

TUNICPUB00102
31/03/2015

TUNIC
pp 00102-00157

PUBLIC
HEARING

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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 TUESDAY 31 MARCH, 2015

AT 10.08AM

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

MR NAYLOR: Commissioner, before we proceed I think there's an application for leave.

THE COMMISSIONER: Yes.

MR GRIFFIN: Commissioner, Patrick Griffin of Counsel. I seek - - -

THE COMMISSIONER: Yes, Mr Griffin.

10 MR GRIFFIN: I seek authorisation to appear on behalf of Gregory Cole-Clark.

THE COMMISSIONER: Yes, Mr Griffin. That leave is granted. Thank you.

MR GRIFFIN: Thank you, Commissioner.

THE COMMISSIONER: Yes, Mr Naylor.

20 MR NAYLOR: Commissioner, just before we resume Mr Montgomery's evidence, I can indicate that overnight the Mine Subsidence Board has produced in electronic form 147 files. As I understand, and I'll tender a letter from their legal representatives in a moment, as I understand there was inadvertent, an inadvertent failure to comply with an earlier notice requiring also production of electronic files so we now have them. I'll tender that letter in due course.

THE COMMISSIONER: Thank you.

30 MR NAYLOR: If I've misapprehended the situation I think Ms Hogan-Doran will correct me.

THE COMMISSIONER: I take it, Mr Naylor, that in view of the service overnight of that volume of files there's been no opportunity to peruse those files and determine to what extent they might be duplications of hard copies or to what extent they might be additional files?

40 MR NAYLOR: My - there certainly has not been any opportunity to look at that material. My apprehension is that there is a great deal of material other than that which has already been looked at and it will need to be examined, Commissioner.

THE COMMISSIONER: All right. Thank you.

MR NAYLOR: Yeah.

MS HOGAN-DORAN: Commissioner, can I indicate on behalf of the Board first, that in the correspondence which I think Mr Naylor is intending

to, to tender we've set out an aide memoir in relation to the files and the properties which are identified in the tender bundle so that that comparison process can be undertaken with some promptness. The second matter I wish to indicated is that the, the circumstances of the inadvertence was that the instructing solicitor with carriage of the matter changed during the course of late January early February. The task was underway and the documents had indeed – the electronic documents had been provided to my instructor's office but had not been forwarded to the Commission and on behalf of my instructing solicitors I communicate our apology on that behalf. And the
10 the third matter is that the – I understand there will be further liaising between my instructor and the Commission's staff today in relation to the four outstanding properties to determine if those additional DocuMap material can be provided during the course of the day.

THE COMMISSIONER: Thank you. Yes, Mr Naylor.

MR NAYLOR: I think Mr Chee was continuing with his examination of Mr Montgomery unless there's anything else.

20 THE COMMISSIONER: Yes. Mr Chee, in view of what's just fallen from Mr Naylor and Ms Hogan-Doran I'm just wondering whether there is any utility in you pursuing any further questions of Mr Montgomery that might be based upon files or documents that aren't in the tender bundle because it would seem as though everybody needs to take the opportunity at some stage to determine which of those files might be relevant in this investigation. Can we proceed on the basis that any further cross-examination of Mr Montgomery based upon so-called missing documents can be postponed until that's taken place?

30 MR CHEE: Commissioner, I agree with that.

THE COMMISSIONER: All right. Are there any other questions that you need to put Mr Montgomery now?

MR CHEE: Yes, I can put some further questions to Mr Montgomery - - -

THE COMMISSIONER: All right.

40 MR CHEE: - - - in respect of the document which was given to him yesterday to, to review.

THE COMMISSIONER: The schedule?

MR CHEE: Yes.

THE COMMISSIONER: All right. I understand that that was simply marked for identification yesterday. Is that right? I think it was.

MR CHEE: I believe so.

MR NAYLOR: The schedule is MFI 2.

THE COMMISSIONER: MFI 2. Perhaps, Mr Chee, it should be tendered given that the questions have proceeded upon that document and as I understand it Mr Naylor has identified an electronic copy of that document that we had in our possession at some stage I think, is that right, Mr Naylor?

10 MR NAYLOR: Well, I'm not certain of that.

THE COMMISSIONER: Right.

MR NAYLOR: I understand there maybe one but I, I certainly haven't seen it, Commissioner.

THE COMMISSIONER: All right.

MR NAYLOR: I'm certainly happy at this time to tender MFI 2.
20

THE COMMISSIONER: All right. MFI 2 now becomes Exhibit T6.

**#EXHIBIT T6 – PROPERTY CLAIM REPAIRS TAHMOOR
STATUS REPORT**

MR NAYLOR: If the Commission pleases.

30 THE COMMISSIONER: Yes. Yes, Mr Chee.

<MATTHEW JAMES MONTGOMERY, on former oath [10.13am]

MR CHEE: Mr Montgomery, I've moved places as you will have noticed, can you hear me?---Yes, I can.

Okay, thank you. Over the intervening period have you had the opportunity to look at the Exhibit T6?---Yes, I have.

10 And have you – well, can you identify to me what this document is?---It's the Tahmoor claims spreadsheet.

And what is it meant to do?---Um, it's just a record of um, the claims that we have progressing in the Tahmoor/Thirlmere area.

Is it correct, Mr Montgomery, that it does more than that, it identifies, it provides quite a great deal of information about each of these claims? It goes into, the approving officer, the amounts of costs, the contractor to which the work was awarded and dates, various pertinent dates, is that
20 correct?---That's correct.

Reviewing T6 have you been able to identify claims which have been attributed to yourself?---Yes.

And have you been able to identify claims which have been attributed to yourself where the work has been awarded to Will Built Constructions?---Yes.

How many instances are there of that?---I counted 20.
30

So in the three and a half years that you've been at the Mine Subsidence Board you've awarded work to Will Built 20 times. Is that right?
---According to that spreadsheet.

Okay. Have you reviewed the spreadsheet in terms of the claims that have been attributed to Darren Bullock?---No.

THE COMMISSIONER: Doesn't the document speak for itself then, Mr Chee?
40

MR CHEE: It does, it does. And I'd like to suggest to you that in fact there are only 16 occasions where Darren Bullock has allocated work to Will Built and that in fact you've allocated more jobs in the three and half years that you've been at the Mine Subsidence Board than Mr Bullock has over 11 years.

MR NAYLOR: I object. I think my friend needs to be clear about the specific period to which he's referring.

MR CHEE: The periods that I'm referring to in terms of jobs which Mr Montgomery has allocated to Will Built relate to the period of his work with the Mine Subsidence Board, being the three and a half years up to date, up to today, and in terms of the period for Mr Bullock's matters which he has assigned to Will Built, is it the course of his employment with the Mine Subsidence Board, being 11 years.

10 THE COMMISSIONER: Well, this is only in relation to the Tahmoor matters because that's the only - - -

MR CHEE: Correct, Tahmoor. Yes.

MR NAYLOR: Well, Commissioner, what, what, what is the possible relevance of this witness answering any questions in respect of any claims that might have preceded his employment?

20 THE COMMISSIONER: Well, I understand that, it's self-evident. But Mr Chee is just seeking to compare the number of claims that were managed by Mr Bullock compared to those managed by Mr Montgomery. But, Mr Chee, in any event the document speaks for itself, doesn't it?

MR CHEE: Yes, it does. I accept that, Commissioner. I'll move onto matters which are attributed to yourself, Mr Montgomery, where you have allocated work to Plantac. Have you been able to review T6 and identify instances where that has occurred?---Yes, I counted four.

30 Could you take me to those four?---On page 2 the address is 39B Abelia Street, Tahmoor, also on page 2 the address is 43 Abelia Street, Tahmoor, on page 5 the address is 9 Huen Place, Tahmoor and on page 9 the address is 55 Progress Street.

Mr Montgomery, I might have, I have myself reviewed the document and I found 11 instances. Look, I think I can, I, I, I'm able to make submissions based on the document. I don't need further questions.

THE COMMISSIONER: I think so, Mr Chee.

40 MR CHEE: I'll move on to a different area. I'd like to ask you some questions about the tender box. Where is the tender box at the Picton office, whereabouts in relation to the office?---It's in the front counter.

And how – is the front counter publicly accessible?---Yes, it is.

Is it supervised?---Ah, mostly.

So there are some occasion where there's no one at the front desk and the tender box is publicly accessible?---Yes, there are times.

THE COMMISSIONER: Is the tender box locked?---Yes, it is.

So someone coming in to place documents in the box can't retrieve documents that are already in the box because it's locked?---You, you can if you – if the – depending on how the letters fall in. If they fall in upright you could, you could pick a letter out.

10 Well, you could pick a letter out provided it was the one that had been last posted into the box?---Yeah, that's right, yeah.

And how was it locked, was it a padlock or - - -?---No. There's two key locks on the underside of the box.

Two key locks?---Mmm.

And who retains the keys for the tender box?---Um, Lyn Evans and ah, the district manager.

20 All right.

MR CHEE: Mr Montgomery, do you know where the keys are held by – sorry, where the keys to the tender box are held specifically?---Yes. They're held in the um, drawer – the district manager's drawer under his desk.

Yes?---And in also the customer service officer's drawer under their desk.

30 And is this drawer – or are the drawers secure drawers, are they locked drawers?---Um, I don't know if they have a lock on them. Rarely would they be locked. I don't know. They're not my drawers so I don't - - -

And are they within a secure area, for example, are they within a locked office?---No.

So anyone within – would it be correct that anyone within the office could obtain these keys and open the tender box?---Yes.

40 Could I ask you a further question about the tender box. Has it been damaged in any way?---The top, the top of the ah, box is lightly lifted. Um, the, the laminate in which the top of the box is glued to is, is um, ah, detaching from the bench.

Could I suggest to you that the metal around the top of the box has been removed. What would you say about that?---No.

THE COMMISSIONER: Sorry, what do you mean around the top of the box, Mr Chee?

MR CHEE: The metal collar around the tender box - - -?---Yes.

- - - has been removed?---It hasn't. It's been – it's partially – it's lifted.

It's lifted is it?---Yes.

Okay. Has it been lifted in such a way that a person could possibly take out documents from the tender box without resorting to using the lock and opening the tender box by that means?---No, I don't think it affects it.

Moving to my last area of questioning, Mr Montgomery. Have you expressed a desire to Greg Cole-Clark, the CEO, that you wanted to become a permanent employee?---Yes, I have.

How many times have you done this?---Um, approximately seven times by email and, and I've had many verbal conversations as well.

It would appear that that's quite a great number of instances where you have made known to Mr Greg Cole-Clark that you wanted to become a permanent employee. What did Mr Cole-Clark say to you?---Um, it varies but he's always assured me I'll be appointed a permanent position.

If I were in your position I might be getting a bit tired of that. Were you annoyed about, about the number of times you had to raise it with him and the fact that nothing has changed?---Yeah, it was a source of frustration for me.

Right. Did you view Mr Bullock as a person standing in your way to obtaining permanent employment?---Not at all.

Okay. Thank you. I have no further questions.

THE COMMISSIONER: I take it, Mr Chee, that you're not going to go one step further and suggest to Mr Montgomery that there is therefore a motive for him to either mislead the Commission or lie in relation to these events because if you're going to say that in submissions you'd better put the question.

MR CHEE: I don't think I have enough basis to put that Commissioner.

THE COMMISSIONER: All right. Thank you. Anything arising?

MR NAYLOR: Yes.

THE COMMISSIONER: Any other cross examination, no? Yes, Mr Naylor.

MR NAYLOR: Thank you, Commissioner.

So Mr Chee asked you some questions yesterday in relation to auditing processes. And my understanding of your evidence was that, in relation to the internal auditing process, the system involves the CEO or the CEO's personal assistant arranging for the audit to take place. And that you indeed had been involved in relation to at least one of those internal audits?---Just one.

10 All right. And am I correct in understanding that that audit involved checking a file as to whether or not it was compliant with the policies and procedures of the Board?---It was. I don't recall if it was a file, but I do recall checking building applications, pre-mining inspections and one or two other processes that the Board carries out.

Do you remember whether the audit in which you were involved concerned a claim for compensation?---I don't recall.

20 All right. In your evidence yesterday you said that there was a check list - - -?---That's right.

- - - that you used as part of that process?---That's right.

Do you remember what was on that check list?---It was just, it was a series of points just to follow through, ensuring that the procedures were followed. I don't remember the exact details on them.

30 Where did you get the check list from?---It was forwarded to me by the, ah, CEO's personal assistant.

And when you did this audit, did you look at that bundle of policies and procedures that you referred to in your evidence yesterday that was available in the office?---I didn't.

All right. You just referred to the check list?---I referred to the check list.

And perhaps the file that you had access to that you were auditing?---That's right.

40 All right. So have you still got a copy of T6, this schedule, in front of you? ---Yes, I do.

Did Mr Bullock, at any time that you can recall in the last three years, suggest to you or promote to you that Plantac should be used as a contractor?---On, on one occasion he asked me to put Plantac on a tender.

When was that, how long ago?---I, I might be able to look it up if - - -

By all means?---I'll just look it up. It was around March, 2013.

Do you remember exactly what he said to you or words to that affect?---He said, I don't remember exactly, but he said, "You haven't put Plantac on a job for a while, put him on the next one."

And do you remember which job it was?---43 Abelia Street.

43?---Abelia Street.

10

Abelia Street?---Tahmoor.

I'm just looking for that on the schedule?---Ah, it's on page 2.

Thank you?---About half way down.

20

Thank you. At any time that you can recall in the last three and half years that you've been working at the Picton District Office, has, did Mr Bullock promote any other contractors for work to be done, repair work to be done on compensation claims?---No. I don't remember him promoting a specific contractor. But I do remember him requesting we try some of the new contractors which had come in with our new selected tenderers list.

Do you remember when that occurred?---It was in 2013 when the last list came in.

Was Mr Bullock specific about which contractors?---No, he wasn't.

30

This schedule, who keeps the schedule?---It's on a drive which we all have access to in the, in the office.

So the entries on the schedule are inserted by you in part and - - -?---By each person that's working on the specific jobs.

I see, so all of the district officers and the district manager?---Ah, this is specific just to our district office so just the - - -

40

Yes?--- - - - district supervisors and the district manager would, would amend it.

Would administrative staff have access to this document as well?---Yes, they would.

Right. Potentially they, they could amend the document or - - -?---Yes, they could.

- - - add things to the document as well. Mr Chee asked you some questions about your employment status. Have you at any time been informed by

Mr Cole-Clark, or indeed anyone else at the MSB, as to why you haven't been made a permanent employee?---No, I haven't.

All right. Have you asked the question?---Yes, I have.

All right. How many times have you asked the question?---I would estimate between, I would, I think 15 to 20 times I might have asked the question.

10 From, from any documents that you've read or any emails or any other documents do you have a belief as to why you haven't been made a permanent member - - -?---No.

- - - of staff?---No. Can I just be clear too, when I say 15 - - -

Yes?--- - - - to 20 times that was, it wasn't maybe me requesting the permanency, it was also just a chat, where are we at with, with the permanency.

20 Of course. No, nothing further, thank you, Commissioner.

MS HOGAN-DORAN: Commissioner, could I have leave to ask a question just arising out of that last exchange with Counsel Assisting?

THE COMMISSIONER: Yes, but just before you do there was something that I just wanted to query. When you say you're temporary, Mr Montgomery, is that on like a, is it a month to month, a year to year contract? What's the nature of the, of the temporary status?---There's no contract, I'm just, I just work, I work week to week.

30 So it's just a week to week?---Yes.

They could tell you next week that they no longer need you?---That's right.

Right. Yes, Ms Hogan-Doran.

MS HOGAN-DORAN: Mr Montgomery, you call yesterday I said I appeared for the Mine Subsidence Board?---Yes.

40 Have you ever been given any indication or explanation by Mr Cole-Clark or any other superior within the organisation that the, a reason for the circumstance of you not being made permanent was because of the ongoing integration with the Department of Trade and Investment?---No, I've never heard that.

No further questions.

MR NAYLOR: Commissioner, it's appropriate at this time I think to tender MFI 3 which was the few pages from the policy and procedures manual that Mr Chee had handed up yesterday.

THE COMMISSIONER: Yes. Those three pages will be Exhibit T7.

**#EXHIBIT T7 – MFI 3 BUSINESS MANAGEMENT SYSTEM
CONTRACTORS DATED 30 APRIL 2013**

10

MR NAYLOR: And may, may I also at this point in time – Commissioner, I'd like to tender two other documents that came to hand overnight from the MSB doing, being two sets of minutes of district meetings held on 1 May, 2012 and 5 and 6 June, 2012. I think it's appropriate if I just ask - - -

THE COMMISSIONER: Yes.

20 MR NAYLOR: - - - Mr Montgomery a couple of questions about those first.

THE COMMISSIONER: Yes.

MR NAYLOR: Copies are being made available if they haven't yet been made available.

30 I'll just start with this document, Mr Montgomery. Just take a moment if you wouldn't mind to have a look at that document. I'm told, sir, that the copy that you have incorporates minutes both for 1 May, 2012 and also 5 and 6 June, 2012. Is that right?---Yes, that's right.

All right. Just take a moment to have a quick look at those. I can take you to the relevant parts. So at page, page 4, sir, these are the minutes of 1 May, 2012?---Yes.

You'll see there item 2.1 paragraphs (a) and (b) refer to some discussion about a schedule of delegations and a new manual for procurement. Do you see those?---Yes, I do.

40 Remember you were asked some questions yesterday I think by - - -?---Yes.

- - - Ms Hogan-Doran - - -?---Yes.

- - - about your attendance - - -?---Yes.

- - - at a district meeting and some discussion - - -?---Yes.

- - - of new financial delegations and changes to the procedures manual?

---Yes.

Does, do these minutes reflect or rather confirm your attendance at, at the district meeting on 1 May about those matters?---Yes, they do.

All right. And if you can go over the page, or go to the minutes for 5 and 6 June, 2012. If you go to page 4, sir, item 2.1 entitled Procurement Training New Procedures?---Yes.

10 And am I reading these minutes correctly to understand that there was further discussion at that meeting about changes in procedures and financial delegations?---According to this, yes.

Yes. Do you have any memory as you sit here now of that particular discussion?---I don't remember this discussion.

No. All right. But you've got no reason to think that these - - -?---No.

- - - minutes are incorrect?---No.

20

All right. I tender those documents, Commissioner.

THE COMMISSIONER: Yes. That will be Exhibit T8.

#EXHIBIT T8 - MINUTES OF THE DISTRICT MEETING HELD AT WYONG ON 1ST MAY 2012 AND 5TH AND 6TH JUNE 2012

30 MR NAYLOR: That's the evidence of Mr Montgomery. Thank you, Commissioner.

THE COMMISSIONER: Thank you.

Thank you, Mr Montgomery, you may step down, you are excused from the summons.

MR NAYLOR: Commissioner, I call John - - -

40 THE COMMISSIONER: I might just indicate, Mr Montgomery, that, that's a temporary status on your part, pardon the pun, but Mr Chee may have a need to ask you some further questions at some later stage so you might have to come back, so I can only excuse you for today's purposes but not from the summons for the entirety of the inquiry.

THE WITNESS: Okay.

THE COMMISSIONER: Thank you.

THE WITNESS: Thank you, Commissioner.

THE WITNESS WITHDREW

[10.37am]

MR NAYLOR: I call John Rawes, Commissioner.

10 MR TAYLOR: Commissioner, I can indicate Mr Rawes will take an oath
and I have explained the legislation to him and he'll be seeking a declaration
under section 38 of the Act.

THE COMMISSIONER: Thank you, Mr Taylor.

Just come and take a seat, Mr Rawes.

20 Just to confirm with you, Mr Rawes, that the section 38 order protects you
from the use of your answers against you in civil or criminal proceeding
which would include of course disciplinary proceedings, but does not
protect you if it should be found you've given false or misleading evidence.
You appreciate that?

MR RAWES: Yes.

30 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.

40 **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**

THE COMMISSIONER: Yes. Can we have the witness sworn, please.

MR NAYLOR: Sir, what's your full name?---John Leslie Rawes.

All right. And your occupation?---I'm a district supervisor at the Mine Subsidence Board Picton office.

10 And how long have you held that position?---I've been in that position since June 2010 when I first started employment with the Board, and I might add that in the last six weeks I've taken up an acting, temporary acting role as the district manager at Picton.

And that was following the resignation was it of Mr Bullock in December last year?---Yes. It was about two months after that, yeah.

All right. What happened in the intervening period if I might just ask?
---Um, the CEO and the subsidence risk engineer were handling any matters of Darren's at that point in time or anything that we need to escalate - - -

20

I see?--- - - - that we would normally give to the district manager.

Sir, are you a permanent employee?---Yes, I am.

And have you always been a permanent employee - - -?---Yes, I have.

- - - since mid-2010?---Yes.

30 All right. What are your qualifications and work experience, sir?---I am a carpenter by trade um, building foreman and clerk of works and I have a diploma in loss adjusting. Um, going back um, I did my apprenticeship on the State Rail Authority as a carpenter. Um, I worked with Sydney City Council as a building project manager for about seven years. Um, I've basically worked in the building industry for about 30 years and five years of that I was in the police force.

All right. Would you say that you have experience in assessing the cost of building and remediation works?---Yes, I do.

40 Sir, were you here during the evidence of Mr Montgomery yesterday?
---Yes, I was.

All right. You would have heard his evidence when I took him to various pages of what I would describe generally as the Policies and Procedures Manual?---That's correct.

All right. Also called the document – also called the Business Management System?---Yes.

All right. And there's a copy of that at the Picton District Office?---Yes, there is.

Yes. And have you had any training or instruction or induction in relation to the contents of that document, that collection of documents?---Partially.

Yes?---Yes.

10 When – and when did that training or instruction take place?---Um, my induction period I was referred to the intranet site to read up on policy and procedures although given such a large document I don't think I read every, every document fully and answer – ask questions about it. It was just a, a um, document that was there to look at.

All right?---I did peruse it but, yeah.

20 Is it fair to say you probably treated it as a resource, that it might have – it was there if you needed to look at it but you didn't actually sit down and read it from cover to cover?---Exactly.

Yeah. Do you remember ever attending any training about any aspect of the contents of that document, that collection of documents?---Um, only I did a process review audit training course for half a day or so that went through some examples in our Policy and Procedures Manual - - -

Yes?--- - - - um, that referred to certain procedures.

30 All right. What's your current understanding, sir, of the circumstances in which one needs to obtain quotes for or tenders in relation to remediation works where there's been a compensation claim? That's a general question. What I'm interested to know is what your understanding of the current practice is in terms of when you need to obtain just one quote or three quotes or when you need more than that or might need to go to public tender. What's your understanding of the current situation?---My understanding is less than \$15,000 we're only required to get one quote.

Yes?---And over \$15,000 you've got to get three quotes or tenders.

40 When you say over \$15,000 that, does that mean any amount over \$15,000 or is there some cap or limit that - - -?---I believe the document says up to \$1 million.

What – all right. The rectification claims that you deal with I take it then are less than that kind of figure are they?---Yes, they are.

All right. Am I understanding you correctly to, to mean that if, if, if it were to happen that the value of the works to be conducted was in excess of

\$1 million then there's probably some other kind of procedure that's involved which, which is not to the effect that you need three quotes you need to probably undertake some other kind of procedure. Is that right?

---Yes. It's normally a matter for the district manager. He basically handled the, the larger claims to deal with infrastructure um, where we might incur them sort of costs.

10 So from the practical perspective in relation to the claims that you handle as under the current procedures, if the claim is more than \$15,000 you need to get three quotes?---Correct.

All right. And where do you, where do you go to get those three quotes?

---From our pre-approved tender list - - -

Okay?--- - - - of, of builders and repairers.

20 Do you understand there to be any specific limits placed upon those tenderers, that is to say you may have heard this evidence yesterday, that – are there limits of \$150,000 for some selected tenderers and only \$50,000 for others?---Yes, I have noticed that on the document.

All right?---My understanding of that is that when they fill in their expression of interest to be on the panel they tick a box on what, what they believe they're capable of doing, the value of work they're capable of doing.

30 All right. Now has it always been the situation in the period of your employment since June 2010 that, well, let's take this step by step, that you only need one quote for works less than \$15,000, has that always been the situation?---No, it hasn't been always the case, that's - - -

All right. How has it been different in the past?---Um, when I first started I believe my, I was able to get one quote under \$6,000.

Right. And do you know when it changed from \$6,000 to \$15,000?---I think it was March 2012.

Right?---Around that time.

40 And was that the only change, was there just a jump from 6,000 to 15,000 or were there other changes in between?---Um, I don't recall any other changes in between, no.

Okay. So when you first started you only needed one quote for works with a value of less than 6,000 or up to 6,000. When you first started did you need to get three quotes for values, value of works above 6,000?---Yes.

Right. And was there some sort of cap or limit on that?---Um, not that I'm aware of, when I first started I didn't deal with very large claims.

I see. So so far as you are concerned your experience is that you, you would have got three quotes for the work that you were doing if, if the value of the work exceeded \$6,000?---Yes.

Up till about March 2012?---I believe so, yes.

All right. And where, where would you go to ascertain or to get those quotes from?---Our pre-approved tender list of builders.

10

All right. Have you ever been involved in a public tender process?---No.

No. And what's your understanding of how the pre-approved tender list works? Let, let me be more specific, are you familiar with a policy that requires invitations to quote to be sent out on a rotational basis?---Um, in accordance with, in reference to that point I've only been aware of that in the last few months of that policy, in the – that wording in the, in the document.

20 All right. Would it surprise you that that according to the documents has been in place since, if I'm not mistaken, 2002?---Um, yeah, I suppose I'd be surprised.

You don't have a memory of reading that in the documents - - -?---No.

- - - until the last few months I think you said?---Exactly.

30 And how in practice from your perspective do you go about selecting tenderers off that list and inviting them to quote if you don't apply a rotational policy as per the guidelines, what, what practice do you apply?
---Um, generally we know between our group of guys that do the claims who's on what job and who's busy and who's not busy and then just factors such as, you know, what's, what's the claim like, what sort of work is involved. Um, there's certain builders that are better doing certain work than others ah, ah, there's factors that come into - the customer might request a certain builder that they've had a good word from from someone else in the community that they would like to have on their job um, there's a number of factors that come into play but um, basically um, on, on the larger jobs I would go to Darren and, and talk to him after talking to
40 the boys about who they've got on work and um, ask him who he'd like to have on the tender, I'd probably make some suggestions that he would either agree with or disagree with um, but yeah, it's just a consultation process between all the staff and the manager on most occasions.

My apprehension, sir, from what you've said is that it's a pretty broad kind of discretion as to who you select off the list in order to invite to tender?
---Yes.

Right. And that it's informed by a whole lot of considerations, including discussions with your colleagues?---Exactly.

All right. And you referred to having discussions with Mr Bullock at least in relation to the larger jobs about who might be invited to tender?---Yes.

And do you have a memory, sitting her now, of any of those discussions?---Specific claims you're after?

10 Yes?---Um - - -

Well specific discussions that you can recall having had with him about who should be invited to tender?---Well not specific, I suppose. But, yeah, I know I've, I've had discussions with him, yeah.

All right? Well, doing the best you can, has Mr Bullock suggested that any particular contractors should be invited to tender during any of those discussions?---Yes, on occasions, yeah.

20 Who?---A&DJ Building, Will Built Homes, KC Building or Bowral Homes, ADR Constructions, Allfitz Constructions.

What about Plantac?---Plantac, yes.

Do those kind of discussions occur frequently?---Yeah, whenever I've got a larger claim to do so.

Yeah?---Probably a dozen times a year.

30 All right. All right. Now the process is having decided who from the list should be invited to tender, invitations to tender get sent out, don't they?---Yes. They're either sent out or we give them to the builders, depending on the timeframe between organising it and generally, we give them on site when we meet at the pre-tender meeting.

Okay. So, but they're given a bundle of documents which includes a scope of works, is that right?---That's correct.

40 All right. And they're given a time period in which to respond to the invitation to tender and when they respond, if they respond, they provide a quote, a tender as to how much they, they can do the work for?---Yes.

All right. I'll just go back a step. Before, before you get to the point of sending out invitations to tender, in relation to the claims compensation process, the claim needs to be assessed, does it not by the district supervisor or the district manager who has carriage of the matter?---Yes.

All right. And the process involves, if it's your matter, preparing a claim investigation report?---Yes.

And that claim investigation report expresses an opinion as to whether or not the damage, which is the subject of the claim, has been caused or not caused by Mine Subsidence?---Yes.

10 All right. And if the damage has been caused by Mine Subsidence damage, Mine Subsidence, in the opinion of the district supervisor then an estimation is made as to how much the cost of the work will be in order to rectify the damage?---Yes.

Right. And when you are making that estimation and including it in a claim investigation report you rely upon your extensive experience in the building industry in order to come up with that figure, do you not?---That's one aspect I rely on, yes.

20 All right. And what are the other aspects that assist you in order to come up with the estimation of the value of works?---We have a Cordell's estimating software program that we can access.

Yes?---We can access suppliers' Websites for material costs and yeah, just catalogues or brochures on materials.

Okay. Once you've done your Claim Investigation Report, where does it go?---It goes to the district manager.

30 Okay. And am I correct in understanding that the district manager has a financial delegation to approve the expenditure, or may have a financial delegation to approve the expenditure which you have estimated in the Claim Investigation Report, depending up how much it is?---Depending on the value, yes.

All right. And what's your understanding, what's the – in terms of the current situation, what's your understanding of the district manager's financial delegation to approve that part of the process, is there a cap or limit on how much the district manager can approve a claim or expenditure on a claim?---Yes. For me now in that role it's \$20,000.

40 All right. And in the period of time that you've been employed at the Picton District Office and most of the time as the district supervisor, now as an acting district manager, has it always been \$20,000, the financial delegation of the district manager in respect of approval of claims?---No, I believe the Tahmoor project he had special delegation to \$50,000.

All right. And do you know in your experience, since June 2010, has that always been the case or has, did it change at some point in time?---I can't recall exactly. As far as I can remember it's been \$50,000.

Okay. And am I right in understanding that for non-Tahmoor-related claims, so for claims in other areas, the, the limit is not \$50,000?---That's correct.

All right. What is the limit?---\$20,000.

All right. And has that been the situation since you were employed in mid-2010?---I believe so.

10

Right. Have you ever had a delegation to approve a claim?---No, not to approve a claim.

All right. Okay. Let's go back to where we were before in terms of the tendering. Invitations to tender are sent out and tenders are received. I'm right aren't I when I say that once the tenders are received they get assessed by the relevant district supervisor or sometimes the district manager who has carriage of the particular claim?---Yes.

20

All right. And the process whereby the tenders are received, they need to be deposited into the tender box at the Picton District Office?---That's correct.

All right. And there's an appointed closing time for tenders?---Yes.

And the process as I understand is that after the appointed closing time for tenders, two people are required to open the tender box and neither of those persons are to be the district officer with carriage of the particular claim?---Yes.

30

And have you ever been involved in that process?---Opening tenders?

Yes?---Yes.

All right. When was the most recent time that you were involved in opening tenders?---Say in the last few months.

Okay. All right. And the process as I understand is that when the tenders are received and the box is opened, the tender book gets noted up with the prices or the quotes that each of the tenderers have put in. That's right?

40

---That's right.

Then the particular tenders and the tender book are sent along to the district officer who makes an assessment as to which tender should, if any, should be accepted?---Yes.

All right. And what's the criteria that you would apply in order to make a selection as to the successful tenderer?---I would um, review my estimate compared to the tendered prices um, I am aware that there is a guideline and

if the tender, if the winning tender is outside of 15 per cent of the estimated price that it needs further review, but it hasn't happened to me yet um, but basically the most conforming complete tender which is normally the cheapest tender, wins the job.

So not necessarily the cheapest?---Well, as far – I don't recall an instance where the cheapest hasn't won.

Right, right.

10

THE COMMISSIONER: Is, is that provided that it's, that it's no more than 15 per cent below or above the estimate?---That's correct.

Right?---Yeah.

20

MR NAYLOR: The 15 per cent that you've referred to, I just want to understand what you're saying, if, if a price or a quote comes in which exceeds what has been estimated as the value of works that has been approved by the delegate, if the price comes in at less than 15 per cent above that amount then the delegate can approve it but if it comes in at more than 15 per cent then the delegate can't approve it?---I think it's either way, so if the, if the lowest conforming quote is 15 per cent above or below the estimate - - -

30

Yes?--- - - - there needs to be further review of whether the claim was estimated correctly in the first place or whether the builders have omitted to understand the scope of works and I, I would refer it to our procedure on that or seek further assistance from the district manager or CEO on how to handle that.

Well, you mentioned review, what, what's the – I'm just trying to understand the process for review in that case?---Well, I don't recall an instance where that's happened to me - - -

I see?--- - - - but that's what I understand the process to be.

All right. And, and we're talking about a different process, are we not, to the process for variations?---Yes.

40

All right. There's a separate set of rules that apply to variations and that doesn't come into play until after the tender has been selected and the work has commenced, that's right?---That's correct.

Okay. Who, what's, what's your current understanding of the district manager's financial delegations to approve, to approve the selection of tenderers in respect of Tahmoor related claims?---I just, I just don't understand that question, sorry.

All right. As I understand, and tell me if I'm wrong, there are two phases of this process whereby people get damage to their houses rectified, there are two, two phases where a financial, a person with an appropriate financial delegation needs to sign off and the first of those phases is where the claim investigation report has been prepared and an estimate has been given as to how much the work is going to cost, so a person with an appropriate financial delegation needs to as it were approve the expenditure, that's the first phase. The second phase is after the tenders have come in when the tenderer actually needs to be selected to do work, is that – am I correct in that understanding?---Yes.

All right. And I'm interested in the second phase and I'm interested in what your understanding is as to what the district manager's delegations are to select tenderers?---To approve the tenderers?

Yes?---Yeah, I believe it's the same delegation as the claims approval so in the Tahmoor/Thirlmere project it would be \$50,000 - - -

Okay?--- - - - where the district manager could approve the, the tender documents, the tender prices and - when I was district supervisor but now it would be \$20,000 as I'm the manager.

So there's no longer a \$50,000 delegation for Tahmoor-related claims? ---Not now, no.

All right. When did that change?---When I took up the role six weeks ago.

I see.

30 THE COMMISSIONER: Mr Rawes, can I ask you to speak a little bit closer to the microphone so that people at the back of the room can hear? Thank you.

MR NAYLOR: And how is it that you became aware of the change in the delegation for Tahmoor-related claims?---The recent change?

Yes?---Um, the CEO advised me verbally.

40 Right. Well, do other people in your office know of the change in delegation?---I have informed Gareth Davies and Matt Montgomery who deal with claims and tenders of that change.

Well, is there some document that records the change in the financial delegations?---There is a schedule C document but it hasn't been changed as yet.

All right. Have you shown, been shown any Board minutes which reflect that the Board's made a decision to change the financial delegations?---No.

Was Mr Cole-Clark sent round any emails or other documents about the change in the financial delegations?---Not that I can recall.

You're just working on the basis of what Mr Cole-Clark said to you verbally?---Yes.

10 Is there some document that people keep at their desks which records – well, let's just deal with you. Do you keep a document at your desk which records the financial delegations?---Yes, I do.

All right. And I'll show you, I'll show you a document. Perhaps the witness can be shown T1, folder 2, page 491. I'm sorry, 492. So this is a schedule of delegations as at 1 July, 2012. Do you think this is the document that you've got at your desk now?---This is the document I've got at my desk now.

20 All right. So we would need to read this document since the conversation that you've had with Mr Cole-Clark about six weeks ago as if to say, looking for example at delegation 3.2, paragraph (c), you see other tasks including rectification works?---Yes.

And going across to DM, the DM column \$20,000, then there's two notes. A bit hard to read but the note 8 down the bottom of the page "DM at Picton office has a separate delegation for Tahmoor. Project equals \$50,000". I'm understanding your evidence correctly to mean to say you effectively have to delete or ignore note 8 - - -?---Correct.

30 - - - since about six weeks ago?---Yes.

But otherwise the document reflects your current understanding of the current delegations?---Yes.

All right. And – all right. So once, once the tenderer has been approved by say you as the district manager the works can then commence?---Yes.

All right. Well, is there any reason why that can't happen, is there some other process that needs to be gone through first?---No.

40 Okay. And it happens, does it not, that it's necessary – well, withdraw that. It happens, does it not, that contractors seek to make variations to the original contract price during the course of the works?---That's correct.

All right. And are there any rules or guidelines or procedures to the best of your knowledge that govern the authorisation of variations?---Yes.

And what are they?---Um, if it's no more than 10,000 – the lesser of \$10,000 or 15 per cent of the contract sum.

And what's the basis for you saying that?---The schedule C delegation sheet.

All right. So you're referring to the very last line on this page?---That's correct.

It's in very small type?---Yes, that's right.

10 Okay. And has that always been the situation while you've been employed since mid-2010?---I can't honestly answer that. I, yeah, I, I assume so.

But you don't know?---I can't recall three or four years ago whether that was on that delegation sheet before 2012.

Okay. All right. Well, let me show you another document. Just keep that volume in front of you, sir, and go to page 735. That appears, does it not, to be another schedule of delegations?---Yes, it is.

20 And you may make this assumption, sir, that it appears among the collection of policies and procedures which are for the period commencing 4 September, 2014, and if you need to see that you need to go back to page 505. So what you should be looking at is a document which is signed by Mr Cole-Clark dated 4 September, 2014?---Yes, that's correct.

505. And I'm just asking you to make the assumption that the schedule at page 735 forms part of the collection of documents which has at the front of it that document dated 4 September, 2014?---That's correct.

30 Have you seen this schedule before, the one dated 10 January, 2007 at page 735?---I believe I have.

Do you remember when you last saw it?---When I first started, I believe that was the schedule of delegations.

Okay. And do you remember having ever had resort or referred to this in relation to variations?---I don't recall.

40 And am I right in thinking when you look at line 4 or delegation number 4, it says, "Claims."?---Yes.

That's the first phase isn't it, that refers to the first phase of that approval process after the Claim Investigation Report's been referred and it gets sent off to the district manager for approval?---I believe so.

Yes. And the second phase that we've been talking about, the acceptance or selection of a particular tenderer, that is dealt with in line 11 or delegation 11, acceptance of tenders?---Yes.

All right. So when you were first employed, does this properly reflect what you understood your delegation to be as a district supervisor in terms of the selection of a tenderer that it was capped at \$1,500?---No, it's not, I, I don't recall having a delegation of \$1,500.

Well, as a district supervisor before you became the acting district manager, did you have any delegation to approve the selection of a tenderer?---Um, I believe I had \$6,000.

10

\$6,000?---Yes.

Okay. And that was from the time that you were employed in mid-2010?
---Yes.

Right. And what's the situation now for district supervisors, as best as you know – I know you're not a district supervisor now, you're acting as district manager, but do you know what a district supervisor's current delegation is to approve the selection of a tenderer?---\$8,000.

20

Okay. Do you know when that changed from six to eight?---I think it was 2012 when the delegation changed.

2012. Okay. Sir, are you familiar with the, any policies or procedures in relation to major claims?---Briefly.

What's your understanding of policies in relation to major claims?
---Um, in my role I rarely come across a major claim, it's generally what I perceive as a, as a full house rebuild - - -

30

Right?--- - - - or a job in excess of say \$50,000.

Right. Okay. And is there some sort of special process that applies to major claims in terms of getting them approved and getting the work done?---Um, as a district supervisor it obviously goes through us, the district manager and up to either the CEO within his delegation or then to the Board for, for their, ah, approval.

40

Okay. So, I'm understanding you correctly, do I mean to say that claims which are worth in excess of \$50,000 are more significant and need to be escalated up the hierarchy to the CEO and the Board for their attention and for their approval?---Correct.

All right. In your experience, in relation to Tahmoor related claims, have you ever had the experience of claims being approved and select, and tenderers selected. But some amount of money of less than \$50,000 and then subsequent variations being made to increase the original contract price, including the variations to an excess of \$50,000?---Yes.

All right. How often do you think that has happened in your experience?---
Ah, my own personal knowledge, probably less than a handful.

Right. Do you see some, and in relation to that handful of cases, have they
been brought to the attention of the CEO and the Board?---Not that I'm
aware of that I can recall.

10 All right. Do you see any particular problem in terms of the possibility, that
the major claims policy might in effect be defeated or not complied with if
you've got claims or original contract prices being approved at some
amount less than \$50,000 and then subsequent variations taking the total
contract price to in excess of \$50,000 and the Board and the CEO not being
informed?---Yes, I can see that.

It would seem to be in contrast to the major claims policy that you have an
understanding about?---Yes.

20 Right. Just put that folder to one side, Mr Rawes. And if the witness could
be shown volume 5. Pardon me, Mr Rawes, I'm sorry. Can I ask you to
turn please to page 2117. Just have a look at that document which there are
three pages of typed written text and then, I think, there's some photographs
and maps behind it. This is a claim investigation report, is it not, in relation
to a property at 50 Rita Street, Thirlmere?---Yes, it is.

All right. And did you have carriage of this particular claim?---No, I didn't.

30 You see, sir, at page 2119 that it would appear that your signature is there as
the investigating officer?---Yes.

Were you the investigating officer?---No.

How is it that, well, is that your signature?---Yes.

How is that your signature came to be on this document if you were not the
investigating officer?---Um, Mr Bullock asked me to sign this claim on his
behalf.

40 Do you remember what Mr Bullock said to you and when?---I believe it
was, as per the date there, the 11 July, or around that date. Um, it was in the
morning. He came out to our work area where Gareth and that and I sit.
And he walked up to my desk with the claim folder and said, "I need you to
sign this, this one. Matt signed the last one because I don't want to send it
over," "I don't want to lose time in sending it up to Greg," or words to that
affect.

Well, did that strike you as unusual?---Yes, it did.

Why?---Because it's not normal practice.

You agreed to sign the document?---I felt pressured, Matt and Gareth were looking at me and Darren was standing at my desk and I looked through the file, I noticed it was a \$50,000 estimate and I just signed it and I felt pressured to do so.

I want to show you a document. Do you recognise that document?---Yes, I do.

10

What is it?---It's a copy of a diary entry from my personal diary.

And when was the entry made?---12 July.

All right. And what does the entry relate to?---It just explains what I just answered, that last question, that Darren approached me to sign this claim.

All right. So this is a record made at about the time of the conversation that you had with Mr Bullock about what he said to you and the circumstances in which you signed as investigating officer, this claim investigation report?
20 ---Yes.

All right. I tender that document, Commissioner.

THE COMMISSIONER: Yes, that document will be Exhibit T9.

#EXHIBIT T9 – DIARY NOTE OF JOHN RAWES DATED 12 JULY 2013

30

MR NAYLOR: I just want to ask you some questions about, about this. Sir, I appreciate that you didn't have carriage of this particular file, pardon me, but you nevertheless are the acting district manager and have significant experience as a district supervisor so I just want to get your comment upon aspects of the file. You see the file actually commences at 2093 and it's in reverse chronological order basically, not, not strictly but can I take you first of all to the invoice from Plantac which appears at 2099?---Yes.

40 You see the total of the invoice was for \$67,654.40 which is inclusive of both the contract value of \$41,660 plus GST plus variation 1, do you see that?---Yes, I can.

And the page immediately before it, 2098, would appear to be approval of payment of that particular invoice, is that the kind of document that looks like a payment approval?---Yes, it is.

All right. Would it trouble you, sir, if this particular claim, being in excess, a total in excess of \$50,000, was not dealt with as a major claim and brought to the attention of the CEO and the Board?---Yes, although the, looking at the invoice the original contract sum was \$41,660 which - - -

Yes, I appreciate that?---Yeah. But with the variation being above 10,000 or, or the lesser of 10,000, 15 per cent of the contract sum it would have needed to have go to the, to the CEO for further approval.

10 I see. So you're saying the variation exceeds \$15,000 or \$10,000 – sorry, 15 per cent or 10,000 whichever is the lesser?---That's right.

All right. So you're saying that's the kind of variation which would need to be escalated up to the CEO for approval?---That's right.

And if that didn't happen then on your understanding of the procedures that applied at this particular time, September, 2013 that would be non-compliance with the procedures?---Yes.

20 All right. And my question was really directed I suppose to your evidence earlier about major claims. The total amount exceeds \$50,000?---Yes.

Should it be a matter of concern that this, this claim which does exceed \$50,000 was not, not treated as a major claim or should we not be concerned about that?---I'm not totally sure of how that major claim policy works.

Yes?---Um, but - - -

30 THE COMMISSIONER: Mr Rawes, do I take it that the confusion resides in knowing whether or not the \$50,000 limit as it were applies to the original claim amount without taking into account the variations?--- Yes, that's right.

And on one view of it I suppose one could quite easily circumvent that major claims policy by putting in a claim which was slightly less than 50,000 but then the variations would inevitably exceed that limit?---That would be possible, yeah.

40 And let me just put this to you then. If the variation on a claim that was originally slightly less than 50,000 was not more than \$10,000 or 15 per cent of the contract price, it would nonetheless exceed the 50,000 but it wouldn't require approval by the CEO?---Quite possibly. I'm not a 100 per cent on what that major claim procedure is but I would probably ask the question of the CEO.

Well, my question is really this, that in those circumstances that I've just outlined, it would fall into a very grey area would it not – in other words it

would technically qualify as a major claim because the ultimate price would exceed 50,000 but it would avoid scrutiny by the CEO on both counts?
---Yes.

Right.

MR NAYLOR: Sir, would you expect as part of the tender process the tender book to have been noted up with tenders received in respect of this particular claim, would that be your expectation?---Yes. For that estimate
10 of claim and, and sum of money, yes.

All right. And your understanding of the need for the tender book to be noted up, where do you derive that from?---Ah, claims over \$15,000 - - -

Yes?--- - - - go to tender under the new arrangements, yeah.

Okay. But there's a practice as I understand of needing to record in the tender book tenders that get issued?---Yes.

20 Okay. And I'm just trying to understand how it is that you became aware of that practice?---It was from when I started that's what the process was.

Okay?---I was told that's - this is the process.

You were told by someone?---Yes.

Did you read it in this bundle of documents at any time about the need for the tender book to be noted up as part of the tender process?---Um, I will be honest and say I, I've read it recently but in my early days I didn't read that
30 particular clause.

Okay. And if this particular matter was not noted in the tender book that according to your understanding and the practice you adopt would, would not be correct?---That's, that's right.

All right. Might that be an appropriate time, Commissioner?

THE COMMISSIONER: Yes. We might take a short adjournment. Just before we do, Mr Rawes, can I just ask you to have a look at Exhibit T9, the
40 diary note. Do you still have that?---Yes, I do.

Just to confirm your handwriting, is that "GCC was coming to office at lunchtime"?---Yes, it is.

And does that refer to Mr Cole-Clark?---Yes, it does.

And the words, "he could have got CEO to sign claim"?---That's correct.

Is that what it says? And underneath that, “I checked Excel job list sheet.” Is that the Excel spreadsheet, is it?---That was that previous exhibit that was brought up this morning, yes.

And does that then read, “Already allocated to Plantac?”---Yes, Plantac’s name was in the column.

Well, I just had trouble reading the word “already.” Is that the first word after the dash?---That’s, that’s it, yeah.

10

Thank you?---It’s my scratchy writing.

No, that’s all right. Thank you.

MR NAYLOR: Well, can I just ask the follow-up question. What do you mean by that, “Already allocated to Plantac?”---Well, I was entering some data that afternoon into our spreadsheet on another claim and due to the unusualness of signing Darren’s claim earlier in the day I just looked on the spreadsheet and noticed Plantac’s name was typed in as the builder for that job.

20

But this is at the point in time, the first phase I would describe, the point in time where the Claim Investigation Report is being approved, so the expenditure is being approved, but even – it’s well before invitations to tender are sent out, let alone tenderers are selected. That’s right, isn’t it? ---Yes, it is.

So does it strike you as unusual that Plantac would be allocated the job in that list at that particular point in time?---Yes, it does.

30

Well, when do you usually put the contractor into the schedule?---After the ah, tender has been authorised and approved.

Yes. Thank you, Commissioner.

THE COMMISSIONER: I’ll take a short adjournment, resume at quarter to 12.00. Thank you.

40

SHORT ADJOURNMENT

[11.31am]

THE COMMISSIONER: Yes.

MR NAYLOR: Commissioner, just by way of housekeeping, may I tender the document that I have referred to this morning being the letter from legal representatives for the Board dated 30 March, 2015 indicating the production of documents overnight.

THE COMMISSIONER: Yes. It's Exhibit T10.

#EXHIBIT T10 - CORRESPONDENCE DATED 30 MARCH 2015

MR NAYLOR: Mr Rawes, you still have in front of you that file relating to 50 Rita Place, Thirlmere?---Yes, I do.

10

All right. There's just one other aspect I wanted to clarify. Your evidence was as I recall that when Mr Bullock asked you to sign the claim investigation report as the investigating officer he said something to you about the CEO?---Yes. As he didn't want to send it up to Greg - - -

Yes?--- - - - and I think the inference was that due to time delay.

Right. But looking at, looking at your handwritten note, the diary entry, do you have a copy of that in front of you?---Yes, I do.

20

And the Commissioner had asked you some questions about this, "GCC was coming to office at lunchtime". That suggests to me that – how, how is it that you came to write that in this diary entry, what – where did you get the knowledge that Mr Cole-Clark was coming to the office at lunchtime? ---After I had signed the claim.

I see. Did Mr Bullock tell you that or did someone else tell you that?---Um, not sure if it was Darren or one of the other staff members said that Greg's coming here lunchtime.

30

All right. But the impression, at least I have, of what your evidence is about what Mr Bullock told you was that he couldn't get Mr Cole-Clark to sign it because – or at least there would be some delay in getting Mr Cole-Clark to sign, to sign it or to be involved in the approval and that was why he wanted you to sign it. That's right?---That's correct.

All right. Was it generally known when Mr Cole-Clark was visiting the office?---Not all the time, no.

40

All right. How often did Mr Cole-Clark visit the office or how often does he visit the office now?---Ah, it's been ah, three or four times in the last few months.

Yeah?---Um, he's dropped in a couple of times unannounced. Um, prior to that I would say maybe once a year. Um, I believe um, the district manager attended some meetings with Sydney Catchment Authority and Sydney Water and other utilities with Mr Clark in the area um, but didn't always come to the office.

It wasn't until after you'd signed this Claim Investigation Report that you became aware that Mr Cole-Clark was going to visit that day?---That's right.

Now, you've still got volume 5 in front of you, sir?---Yes.

All right. Can I ask you to turn to page – turn first of all to page 2129. You see that would seem to be the front of a file - - -?---Yes.

10

- - - in relation to a property at 1 Connor Place, Tahmoor?---That's correct.

Right. And then take it from me that various documents which appear behind it, which I will take you to a part of that file as received by the Commission, and if I can take you first of all to page 2156?---Yes.

Found that? That again appears to be a Claim Investigation Report, does it not?---Yes, it does.

20

Three pages, and behind it are a number of pages of photographs and maps and graphs of various descriptions?---Yes.

And this is a Claim Investigation Report in relation to that property, 1 Connor Place, Tahmoor, and you'll see that the estimated costs of the works at 2157 are \$45,000?---Yes.

Is this, did you have carriage of this particular claim?---No, I didn't.

30

All right. Looking at page 2158 it would appear that your signature is there next to the description, "Investigating Officer." Do you see that?---Yes, I can.

Is that your signature?---Yes, it is.

Did you put your signature on this page?---Yes.

Were you the investigating officer?---No.

40

In what circumstances did your signature come to be put, ascribed on this particular page if you were not the investigating officer?---Darren asked me to sign it.

What did he say as best as you can recall?---Um, I believe the claim report had just been typed by Kim Reid from our office and she brought the file and placed it into my in-tray and I looked at what she was putting in my tray 'cause I knew I never had any typing to be done, and I noticed it was – and I said, "That's not mine." And she said, "Yeah, it's got your name on it." And I looked at it and then Darren was standing there talking to Gareth at

the time and ah, he turned around and said, "Yeah, yeah, I'll get you to sign that one, I haven't got time to send it to Greg," or words to that effect, and then he stood next to my desk waiting for me to sign it.

All right. Did that strike you as an unusual situation?---Yes, it did.

If you regarded it as unusual, why did you sign it?---Um, again I felt pressured to sign it.

10 What kind of pressure did you feel?---Um, well, Darren was standing there, Gareth and Kim were looking at me and I felt a bit intimidated to sign it.

Well, if you hadn't signed it, if you hadn't done as Mr Bullock requested you to do, what, what was your fear?---Um, I don't know, maybe um, Darren taking other actions against me, I don't know.

What kind of actions?---I don't know, he distributes the claims, he may have given me some bad claims to deal with, I don't know. I can only surmise what might have happened but I don't know for sure.

20

I'll hand you a document. Just take a moment to have a look at that, Mr Rawes?---Yes.

Yes. Do you recognise that document?---Yes, I do.

What is it?---It's a copy of a diary page from my personal diary.

All right. Does it, does the handwriting, is the handwriting that appears on that page your handwriting?---Yes, it is.

30

All right. And do you know when you made this note?---As per the diary, 14 January, 2014.

And relative to the conversation that you've just described having had with Mr Bullock about signing the claim investigation report was it, when was this note made?---Ah, shortly after I signed that claim report for Mr Bullock.

40 And why did you make this note?---Because it was an unusual event and I needed to make note of it.

All right. And I'm looking at the first line of the handwritten note, sir, where it says, "Got me to sign off on a claim report he did for" and then the words "33 York Street, Tahmoor" appear. That, that would appear to be a different address to the address that we've been talking about at 1 Connor Place, Tahmoor, are you able to explain that?---Ah, the only thing I'm now aware of is that the, the same owner of 33 York Street as 1 Connor Place so

when I've referred back to the system I've inadvertently written, wrote down the wrong address.

I see. So when you wrote 33 York Street, Tahmoor you were, you were in, you were in fact were intending to refer to 1 Connor Place, Tahmoor?
---Yes.

I tender that document, Commissioner.

10 THE COMMISSIONER: Yes. That will be Exhibit T11.

#EXHIBIT T11 – DIARY NOTE OF JOHN RAWES DATED 14 JANUARY 2014

MR NAYLOR: I just want to ask you some questions about that file, the 1 Connor Place file. You see first of all it's still with the claim investigation report, page 2157, the estimate cost \$45,000, at this particular time, January
20 2014, am I correct in understanding that for, for a Tahmoor-related claim such as this your understanding of the financial delegations that were in place at this time was that the district manager had authority to approve the selection or, first of all, this claim?---The expenditure.

Yes?---Yeah, yeah.

Up to, up to \$50,000?---Up to 50,000, yes.

30 So it was within his domain - - -?---Yes.

- - - to approve this claim?---Yes.

And it was also within his domain to approve the selection of a tenderer up to a value of \$50,000?---Yes.

All right. Can I take you slightly forward in the bundle to page 2148 and this document appears to go until 2151. Have you looked at that document?
---Yes. Yes, I have.

40 Am I right in thinking that this is a scope of works?---Yes, it is.

This is, this is a scope of works that would have been sent to those who were invited to tender to do the work?---Yes.

And at page 2151 the document says it's a specification prepared by Darren Bullock?---Yes.

Am I right in understanding that these scope of works are prepared by the officers with carriage of the file?---Yes.

So I would, you would infer from what appears on this page that Mr Bullock had carriage of this file?---Yes.

You didn't have carriage of this file?---No.

10 Would, what, what's your understanding as at this particular time, 16 January, 2014, was the district manager able to approve his own claim files?---I believe up to the sum of \$10,000.

Right. Well this sum is, appears from the documents to be \$45,000. Was Mr Bullock entitled as the district manager to approve a claim of this value on your understanding of the policies and procedures that applied at that time?---Not if he was the investigating officer, no.

Well where should it have gone for approval?---To the CEO.

20 Right. Now I just want to ask you a couple of questions about an aspect of the scope of works. Now it may be, sir, that you say to me, "I don't feel qualified to answer the questions," but if that's the situation, just tell me. The scope of works as I understand, and this is the document at 2148. Sets out the work that needs to be done, yes?---Yes.

And that's the work upon which a tenderer submits a quote?---That's correct.

30 Right. You wouldn't expect would you, for works, for those works to be later included in a variation, would you?---Is it the same works on the scope of works you're saying?

Yeah?---No.

40 No. So if one looks at page 2149 and you and I are both in, perhaps the same difficulty that words might be construed in different ways. But if you look at page 2149, top of the page, part of the scope of works in section 1 is at paragraph H, this says, "To allow to replace white rocks to side garden if required." You see that?---Yes.

So you would, you would have an expectation, would you not, that the tenderer, when submitting his or her quote, would include the cost of that in the tender?---Yes.

All right. And if it was in fact included in the cost of a later variation after the tender was accepted, that would be inconsistent with your understanding of the policies and procedures and how they worked?---Yes. I suppose the

only thing I'd say to that is that, um, there may have been a specified area at a pre-tender meeting that was allowed for.

Quite?---Because often that's why we have these pre-tender meetings is that builders will ask questions and we can answer them before they tender. So unless it was for one particular area of white rocks to be replaced and then as they did the work more white rocks in other areas needed to be replaced, I don't know, yeah.

10 Right. You'd need to construe the scope of works within the particular context which included the site meetings?---Yes.

All right. So when one looks at the, the Plantac invoice of 2135, you see that?---Yes.

And again I accept it might be difficult to draw any conclusions, but you see that the invoice suggests that the contract value of 45,540 plus GST has already been claimed and that a variation is submitted. Variation number 1 and the first item includes the supply and installation of two tonnes of white pebble?---Yes.
20

All right. If it, if it were to be the case, so, if it were to be the case that that white pebble, the supply and installation of that white pebble, is the same thing as what is referred to in the scope of works. And I don't have an answer to that question for you. But let's make that assumption. Then that aspect of the variation, would, would not be consistent with the way in which the procedure worked, would it?---No, it wouldn't.

No. That, that would essentially be, would it not, double dipping?---Yes.
30

All right. Have there been any other incidences that you can recall of Mr Bullock prevailing upon you to sign claim investigation reports as the investigating officer when you were not the investigating officer?---Not that I can recall.

Okay. So do you remember any involvement in the tender process in respect of a property at 336 Moreton Park Road, Douglas Park?---I wasn't involved in the evaluation of the tender process but I observed the tender being opened.
40

All right. And what were your observations?---Ah, I think it was Matthew and Lyn opening the tender and I was interested in who was winning the job.

Yes?---So I was standing back just watching and they opened the ah, tender envelopes and um, I did observe a couple of the envelopes to have sticky tape sealing them closed.

All right. Well, how – did you actually have the envelopes in your hand when you were observing them?---No.

All right. Well, what was your vantage point when you were observing what was happening?---I was standing about a metre behind Lyn at the front counter - - -

Yes?--- - - - looking over their shoulders or between their two bodies as to -
- -

10

Well, who was holding onto the envelopes?---Ah, Matthew.

All right. Okay. And did anything that you observed strike you as unusual in any way?---Um, well, I can't say I've seen a lot of envelopes with sticky tape on them because normally they're a pre-sealed envelope that we supply to the contractors but I can't be positive about that.

20

Okay. And did you have a conversation with anyone about what you had observed?---Yes. Matthew um, brought it to my attention after the tender opening process was completed and I said yeah, I saw, saw they had sticky tape on then,

Well, sorry, who said that to whom?---Matthew said to me did you notice the stick tape on a couple of envelopes and said yes, I did.

All right?---And I asked him whose, whose envelopes were they.

30

Yes?---And he told me that ah, it was M Bruton Building and I think it was Asset Services ah, tenders.

Okay. And did, did – was anything said to you about the third envelope? ---Um, the third envelope was the winning tenderer in Plantac Pty Limited.

Sir, I just want to show you a number of documents. Pardon me. And I hand you two documents, sir. One – yes, I'll get copies. Sir, you should have two documents?---Yes.

One appears to be a letter to you dated 20 May, 2010?---Yes.

40

And the other appears to be a position description dated March, 2010? ---Yes.

Do you recognise those documents?---Yes, I do.

All right. What are they?---Ah, the first one is my ah, appointment letter to – offering me the position as district supervisor at Picton office.

Yes?---And it also includes a copy of the um, position description.

Yes. And the second document would appear to be the position description together with your signature?---Yes, that's right.

Verifying that you've received it?---Yes.

And on the last page the acceptance of your appointment as district supervisor Picton dated 28 May, 2010?---Yes.

10 Yes. I tender those documents, Commissioner.

THE COMMISSIONER: Yes. Those two documents together will be Exhibit T12.

#EXHIBIT T12 - APPOINTMENT LETTER OF JOHN RAWES AS DISTRICT SUPERVISOR WITH THE MSB DATED 20 MAY 2010 AND ACCOMPANYING POSITION DESCRIPTION

20

MR NAYLOR: And finally, can I hand you one last document please, Mr Rawes. Do you recognise that document?---Yes, I do.

What is it?---It's an induction checklist for new employees, permanent staff.

Yeah. And does this relate to you in some way?---Yes, it does.

Is this the induction checklist relating to your employment - - -?---Yes.

30 - - - at the Mine Subsidence Board Picton office?---That's correct.

The date at the bottom of the page, 2 November, 2004 doesn't reflect when you were employed, does it?---No, it doesn't.

Just seems to be the date on a template of some description?---Probably the date the template was produced.

40 Yes. And if you go over the page, you see it would appear to have, appear to describe a program of induction going over a period of a number of days and indeed a number of weeks, and am I reading this correctly when I say that when initials are included or inserted into the last column, that means to say that you've in fact been inducted in relation to that particular item? ---That's what it infers, yes.

Right. So for example, day 2 item 5 says, "Briefings on," among other things, "mapping." And that contained a couple of initials in the final column. That suggests to me that you were inducted in relation to mapping?---Yes.

Right. If you go over the page, item 9, this is about briefing on the Board's policy and procedures manual, including information and process for among other things, claims, and there are no initials which appear in the final column. Is the correct inference to draw that you weren't in fact inducted in relation to the Board's policy and procedures about claims and other things mentioned there?---Um, probably not totally.

10 Right?---Um, a lot of my induction was learning on, on the job, so I did learn how to do claims and how to make payments and how to do tenders from another staff member and Darren - - -

Okay?--- - - - who ah - - -

But this is a program of formal induction, is it not, for new employees?
---Yes.

20 Yes. And the officer whose initials appear to be designated in the third column, that's the secretary of the Board, is it not?---In the third column?
S-a-m-f-a?---Samfa, yes.

I'm still on item 9?---Yeah, yes.

S-a-m-f-a is a reference to the secretary of the board?---That's right.

And the secretary of the Board has his office at head office in Newcastle?
---That's correct.

30 Right. Is the position currently vacant?---Yes, it is.

Right. And what this suggests to me, and tell me I'm wrong, is that the secretary was the person who would have inducted you had this program been complied with in relation to the Board's policy and procedures manual?---That's correct.

40 And did you ever have an induction with the secretary in relation to policies and procedures?---Um, what I recall is I, I did go up to Newcastle office, I think it was part of another, could have been a district meeting or something else we were up there for, and I went and met the secretary at the time which was Mike Clarke and he did discuss with me the history of the Board and welcomed me to the organisation, but didn't go into any detail about these items, no.

No. Okay. Didn't sit down with you with that compilation of documents, that bundle of documents and say let's have a look at these?---No.

No. Excuse me, Commissioner.

No, they're my questions. Thank you, Commissioner.

THE COMMISSIONER: Did you want to tender the induction document?

MR NAYLOR: Oh, yes, I'm sorry. I tender, I tender the induction program for Mr Rawes.

THE COMMISSIONER: Yes. That's Exhibit T13.

10

#EXHIBIT T13 - MSB INDUCTION CHECKLIST OF JOHN RAWES

MR NAYLOR: Thank you, Commissioner.

THE COMMISSIONER: Yes. Any cross-examination for Mr Rawes?

MR CHEE: Yes.

20

THE COMMISSIONER: We'll go with Ms Hogan-Doran first, thank you.

MS HOGAN-DORAN: Mr Rawes, my name is Dominique Hogan-Doran. I appear for the Board?---Yes.

I just want to ask you some questions about Exhibit T6. Do you have that or can the witness be shown Exhibit T6?---No, I don't. Yep.

30

Please forgive me if I repeat some questions that you may have already answered, I just want to be clear about some matters. Is it your evidence that this document was in use or in existence when you first began with the Board in 2010?---Yes, it was.

Right. And I think you gave some evidence that from time to time you yourself entered information into this document?---Yes, it's the people that have carriage of the claim update the information on there.

Right. And is the document – sorry, is it still a document in use- - - ?---Yes, it is.

40

- - - at the Picton office?---Yes, it is.

And is it correct to understand that it's a document that's maintained on the local computer system in Picton?---Yes, it's not generated from our operating system, it's - - -

Right. So when you say it's not generated from your operating systems the first thing is am I correct in understanding it's not part of the intranet for the

Board?---It's not part of the Property Management System or DocuMap system.

Thank you. Are you aware as to whether this document or any iterations of this document are distributed beyond the Picton office in the ordinary course of events?---Yes, they are.

And to whom are they distributed or to what are they distributed?---To our mapping department.

10

And is that located in Newcastle?---Yes, it is.

Right. And for what purpose is it distributed to the mapping department? ---It shows by colour coding the ah, status of the claims and they develop a ah, Tahmoor claims map that we have in our office that's used to show where, where the, you can see by the colours where the claims are still to be done and in progress and been completed.

If you could just turn to the last page of the document and you'll see that there is a grey shaded section with the words "Claims pending"?---Yes.

20

What is that intended to designate?---That's the amount of claims that are yet to be done, yet to be investigated.

Yet to be investigated?---Yes.

Right. So that is that they have not yet had a claims investigation report prepared in respect of them?---That's right.

30 Right. Thank you. No further questions.

THE COMMISSIONER: Yes, Mr Chee.

MR CHEE: Mr Rawes, I appear for Darren Bullock. You understand that?--Yes.

Whilst you have Exhibit T6 before you I might have some questions to ask you about that document. Is it possible that an entry on this document could be updated by multiple officers, for example let's just take on the second line 2 Abelia Street, Tahmoor, it's recorded as being a matter allocated to Darren Bullock and the contactor is A&DJ Building Services, is it possible that someone other than Mr Bullock made entries on that particular record? ---Yes, it is.

40

And is it possible that a contractor could be entered onto that record, not this particular record but other records, if that contractor had commenced minor works in respect of a particular location?

MR NAYLOR: Could I object? I thought we were dealing with this particular record, Commissioner, and entries being made on this record rather than other records.

MR CHEE: Commissioner, the, the reference to that particular record was only by way of example, I'm asking is it possible that an officer other than the allocated officer made an entry as to the contractor to which the work was allocated.

10 THE COMMISSIONER: Well, possibilities don't help me very much, Mr Chee, but I, I understood some, I understood the witness to say earlier, it wasn't Mr Rawes, it was Mr Montgomery, that the schedule of repairs was accessed by a variety of people in the office and updated from time to time. Anyway.

MR CHEE: This particular question goes to sections of this witness's evidence about being surprised by noting that Plantac had been indicated, had been already noted on this, on Exhibit T6.

20 THE COMMISSIONER: Well, I appreciate that but as I said possibilities don't really help. If you have a positive case that that aspect of the document was updated by someone other than your client well go, go for it but look, unless, unless there is another inference to be drawn as I've said before possibilities don't help very much.

MR CHEE: My instructions don't go that far but my instructions do go so far as to suggest that this practice occurred and it might, and it would not be surprising if there was already a contractor on record if that contractor had performed minor works in respect of that, of the premises.

30 THE COMMISSIONER: All right. Well, that – well, if that, if that proposition is being put we have to establish that it applies to the particular property in question, the one that is being referred to because that was a specific instance that I understood the witness was referring to where Plantac was already entered against the, the column or rather entered into the column that attributed the job to that building firm. Isn't that the position, that that was the evidence?

40 MR CHEE: That is correct. I however am somewhat in a difficult position in that I don't have instructions in respect of that particular instance but I do have instructions - - -

THE COMMISSIONER: Well, if you don't have instructions in respect of that particular instance I don't know th0at you can put any proposition that goes to that particular incident.

MR CHEE: But I think I should be able to put a proposition that applies generally to practices that occurred in respect of the Tahmoor claims schedule.

MR NAYLOR: Commissioner, as I recall I put to this witness the circumstances in which the building contractors are as a matter of course and practice entered into the schedule - - -

THE COMMISSIONER: Yes.

10

MR NAYLOR: - - - after I'd asked him the series of questions in relation to Plantac being inserted into the schedule in relation to that particular job.

20

THE COMMISSIONER: That particular job. Mr Rawes, essentially this proposition is being put to you, would there be occasions when that schedule would be noted up, that is, by way of attribution of the building firm in the column that is allocated to the award of the contract, would that be entered in circumstances where that building company had already carried out minor repairs in relation to that specific property, was that a circumstance that, that – or was that an event that occurred from time to time on schedule, schedule C – the schedule of repairs, sorry?---Yes. There has been occasions because some, some temporary repairs can be quite costly and timely so at that point in time some of the status of claims go from orange as in repair because there's extensive temporary repairs being conducted and then um, there might – it might go back to pending until such time as subsidence is complete and then it will be tendered and then it will be changed again to a different contractor depending on the tender.

30

All right. So what you're indicating is that, as I understand it, those parts of exhibit T6 that are coloured in orange would be properties where minor repairs were being carried out in advance of some further allocation of work?---Not correct. It's - - -

No?---It could be temporary repairs but it's more than likely the actual claim repairs following the claim investigation report and the tender or quote process being completed.

40

Well, that's, that's somewhat different from what I understood the proposition to be. Perhaps you'd better clarify it, Mr Chee.

MR CHEE: Sorry, I didn't catch the last part of your answer. Could you repeat that?---Um, most of these that are coloured orange would be claims that are in progress after the subsidence is complete, claim investigation report is done and quotes or tenders have been processed and that the job is in progress. Um, but as I said before, there has been occasions where some temporary repairs have been quite lengthy or costly and um, and repairers have been put into those columns as the temporary repairer or urgent

repairer and then after the claim has been done it may change to a different repairer.

THE COMMISSIONER: Sorry, can I just clarify that. So it wouldn't be those – what you've just described is not those properties that are marked in orange?---Not all of these would be probably claims done um, repairs in progress after claims have been awarded but I would say the majority of them would be.

10 The majority of the entries on Exhibit T6 - - -?---In orange would be - - -

- - - in orange - - -?---Yeah.

- - - would be places where repairs have been done after the job had actually been awarded to a tenderer?---Yes.

Well, are there any, are there any entries on T6 that you can identify where the contractor listed under the contractor column is carrying out in effect temporary repairs before the award of the tender contract?---On the second
20 page there there's a – again, whether it's human error or, I'm not sure but there's a claim at um, five or six down, Mrs Linsell at 25-33 where there's no contractor in there. Um, I'm not sure if that's a temporary repair or – it's not my claim – um, or if that's a claim being done after the tender process has been completed.

But are there any circumstances where the name of a contractor would appear on this Exhibit where the contractor was only carrying out temporary repairs in advance of the award of a tender?---Not that I can see, Commissioner.

30

Not that you can see?---No.

MR CHEE: Could I suggest it, suggest it to you, Mr Rawes, that this document is, could be described as a living document. It's subject to change?---Yes, it is.

Okay. Thank you. I'll move on to the issue of the tender box. You were, in the hearing room, when Mr Montgomery gave evidence as to the location of the tender box?---Yes.

40

Do you recall, you recall that?---Yes, I do.

You also recall that Mr Montgomery gave a description as to how part of the tender box had been manipulated in some way to suggest that perhaps it had been lifted up, the top part, the top collar had been lifted?---Well he didn't say - - -

THE COMMISSIONER: Well he didn't say it had been manipulated. He said, Mr Chee, you were the one who put the proposition that the metal collar had been displaced and what Mr Montgomery agreed with was that that part of the tender box had in fact lifted. He didn't say anything about it being manipulated.

MR CHEE: Sorry - - -

10 THE COMMISSIONER: I understood it to be a defect in the tender box, not something that someone had caused. But anyway - - -

MR CHEE: I will clarify, Commissioner.

THE COMMISSIONER: Go ahead.

MR CHEE: You've been employed at the Mine Subsidence Board since 2010?---Yes.

20 When you commenced working at the Mine Subsidence Board, was there a tender box at the Picton Office?---Yes, there was.

And the tender box during that period of time that you have worked there, has there been anything done to the tender box in that time?---Done as in?

Well has someone manipulated it or perhaps interfered with it?---I think it's, um, there was one point there where the, the locks were difficult to open but
- - -

30 THE COMMISSIONER: What's being put to you Mr Rawes, is that someone damaged the tender box in some way. Do you have any knowledge of that process of anyone actually damaging the tender box?---No.

MR NAYLOR: Commissioner, I don't mean to interrupt, my friend, but I'm just trying to understand what the positive case - - -

THE COMMISSIONER: No. No.

40 MR NAYLOR: - - - is that is being put? He has an obligation, Commissioner, to put a positive case and it's just not apparent to me, I'm sorry.

THE COMMISSIONER: Well, Mr Chee, we've moved somewhat from some defects in the materials that the tender box was constructed from to a proposition that someone has actually damaged the tender box. What is it that you're actually putting?

MR CHEE: I'm putting that the tender box was damaged in such a way that it would allow a person, potentially external to the Mine Subsidence Board to come and access tenders that have been left at the tender box.

THE COMMISSIONER: Well, is that being put as a positive case that that was in fact what occurred?

10 MR CHEE: Well again, my client can't give me the, can't give me the, the instructions to that degree. But it opens the possibility that the, the tenders that have been the subject of enquiry could have been opened by someone external to, could have, could have been accessed and manipulated by someone external to the Mine Subsidence Board.

THE COMMISSIONER: Well, as I understand it we're only talking about a particular tender where two envelopes out of the three appeared to have been opened if you accept the proposition that the sticky tape on the back of the envelopes was indicative of someone opening those particular tenders. So is it confined to that instance or are we talking just generally, Mr Chee?

20 MR CHEE: It is suggested that it could have occurred in that particular instance. I do have instructions as to when this damage could have occurred and I would be seeking to put that to this witness.

THE COMMISSIONER: Well, can you put it specifically so we all know what is being put, when the damage occurred and by whom, if you have those instructions?

MR CHEE: I was moving to that point, Commissioner.

30 THE COMMISSIONER: All right. Let's get there.

MR CHEE: Could I suggest to you, Mr Rawes, that in or about early 2014 the tender box was damaged. What do you say about that?---I was aware that the box was fixed underneath the front counter, I was aware that it came loose at some point in time, when that was I don't know but um, I'm not sure who fixed it or who rectified it or if it has been rectified, I haven't opened that box for quite some time myself.

40 Could I suggest to you that it has been damaged in such a way that it allows for a person to access the tender box without using the key and lock to the box?---I couldn't agree with that.

THE COMMISSIONER: Mr Rawes, did you say that the box came loose from under the front counter?---Yes. So it sits under the counter, there's like mailbox slot in the top of the counter and it's fixed to the underside of the, the counter.

All right. So let me understand this. There's a slot that actually is in the top of the counter itself?---Yes.

So that when someone enters from the street, all they see is the counter with the slot in it?---Yes.

And the box itself is accessed from behind the counter because it's fixed by some kind of bracket to the top of the counter. Is that right?---That's correct.

10

And so at some stage the box became loose from that position and it was, it was repaired at some stage?---Yeah, I think it only dropped.

It dropped below the level of the slot?---It dropped below the level of the counter, so it wasn't firm up against the counter.

Right?---So it needed to be tightened up.

20

Right. During the period of time that you observed that the tender box had dropped slightly below the level of the counter, did you see any envelopes that were placed inside the slot fall from the slot onto the floor as opposed to into the tender box?---No, I didn't.

Yes, go on, Mr Chee.

MR CHEE: You would have also heard the evidence of Mr Montgomery about whether the front counter had been, was supervised. Do you recall that?---Yes, I do.

30

Was it supervised?---There are occasions when there is nobody at the, at the ah, front office area.

Right. Thank you. You're currently now acting district manager. Isn't that right, at the Picton office?---That's correct.

Have you been acting district manager previously?---Yes, when Darren's gone on holidays, periods over, over - - -

40

How often did that occur? Or sorry, I didn't mean to interrupt you?---Um, generally when he goes on holidays over, over a week period, when it's over a week. If he's gone for a couple of days I don't act in that role.

And how often has that occurred?---Oh, I'd say five times.

Thank you. In the course of working for the Mine Subsidence Board, have you had the requirement to liaise with the CEO?---Yes, I have.

In what context did you liaise with the CEO?---Ah, about claims, specifics and generally, and at district meetings.

If I can focus upon claims. Were you seeking approval or instructions from the CEO in respect of those claims?---Um, yes, I gather in most of those situations, yes.

And how did you find the CEO's response, response time to those matters? ---It varied from um, a matter of days to a matter of months.

10

If a claim were to be brought to your attention, you raised it with the CEO and you didn't hear back for a couple of months what would you, well, what did you, what would you have done?---I would go and see Darren 'cause before it goes, I don't go directly to the CEO, it generally goes through Darren to the CEO so I'd go to Darren and say next time you're talking to Greg ask him about Mrs Jones's claim, see where it's up to or something along those lines.

20

Did anything happen in the meantime whilst you were waiting for approvals in respect of those claims?---Um, the customer would be chasing me for, for answers and I would say it's, it's with the CEO and I'm awaiting an answer.

I might suggest that it could be quite unacceptable for a matter to be left waiting for waiting for instructions for a matter of months, would you agree with that?---Yes, I do.

And clients within the community would be quite upset about that response time?---Yes.

30

Did the Mine Subsidence Board receive many of these complaints arising from delays?

MR GRIFFIN: I object to the question.

MR NAYLOR: Well, the question – I object.

MR CHEE: Okay. All right. I'm sorry, I withdraw that.

40

THE COMMISSIONER: I don't know that he would be in a position to know that.

MR GRIFFIN: Commissioner, this line of questioning can't assist you.

THE COMMISSIONER: No.

MR GRIFFIN: It's so general as to be, have no weight whatsoever because if there is a delay it would depend on why there was a delay.

THE COMMISSIONER: There might be a reason for it, I understand that, yes. It, it, it goes without saying. Yes, go on, Mr Chee.

MR CHEE: Was it your understanding and experience working at the Mine Subsidence Board that there were complaints about delays in the handling of matters?---Yes.

How many complaints are we talking about?

10 MR NAYLOR: Well, I object. Can I suggest, Commissioner, that Mr Chee should perhaps be a little more specific about the types of complaints and preferably also the properties.

THE COMMISSIONER: Well, apart from anything else, and I take that on board, Mr Rawes, your knowledge of complaints I take it would be restricted to the clients with whom you directly dealt?---Um, not totally, we – a small office, we all sort of know if someone’s claim is, you know, being subject to a complaint, we all sort of talk about it or hear about it.

20 All right. So it would be a combination of matters where you were the signed officer and others that you may have heard through conversations in the office?---Exactly.

All right. Yes, sorry, go on.

MR CHEE: Sorry, was that question allowed?

THE COMMISSIONER: Well, I’m sorry, you’ll have to put the question again.

30 MR CHEE: Okay. In your experience and understanding of working at the Mine Subsidence Board have there been complaints about the delays in respect of the handling of matters?

THE COMMISSIONER: Well, that was the previous question - - -

MR CHEE: Yes.

40 THE COMMISSIONER: - - - and that was already answered in the affirmative.

MR CHEE: And I asked how many complaints.

MR NAYLOR: Well, I think the objection went to - - -

THE COMMISSIONER: This is the problem. The problem is he might know for sure in relation to those matters in which he was directly involved, he’s only relying on general conversation to determine how many others

there are but more importantly we don't know what the content of those complaints were.

MR NAYLOR: Nor, Commissioner, do we know the time period nor - - -

THE COMMISSIONER: No.

MR NAYLOR: - - - can I suggest is it at all helpful to this inquiry.

10 THE COMMISSIONER: Mmm. Mr Chee, I think you might be better – I think we've established that there were complaints from time to time. Can we move onto the next area of questioning.

MR CHEE: As the Commissioner pleases.

Mr Rawes, are you aware of the auditing, any auditing processes in place at the Mine Subsidence Board?---Yes, I am.

Would these be internal audits or external audits or both?---Both.

20

In respect of the internal audits, what's your understanding of the auditing process?---Um, the personal assistant of the CEO will um, select um, staff from different offices to conduct process reviews on other offices and in my situation I would be sent a series of four or five processes in our procedures manual that I, in my case I had to go to Wyong office and evaluate that process on some files. So the manager of that office would also get that information and he would prepare a list of claims or minutes or whatever it was the process was being reviewed, for me to review once I attended that office.

30

Mr Rawes, are you aware if any of your matters have been reviewed internally?---I couldn't say, I don't know.

Have you received any adverse feedback in respect of any internal audits? ---Not that I can recall.

40 THE COMMISSIONER: Mr Rawes, can I just ask you, do I understand you to be saying that the internal audits essentially consisted of officers from say the Picton office going to the Wyong office and vice versa, so that the audits were carried out by officers who were not stationed in the particular office being audited?---That's correct.

And, and when you went to that office, and this would apply to Picton as I understand it, the district manager of that office would have already selected a number of files that demonstrated the processes and procedures that were being audited?---Yes.

So that when the person arrived from the other office they would essentially be presented with what was already selected by the district manager for the audit?---Yes.

Right.

MR CHEE: Could you explain your understanding of the external audits?
---Now, there's an external um, auditor that comes into the office, I'm not
10 sure if it's once a year or twice a year, but I have not dealt with him
personally um, I think the only time I've come across him is I've come back
from being out on my duties and come back into the office and working
away on my computer and I've noticed him in the office and he's, he's
asked me a couple of questions about a claim or, or a procedure.

In respect of these questions that you were asked by the external auditor, did you receive any feedback from the auditor?---No.

I'm going to ask you some questions in a different area concerning
20 variations. Was it commonplace in the Picton office to received claims and
then subsequently receive variations to that particular claim? I'm asking in
terms of the practice that occurred in the office and your understanding of
that, of that process?

MR NAYLOR: Commissioner, may I take it that my friend's question is directed to this witness's experience - - -

THE COMMISSIONER: Yes.

MR NAYLOR: - - - as distinct from the experience of other officers in the
30 office?

THE COMMISSIONER: Well, I - - -

MR CHEE: That goes without saying I would expect.

THE COMMISSIONER: Yes, I would have thought so. Anyway, in your experience, Mr Rawes.

THE WITNESS: Yeah, it's, well, definition of common is quite open but
40 there has been occasions of variations on claims, yes.

MR CHEE: Would you be able to put a percentage figure on that?
---My own claims I would probably say 20 per cent, 25 per cent.

And under what circumstances would there be variations?---Generally um, for unforeseen works um, or in some cases where we've um, moved the people out and we move furniture out and we notice more damage behind wall units and other items of furniture, also on occasions where we are re-

levelling a house um, it's quite common where we cause more damage, particularly in high-cost items like bathrooms and wet areas, so there's a number of factors that can give rise to variations.

Could I suggest also that there might be ongoing damage occurring which might lead to variations to the scope of works?---Yes. There has been occasions where we have, um, believed subsidence was complete and undertaken repairs and you know, either whilst repairs were underway or, or, ah, shortly thereafter that, that further damage occurs.

10

Thank you. I'm going to ask you some questions now about your understanding of conflicts of interest. Do you understand that principle?---Yes.

That's something which you, is that something which you have noted as part of the policies and procedures or something which you've informed yourself of - - -?---Um - - -

20

- - - prior coming to the Mine Subsidence Board?---It's a bit of, a bit of policies and procedure and a bit of what I'm advised when I've sought answers.

During the course of your work for the Mine Subsidence Board have you encountered any conflicts of interest?---Yes.

Could you please elaborate?---Um, my son works, well took up a skill based apprenticeship with one of our panel builders.

Was this conflict disclosed?

30

MR NAYLOR: I object, Commissioner. I object to the line of questioning. It's beyond the scope and purpose of this enquiry.

40

THE COMMISSIONER: Well, I know. I still don't know where this is going. Mr Chee, see the problem is, conflicts of interest, if they exist, in and of themselves are not the problem. It's how one manages the conflict the interest. But even if we were to go down that track, we could debate endlessly how that occurs in any given situation. Because the management of a conflict of interest varies according to the multifarious circumstances under which they arise. But if you look at the scope and purpose of this enquiry, there is no allegation here that relates to conflict of interest. None whatsoever. So why are we pursuing this topic?

MR CHEE: It was my understanding that it was asserted that Mr Bullock was acting in a way which was in conflict of interests.

THE COMMISSIONER: No, no, no. It's a much, much different matter. It is an allegation of corrupt payments. Conflict of interest is a whole different beast. We've gone way out of that territory. We're into an altogether

different conduct. So I just don't understand why we're focusing on conflicts of interest?

MR CHEE: Okay. I'll move on. Thank you, Commissioner. Mr Rawes, did you see in late 2014 a document which was addressed to Mr Bullock care of the Mine Subsidence Board in relation to ICAC proceedings?---I didn't see that document, no.

Did anyone discuss that document with you?---Yes.

10 Who discussed it with you?---Kim Reid from our office.

And what did she say about it?---A letter came for Darren today, um, that she opened 'cause it wasn't marked private and confidential. And she realised it was a summons to appear at ICAC. And she told me the date that he was coming but did not disclose any further details.

Right. I have no further questions. Thank you, Commissioner.

20 THE COMMISSIONER: Thank you. Anything arising Mr Naylor?

MR NAYLOR: No, Commissioner.

MR TAYLOR: Commissioner, if I could just ask very briefly?

THE COMMISSIONER: Certainly, go ahead.

30 MR TAYLOR: For the record, Taylor and I appear on behalf of the witness Mr Rawes. Mr Rawes you recall the document now being tendered in evidence T6?---Yes.

A spreadsheet in relation to Tahmoor claims. Am I correct in assuming that there are spreadsheets in relation to other areas of the work that you do in the Picton Office?---Yes. There's three worksheets within this document. One relates to Tahmoor, one relates to Douglas Park claims and one relates to infrastructure claims.

40 And would it be fair to say therefore to estimate the total amount of work that any particular officer does you would have to access all three spreadsheets?---That and probably more because we also do works at Appin and Joadja in the Southern Coalfields.

And those particular areas don't have spreadsheets?---No.

Nothing further. Thank you.

THE COMMISSIONER: Yes.

MR NAYLOR: One question arising, Commissioner. Mr Rawes, you've given some evidence already that there was a specific Tahmoor related financial delegation?---Yes.

Which was as I recall your evidence \$50,000 - - -?---Yes.

- - - for the district manager and that was in respect of both claim approvals and tenderer selection?---Yes.

10 All right. Douglas Park is a different area to Tahmoor?---Yes.

The financial delegation that related to Tahmoor, the financial delegations that the district manager had in relation to Tahmoor did or did not apply to the Douglas Park area?---I believe did not apply.

Okay. Thank you, Commissioner. Mr Rawes may be excused.

20 THE COMMISSIONER: Mr Rawes, can I just ask you another question about the office itself. When one enters from the street there is a counter and you've described how the tender box was affixed to the underside of the counter?---Yes.

Was the counter a continuous counter in the sense that it ran to each wall of the office so that a member of the public couldn't in fact gain entry to the office from that side or was there a passageway by which someone could move around the counter to the other side?---There is a hinge door that has a little catch on it. It's not lockable so you could reach over, open the catch. That's the way - - -

30 And then - - -?---That's the way we all accessed the office.

Right. And then move to the other side of the office?---Yes.

40 And if one came in from the street and the counter was in front of you, could you see officers, whether they be administrative assistants or district supervisors, could you see people working within the office beyond the counter?---Yes, the front section of the office has two administration staff and then there's, it used to be two separate, separate shops I believe and now part of the wall's been taken out and the district supervisor sits, so you can't see the front counter from the district supervisor area but when the front glass door is opened there's a bell that rings that someone's opened the door.

And so the first thing you would see as you approach the counter would be the administrative officers working somewhere behind that counter?---If they were there, yes.

Well, when you say if they were there I was coming to my next question, is there always someone in that position or are there times when the whole of that immediate office area is vacant?---I would estimate 95 per cent of the time that someone is always there.

And what about during the lunch hour, are the lunch hours staggered so that not all the staff are out of the office at the same time?---Mostly, yes.

Any questions arising from that?

10

MR NAYLOR: Nothing from that, Commissioner. May I say I sat down a little hastily before.

Just one other question, sir, would a claim in respect of a property at Thirlmere, would you regard that as a Tahmoor-related claim?---Yes, I would.

Yes. Yes, thank you, Commissioner.

20

THE COMMISSIONER: Thank you, Mr Rawes, you're excused from the summons for today's purposes in any event. I can't give you a complete assurance that you won't be required to come back but at this stage it doesn't appear that you will be required to come back?---Thank you.

THE WITNESS WITHDREW

[12.59pm]

30

THE COMMISSIONER: I'll take the luncheon adjournment, 2 o'clock, thank you.

LUNCHEON ADJOURNMENT

[12.59pm]