10 All right. Go over the page to paragraph 4 and the first sentence concerns public tenders. I'll come back to that later. But it's the last part of the paragraph I'm interested in. Just read the paragraph to yourself?---Yes. Yep.

And as I understand what is said there it means to say that where a tender is received that is more than 15 per cent in excess of what has been estimated as the value of the works it has to go up to the Board to be approved. Am I reading that correctly?---Yeah, I think, I think yeah, well, it says, "Tenders with a margin exceeding that should be," yeah.

20

And the information available to the Commission, sir, suggests that this policy was in force as at October and November, 2007. Accept from me that that's what the information available to the Commission suggests. That this policy was in force at that time. All right?---Yeah. You're making a statement.

All right. Well it would appear therefore, that your approval on 5 November, 2007 of the recommendation by Mr Bullock in relation to 42A King Street, breached the limit, the 15 per cent limit on the approval of tenders. That is to say you didn't have a financial delegation to approve this tender, it should have gone to the Board. Do you agree with that proposition?---I understand what you're saying on the proposition but I'm not sure what the circumstances were at the time. So as I said, I discussed these with various people, may even discuss them with the Chair of the Board at the time, what they did. So I can only say that that's what ever process I followed I believed was right.

30

But it looks on the papers like you've breached the policy - - -?---Ah, if that was - - -

40

- - - in that you have purported to exercise a delegation which you didn't have?---I don't believe that was any intention to do that, if you're saying that's the case and what I'm saying is I did discuss these with other people and I tended to rely upon also, ah, Mr Naylor, a schedule C which I think you're aware of as being the thing that defined, um, you know what was required and what my delegations, ah, were and what I provided to all staff. So, um, that's the only response I can give you.

All right.

THE COMMISSIONER: Mr Cole-Clark, can I just ask you, where it says tenders with a margin exceeding 15 per cent shall be referred to the Board, what do you understand the reference to the Board to mean? Does it mean that they have to go to a meeting of the Board?---Look - - -

10 And where there occasions when tenders that exceeded by a particular margin did go to a meeting of the Board? Did that occur?---I can't recall, your Honour, whether that was a case. I just can't recall one going to the Board or whether one went to the Board under those, ah, requirements. Certainly those that exceeded my delegation, right. Um, or, ah, replacement of houses and odds and ends, ah, went to the Board.

MR NAYLOR: Do you agree, sir, that this policy which is dated 12 January, 2005, do you agree that this was in force as at October, November, 2007 or do you think that some other document might have been in force?---Mr Naylor, I can't say.

20 Okay?---I can't say. I accept there's books, I accept there's policies. You must keep in mind, and I introduced the Quality Certification.

Yes?---I introduced a lot of these things and for the want of the record, the policies carried forward, so we were dealing with, ah, you know, what was as of today, if you understand what I'm saying. So I'm sorry, I can't comment that far back. I don't know.

30 Okay. Let's move on. I want to take you to some other property files and I'll try and do it as quickly as I can. First of all in relation to a – some works that were done at a property at 43 Abelia Street, Tahmoor and what I'm going to try and do, sir, to save some time is just ask you to make some assumptions about what the nature of the file says and what the evidence is. If you need at any point to look at the file, please let me know. The file for other people's benefit is T54 starting at 1388. Sir, this is a matter in relation to which a claim was received on 28 January, 2009 from the property owner and it was subsequently inspected and in October, 2009, Mr Culbert, who was the district supervisor at that time, he prepared a claim investigation report as the investigating officer and he put a certain amount – he put a certain estimate on the repairs being \$15,000 in this particular case. Mr  
40 Bullock was the reviewing officer and he approved the claim and there's no dispute that he had an appropriate financial delegation to approve the claim. Then on the basis of the information available to the Commission, three quotes needed to be obtained from suitable tenderers. Quotes were obtained from two tenderers. So unlike the other situations that I've already taken you to. A quote was obtained from A&DJ Building Services, Mr Salmon's building contractor. And one was obtained from Plantac, Mr Inskip's company. There's no third quote on the file which would seem to suggest there was a failure to comply with the requirement to get a third quote. Just

make that assumption for me. There was I as, as I understand on information available to the Commission, a requirement for tenders to be put into a tender book, yes?---Ah, yes. I understand that, sir.

And can you make the assumption for me that it's not, this job is not in the tender book?---I - - -

10 I'm just asking you to make the assumption?---I'm not making – I can't make any assumptions I'm sorry but I accept your, if your advice it's not in the tender book I accept respectfully your advice, but I can't make an assumption.

It's all right. What I'm doing is asking you to make a series of factual assumptions and then I'll ask you a question about it. Okay?---Um - - -

You can look at the file if that helps you?---No, no, no, no, I'm, I'm sorry, I'm not sure, Your Honour, whether I'm being – I'm trying to be helpful but factual and assumptions I'm not quite sure how that ties up?

20 THE COMMISSIONER: Well, it's just to set up the preconditions for the question in effect. Yes.

MR NAYLOR: So we've got a claim, there was a requirement to get three tenders, only two tenders were obtained, there was a requirement to note it in the tender book but it didn't go into the tender book. Then it's also usually the case, as you've already said, that a scope of works gets prepared, does it not? That happens before, that happens before the tenderers are invited?---In order to seek a tender?

30 Yes, of course?---I would expect that, yes.

Right. So in this particular case the scope of works seems to have been prepared after the tenders have been received. That doesn't seem right, does it?---Keep going, I'm trying to get the whole picture of what you're suggesting, Mr Naylor.

Okay. All right. Let me take you to a document. This is C54 at 1546. So that's another one of those - - -?---Yes.

40 - - - familiar-looking minute papers. All right. And I want you to make this assumption, and this is based on the contents of the file, that this document, this document which is dated 25 November, 2009, postdates the works having been done and the works having been paid for. That doesn't seem right, does it?---So you're suggesting that that postdates the – look, I'm not aware of that, but that's what you're saying, I understand, yeah.

The – you can look at the file if you like?---No, no, I accept your advice, Mr Naylor.



The invoice was submitted on 22 November, 2009?---Mmm.

And Mr Bullock authorised payment of the invoice – this is for the works – after they’d been done – on 24 November, 2009. Then on 25 November, 2009 Mr Bullock sends you a minute to say can you please approve the selection of the tenderer?---Mmm.

10 That’s all the wrong way round, isn’t it?---Certainly something that I believe is the wrong way round and I wasn’t aware of it because as you said, I got that the same as I received others, yeah.

Well, that’s what I’m just trying to understand, I’m trying to understand how it could have occurred that the works had been done and paid for before you signed off on the selection of the tenderer. How could that have occurred?---I’m not sure how that could have occurred, Mr Naylor. It’s not something that as CEO, right, I would see the tender, as we spoke before of what I would see, I’m not involved and don’t do the financial payments, I would have I’m saying consulted, so I can’t explain what the circumstances  
20 are with that, I can only give you my, how I would process or what I would do, so yeah.

Well, there might be a couple of explanations for how this has happened. One explanation is that the documents that you might have received with this document is not necessarily the full file. That might be one explanation?---(No Audible Reply)

Is that a possibility?---No, I mean - - -

30 No?---I don’t think so, but anyway, go on.

Well, if you received the full file, and let’s take that another step, and if the full file received the form that evidences payment having been authorised, then the only other explanation is you didn’t look at the file before you authorised this?---No, Mr, Mr Naylor, I think I made it I thought clear to assist the Commission earlier as best I could is that I would have been looking at the scope or whatever did, whether there had been tenders done, this value I wouldn’t go through and look at a checklist, I wouldn’t look at a previous claim, I wouldn’t look at that, that’s what would have been sent up  
40 to me. So whether it was sent to me with the file or part of the file we’ve discussed before, what I’m saying is I have no ah, idea, I can’t provide an explanation of what you’re saying and I don’t, yeah, that’s all I can say.

Yeah. Pardon me. Let’s go to another, another file. Sir, I want to take you to another document and if, if you can be shown please an Exhibit T54, page 854. Sir, this relates to a property at 3 Stuart Place, Tahmoor and I’m going to show you a similar kind of document to what I’ve shown you previously. You see, in this case, sir, you’ve approved Mr Bullock’s

recommendation that Plantac be selected as the relevant tenderer and the file seems to suggest, sir, that Mr Bullock had authorised payment to Plantac for the repairs the previous day. So the works have been carried out before you signed off on the selection of the tenderer. That doesn't seem right does it?--No, it doesn't.

10 Right?---And it's something I wasn't – wouldn't have been aware of and you wouldn't sign this if that was the case. I'm saying that's what I got. That's what I did. I explained the process, Mr Naylor, previously. If something – and trusted in Mr Bullock and everyone to be doing things right, they're the people with expertise, they're the district manager. If something has been going on that I can't or wasn't aware of then I can't explain it.

Because you have to ask yourself the question how you could have signed off on this - - -?---Why?

20 - - - if that is what occurred. You have to ask yourself what information did you have in front of you or were you provided with and what inquiries did you make in order to satisfy yourself that you should sign off?---The same information I think, Mr Naylor, I spoke about before. It doesn't change the circumstance whether this claim or one of the earlier claims, a claim to satisfy myself that, you know, there'd been damage and this was acceptable and reasonable expenditure.

30 THE COMMISSIONER: Mr Cole-Clark, can I ask you something about the payment of these amounts. Did these funds come out of an MSB bank account, the central account?---The way it operated, Your Honour, is we have a funds manager.

Yes?---And most of the Board's funds are in the funds manager.

Yes?---And where necessary we draw down funds into a bank account that may have been with Commonwealth or – I think it was Commonwealth - - -

Right?--- - - - and now Westpac Bank.

Right?---And those funds are utilised right.

40 Right?---And when they're reduced then we can - - -

You draw down again?--- - - - draw down again. But once a year when the levy is set then money goes into that and most of that money is put into the funds and the remainder, Your Honour, remains in, in the account for use of - - -

Right?--- - - - you know, claims and normal expenditure.

So the money that – the money that is regularly paid when these jobs are done - - -?---Yeah.

- - - that are approved – the moneys that are approved for payment they all come out of this Commonwealth Bank account?---It's Westpac now but, yes. Yeah, the - - -

Westpac, sorry. Westpac bank account?---Yeah, the, yeah. Yes.

10 And do I take it that the bank branch for the purposes of the account is Newcastle?---Look, I'm not aware of the details.

No. All right?---No, look, I don't - - -

Right?---To be honest I don't have anything - - -

No?--- - - - to really do with the, the general payments or the financial part of it.

20 Right. Well what I'm driving at is you see, there wouldn't be a separate account, for example, in Westpac at Picton that only the Picton office had control of?---Oh no, definitely not.

No?---No, it was all centralised.

No. So it's a centralised account. So the question I'm asking goes to that issue. There would be the capacity would there not by means of electronic access to the MSB account for there to be a fairly instantaneous, almost daily reckoning of moneys that are going out of the account for the purposes  
30 of payment of these approved claims?---I can't respond to that. I mean, your Honour, I don't know.

Right?---I mean, the financial people may be able to help but I don't really know.

Is there someone at the Board who regularly reviews the accounts of the MSB?---Um, I don't know. I can't answer. But I don't believe so on a daily basis.

40 On a, no?---The accounts are obviously reviewed for annual, annual reports and - - -

Right?--- - - - financial reporting but I don't believe that - - -

Right?---I don't know. I can't answer it.

All right. Well just so that we're not talking cross purposes you would appreciate that anyone who has an account with a bank can seek electronic

access to that account and you can see almost within minutes of moneys being withdrawn from the account that the moneys have been paid out somewhere?---Yeah, I accept that. It's how my account works, yes, your Honour.

Right. All right. So in the example, or in the circumstance that Mr Naylor's outlining to you it would always be possible to determine fairly quickly whether moneys had been paid on a claim before there had been any actual approval of expenditure?---I think that supposition may be correct. I don't  
10 know, your Honour, what happened in 2009 or 2007 - - -

All right. Okay?--- - - - it's also nothing I've ever had ah, ability to do or access to do.

All right. No, I accept that. All right. Yes, go on.

MR NAYLOR: Sir, can I move on to another issue. And for that purpose I want to take you first of all back to that policy document that we were  
20 looking at before the adjournment, which is volume 1, T1, page 449. Do you still have - - -?---(not transcribable)

Okay?---Mr Naylor, I haven't got it.

It's coming up on the screen if that - - -?---Oh yeah, that's fine.

- - - if that helps?---That's fine, that's all right, yep.

And can we go back to the same paragraph that we were looking at, but the  
30 first part of it. So this is paragraph 4 on page 450. Can you see the first sentence there, "For work greater than 20,000 public tenders are to be called"? Mr Bullock's given evidence that during the period of time that he was the district manager at Picton from 2003 to December last year his office never went to open tender or public tender in relation to any works, notwithstanding the fact that there is good evidence that quite a number of the works exceeded that value, \$20,000. Can you offer any explanation as to why it might have occurred that no public tenders were ever arranged  
40 for?---The only suggestion I can make I believe, Mr Naylor, is obviously under schedule C and odds and ends there was delegations and, that were required or allowed to be done. Um, my understanding – again, as I said I must clarify I'm not the claims manager who sits there doing claims every day so I can consult and – and I still do – consult with the subsidence risk engineer and others. I've even talked to ah, them recently – and this work "public tenders," there's a number of ways you can get procurement from single invited tenders to selected tenderers, to nominated tenderers on schedule C and those processes would have been followed. So I'm not quite sure what the "public tender" means but what I can say is there was a process of procurement for those that, you know, exceeded delegation levels and came up to me.

Well you were the CEO at the time that this policy was issued in 2005?---  
Yeah, of course.

All right. And were you involved in drafting this policy?---Ah, I assume I'd  
have had some input into these policies um, they'd have been more focussed  
on ah, risk engineering or um, financial people putting them together but - -  
-

10 Well, the policy wouldn't have been issued within the organisation unless it  
had first gone through you. That's right isn't it?---No, I would have had in  
put or it had been discussed with me I'm assuming.

All right. And what's your memory of what was meant by public tender  
when the document was being prepared?---The advice I guess I'm saying or  
that, not of my memory but the advice I was getting was that there was a, it  
means a process including single invited tenders, procurement and odds and  
ends and they were detailed in schedule C, so I'm not quite sure – and I  
20 think even the subsidence risk engineer we have today has said the same  
thing to me, there's a number of things that you can do under the tender  
process that are appropriate and suitable, so that's what I'm saying.

But with respect, sir, you haven't answered the question, and I'll put it in a  
slightly different way. At the time that this policy was prepared and then  
promulgated within the Mine Subsidence Board when you were the CEO,  
what you knew public tender meant was an open tender. That is an open  
tender to members of the public. That's what that means, doesn't it, and  
that's what that meant - - -?---No, no, that's what you're saying.

30 - - - at the time?---No, no, sorry, that's what you're saying it means.

Yeah?---That's not what I'm saying it means, I'm sorry.

I'm putting that, sir, as a proposition to you?---And I'm saying no.

I see. Let's have a look, sir, at a property at 15 Bronzewing Street,  
Tahmoor. It's Exhibit T54, starting at 1041. Sir, this is a property in  
relation to which – I'm just going to tell you a little bit about the file and  
then I'll ask you some questions about it. It's a property in relation to which  
40 there was substantial damage, it had a pool in the backyard and the pool had  
to be replaced?---Yep.

Yep. And when the claim investigation report was prepared by Mr Bullock  
he had estimated the repairs at \$120,000. So it's a big job, yes? Make that,  
I'm just telling you what the facts are, make those factual assumptions for  
me and I'll ask you a question in a minute?---\$120,000 I understand what  
you're saying, yeah.

Okay. All right. And this is in, this is at 12 February, 2009?---Ah hmm.

So it's four years after this policy document that I've just taken you to and on the information available to the Commission, that policy document was in force at that time, and that would – you may have, I think you may have already answered this question but I just want to clarify if I may, an estimate of repairs of \$120,000, reading the policy, it would suggest that public, what the policy says is public tenders are to be called, and the way I read that is what was necessary to occur was you don't go off the selected tenderers' list, you advertise for tenderers in newspapers. That's what is meant by that, isn't it?---I have – no necessarily and I don't have enough information to understand what you are suggesting. Are you talking about the pool or are you talking about the house, the damage, I'm not sure, Mr Naylor.

Well, let's just stay with that policy document. Have you still got that with you, page 450 of the policy document. See that?---(No Audible Reply)

And go down the page a little bit. Go to paragraph 7, and this explains the process, doesn't it, of public tendering? It says, "For advertised tenders." That's a public tender, isn't it?---That says, that says, "For advertised tenders."

Yeah?---So my interpretation, if there was an advertised tender it gives a process, if there's a tender advertised.

Well, an advertised tender is a public tender isn't it?---I know Mr – you keep saying – I understand you keep saying about this public tender and I've been saying that there's a schedule C, there's some delegations, there's selected tenders, nominated or say invited tenders, there's a number of means to do this, and I'm trying to get my head around, Mr Naylor, and, and Your Honour, to what you're talking about when you mention – I have no recollection of it but the house you were talking about.

Well I'm coming to that. But I just want to understand the policy first of all. When I read the policy, sir, what it suggests to me is that if the estimate of the works is going to exceed \$20,000, you've got to go to a public tender and that means advertising and then paragraph 7 describes what you have to do when you advertise your tender. You advertise for tender invitations. That's, that's what that policy mean, doesn't it?---No, that's you're saying it means. I've given some other answers to what - - -

Do you disagree with that?---No, I'm not saying if it had to go to an advertised tender it delegates that. You asked me about - - -

I see?--- - - - Mr Naylor, about public tenders and I've made a response to that.

All right?--- - - - ah, previously.

Well let's, let's go to the property then. So this is 15 Bronzewing Street, Tahmoor. And as I ask you to assume, Mr Bullock had estimated the value of the repairs to be \$120,000. And in relation to the pool, sir, in relation to the pool, a quote was received from a firm called Riviera Pools and they estimated the value of replacing the pool, how much it would cost at \$70,800 plus GST. Accept that from me. No other quotes were received to do the pool job, just one quote. That quote was received on 16 February, 2009. On 24 February, 2009, Mr Bullock writes to them and says "Your  
10 quote's been accepted". Mr Bullock accepts. He didn't have a financial delegation to accept that quote. How could that have occurred?---Ah, just go through that again, please?

Sure?---Just say, if you wouldn't mind because you jumped a bit quickly for me. Just say, if you wouldn't mind please, with respect, your Honour.

Mr Bullock, purports to exercise a delegation, a financial delegation which he does not have?---All right.

20 To accept a tender in relation to the reconstruction of the pool. And he doesn't have the financial delegation because it far exceeds, the amount, \$70,000, far exceeds the delegation that he had to select tenderers?---Mmm.

And I'm trying to understand how that could have occurred within the Mine Subsidence Board? How could a district manager purport to exercise a financial delegation which, on the papers, he didn't have? Was that Mr Bullock acting as a rogue? Is that, is that how it occurred or were - - -?---  
30 Well it would seem to be, based on face value, ah, Mr Naylor, what you're saying is Mr Bullock has been, has signed something off or approved something that exceeded his delegation.

All right?---Simple as that.

And but - - -

THE COMMISSIONER: Sorry, that just begs the question though?---  
Yeah, sorry.

40 What's being asked though, is, given that the policies and procedures don't always appear to be consistently applied, what Mr Naylor wants to know is, is Mr Bullock's action in that respect, is that Mr Bullock on a frolic of his own or is that something that was contemplated by these, you know, kind of elastic procedures that were applied throughout the Board's officers? That's the question?---Your Honour, my, my advice is, um, it's not what you said elastic procedure odds and ends. There's been clear and we've - - -

A clear breach?--- - - - training and other odds and ends for what their constraints are for district managers. And in a district office and managing their district office, there's a whole lot of rigor and things they do.

Right?---It goes beyond them, right.

10 All right?---It puts, if you wouldn't mind me saying, another level of, of people and confidence above it. But at district levels all those things should be followed and it does appear to me that Mr Bullock, based on what I've been told, has signed off on something that exceeds his delegation.

All right.

MR GRIFFIN: In that respect, there is a statement from Peter Evans which I think is before the Commission.

MR NAYLOR: No.

20 THE COMMISSIONER: No.

MR NAYLOR: I've been handed it just before the adjournment - - -

MR GRIFFIN: Well in that case - - -

MR NAYLOR: - - - or during the adjournment.

MR GRIFFIN: There is an issue of special circumstances which does arise in these matters and that should - - -

30 THE COMMISSIONER: Well, I think, I think the Counsel Assisting might get around to that we haven't had a chance to - - -

MR GRIFFIN: It's just relevant to this particular - - -

THE COMMISSIONER: Yes, all right.

MR GRIFFIN: - - - question, I believe.

40 THE COMMISSIONER: Yes, all right. Sorry, go on, Mr Naylor.

MR NAYLOR: Sir, I'll come to special circumstances in a moment. But let's just stay with the issue of financial delegations. What have you done within the Mine Subsidence Board while you've been the CEO to ensure that financial delegations which are given to officers are not breached? What steps have you taken to make sure people observe their financial delegations?---My advice is steps are, there's a property management system, there's a, ah, um, delegated authority. I don't again, um, do that personally. Ah, that's something to be done by financial people but I think



there's a number of checks with the PMS or people who are paying, right, ah, invoices or odds and ends to look at those, ah, those matters.

10 What about – it's just a suggestion. What about auditing, regular audits of the exercise financial delegations, have you ever implemented a system for regular audits of financial, the exercise of financial delegations?---Not, I don't believe specific financial delegations, Mr Naylor, but every year, right, every year we have to comply with the audit process and get audits signed off and at that time, I understand, and again it's not something a CEO, I do. I see the, you know, the end accounts that are signed to make sure they're done, I don't do the process. You must understand that. But there is a process where an auditor comes out who's employed I guess indirectly by the audit office who calls any number of claims up and looks through them as part of the audit process. So I'm assuming as part of their due audit diligence and odds and ends they would be looking at all those matters – and that happens annually.

20 You make an assumption that the external auditor checks to see on an annual basis whether financial delegations have been properly exercised?---Ah hmm.

You make that assumption?---Ah - - -

That's what you've just said?---I'm sure he does but I'm not the auditor, Mr Naylor. I mean, you know - - -

30 No. Then that's the point. See, you're the CEO. As the CEO you would be responsible for ensuring would you not that financial delegations which had been given to officers of the MSB are exercised properly?---My understanding is as well is when they – there is a financial delegation on the property management system, right, that also has maximum that's cross reference, or cross checked. If you're asking me – I mean, I appreciate what you're saying, the CEO and I may be easy in hindsight to make comment. I'm saying there are a number of procedures and as part of our continuous improvement, Mr Naylor, if there's anything we can do to continue to improve our organisation we certainly will.

40 The point raised by your Counsel is that there may be circumstances described as special circumstances in which relief can be provided from the ordinary rules as part of the policies and procedures – and there is some evidence, and perhaps there's more in Mr Evan's statement that he's referred that I just haven't read yet, I'm sorry?---Yeah.

But there may be circumstances in which for example you can select a particular contractor to do the work because he or she is a specialised contractor?---That would be one example.

And you wouldn't need to therefore comply with the requirement to obtain three quotes?---Yeah, that would be an example.

You're familiar with that sort of situation?---Yes. I mean, one thing I think it's very important – if you wouldn't mind me saying, and as well as the Commissioner – is that under the Act, right, Mine Subsidence Compensation Act, right, you're entitled to have your property put back as a, condition as new as practical that pre-existed, right.

10 Yes?---So if for example you had a certain type of pool or a certain type of house you're entitled to have that reinstated. Or conversely you're entitled to just be given the money for it. But there's reasons in order to manage the system, to look after the community that the Board in most instances doesn't do that. But yes, I think it's important to understand that.

Okay. The file is an interesting one, sir, not just because it would appear that there's been, there's breach of a financial delegation by Mr Bullock in relation to the pool but there were building works carried out as well – building work carried out by Plantac – and there was a tender process  
20 initially. Plantac and A&DJ were involved in the tender process. But later on Plantac, rather, submitted an invoice to Mr Bullock in the sum of \$65,500 plus GST – and why I say it's interesting is that there was no tender process in relation to that and Mr Bullock appears from the file to have just authorised payment of that \$65,500. So again there would appear to be quite a breakdown of the process and the exercise of a financial delegation which Mr Bullock just didn't have. So it begs those questions again as to how that could have occurred and what processes the MSB had in place to monitor or to check that officers were comply with their financial delegations?---I think two things, Mr Naylor, it again is important to assist  
30 the Commission and note obviously the district managers, and we have to um, you know, I have to trust those people who – and everyone including the Board members trusted Mr Bullock and complimented on the work being done down there – and the ah, success had been achieved. We had, you know, relatively few complaints from the, as a mine subsidence board which is very good – and the other thing is that there are um, at least some practices um, that monitor these things but whether they get – and obviously they can be improved if that's the case. But these are things that, you know, I'm perhaps not aware of until 20/20 hindsight and this comes before the Commission.

40

But I mean your answer raises an interesting issue. I accept without any form of qualification that what you say about the fact that you trusted Mr Bullock but isn't the purpose of policies and procedures to ensure that, that people – the purpose of policies and procedures to put it one way is that people are fallible, people make mistakes, but if there's a policy and procedure in place it helps to avoid those mistakes getting made, whether they're deliberate or whether it's due to carelessness. That's the whole

purpose of a, of a set of policies and procedures. Do you agree with that?---  
Not entirely.

Right?---And I'll tell you why I don't agree entirely.

Yes?---Because the policies and procedures set the guidelines or the  
information. It's the checks and balances which I think you're alluding to  
that, that help measure those outcomes. So that would be my response. It's  
10 a, it's a combine thing of policy and procedures based that and we  
introduced or the Board introduced a, a property management system  
endeavour to – in an effort – I'm not sure when this came in, but to try and  
monitor and measure some of those things. We've been reviewing that to  
see if we can improve that to give it even more rigour.

You see, the situation is in relation to Mr Bullock at the Picton District  
Office, you reposed a significant amount of trust in him did you not?  
---Yeah, absolutely.

To do his job properly?---Absolutely.  
20

And the evidence before this Commission would suggest that in very  
significant ways he didn't do his job properly?---And there's absolutely  
nothing unfortunately and disappointingly, and believe me that everyone in  
the Board is grossly affected by this right, and grossly, you know, by this  
whole thing and reading the transcripts, yeah, we all did. The Board  
members did.

But as you – you've already – I mean I've already asked you a number of  
questions this morning. Had certain policies and procedures been complied  
30 with and had there not been breaches of financial delegations then – I mean  
who knows what might have happened but there would have been a much  
better chance would there not had the policies and procedures been properly  
implemented and had financial delegations been properly monitored that  
there wouldn't be the kind of situation that there is before us today?---I'm  
sorry, Mr Naylor, the only thing, I can't agree with you saying it's properly  
this and properly that. I provided as best response as I can to assist ICAC.  
I've done an immense amount of work to assist ICAC and, yeah.

Look, there are a number of other examples, sir, which I perhaps don't need  
40 to take you to of - - -?---Thank you.

- - - breaches of financial delegations by Mr Bullock?---Thank you.

It's not the only file. There are other files which disclose obvious breaches  
of financial delegations?---Yeah.

THE COMMISSIONER: Did Mr Bullock ever have a conversation with  
you, Mr Cole-Clark, to the effect of look, these policies and procedures

don't really make any sense for the Picton/Thirlmere area and frankly if we're going to get this work done we just need to be given permission to get on with it and do it?---No. I can't ever recall a conversation like that with Mr Bullock and nor would I have acceded to that, Your Honour. I mean I set up policy and procedures.

All right?---I expect them to be adhered to.

10 I have to put that question to you because that was squarely suggested in Mr Bullock's evidence?---I've not seen (not transcribable)

MR NAYLOR: You didn't at any time sanction Mr Bullock to - - -?  
---No. Sorry.

- - - to, let me finish the question if I may. You didn't sanction Mr Bullock at any time to approve either claims or the selection of tenderers that were above his financial delegation?---No, Mr Naylor.

20 No. And Mr Bullock had also made a claim during his evidence that there were at least sometimes excessive delays by you in considering requests for the exercise of your financial delegation because they were above his financial delegation. He said there were sometimes long delays in files being turned around by your office. Is that, is that true?---As I said, I have a - I'm not making excuses, I'm saying I have an immense workload and a corporate workload and there's many many things I have to do. When files were sent to our office, one, they would go through a number of steps to get to me, secondly is if they were urgent or important, Mr Bullock did and would always ring up and say, look, I need this, or can I get it back, even if it was a matter of days, any file I could sign off was done immediately, but  
30 you've got to appreciate, Mr Naylor, a lot of files that came to me were because maybe they needed legal advice or legal guidance, maybe they needed some other assessment, so they weren't simply a stamp the thing and turn it round, and secondly I think, given your questioning, you'd be pretty disappointed if I just stamped it and didn't look at things. So there could have been a time frame to turn claims around, and the last thing is, some claims may not have been urgent, so whilst they might have been up there, mine subsidence may have occurred, the work may not have happened for some time, there may be a second mine wall affecting it, but I can say to  
40 you that both Mr Bullock and I, you know, would have had regular conversations if necessary about any, any claim that was pressing, and part of that is that obviously if you didn't do something then the claimant themselves would obviously not be very happy and you'd be getting bad feedback.

See, the context, just so you're aware of the context, the context in which Mr Bullock said that there was sometimes excessive delays in getting files turned around by your office was that he felt pressure to get the job done and he relied upon that reasoning as a basis for breaching financial

delegations and breaching procedures. So he's tried to put a proposition that there was this, there was a culture perhaps within the MSB that the need to get the job done within a certain time period should be given priority over complying with the relevant processes. What do you say about that?---I'd say that's absolute garbage.

Right?---It's just not true.

10 Okay. Pardon me. I'll provide you with Exhibit T42. That, sir, is a copy of an email from Margaret MacDonald-Hill to Kylie Hargreaves. Mrs MacDonald Hill was a member of the Board as I understand and - - -?  
---Yes.

- - - Ms Hargreaves is the current Chairperson of the Board. Just take a moment to read that. Have you had a chance to read that yet, sir?  
---Oh, as best I can, I've scanned through.

All right?---I might have to refer to it again, Mr Naylor.

20 See, what – this is Mrs MacDonald-Hill recalling a conversation that she had with Mr Bullock on 17 March, 2015 and several lines down, fifth line down actually towards the end of the line the email says, “He,” being Mr Bullock, “replied that he had done the wrong thing in exceeding his delegations to get his job done and keep things moving, and he had been asked by the CEO to take leave.” He said the CEO had let him down and he had resigned. Now, do you know what is meant by the last sentence, that is Mr Bullock's assertion that you had let him down?---Oh, Mr Naylor, no.

30 No?---I gather you see a lot of these things. Is it amazingly in hindsight, number one, and number two is suggestions that he's resigned because of that is certainly not what he said at the time when he um, resigned from the Board. So I mean, it's it seems to be me to be littered with things that just aren't correct.

What did he say to you at the time that he resigned from the Board?---Um, we had very brief conversations and let me tell you, Mrs MacDonald-Hill was not aware of any of this because in confidence, and it's even what the ICAC had said, said absolutely to, nothing to anyone about any of this including the Board members.

40 Yes?---And um, ah, he I think indicated he was pretty distraught on the couple of occasions I saw him. I was seriously concerned about his welfare and sought assistance through the department to make sure that he was being looked after.

Yes?---As I did for other staff. And um, he basically indicated that he'd done the wrong and that, all, but he'd been advised in his best interests of looking after the family he was um, had been advised to resign.

Yes?---And I received his – I remember being very, very surprised and fairly shocked because I think I received his resignation some time on a weekend ah, in the evening.

Yes. All right. Thank you. Pardon me, Commissioner. Sir, I've shown you a number of documents that are minute papers that you've signed off on, selection of tenderers. You've - - -?---Oh, yes. Yeah.

10 I've shown you those today, and in each of the cases there were only two tenderers, A&DJ Building Services and Plantac – and the question is this – do you accept that there is a risk that district managers or even district supervisors might develop – I withdraw that. Prior to ICAC becoming involved, prior to this hearing were you aware that there was a risk of district managers and district supervisors developing relationships with particular contractors?---Not that I was aware of, no. I don't think it was a - - -

20 Okay. I don't want to be - - -?---At least what it, no, but what I'm saying is contractors – that's why you have, you know, the tender process and that, so yep.

And I think that's exactly the point. I don't mean to be cryptic at all?---No.

30 See, the whole, one of the purposes of a tender process is to try to get an independent assessment from people who are separate from the Board, or don't have a relationship with persons in the Board as to how much a particular job is going to cost. That's why you see a number of quotations or tenders isn't it?---Yeah. Yeah.

40 And what – the evidence that the Commission has and the documents that I've taken you to this morning they're circumstances in which only two tenders were sought and the clear evidence before the Commission is that Mr Bullock had corrupt relationships with both of those tenderers, Mr Salmon of A&DJ and Mr Inskip of Plantac, and see a situation was allowed to develop whereby those corrupt relationships could be formed and could continue and so the whole tender process became in one sense irrelevant and lost its importance because prices were being received that in many cases included secret commissions, that is, that prices were being manipulated and I just want to understand if that, that particular risk, the risk of that kind of corrupt relationship developing had been known to you before ICAC became involved?---Oh, absolutely not. No. No risk that (not transcribable)

Pardon me, Commissioner. Sir, there's a – I'm pausing because there's a particular document that I don't have a copy of but I'll come back to that issue if I may. You see, can I just explore with you your answer, that is, that you didn't perceive this as a risk and you're saying that you never gave any thought to the possibility that, that people with financial delegations to

select tenderers such as Mr Bullock when he was district manager, you never gave any thought to the possibility that he might be able to provide preferential treatment to those contractors so a system might be needed to check or to monitor whether corrupt relationships might form. It wasn't something that occurred to you?---It wasn't something, Mr Naylor, that was, was evident on the basis of everything that everyone right, including the Board members, myself, engineers, people who've been at the Board for many, many years, highly experienced people suggested that that was a, a problem all in, you know, we trusted in each other.

10

Because, and let's just consider it in the context of the financial delegations. Mr Bullock was in a position, whereas I think you've already agreed he had considerable autonomy in what he did. That's right isn't it?---I don't think I agreed with that at all but, but if you're raising it - - -

All right. Well, do you, do you agree with that?---Yes, he was in charge of the district, right.

20

Yes?---And as district manager it was his responsibility to manage that, that district, yes.

30

Okay. And he, he was in this position was he not that in relation to works below a certain value he could not only approve the claim as the financial delegate but he could also select the tenderer and he could also inspect the works after they've been done and he could authorise payment. That's what the documents show. So he was in control in relation to works below a certain value. He was – it was within his financial delegation to be responsible and to take decisions in relation to each step of the procurement process. You agree with that?---Of a number, yeah, a number of aspects of that depending on delegated levels and authorities, yes.

Right. But below a certain value he could make all the decisions within his delegation in relation to how much the works would cost, selecting the contractor, authorising payment and what I want to suggest to you, sir, is that creates an environment for corruption. That creates an environment for corruption because that particular person can be preferential in the way in which he deals with contractors. He can prefer one contractor over another. You agree with that?---Keep going. I'm just, yeah.

40

He can provide favour?---Yeah, and that's why you, you need to rotate - - -

Right?--- - - - a number of contactors and that's exactly the discussion I had with Mr Bullock on at least one or two occasions at which he assured me that they were being rotated and he had records of that. I haven't seen that records but I'm just saying he assured me that there was rotations of contractors.

Well, apart from his assurance that he did rotate and that he kept records to that effect, what other evidence did you seek or obtain if any that that is in fact what was occurring?---I saw various tender documents I guess or documents that came through that had different people on the list other than those, those two. I understand there was other people who got jobs, not just him. I mean I know at one stage he rang me up and said to me, look, a certain tenderer is getting a number of jobs and he was looking at not using that person often because they were winning some. That made sense to me.

- 10 Wouldn't it be helpful, it would have been helpful to you to have been assured that the rotation policy was being applied if you received information such as in the monthly reports, the contactors to whom jobs were being awarded, how many jobs were being awarded, the value of those works, if you had that sort of information you'd be better placed, would you not, to make a decision for yourself without relying on Mr Bullock's assurance as to whether or not the work was being shared between a number of contractors?---Mr Naylor, I agree with you, there's a number of processes, right, and we've already been investigating procedures to improve things for the Board, right, to make sure that those matters can be
- 20 better recorded and better managed and I'm sure the Chairperson this afternoon if she's on will make some comments, but there's already been actions to, to look at those areas.

- But the question is, sir, why weren't those actions taken earlier? I mean Mr Bullock was in his role from 2003 to 2014. Why did it take an inquiry by ICAC to work out that processes might be required to check that the rotational policy was being enforced? Why didn't it occur to you sooner that you needed information such as those contractors who were being engaged and how much they were being engaged for and how often? Why
- 30 didn't it occur to you sooner to require Mr Bullock to provide that information to you?---Those matters, Mr Naylor, were not, as far as I understand, seen to be a high-risk to the Board, number one, and number two, I just point out that it was Mine Subsidence Board members, right, the Board members themselves who increased the delegation on the benefit of manager finance and admin to allow Mr Bullock to approve things at a higher level.

I note the time, Commissioner, I'm about to move onto another topic.

- 40 THE COMMISSIONER: All right. We'll take the luncheon adjournment and resume at 2 o'clock. Thank you.

**LUNCHEON ADJOURNMENT**

**[12.58pm]**