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20

HEARING RESUMES

CHAIRPERSON: Good morning Ms Gcabashe, good morning everybody.

ADV LEAH GCABASHE SC: Good morning Chairman.

CHAIRPERSON: Yes are we ready?

ADV LEAH GCABASHE SC: Yes we are Chairman.

CHAIRPERSON: Yes. We have just finished twelve months since the commission started hearing oral evidence and we will issue a statement to mark this period maybe tomorrow and maybe I will read it out here or
10 we will just issue it but it is quite a long way that we have travelled but there is still quite some distance to travel. So it is not our birthday but it is a milestone. Okay thank you let us – I think let us continue then. Mr Thabethe thank you for coming back. You had taken an oath last week that oath still applies and you confirm that you still consider it binding on your conscience this week?

MR MBANA PETER THABETHE: Yes I do Chair.

CHAIRPERSON: Thank you very much. Thank you.

ADV LEAH GCABASHE SC: Thank – thank you Chairman. Mr Thabethe good morning.

20 **MR MBANA PETER THABETHE:** Good morning Ms.

ADV LEAH GCABASHE SC: Just in a nutshell what we dealt with largely last week was the regulatory framework that gives effect to Sections 215, 216, 217 and of course everything else that gives effect to these constitutional provisions and we went through some illustrations. What I would like to do today because time is of the

essence. We will see if we can try and finish leading your evidence today is goes straight to the deviation from the Supply Chain Management Policy and Prescripts that you used in appointing Estina as the implementing agent for the Vrede Dairy Project. I know we have talked about it in general. I now want to specifically deal with the issue and ask you to explain first the instruction you say you gave to Doctor Masiteng in preparing the submission that you were going to sign. Please take the – please take the Chairman through that specific discussion with Doctor Masiteng who was Chief Director District

10 Services at the time?

MR MBANA PETER THABETHE: Thank you very much Chair. I would not consider it as an instruction Chair because it was agreed upon. And instruction is something that you – you decide alone and instruct. The – last week I explained how the implementing agents were – were being appointed in line with the budget allocation. We – in this instance we also followed the same route but we then agreed because of the reason that we had agreed that the implementing agent which was also at the same time the funder of the same projects where the implementation is going to take place. We looked at these options and

20 then we – we decided that we cannot go on tender when the expertise that we require it is in the implementer.

ADV LEAH GCABASHE SC: Can I just interrupt you please do not forget the rest of what you were going to tell the Chairman Mr Thabethe. I have a slight difficulty with we because I am not sure who we relates to. Can you just explain who we are?

MR MBANA PETER THABETHE: We chase the department.

ADV LEAH GCABASHE SC: And then more specifically within the department because I ask this because Doctor Masiteng's evidence is that he had no prior knowledge of this until you asked him. In fact the word you use here you requested him to prepare the submission. So it is important to find out who the personalities were even if it is in their official capacities who were assisting you.

MR MBANA PETER THABETHE: Ja Chair – Chair the – like I have indicted there was not any instruction given. Because discussions were
10 being made in meetings so we had agreed that we were not going to follow as a department in terms of the management part.

CHAIRPERSON: Yes okay no I think let us – was the decision not to follow tender processes as decision that was taken in a meeting and if so who were the participants in that meeting? Then one can understand the we if that is the case. Was it a decision that was taken in a meeting?

MR MBANA PETER THABETHE: Ja Chair – Chair I would mention three people.

CHAIRPERSON: So let us start with was it in a meeting?

20 **MR MBANA PETER THABETHE:** It was in a meeting discussed Chair.

CHAIRPERSON: Okay ja who were the participants in the meeting?

MR MBANA PETER THABETHE: It was myself, the CFO and the Chief Director Doctor Masiteng.

CHAIRPERSON: Yes okay.

MR MBANA PETER THABETHE: Hence he then drafted the submission

he sent it to the CFO and it was then given to me for approval.

ADV LEAH GCABASHE SC: But is it not correct Mr Thabethe that the documentation that was given to Doctor Masiteng is Doctor – documentation that you provided. He had not been involved in the Estina matter at all prior to this meeting that you refer to.

MR MBANA PETER THABETHE: No it is not true Chair.

ADV LEAH GCABASHE SC: Please give us the facts as you understood them at the time?

MR MBANA PETER THABETHE: Because Chair it will – remember he
10 is the custodian – he was the custodian of the budget.

CHAIRPERSON: That is Doctor Masiteng?

MR MBANA PETER THABETHE: Doctor Masiteng.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: So he would not have heard for the first time that we going to – because he is the one who goes to National and make presentations of all projects that we want to implement. So it cannot be that he heard about the project for the first time. Because if he had gone to National I had also went to National with him to go and present this exact project. So it could not have
20 been for the first time.

ADV LEAH GCABASHE SC: Now do not forget Mr Thabethe that that first submission that was signed was signed on the 26 May 2012. Doctor Masiteng was out of the country at that point in time.

MR MBANA PETER THABETHE: Yes I agree Chair but he knew about the project even before he left.

ADV LEAH GCABASHE SC: Well that was not his evidence. The Chairman will weigh up the two different versions in due course.

MR MBANA PETER THABETHE: Thank you Chair.

ADV LEAH GCABASHE SC: Please – please continue.

MR MBANA PETER THABETHE: Ja I am just mentioning it that it cannot be that for the first time you are – he was informed to make a submission because it would have been a problem for him that you arrive and you say to him make a submission we want to deviate for a project that he has not seen.

10 **ADV LEAH GCABASHE SC:** Just again to go back to the facts as I have understood them to date. The first submission was made on the basis of documentation. The submission that Doctor Masiteng made in July in – I beg your pardon – in June when he got back was a submission that included the deviation. So the first submission did not include the deviation.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: A colleague of his who was acting signed on his behalf.

MR MBANA PETER THABETHE: Yes.

20 **ADV LEAH GCABASHE SC:** That is the 26 May documentation. But what your instruction as I have put it you have put it as your – a request when I look at your affidavit. What you said to Doctor Masiteng was that he had to put in the deviation because you had already been to EXCO and EXCO had already given you the authority or its permission to implement the project. Are these facts incorrect?

MR MBANA PETER THABETHE: No, no. EXCO did not give us permission to deviate the...

ADV LEAH GCABASHE SC: No, no I said to implement.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: The project.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: I did not say deviate. You took the decision to deviate Mr Thabethe as I understand the facts.

MR MBANA PETER THABETHE: Yes that is correct Chair. Therefore
10 after the submission of the submission given the facts that we had also indicated in the deviation itself that we then deviate from following normal procurement process. Two reasons.

1. Was that the – we needed the expertise of Estina/Paras to assist us with the implementation because if we would go on a tender it means we will get somebody else responsible for the implementation hence we looked for the expertise that Paras had. That is – was one of the reason?

2. Secondly it was the reason that they were also going to be financials of the project and if we as government go on tender it
20 may mean that we will not be able to go and tender on behalf of what they will be including into the project.

That those were ...

ADV LEAH GCABASHE SC: Can I – continue.

MR MBANA PETER THABETHE: Those were the two main reasons
Chair why...

ADV LEAH GCABASHE SC: Can I interrogate those reasons with you?

CHAIRPERSON: I am sorry – I am sorry. Let me just get it. Just articulate those two reasons again they are going to be very important?

MR MBANA PETER THABETHE: Ja the first reason Chair was that we will – they were going to finance the project themselves. Therefore if we go and tender we should also include their money in the tender which means we would have then gone on a different process that would be – that was the first part. The second part was the expertise that we required them to assist us in implementing the project. So we
10 wanted them to implement because the facility that we wanted them to do is already what we have seen in India. That is one of the reasons why we did not want to go on tender and advertise for a service provider.

CHAIRPERSON: So two reasons.

1. Because they were going to finance the project?

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON:

2. Because of the expertise which they through Paras would bring.

MR MBANA PETER THABETHE: Yes. Yes Chair. We – the third
20 reason would be also which I have explained last week that this money was allocated under transfers. It was not under goods and services.

CHAIRPERSON: Okay so – but my understanding was that you – you said if money was allocated under transfers.

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: The tender procedures did not apply.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: And my understanding is that when you talk about deviation it is where tender procedures do apply but you need good grounds to deviate from those procedures. That is my understanding. So how – the two appear to be mutually exclusive to me. It is either the tender procedures apply or do not apply. If they do not apply you cannot talk about deviation. If they do apply then depending on the circumstances you may – a deviation may be applicable.

MR MBANA PETER THABETHE: That – your explanation is correct

- 10 Chair but however in my explanation was that given the situation we had agreed with the farmer that we will appoint the – the implementing agent and then give the money to the implementing agent so that the implementing agents delivers the projects on behalf of the farmer. So from our side we – we opted that when we appoint even though the money it is on a transfer it should go to the farmer because in this instance we are giving it to the implementing agent. Let us do the selection process through a tender. So the rest of the other implementing agents we did advertise, appointed, agreed with the farmer that you are going to agree with us to use one of these
- 20 implementing agents. But now in the case of Vrede Dairy instead of us advertising we opted because the rest of them we had gone through normal procurement processing. We then said in this instance because of the other two reasons that I have given we will then deviate from the normal procurement process.

CHAIRPERSON: So did the tender procedures apply to this transaction

of Vrede? Were they applicable the prescripts relating to tenders?

MR MBANA PETER THABETHE: It did not because of the budget allocation.

CHAIRPERSON: Because it was under transfer?

MR MBANA PETER THABETHE: Under transfers yes Chair.

CHAIRPERSON: Okay. But nevertheless you appear to have talked about deviation, is that right?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Why is that?

10 **MR MBANA PETER THABETHE:** Because we – we had – we had put ourselves in a situation where in the past even though the money was allocated under transfers because of the previous problems that I had explained we then opted to say we are deviating from the normal procurement processes by appointing because it was us and the farmer together that was appointing the implementing agent. Hence we then decided to say we are deviating from our normal procurement – or normal not according to the law. Because our normal procurement process we have done it that way. So in this instance we decided that we are deviating from that.

20 **CHAIRPERSON:** Hm. Ms Gcabashe.

ADV LEAH GCABASHE SC: You – there are a number of things that I would like you to explain in – in – further to the Chairman please. So first you speak of a deviation based on the budget allocation. Have I understood you correctly?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: My reading of the papers and I can take you to these particular documents is the following: You had budgeted from Mahuma Mobung in the 2011/2012 financial year. You had budgeted an amount of R30 million. You had not budgeted any specific line item for the Vrede Dairy Project. Please correct me if I am wrong?

MR MBANA PETER THABETHE: That that is...

ADV LEAH GCABASHE SC: So when this thing started there was no Vrede Dairy Project there was Mahuma Mobung.

MR MBANA PETER THABETHE: That is correct Chair.

- 10 **ADV LEAH GCABASHE SC:** So are you saying to the Chairman that anything that fell within the ambit of Mahuma Mobung would – you would have been forced to deviate because you had budgeted for that as you say under the transfer model?

MR MBANA PETER THABETHE: Ja Chair. The Vrede Dairy Projects was under Mahuma Mobung budget allocation. So the bigger name on top was Mahuma Mobung and thereunder you have Vrede Dairy as a project and that budget allocation of Mahuma Mobung will then dictate what is below it.

- 20 **ADV LEAH GCABASHE SC:** And what was allocated for Vrede if my recollection serves me well I can – it is actually a point I will raise later is R6 million. R3 million for infrastructure and R3 million for something else. Am I correct?

MR MBANA PETER THABETHE: Ja. Chair, chair. I am sure we have discussed that last week.

CHAIRPERSON: Yes well in the meantime lots of things may have

happened. I was hearing another – the evidence of another witness yesterday so I was – some – we may have to refresh our memory on – memories on some of the things.

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: So please just go back to it please.

MR MBANA PETER THABETHE: Yes Chair. We discussed that there was R17 million allocated to the three projects. There were three projects originally R17 million if I am – if my memory serves me well Chair. The three projects...

10 **CHAIRPERSON:** Well it – it – I think the way it was put last – last week was three plans was not three plans including a feasibility plan?

MR MBANA PETER THABETHE: No Chair.

CHAIRPERSON: Three projects.

MR MBANA PETER THABETHE: Three projects yes.

CHAIRPERSON: Oh.

MR MBANA PETER THABETHE: There was one.

CHAIRPERSON: Each one would need some plans?

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: Ja okay.

20 **MR MBANA PETER THABETHE:** Yes, yes there were three projects in themselves.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: And then we then pulled the budget together of the three projects because we wanted then to implement one bigger project because the three were smaller and we realised that

the smaller projects are not doing well. Hence we pulled the projects together into one project and we allocated it under Mohuma Mobung.

ADV LEAH GCABASHE SC: I – I have difficulty in the – in your presentation of the facts Mr Thabethe. You really have to try to be specific. So – and when I ask you to be specific it is in terms of the years because you have a three year cycle where you allocate certain amounts and then you work every year you use whatever amount has been allocated from the equitable share that Province has. So in your explanation I think it would really serve the commission better and the
10 Chairman if you could just give us the dates, the year that you are dealing with? It really would be of assistance. So let us go back. Mahuma Mobung. The allocation for Mahuma Mobung was what in which year according to your records?

MR MBANA PETER THABETHE: Ja Chair the difficulty I would have it will mean now I must have the figures exactly in front of me.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: So that – so that I am able to say in the year 2012/2013

CHAIRPERSON: Yes.

20 **MR MBANA PETER THABETHE:** Because that is the initial budget allocation.

CHAIRPERSON: Hm, hm.

MR MBANA PETER THABETHE: The – in that particular year that is the year in which the three projects were allocated a total of R17 million. And then we then pulled that money together to form the Vrede

Dairy Projects to allocate it to one of the three which was Vrede Dairy.

CHAIRPERSON: I think maybe the way to deal with it and of course if you cannot remember figures you cannot remember them. If there are documents that could refresh your memory and they are available the commission – the legal team should make those available to you to help you. But what you – you may be able to say is in 2013 there were the three projects and there was only one amount allocated to them R17 million if that is what – what it was. The R17 million was meant for three projects and at a certain stage you decided as you put it to pull
10 the – them together.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: In order to do a bigger project.

MR MBANA PETER THABETHE: Project.

CHAIRPERSON: So the entire R17 million would be for this one bigger project.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Ja. Now you might then be able to say the following year this is what happened. For example it may be that you forgot about the other two that had originally been there. You focussed on –
20 on the one and whatever budget allocation was made in the following year 2014/2015 was for that big project only and not longer for the other two. You might be able to explain it like that.

MR MBANA PETER THABETHE: Ja. That is correct Chair. In addition to the – to the 30 we then made – we had already made a request to the Executive Council indicating that we needed an additional R84

million in that same year 2012/2013. Now we were then given approval of the 84 to be made available to us during the budget appropriation which is the second appropriation that normally happens in October.

ADV LEAH GCABASHE SC: No can we get the facts right please, please Mr Thabethe. You are now talking about the EXCO Resolution. The EXCO Resolution let us pull it out. Can we – we will get to the EXCO Resolution because that is not what it says. But first I want to help you find the figures for 2011/2012. So if you go to Reference Bundle C page 778. Reference Bundle C page 778. It is a note from
10 the Provincial Treasury and its usefulness lies in the fact that they actually summarise a number of things. All of which are relevant to the Vrede Dairy Project. Are you there?

MR MBANA PETER THABETHE: Yes I am there Chair.

ADV LEAH GCABASHE SC: Thank you. So it is a preliminary report on the Vrede Dairy Project but they tie it into the Mahuma Mobung broad strategic concept. So in paragraph 2 yes they set out the background. Please read paragraph 2 into the record because it will help you remember it if you read it through.

MR MBANA PETER THABETHE: Paragraph 2 under the heading
20 background.

ADV LEAH GCABASHE SC: Yes.

MR MBANA PETER THABETHE:

“In 2011/2012 financial year the Department of Agriculture and Rural Development which was combined then requested funding towards Mahuma

Mobung Project. This was done during adjustment budget – this purpose Mahuma Mobung then was to initiate a macro Province wide commodity orientated programme aimed at improving primary production, levels amongst smallholder farmers and that channelled these volumes into a common value chain to achieve food security, food affordability and sustainability in productions. Furthermore this project was to be undertaken in conjunction with various relevance stakeholders, strategic partners and potential investors.”

ADV LEAH GCABASHE SC: Right so it was a Province wide strategy that is what paragraph 2 says.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: 2 simply outlines the types of projects.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: I would like us to go to paragraph 4.

MR MBANA PETER THABETHE: Ja.

ADV LEAH GCABASHE SC: Please read that into the record?

20 **MR MBANA PETER THABETHE:** Ja. Chair – Chair can I talk to paragraph 2?

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: It was in 2011/2012 financial year when – when the strategy was being initiated and accepted by Treasury.

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: Because we then went to request budget allocation to implement the strategy. So that is the background of item number 2. Chair

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: I want just to check which is the next paragraph?

ADV LEAH GCABASHE SC: 4 paragraph 4 Mr Thabethe.

MR MBANA PETER THABETHE: Paragraph 4.

10 “To this effect an amount of R30 million was approved by the Executive Council to fund the first phase of Mahuma Mobung Project and the approval was given during the 2011/2012 adjustment budget.”

ADV LEAH GCABASHE SC: Right so that is R30 million for all the projects?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: Continue paragraph 5.

MR MBANA PETER THABETHE:

20 “From the allocated budget of R30 million the Department spent an amount of R25.335 million or 84.4% however the details of this expenditure has not yet been confirmed with the Department.”

ADV LEAH GCABASHE SC: So that is your department? You spent 84.4% of the R30 million that had been allocated? Please tell me if I am correct or incorrect?

MR MBANA PETER THABETHE: Chair, chair this is not my letter. It is the letter of the Provincial Treasury.

CHAIRPERSON: Yes but she is asking whether that is correct what they are saying here that your department spent 84.4% of that amount.

MR MBANA PETER THABETHE: It is not indicating in which financial year ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Because I look at the report Chair.

CHAIRPERSON: Yes.

10 **MR MBANA PETER THABETHE:** The date of the report it is signed on 22 May 2013.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: The - the first financial year - the - the financial year on which the budget has been allocated had passed and my understanding that we had spent 30 million ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: And - and there is proof of bank statements in that regard.

20 **CHAIRPERSON:** So you - you may need to see certain documents in order to refresh your memory as to exactly how much you had spent or not really?

MR MBANA PETER THABETHE: That - that is correct Chair. I - I think I have - I have seen the document ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Confirming that in July 2012 the

amount of 30 million was paid.

CHAIRPERSON: Had - had been spent?

MR MBANA PETER THABETHE: Had been spent.

CHAIRPERSON: Yes. No, in other words in terms of your understanding based on that document as at July 30 million had been spent.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: Now Mr Thabethe ...

10 **MR MBANA PETER THABETHE:** So I am - I am not sure Chair. Sorry. I am not sure. That is why I am asking this 84 percent which financial year is it applicable. So that then I can refresh my memory very well.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: Mr Thabethe the context has always been the 2011/2012. Everything above paragraph 5 relates to 2011/2012 and we know the end of that financial year is March 2012. Why would you assume it is a different year?

MR MBANA PETER THABETHE: (No audible reply).

ADV LEAH GCABASHE SC: This is why I asked you to read it. So that
20 at least as you read it - it - you might start remembering as the head of department what spending - what expenditure occurred during that time.

MR MBANA PETER THABETHE: 2011/2012 ...

CHAIRPERSON: Well it might help you if you look at paragraph 7 the following page where it says:

“In June 2012 the department approached Provincial Treasury to approve an advance payment of - to a tune of R30 million towards Estina in relation to the establishment of a mega project called Vrede Dairy Project.”

I see the mention of R30 million there and I see June 2012.

Does that assist you?

MR MBANA PETER THABETHE: Ja. Chair the - the report is very confusing. Let - let me - let me ...

10 **CHAIRPERSON:** Yes.

MR MBANA PETER THABETHE: Let me first go back Chair with your permission.

CHAIRPERSON: Yes. That is fine.

MR MBANA PETER THABETHE: In - in the background ...

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: The document says in 2011/2012 the department requested 30 million.

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: That is - that is the background.

20 Paragraph 2.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: That is 2011/2012. So ...

CHAIRPERSON: That - that would be - that would mean that it is way before March 2012?

MR MBANA PETER THABETHE: Yes because ...

CHAIRPERSON: The request because the - the 2011/2012 financial year for Government would end in March 2012. Is that right?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: So if you are making a request in regard to that - if it is said in 2011/2012 that is somewhere ...

MR MBANA PETER THABETHE: Hm.

CHAIRPERSON: Between April 2011 and March 20 ...

MR MBANA PETER THABETHE: 2012, yes.

CHAIRPERSON: March 2012.

10 **MR MBANA PETER THABETHE:** That, yes.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: The next request of June 2012 was then in another financial year. So these are two different financial years.

ADV LEAH GCABASHE SC: Chairman, can I be of assistance because having (intervenes).

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: Paragraph 6 ...

CHAIRPERSON: Yes.

20 **ADV LEAH GCABASHE SC:** This confusion arises.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: Paragraph 6 makes it plain that in the 2011 - because there are three year cycles in Government. So paragraph 6 sets out very clearly that 35 million was allocated in 2012/2013. 40 million was allocated in 2013/2014. 22 145 000 was

allocated in 2014/2015. So really there is no confusion. What was allocated in 2011/2012 was 30 million. Of the 30 million 84 percent ...

CHAIRPERSON: Well - well Ms Gcabashe I am - I - I want to see if there is no confusion. Mr Thabethe thinks there is. I am also trying to have a look here. The - the - paragraph 6 does not talk about 2011/2012. It talks about 2012 to 2013 and - and 2013/2014 and 2014/2015. Paragraph 2 says:

“In the 2011/2012 financial year the department made a request for funding.”

10 So the - the - in regard to Mohuma Mobung Project. That is general I would take it and then in paragraph 4 it says:

“An amount of R30 million was approved by Exco for the Mohuma Mobung Project.”

And that approval was given during the 2011/2012 financial or adjustment budget. That is 30 million. Then five:

“From the allocated 30 million ...”

That is the 30 million referred to in paragraph 4.

“...the department spent 25.335 million.”

20 So that - that is money belonging to 2011/2012. So the R30 million. So 20 - paragraphs 2, three, four and five seem to be about the 2011/2012 financial year and then six is about 2012/2013, 2013/2014, 2014/2015 and then paragraph 7. It looks like they go back to 2012. They say:

“In June 2012 ...”

Now in June 2012 that would be the 2012/2013 financial cycle.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: June 2012. It would not be the 2011/2012 financial cycle because that would have come to an end in March 2012.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: So they say then:

“In June 2012 your department - the department approached Provincial Treasury to approve an advanced payment to a tune of R30 million.”

So that R30 million must be relating then to the 2012/2013
10 financial year for which it would appear in paragraph 6 R35 million had been allocated.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Okay. Maybe what I have - what I have read and what I have said does help you. Maybe it does not help you. Are you able to - to say anything arising out of that?

MR MBANA PETER THABETHE: Ja. Your interpretation is correct Chair.

CHAIRPERSON: Okay. Let us go back to Ms Gcabashe's question which I have forgotten Ms Gcabashe. So please just ask it again and
20 let us see if we are able to make progress.

ADV LEAH GCABASHE SC: It was the simple proposition Chairman taken from paragraph 5 of the same letter. The department spent 84.4 percent of what had been allocated.

CHAIRPERSON: Yes and you wanted him to confirm whether he agrees with that.

ADV LEAH GCABASHE SC: And he could not agree or disagree because he said ...

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: The numbers did not make sense to him.

CHAIRPERSON: Yes. At - at least whatever may have been confusing earlier on maybe it has been clarified now?

MR MBANA PETER THABETHE: Yes Chair. *Ja* Chair.

CHAIRPERSON: Yes. So are you able to - to answer that question?

MR MBANA PETER THABETHE: Chair, I - I would not - I would not be
10 able to confirm whether it was 84 million. I cannot remember now ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: But we may need to go back to the department because ...

CHAIRPERSON: And check the documents?

MR MBANA PETER THABETHE: *Ja* because when I read the statement Treasury is also not sure ...

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: Because they say the detail of this expenditure has not yet been confirmed with the department.

20 **CHAIRPERSON:** Okay.

MR MBANA PETER THABETHE: So we may need to go and confirm so that we agree whether yes ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Or no.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Chairman, can I just ask Mr Thabethe to make the correction. It is not 84 million.

MR MBANA PETER THABETHE: 84 percent, sorry Chair.

ADV LEAH GCABASHE SC: Yes. Just - because we will talk about 84 million in due course. Can you just explain to the Chairman what that 2011/2012 adjustment - adjustment budget process speaks to and that - I am reading that from paragraph 4. Just so that we understand how this 30 million was sourced.

MR MBANA PETER THABETHE: Chair adjustment budget it is - it is
10 when you had not been allocated the money in the beginning of the financial year.

ADV LEAH GCABASHE SC: No more correctly when you had not requested - you had not budgeted for the money at the beginning of the year. That is how you get the allocation.

CHAIRPERSON: Well ...

ADV LEAH GCABASHE SC: Mr Thabethe.

CHAIRPERSON: Mr Thabethe explain it the way you understand it.

MR MBANA PETER THABETHE: Yes Chair. Adjustment budget allocation ...

20 **CHAIRPERSON:** Yes.

MR MBANA PETER THABETHE: It is money that you get allocated in the second adjustment budget. That means if - if in a period from the beginning of the financial year you realise that you need money for whatever reason. Then you go and make a request for that money to be allocated to you and then if that request is approved that you be

allocated that money. Then you will receive that money during the adjustment budget.

CHAIRPERSON: So it would be money that you - would it be money that you may have requested before the financial year but were not granted or could it only be money that you had not requested and therefore that is why it was not budgeted or it was not given to you at the beginning of the financial year?

MR MBANA PETER THABETHE: It - it can be both instances Chair - Chair. The - the - your motivation is what allows them to allocate. You
10 might have asked it before but did not motivate properly.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: It was not allocated.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Then you go back and you remotivate.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Then you get the allocation.

CHAIRPERSON: So like you say I told you earlier when I asked for it that if you did not give it these would be the consequences. Now these consequences have started happening. I am asking you again to - to
20 give me this money.

MR MBANA PETER THABETHE: Allocate - that is correct Chair.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Now as a matter of fact for Mohuma Mobung you had not provided a budget item. Am I correct - until you got to the adjustment budget phase?

MR MBANA PETER THABETHE: Chair it is not a budget. You will not have a budget item when it has not been allocated. Even if you might have made a request. It only becomes a budget item when you have been allocated. So the item would not have been there because there was no money allocated.

ADV LEAH GCABASHE SC: Mr Thabethe there was no allocation because Mohuma Mobung was a new idea. Am I correct?

MR MBANA PETER THABETHE: Chair ...

ADV LEAH GCABASHE SC: It was a 2012 - 2011, early 2012 idea?

10 **MR MBANA PETER THABETHE:** Yes that is correct Chair. It was a new idea ...

ADV LEAH GCABASHE SC: Yes.

MR MBANA PETER THABETHE: But it does not mean we had requested for funding. We had requested for funding but the money was - was not allocated. So we then persistently went on and on requesting for it.

ADV LEAH GCABASHE SC: When does the adjustment budget process take place - those discussions?

20 **MR MBANA PETER THABETHE:** Adjustment budget takes effect any time from 1 April in the new financial year you can start making your request for adjustment budget.

ADV LEAH GCABASHE SC: Would the discussions not have taken place in or around November before the financial year closed?

MR MBANA PETER THABETHE: Chair by that time a decision would have been taken what are we financing by November because the

adjustment happens in October. You do not wait until November to place your request. You can place it any time before that time when a decision is taken.

ADV LEAH GCABASHE SC: This is precisely why I said in or around. So October/November no problem. In or around means in that vicinity. So you asked for this 30 million in October 2011?

MR MBANA PETER THABETHE: Chair you - you do not ask for it in October. It is presented in October. So you would have already asked for it to be allocated to you. You do not have to wait for October to
10 make a request.

CHAIRPERSON: You - you make the request much earlier ...

ADV LEAH GCABASHE SC:

MR MBANA PETER THABETHE: Yes Chair.

CHAIRPERSON: But you get to know whether you have been granted - your request has been granted in October?

MR MBANA PETER THABETHE: In October, yes.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Mr - Mr Thabethe on my recollection of your - your evidence the Mohuma Mobung concept was a 2011 concept.
20 Am I - am I correct?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: So it being a 2011 concept it would not have been - no money would have been allocated to that strategy or to that initiative in the 2011/2012 financial year. Am I correct?

MR MBANA PETER THABETHE: Chair ...

CHAIRPERSON: Yes speak Mr Thabethe.

MR MBANA PETER THABETHE: Yes Chair.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Ja. Chair in the 2011/2012 financial year ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: The report says we were allocated money during the adjustment budget ...

CHAIRPERSON: Yes.

10 **MR MBANA PETER THABETHE:** Which - which took place in October.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: What I am trying to say is that before that allocation happened we had already made a request.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: That is why I am - I do not understand the question ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Because I thought I had explained that.

20 **CHAIRPERSON:** Yes.

MR MBANA PETER THABETHE: You make the request and then you get the allocation in October.

CHAIRPERSON: Yes. I am sure Ms Gcabashe will come back to you on the matter.

ADV LEAH GCABASHE SC: No Chairman.

CHAIRPERSON: Huh-uh.

ADV LEAH GCABASHE SC: I will come back to a different witness on the issue.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: To help us understand it ...

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: Because I have to think that Mr Thabethe is not being particularly helpful today.

CHAIRPERSON: Huh-uh.

10 **ADV LEAH GCABASHE SC:** That is my view.

CHAIRPERSON: Huh-uh.

ADV LEAH GCABASHE SC: So I will move on from this point ...

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Because it is - it is one of many things that I - I would like to explore.

CHAIRPERSON: Huh-uh.

ADV LEAH GCABASHE SC: Mr Thabethe would it be correct to say that the six million that was budgeted for the Vrede Dairy Project was requested in 2012 in the new financial year?

20 **MR MBANA PETER THABETHE:** (No audible reply).

ADV LEAH GCABASHE SC: That is after end March 2012.

MR MBANA PETER THABETHE: I am - I am trying to - to recollect Chair.

(Background noise)

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: I am trying to read paragraph 7.

CHAIRPERSON: Yes, okay.

MR MBANA PETER THABETHE: From - from the report.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Ja. Chair ...

CHAIRPERSON: Yes Mr Thabethe.

MR MBANA PETER THABETHE: In - in June 2012 ...

CHAIRPERSON: Huh-uh.

MR MBANA PETER THABETHE: Which was the - the year in which in
10 terms of the report on - under item six.

CHAIRPERSON: Huh-uh.

MR MBANA PETER THABETHE: It says:

“In 2012/2013 ...”

CHAIRPERSON: Huh-uh.

MR MBANA PETER THABETHE: Because June 2012 ...

CHAIRPERSON: Huh-uh.

MR MBANA PETER THABETHE: Would - would then mean the
allocation was 35 million under - for Mohuma Mobung.

CHAIRPERSON: Huh-uh.

20 **MR MBANA PETER THABETHE:** Then in June 2012 ...

CHAIRPERSON: Huh-uh.

MR MBANA PETER THABETHE: The department requested 30 million
from the allocated 35 of Mohuma Mobung ...

CHAIRPERSON: Huh-uh.

MR MBANA PETER THABETHE: And the report is explaining that in

the - in the Mohuma Mobung budget from the allocated 30 million six million was put aside for Vrede Dairy and ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: And three million was coming from infrastructure enhancement allocation and another three million from EPWP grant. That - that is what the report is saying that - that I am reading. Chair what - what I remember we had done which I had also tried to explain. We have pulled three projects together which were individually allocated.

10 **CHAIRPERSON:** Well I am interrupting you Mr Thabethe but that is because I want to draw your attention to what the question was. As I understand the question was it sought to establish when you would have made the request. Is that right?

ADV LEAH GCABASHE SC: Correct Chairman.

CHAIRPERSON: When you would have the request but I do see that in the first line of paragraph 7 it says: you approached Treasury - Provincial Treasury in June 2012, but I do not know whether the approach referred to there would be the request or whether the request would have been earlier. I think that is - that is - the question relates
20 to when would you have made the request for that amount.

MR MBANA PETER THABETHE: That (indistinct) yes.

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: Ja.

ADV LEAH GCABASHE SC: The question Chairman is just when would that six million for the Vrede Dairy Project have - had been budgeted

for. When did he request that that amount be allocated to Vrede because we now know it was in the 2012/2013 financial year?

CHAIRPERSON: I am not sure if - paragraph 6 tells us that for the 2012/2013 financial year R35 million was set aside.

ADV LEAH GCABASHE SC: Correct.

CHAIRPERSON: That - that must mean that was the budget?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Ja. Now in 20 - in June the department approached Provincial Treasury and as I understand Mr Thabethe's evidence to ask
10 for R30 million ...

MR MBANA PETER THABETHE: 30.

CHAIRPERSON: Of that R35 ...

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Million to be given to them as an advance payment.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: So the - the budgeting was already there as I understand it. So the six million - well once you - you got the 30 million the 30 million was part of the budget ...

MR MBANA PETER THABETHE: That is correct.

20 **CHAIRPERSON:** Already. Now one would need to look at this to see whether the six million is supposed to come from that 30 million because if it comes from that 30 million it means it is still within the budget but then the - if the question is whether you had to make a request for the six million then we can look at that.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Ms Gcabashe.

ADV LEAH GCABASHE SC: Chairman the ...

CHAIRPERSON: I think that part of what I am - what I have just said arises from the fact that when you were telling me what your question was you referred to when the six million was budgeted for and my understanding was I sought to say but paragraph 6 tells us that then five million was set a - aside and paragraph 7 talks about R30 million which is part of the 35 million.

What I have not checked is whether the six million is a - is
10 part of the 30 million or not but I - I wanted to indicate that it may be that it was budgeted for. So if that - if - if the question is whether it was within budget. It seems that it was but I maybe misunderstanding.

ADV LEAH GCABASHE SC: Chairman, maybe Mr Thabethe can assist us here. Mr Thabethe given that we know that for the 2012/2013 financial year under Mohuma Mobung the amount that had been budgeted was that 30 - 35 million.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: We all agreed on that?

MR MBANA PETER THABETHE: Yes.

20 **ADV LEAH GCABASHE SC:** Because there are various projects that fall under Mohuma Mobung my assumption has been that you would try as the department to allocate certain amounts to specific projects. Is that assumption incorrect?

MR MBANA PETER THABETHE: No that is correct Chair.

ADV LEAH GCABASHE SC: So within that allocation that you work

through as the department - because you know what you need to support in that year - would you have allocated now as the department from the 35 million six million for the Vrede Dairy Project?

MR MBANA PETER THABETHE: Ja. Chair I - I think we are going back ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: To what we had already - I had already agreed on.

CHAIRPERSON: Yes.

10 **MR MBANA PETER THABETHE:** That the 30 million ...

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: Was not only allocated to Vrede but ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: We took a conscious decision ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: That it be allocated to Vrede Dairy.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: That - that I - we - I have agreed.

20 **CHAIRPERSON:** Yes, yes.

MR MBANA PETER THABETHE: Yes Chair.

CHAIRPERSON: Huh-uh, but I think she is talking about the six million. As I understand the position - maybe we should read what - what this paragraph says about six million.

“However from budgeted projected list Vrede Dairy

Project was only budgeted R6 million of which three

...

Okay. I guess this talks to the distribution ...

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: Maybe initial distribution ...

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: Of how much of the 30 million would go to Vrede Dairy.

MR MBANA PETER THABETHE: Yes.

10 **CHAIRPERSON:** How much of the 30 million would go to the other two projects. Is that right?

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: That is - that is the stage to which this relates.

MR MBANA PETER THABETHE: Yes Chair.

CHAIRPERSON: Is that correct?

MR MBANA PETER THABETHE: Ja. I - I ...

CHAIRPERSON: Ja.

MR MBANA PETER THABETHE: That - that was the case Chair before we approached ...

20 **CHAIRPERSON:** Yes, yes.

MR MBANA PETER THABETHE: We had already consolidated by the time we approached Treasury to request ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: So they - they may not go back and say remember ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: It is like they are saying remember ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Before you put this money together.

CHAIRPERSON: Oh, okay.

MR MBANA PETER THABETHE: This is how it was allocated.

CHAIRPERSON: Originally?

10 **MR MBANA PETER THABETHE:** Yes Chair.

CHAIRPERSON: Yes, okay.

ADV LEAH GCABASHE SC: The - the importance of understanding what the original internal allocation had been is for one to be able to do a comparator with what you correctly call a realignment and a rethinking on where the entire amount should go. So I fully agree with you Mr Thabethe when you say in or about May/June a decision would have been taken that the entire 30 million - it is 30.5 but the request that was put in was for 30 million but that was the entire Mohuma Mobung allocation ...

20 **MR MBANA PETER THABETHE:** That is correct Chair.

ADV LEAH GCABASHE SC: And all of that was going to go to Vrede?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: Ja. There I - I agree with you. What then remained was the five million of the 35 million that had been allocated.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: Good, so let's go to the evidence of Ms Anna Fourie very briefly. She told the Commission, she told the Chairman that on the 15th of June indeed she was told that the CFO from your department would be arriving and would be coming to request 30million for the Vrede Dairy Project, really it was for Estina, to pay Estina. Do you know about that request?

MR MBANA PETER THABETHE: Yes Chair.

ADV LEAH GCABASHE SC: Is it the same request that's referred to here in paragraph 7?

10 **MR MBANA PETER THABETHE:** That's correct Chair.

ADV LEAH GCABASHE SC: Can you take the Chairman through why at that point in time, on the 15th of June, it was important for the Department to have R30million to hand?

MR MBANA PETER THABETHE: Chair can I refer to some of my notes?

CHAIRPERSON: Yes you may do so.

MR MBANA PETER THABETHE: So that I am able to respond properly. Chair I'm trying to go back to the very same – I think we dealt with it on Thursday where there was an indication, we went through
20 that table.

CHAIRPERSON: If you give information, if you're able to, what the table was all about Ms Gcabashe might just be able to tell you where it is to be found.

MR MBANA PETER THABETHE: Chair, the table that we looked at, where the work was done or not done.

ADV LEAH GCABASHE SC: Yes the same – rest assured Mr Thabethe that the items that are set out in paragraph nine are a mirror image of what's on that table. In the meantime, we'll find that table for you.

MR MBANA PETER THABETHE: Because Chair, why I want to go back to that table because that's what this money was for.

CHAIRPERSON: Okay what's she's saying is that while they will look for that table if you look at the items in paragraph 9 of page 779 those item reflect what is in that table, maybe that might assist you.

10 **MR MBANA PETER THABETHE:** That's correct Chair.

CHAIRPERSON: It does assist you?

MR MBANA PETER THABETHE: It does yes.

CHAIRPERSON: Okay, alright, yes.

MR MBANA PETER THABETHE: Because those are the items that we required to be dealt with within the first R30million.

CHAIRPERSON: Yes okay, Ms Gcabashe you will know whether that answer your question or not?

20 **ADV LEAH GCABASHE SC:** And yet Mr Thabethe when – maybe I should start it from the beginning. So you were aware, when you asked for that money from Province that, that money was going to be used for land acquisition, environmental impact assessment, feasibility study, water reticulation, electricity connection, electricity connection applications, identification of beneficiaries in Agri BEE entity, set-up Agri BEE entity and [indistinct] of role of stakeholders. Draw up project plan for phase two, determine date for capital injection by Estina.

MR MBANA PETER THABETHE: That's correct Chair.

ADV LEAH GCABASHE SC: I – Chairman if you will indulge me, there I a document I want to show you in that case Mr Thabethe and we'll come back to this one, where Estina gives one of it's monthly reports, a report that the R30million that they received from you was retained for purposes of purchasing the milking parlour, do you know anything about that, do you want me to repeat that?

MR MBANA PETER THABETHE: Chair can we...

CHAIRPERSON: Did you understand the question or Ms Gcabashe
10 still...[intervenes].

ADV LEAH GCABASHE SC: I have a document I'm happy to show him Chairman. Reference bundle D page 1403 it is the quarterly report for October 31st, 2012.

CHAIRPERSON: What was the page, 403?

ADV LEAH GCABASHE SC: 1403 Chairman.

CHAIRPERSON: 1403, okay.

ADV LEAH GCABASHE SC: Are you there Mr Thabethe?

MR MBANA PETER THABETHE: Yes I am.

ADV LEAH GCABASHE SC: Excellent, so you see here this is the
20 cash flow of Estina (Pty) Ltd, from July 2012, Vrede Dairy Project, I'm reading what's written here, July 2012, August 2012, September 2012, October 2012. Source of funds, there's an opening balance that they refer to, then they refer to the grant received from your department, do you see that, in July on the 9th of July actually.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: R30million, then when you look at the application of funds, you find in line two they reserved for parlour equipment R29million. Now maybe you have a better explanation than the one I have been able to put together. My understanding of this entry is that R29million of the R30million you advanced was parked, put away for purposes of purchasing milking parlour equipment.

MR MBANA PETER THABETHE: Yes Chair that's what the report says.

ADV LEAH GCABASHE SC: So it can't be correct that the first
10 R30million was to be applied for the items that you have identified in paragraph nine, which are the same items, I'll give you your column, you list that you were asking for earlier, it's reference file D, exactly the same file that you're holding but the page reference is 1378, if you go to 1378, same file, file D, 1378, just to give you a sense of comfort you'll see those Estina obligations for the first phase that we were discussing on.

CHAIRPERSON: Did you say 1375?

ADV LEAH GCABASHE SC: 1378 Chairman.

CHAIRPERSON: Sorry 1378.

20 **ADV LEAH GCABASHE SC:** Yes Chairman, so you are able to relate the two lists they are exactly the same as I suggested earlier.

MR MBANA PETER THABETHE: Yes that's correct Chair, the page 1403 was a report that we received from Estina, now a report doesn't necessarily mean we agree, so this was a report that was presented to us to say, this is what we...[intervenes].

CHAIRPERSON: This is what Estina was dealing with.

MR MBANA PETER THABETHE: Yes, however if you see then the following report, after the discussion between us and Estina, we did not necessarily agree. Hence you will realise the question that the evidence leader asked me last week, if you were aware of any money that Estina has paid. Now if you look at the next quarter report, the status quo had changed because we had been in discussing saying we don't really agree because this is what the money has been allocated for.

10 **CHAIRPERSON:** Yes.

MR MBANA PETER THABETHE: And this is what your report is saying, so that was an ongoing, because this was a report presented to us and then you engaged the report, you make the necessary changes on the report.

ADV LEAH GCABASHE SC: Can you then just assist me with the difficulty I have Mr Thabethe, if you believe that the R30million was used to deal with Estina's obligations for the first phase, and Estina believed that, that R30million it's really minus R1million, R29million was for entirely different purpose. How is it that you were able to sign
20 off on Estina having met its obligations for the first phase?

MR MBANA PETER THABETHE: Chair, if I may come back here, here we were dealing with issues of cash flow, it was a matter of which first. Now according to them they thought we would delay the payment of the people that were dealing with your feasibility study and so on and maybe advance the money for the acquisition of equipment, so that we

then – we're able to secure because it takes a bit of time to secure some of this equipment. So that was their thinking which it did not necessarily agree with because we thought, before you secure equipment your feasibility study must agree with you. So we thought, before you can even secure those equipment let's check if, indeed, we are going to be able to do what we are expected to do. Hence I'm saying the report versus what they have been reporting to us, may not necessarily mean that is what was implemented.

ADV LEAH GCABASHE SC: Mr Thabethe, so on the 5th of June 2012
 10 you signed that first agreement with Estina. In signing that first agreement with Estina you committed – Government, your Department to the payment of R114million over a three-year period, am I correct?

MR MBANA PETER THABETHE: That's correct Chair.

ADV LEAH GCABASHE SC: Now two things arise, the first question is, had you provided for this R114million and if so, how had you done so and I'm talking about when you signed that agreement of the 5th of June.

MR MBANA PETER THABETHE: Chair, we had done our due diligence as a department, we had gone to the Executive council to approve the
 20 project and the Department was also referred to the provincial Treasury to the budget council so that we can then raise the necessary money for the project. I had already engaged with the National Department of Agriculture who had already given us an indication that we can, from the money allocated from the Province we can source money to pay the project. So by that time we had already done our part. Hence if you

look at the year that precedes that, that exact amount was made available to the budget for the project.

ADV LEAH GCABASHE SC: You speak of an exact amount, before I go to my real question, exact amount, what are you talking about?

MR MBANA PETER THABETHE: I mean the allocation of R114million per annum.

ADV LEAH GCABASHE SC: Was provided where – was provided for where?

MR MBANA PETER THABETHE: In our Department, in our
10 departmental budget.

ADV LEAH GCABASHE SC: Of which year?

MR MBANA PETER THABETHE: Of the year 2012/2013.

ADV LEAH GCABASHE SC: Now this is a three-year cycle, the year 2012/2013 started on the 1st of April.

MR MBANA PETER THABETHE: That's correct Chair.

ADV LEAH GCABASHE SC: And what point did you provide for the R114million for just that one financial year and then for the second financial year and the third, because I know you work in three year cycles?

20 **MR MBANA PETER THABETHE:** Yes Chair when we do our three-year budget cycle we make sure that, that money is available. It means when we move to the 2012/2013 budget we had already allocated the three-year cycle and the proof to that would be that in the 2012/2013 financial year that money was sitting in our budget.

ADV LEAH GCABASHE SC: No it was not Mr Thabethe are you

talking about the R114million?

MR MBANA PETER THABETHE: Yes in the 2012/2013 financial year it was.

ADV LEAH GCABASHE SC: It was not, which is why you had to go to Exco and why Exco approved, and I'm going to read from the Exco memo of the 13th June 2012, there are various issues that the dealt with but I'll read the – what's relevant, so the Exco council, Chairman if you wanted to look at it yourself it's on page 323 of the reference bundle A.

10 **CHAIRPERSON:** Ja maybe it might not be necessary ja, okay.

ADV LEAH GCABASHE SC: And the copy is not a great copy so I know you will not be happy with it. Can I read this Chairman?

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: So Exco approved the following recommendations,

“1) The implementation of the proposed integrated Vrede Dairy Agri business project, it's implementation.

2) Exco supported the sourcing of additional funding of R84million for this current financial year from the Province”.

20 **MR MBANA PETER THABETHE:** Chair let me correct my statement.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: The 2012/2013 it's when we had the R30million, maybe I confused myself somewhat. Yes, the 2012/2013 it's when we had the R30million. The 2013/2014 that's the year then when we had the full budget allocation, I think I just need to correct

myself there.

ADV LEAH GCABASHE SC: I'm happy to make peace with that, yes. Now in this 2012/2013 year you therefore had a shortfall of R84million.

MR MBANA PETER THABETHE: That's correct chair.

ADV LEAH GCABASHE SC: And what Exco was permitting you to do was to find this money somewhere in the Province from wherever, you'll explain where it would have come from but that's what I understand them to have allowed you to do?

MR MBANA PETER THABETHE: That's correct Chair.

10 **ADV LEAH GCABASHE SC:** Where was this money going to come from Mr Thabethe, if you could help us understand, the R84million?

MR MBANA PETER THABETHE: Chair, the Province normally has its own revenue advancement strategies and then each department goes and bid for that money, it's a pool of money that you have to motivate from own revenue if you would be allocated that money. Now part of the strategy was also to go in there and bid for that money for the R84million which then becomes allocated to your during the adjustment. Then they also indicated to us, we must interact with the Free State Development Corporation, so that they can also see if they cannot
20 assist us in finding money, that is what Exco indicated to us.

ADV LEAH GCABASHE SC: That is correct and the last line here actually, just to complete what Exco said, it said for the next three years the Department of agriculture will have to pay R113, I think they meant to say R113million, essentially acknowledging that you would be budgeting now for his particular expense.

MR MBANA PETER THABETHE: That's correct Chair.

ADV LEAH GCABASHE SC: You see the reason that the issue of providing for contractual obligations is important Mr Thabethe is because as we said on Friday – Thursday/Friday last week Section 38 of the PFMA says an accounting officer may not commit a department, trading entity or any constitutional institution to any liability for which money has not been appropriated. My reading of what happened is respect of that first R114million you required for the Vrede Dairy Project is that you, on signing the agreement of the 5th of June and
10 then again the agreement of July the 5th, committed the department to obligations where money had not been appropriated to meet those obligations, would you agree with me?

MR MBANA PETER THABETHE: Chair, the commitment is what had been agreed upon and then you agree and then you allocate the money in terms of – because you cannot allocate the money before you get approval. You get the approval and then you are able to say, yes, now that we have an approval, we can commit, Executive council has agreed that this project must be undertaken. Now lots of agreements we do during the year, but the budget gets allocated to you in the beginning of
20 the new financial year. If there is money available they will allocate to you to say, at the meantime do 1, 2, 3 with this existing budget but then your full scope of the budget then gets allocated to you in the full financial year, as agreed upon. Then it became my responsibility during that time to be able to make sure that, that line item is properly budgeted for in the new financial year. If not then I'll go back to both

Treasury and executive council and say, we will not be able to meet the commitment because of 1, 2, 3, 4 we don't have the money, we can't find the money but if it has been agreed upon then I will be able to budget for it and make it available.

ADV LEAH GCABASHE SC: But the facts as they relate to the 2012/2013 financial year where money had not been appropriated, R114million had not been appropriated, the facts are that, what you as the accounting officer then did is – falls within the parameters of financial misconduct as set-out in the PFMA, or am I wrong?

10 **MR MBANA PETER THABETHE:** No Chair the budget – you cannot make the budget available in the same financial year of the approval because you already have a deserted budget in that year. The commitment takes you to the next year. If, during a current financial year you make a commitment, that commitment becomes effective in the next financial year, because you cannot then – unless you want to do a budget adjustment in the whole department but in this instance it's saying you must make money for the next three years. My understanding was that starting from 2013/2014 I must make sure that, that money is budgeted for.

20 **ADV LEAH GCABASHE SC:** And yet my understanding is that had you waited with this project and had not rushed it, had you then provided for it as you are now suggesting in the following year, you would have been in full compliance with the PFMA.

MR MBANA PETER THABETHE: I don't see where I did not comply Chair.

CHAIRPERSON: Yes or maybe let's understand, maybe you could just read that provision Ms Gcabashe if it's in front of you, of the PFMA.

MR MBANA PETER THABETHE: It's Section 38 (2) Chairman, it is here and it reads as follows:

“An accounting office may not commit a department, trading entity or any constitutional institution to any liability for which money has not been appropriated”.

CHAIRPERSON: So I guess that the question would be whether you committed the department to a liability, what that liability was and whether money had been appropriated for that liability at the time you committed the department. I think those would be the features to look at.

MR MBANA PETER THABETHE: Yes I hear Chair, my understanding is that given the approvals, I was mandated to commit because those approvals were granted to me...[intervenes].

CHAIRPERSON: Approvals granted by Exco?

MR MBANA PETER THABETHE: By the Executive council yes Chair.

ADV LEAH GCABASHE SC: Chairman, but the committal – you signed the agreement on the 5th of June, the first agreement 2012, you only approached Exco after that. So when you approached Exco you'd already committed your department to obligations arising from the agreement of the 5th of June, would you agree with that?

MR MBANA PETER THABETHE: No Chair, we had already got approval from Exco before they indicated Executive memorandum, I

think I had also indicated that there were other presentations and approvals before this one.

ADV LEAH GCABASHE SC: The difficulty I have with that proposition is there were two submissions that were made to Exco, the first one was when Dr Masiteng was out of the country, that's the one of the 26th of May, the second one was the one of June – of the 5th of July. Now this Exco resolution speaks to you implementing the project, it doesn't say we approve the project and it may be, Mr Thabethe that there are documents that I do not have that you know exist to support what you
10 are saying but the documents that have been furnished to us, there's no other document, other than the submissions and then this Exco resolution.

MR MBANA PETER THABETHE: Chair I think that's what then we may need to go back and check, those approvals prior to this submission.

CHAIRPERSON: Yes then maybe what may have to be done is if you indicate – if you give the legal team enough information for them to be able to write to the Department and say exactly what they are asking for, that would help.

MR MBANA PETER THABETHE: Thanks Chair, I will do so.

20 **CHAIRPERSON:** Ja.

ADV LEAH GCABASHE SC: But can I just stay in this general area and ask you about the other two projects that you mentioned in your submission to the Premier dated the 24th of February when you were asking permission to go to India. So you mentioned the Vrede Dairy Project. You mentioned the QwaQwa Project and then the third one

was the Sitsotho Project. You recall that? We discussed that last week.

MR MBANA PETER THABETHE: Yes Chair.

ADV LEAH GCABASHE SC: What do you know about the Sitsotho Integrated Dairy Project?

MR MBANA PETER THABETHE: Ja Chair we – we had already agreed last week that we will approach the Department so that they provide the commission with that report.

ADV LEAH GCABASHE SC: I have it.

10 **CHAIRPERSON:** Hm.

ADV LEAH GCABASHE SC: If you go to – Chairman if I might indicate and also to you Mr Thabethe that some of your colleagues – former colleagues were listening to your evidence last week.

MR MBANA PETER THABETHE: Okay Chair.

ADV LEAH GCABASHE SC: And they take issue with – in other words they disagree with the evidence you have given. So they sent us that particular report which you will find in the Reports Bundle. It was just easier to put it in the Reports Bundle. So there is a Reports Bundle and it is – it should be where item 28 is.

20 **MR MBANA PETER THABETHE:** Sorry Chair there is A and B.

ADV LEAH GCABASHE SC: It is in B because it has just been added.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: Can I also indicate Mr Thabethe that they are – they have indicated that they would like to come to the commission to give their version which is healthy.

MR MBANA PETER THABETHE: It is fine.

ADV LEAH GCABASHE SC: And this is one of the documents I am assuming they will be relying on. Chairman they have written a letter to you.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Which we had – we have a copy of.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: Where they indicate that they would like to come to the commission then they have asked to meet the evidence
10 leaders. It only arrived yesterday Chairman.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: So we will engage with them after this. We were already preparing for this.

CHAIRPERSON: No that is fine. Yes.

MR MBANA PETER THABETHE: Ja Chair I indicated that there was a study that was done between the Department I think with Germany.

CHAIRPERSON: Yes you did.

MR MBANA PETER THABETHE: [Indistinct] that is the one that I had then requested that it be sourced from the Department.

20 **CHAIRPERSON:** Yes. Let me interrupt you. I think bring your microphone closer a little bit to you just a little bit.

MR MBANA PETER THABETHE: Thank you Chair.

CHAIRPERSON: Yes, yes okay. Yes.

MR MBANA PETER THABETHE: Yes. I just want to check the page number Chair.

ADV LEAH GCABASHE SC: Oh it is under item 28 I hope they have flagged it. It is actually the last report in B Mr Thabethe. The very last report. It should be under item 28. That should be the one.

CHAIRPERSON: Ms Gcabashe.

ADV LEAH GCABASHE SC: Chairman.

CHAIRPERSON: I now have a number of these lever arch files opened here. This is now the fourth one.

ADV LEAH GCABASHE SC: Yes Chairman.

CHAIRPERSON: There must be some that we should put – be able to
10 put away for now.

ADV LEAH GCABASHE SC: I would ask you Chairman if you could please keep them open.

CHAIRPERSON: Not close them.

ADV LEAH GCABASHE SC: No Chairman. My apologies. And part of the – the reason Chairman is as we got better copies of something we would then put them in another file. We

CHAIRPERSON: Ja.

ADV LEAH GCABASHE SC: Because we have been trying to get clearer copies. We had very bad copies to start with of documents. I
20 do apologise Chairman.

CHAIRPERSON: Yes okay.

ADV LEAH GCABASHE SC: But...

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: I will go through the material very slowly.

CHAIRPERSON: Yes. Now on this latest one.

ADV LEAH GCABASHE SC: This particular one.

CHAIRPERSON: Are we at page 01.

ADV LEAH GCABASHE SC: Correct Chairman.

CHAIRPERSON: Sitsotho Integrated Dairy Project.

ADV LEAH GCABASHE SC: That is correct Chairman.

CHAIRPERSON: Okay alright.

ADV LEAH GCABASHE SC: Now if I might say as you talk to us about this project and put it in perspective as the Head of Department.

MR MBANA PETER THABETHE: Ja.

10 **ADV LEAH GCABASHE SC:** As I understand the – the – one of the complaints from the witnesses who will come they say that this particular dairy project preceded Vrede and you stole their idea and moved it to Vrede. You do not want to come back too many times. You might as well deal with that. And just explain how as the Head of Department – you are the Head of Department how you related to this document? What your job was in terms of aligning documents etcetera, etcetera?

MR MBANA PETER THABETHE: Ja thank you Chair. It cannot be true. How do you steal one project and implement it somewhere? This
20 project was jointly done between the Provincial Department this...

CHAIRPERSON: The one reflected in this document now?

MR MBANA PETER THABETHE: Ja this – let me just talk to this one.

CHAIRPERSON: Yes. Yes.

MR MBANA PETER THABETHE: This exercise started even before I came to the Free State. Before I came in there it had already been

done. There were a number of challenges in the implementation of this – what I understood was that there was a problem in the implementation of this project. And it is not even the same idea of the Vrede Dairy. These are two – this was a cow hotel exactly crafted in the model of Germany and then this project actually the Department was supporting Sitsotho Municipality. They were the initiators of the project and we came to support them and my understanding was that the Department even paid for the feasibility study to be done. But problems came on the implementation between the three parties
 10 Sitsotho, the Department and the German part of it. So when I came these existed already but there were challenges. And the model are far from each other. They are not the same. So it cannot be that you can steal this model and go and implement it differently.

ADV LEAH GCABASHE SC: You see...

CHAIRPERSON: I guess Ms Gcabashe that maybe there will have to be an opportunity after you have had a chance to interview those officials who have said they would like to come and give evidence and you – you have full information as to how they motivate or substantiate the allegation that the Vrede Dairy Project constituted theft of this project
 20 and then that can be put to him so that he can deal with it properly knowing exactly what the grounds are for saying he stole the project where this – where are the similarities and so on in the two projects. So I am just mentioning that because you mentioned that you – you are still to – you only got the information yesterday.

ADV LEAH GCABASHE SC: Thank you Chairman.

MR MBANA PETER THABETHE: Ja. Chair if I may add? My understanding is that these documents were owned by the Department because it is the Department that paid for. So I am just thinking not – I am not admitting it was stolen.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: I am saying even it was stolen.

CHAIRPERSON: Ja.

MR MBANA PETER THABETHE: It is the property of the Department.

CHAIRPERSON: Yes.

- 10 **MR MBANA PETER THABETHE:** But the concepts are different from each other.

CHAIRPERSON: Hm, hm.

ADV LEAH GCABASHE SC: Mr Thabethe now I would assume that – I would assume that the QwaQwa Project, the Sitsotho Project and the Vrede Dairy Project would all have fallen under Mahuma Mobung?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: Maybe we should just bring the QwaQwa Project in now that we know about these two. The other two. What happened to the QwaQwa Project?

- 20 **MR MBANA PETER THABETHE:** Chair there are still in existence the smallholders that we have supported who have been doing small dairies. The bigger picture there my understanding there used to be an old dairy that used to belong to the then QwaQwa government that had been visited a number of times which stood an opportunity to be renovated and reassessed. But that project did not belong to the

Department of Agriculture and Rural Development. And in looking at that infrastructure it had become very old and dilapidated. It is non-functional. So one of the bigger picture was eventually to deal with that. But the budget that was allocated to QwaQwa was not for that initiative it was to establish small dairies on farms. Keeping in mind that there could be an opportunity to go and rehabilitate that dairy. But his budget that we talking about here was to assist the smallholder farmers with their own small dairies on the farms for them to be able to milk. Hence we then said let us consolidate. We never neglected
 10 them. We proceeded supporting them under the comprehensive agricultural support programme but not under Mahuma Mobung. So they were provided support under CASP. So they were assisted but on a different budget item.

ADV LEAH GCABASHE SC: Are you talking in this instance about both the QwaQwa Dairy Project and the Sitsotho Integrated Dairy Project?

MR MBANA PETER THABETHE: The Sitsotho we did not the QwaQwa one we did support to those ones.

ADV LEAH GCABASHE SC: So what then happened to the Sitsotho one?

20 **MR MBANA PETER THABETHE:** Chair the Department can still look at it and if the challenges that existed then were resolved I think they can still proceed with the project.

ADV LEAH GCABASHE SC: No the reason I ask is because in your letter to the Premier you specifically mention it. So I would assumed that part of the motivation that the Premier accepted from you was that

there were these three dairy projects that the Province would be seeking strategic partners for, finance for, etcetera, etcetera.

MR MBANA PETER THABETHE: I – I agree Chair. These projects cannot be put aside. All of them can still be assisted to proceed. It is a matter of time which one first then the other one. Because it might be difficult to do all of them at the same time.

ADV LEAH GCABASHE SC: So as at 2018 when you left the Department you had not put any funding into the Sisothe Integrated Dairy Project?

- 10 **MR MBANA PETER THABETHE:** Chair we had not because we had not completed any of those. I think it was a matter of prioritising if we were to prioritise whether it will be QwaQwa first after Vrede or Sisothe first. But we had not done that at that time because we had not completed any of those. I think it was a matter of prioritising if we were to prioritise whether it will be QwaQwa first after Vrede or Sisothe first. But we had not done that at that time.

- ADV LEAH GCABASHE SC:** Let us come back to Estina and the agreement that you signed with Estina on the 5 June. Can I ask you to look at Reference Bundle D which is the one that we – we have been
20 looking at quite – quite a bit. So it is Reference Bundle D.

CHAIRPERSON: Did you say D?

ADV LEAH GCABASHE SC: D for Donald.

CHAIRPERSON: Okay what page?

ADV LEAH GCABASHE SC: 1331.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Have you got that Mr Thabethe?

MR MBANA PETER THABETHE: That is correct I have got it Chair.

ADV LEAH GCABASHE SC: Right. Now if you look at the next page 1332 you will notice that that is your signature so this is the letter that was written by you.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: You may want to spend just a minute having a quick look at the letter because I want to ask you what gave rise to your writing this letter. I want your explanation.

10 **MR MBANA PETER THABETHE:** The second page?

ADV LEAH GCABASHE SC: No the whole letter.

MR MBANA PETER THABETHE: The whole letter.

ADV LEAH GCABASHE SC: So all I was pointing out to you on the second page is that you are the author of this letter. Thank you.

MR MBANA PETER THABETHE: Thank you.

ADV LEAH GCABASHE SC: Is it – can I try and summarise it in a nutshell or do you want to explain? I am thinking of time. Maybe I should allow you to explain in a nutshell what the issue is that you were raising here?

20 **MR MBANA PETER THABETHE:** Chair the issue here we were requested by the state law advisors after they had received the first document what was agreed upon where we were making a request of a transfer payment. They – my understanding was that the agreement was referred to the state law advisors by Treasury and then – then they interacted with us requesting that we submit additional document for

them to be able to do assessment. This is the letter that I wrote to – to – to Advocate Ditira attaching the requested documents and trying to explain what has happened and – and then giving the documents that they have requested.

ADV LEAH GCABASHE SC: Now the essence of what you are saying here is that you believed you had followed all processes and applied all the right procedures?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: And what you were requesting here was
10 that they sign off on the agreement that you had signed on the 5 June.

MR MBANA PETER THABETHE: Not – there is a lot of issues raised here Chair. I have also strongly urged them to consider and advise. Because already there had been a concern from Treasury hence then in this letter I have also said they must also advise but the document was there. So that they can have a look at it and advise us if – if indeed it is not correct or we – what else that we needed to do. So in addition to that I had also placed it that they must provide us with the necessary
advise.nd advise us if – if indeed it is not correct or we – what else that we needed to do. So in addition to that I had also placed it that they
20 must provide us with the necessary advise.

ADV LEAH GCABASHE SC: Now if you go to page 1328 and 1329 of the same bundle.

MR MBANA PETER THABETHE: Yes I am there Chair.

ADV LEAH GCABASHE SC: You – yes – you have a response from the state law advisors.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: And this is what they say to you on the 26 June. You had written to them on the 25 June. This is what they say to you on the 26 June.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC:

“The signed partnership agreement does not explain sufficiently the inter-relationship of the parties. Is Estina the service provider or project manager? The relationship with Zana is also not clear.”

10 Now the context of course is the 5 June agreement we had started dealing with it last week and the fact that Zana was going to be the vehicle that would hold the beneficiaries shares.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: Is that correct? Why would you not accept or maybe you did that this was a fair criticism of that agreement? If you did please just say so.

MR MBANA PETER THABETHE: Ja thank you Chair. We did accept the advice from the state law advisor. Hence there was a second agreement that they drafted for us and we signed the second
20 agreement. So we accepted this advice that was given to us. After they had raised this letter we actually arranged a meeting between us and them. We went and we sat down trying to explain everything in details what we have done from our side and then they then advised us that they want to rework the agreement. Hence it was reworked and signed again.

ADV LEAH GCABASHE SC: The project costing we are going to come to sometime this morning because there was a proposal that you received from Estina. So project costing is – is particularly important with a project of this nature. Is that correct?

MR MBANA PETER THABETHE: That is correct Chair I agree.

ADV LEAH GCABASHE SC: Okay. In paragraph 5 they speak about the – the very last sentence about the specifications for the dairy and the processing plant that was to be built. So they pointed this out to you that it is important to know what those specs are.

10 **MR MBANA PETER THABETHE:** Ja Chair by this time we had not provided them with all the documents. The only documents that was sitting in front of them was only a few documents that were requested. We had then provided such documents as requested in order for them to be able to draft or to advise us properly. We had not made the entire list of document – that we did after we had had a meeting so that then they have a full understanding of what we were talking about.

ADV LEAH GCABASHE SC: The – I accept what you are saying Mr Thabethe but maybe I should also explain the reason that I am going through the points that were highlighted. It is because I am then going
20 to go to the project proposal, the business plan, the feasibility study that were handed to you and I am going to be interrogating those documents. And as I interrogate those documents I would like to bear – you to bear these comments in mind because the things that have been highlighted here I would expect to have the Department ensure that they are in the documents they then received after this – after the July

agreement.

MR MBANA PETER THABETHE: Okay Chair.

ADV LEAH GCABASHE SC: Are you with me?

MR MBANA PETER THABETHE: I am with you Chair.

ADV LEAH GCABASHE SC: Okay. You then – so one of the issues that was also raised by the National Treasury investigators Mr Thabethe is item number 6, That high level study that you conducted I trust there is a copy of that document somewhere? Because those National Treasury investigators said they were not able to get a copy
10 from you. Does the document exist?

MR MBANA PETER THABETHE: Chair I could not understand what – what were they referring to because what they asked me is my desktop study.

ADV LEAH GCABASHE SC: I believe that is how I would interpret this as well but I would then have assumed that you generated some documentation from that.

MR MBANA PETER THABETHE: Yes Chair.

ADV LEAH GCABASHE SC: Please correct us if we are wrong in what we are assuming.

20 **MR MBANA PETER THABETHE:** Yes that is correct Chair. But – but according to them that is not what they wanted.

ADV LEAH GCABASHE SC: According to – now I have talked about two different sets of people who wanted documents. National Treasury investigators and of course the state law advisors here who were pointing out in paragraph 6 that you did not attach this high level study

that you conducted. You did not understand what the state law advisors were talking about. Let us start there because that is the letter we are looking at.

MR MBANA PETER THABETHE: Hm.

ADV LEAH GCABASHE SC: Is this what you are saying?

MR MBANA PETER THABETHE: Chair the study that we had referred to we spoke about it was the analysis that we did. If you remember Chair we had done analysis of different countries in terms of milk production. Now that is what is being referred to. I am not sure what –
10 what document were they actually looking at because that was my understanding when I referred to that.

ADV LEAH GCABASHE SC: You...

MR MBANA PETER THABETHE: But apparently they did not accept that to be the document I was talking about.

ADV LEAH GCABASHE SC: So if you just very briefly go to page 1331 that is your letter to the state law advisors. 1331.

MR MBANA PETER THABETHE: Thank you Chair

ADV LEAH GCABASHE SC: And I have just counted the beginning of each paragraph and I think it is at paragraph 7 which starts a copy of
20 the results of the detailed study mentioned in paragraph 2.2 are you there?

MR MBANA PETER THABETHE: Yes I am there Chair.

ADV LEAH GCABASHE SC: Aha. Of the executive council memorandum. Then you say:

“We are attaching a high level study that was

conducted. The detailed study will be provided as soon as it is ready subject to the release of the initial funds.”

So just explain that paragraph to the Chairman because you appear to be talking about two different documents and linking the second one to the release of funds. Please help us understand that paragraph.

MR MBANA PETER THABETHE: Yes. The detailed study Chair is the detailed feasibility study and business plan which then required money for us to be able to do so. This is what that paragraph – we were
10 attaching the initial study and we are saying the detailed study will be provided as soon as it is made – because that was still to be done.

CHAIRPERSON: Is the ref – is the first study referred to in that paragraph what you have called desktop study?

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: Research.

MR MBANA PETER THABETHE: Yes, yes.

CHAIRPERSON: That is what it refers to.

MR MBANA PETER THABETHE: Yes which we...

CHAIRPERSON: But the second one was still to follow?

20 **MR MBANA PETER THABETHE**: That is correct Chair.

CHAIRPERSON: It had not been done yet?

MR MBANA PETER THABETHE: It had not been done yet.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Now this – this is the very same document we are giving to the state law advisors which we had

provided to National Treasury which they say they have not received.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: In fact if that is your explanation then we are talking about the high level study which was the desktop study.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: Which you did not furnish to the state law advisors. Am I correct? Because they say it is not attached. I am just reading paragraph 6.

MR MBANA PETER THABETHE: Of their letter?

10 **ADV LEAH GCABASHE SC:** Of 1328 I am back at 1328.

MR MBANA PETER THABETHE: Okay I see it Chair.

ADV LEAH GCABASHE SC: Yes. So you did not attach that?

MR MBANA PETER THABETHE: It could not have been attached. I had referred to it as attached. Maybe then it was not attached but I stand to believe that we had then later provided to them. Because it was there. Otherwise I would not have said attached.

ADV LEAH GCABASHE SC: Then the second document was the more detailed documentation that I said we are going to be dealing with a little later.

20 **MR MBANA PETER THABETHE:** That is correct.

ADV LEAH GCABASHE SC: Now I will readily say that this evidence you are giving now is aligned to what you were saying earlier when we were discussing what the R30 million was for. Because the R30 million had not been paid yet.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: When these letters were written.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: The R30 million was only paid on the 9 July 2012?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: So what you were saying here was you need that money so that those...

MR MBANA PETER THABETHE: Activities can...

ADV LEAH GCABASHE SC: Exercises can be conducted.

10 **MR MBANA PETER THABETHE:** That is correct Chair.

ADV LEAH GCABASHE SC: And you were also saying in your letter that you had now committed your department to these contractual obligations.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: And you stood to get into a bit of trouble if you did not at least start giving the money that you had undertaken to give for this first phase of work.

MR MBANA PETER THABETHE: Ja that is correct Chair.

20 **ADV LEAH GCABASHE SC:** Ja no I am understanding that and that is what you have said now in what you said a little earlier.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: You then – you then come to an arrangement with the state law advisors but can I also point you to the concerns of Treasury because we are really now dealing with your assessment of risk as your colleagues were pointing these factors out

to you. This is really the subject matter of what we are dealing with. How you assessed the risk inherent in dealing with Estina and you mitigated that risk. That is the broad you know underlying subject.

MR MBANA PETER THABETHE: Okay.

ADV LEAH GCABASHE SC: Can you please then same file go to page 1364. Have you located it? It is actually an email.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: That was written by Mr Moses who was in the Provincial Treasury.

10 **MR MBANA PETER THABETHE:** That is correct Chair.

ADV LEAH GCABASHE SC: It is a rather important email Mr Thabethe. Again within that context of what was concerning your colleagues. Can you please read this into the record?

MR MBANA PETER THABETHE: The entire email?

ADV LEAH GCABASHE SC: Starting with the date please.

MR MBANA PETER THABETHE: It is a report with the heading Vrede Dairy Product. I take it it came from Itumeleng Moses on the 19 June 2012 at 37 minutes past 4 in the afternoon to Seiso Mohai. It was sent to, copied to Humphrey Litebe Kgomongwe. It says:

20 “Dear MEC. Notwithstanding the EXCO Resolution and decision of the Treasury committee this morning. I have been thinking about the wider implications of these resolutions. Based on the preliminary pronouncement of the state law advisors that the contract is illegal the immediate question is that – is

what to do then. Do we first correct the illegalities of the contract before disbursing any funds or do we disburse funds and correct the illegalities later? As matters stand the Province has opted for the latter which brings me to the second issue. Secondly the R30 million which must be made available as in yesterday is based on an illegal contract. Wouldn't this payment be an acceptance and endorsement of an illegal contract? My thinking is that this down
10 payment will bind government to what is essentially an illegal contract. The fact that Treasury would have approved the down payments makes it an accessory to the crime of financial misconduct. Thirdly the contract places all the obligations on government to make funding available to the balance of the project. R342 million. In the event the Provincial Government is not able to find alternative sources as per Treasury Committee Resolution it will still be held accountable. In this way entering into
20 this contract commits future resources for which no provisions has been made in the budget over the MTF. Combined these issues do apply noncompliance to Section 100(1)a and may worsen the situation for the Province. It does appear to me that perhaps the contract would be legalised first and

revised in order to plug all the gaps prior to even transferred one cent to the service provider. Then we will draw comfort from knowing that this is a legal exercise. Ideally no contract would be entered into until there is certainty regarding the availability of funds. On paper the project looks very interesting and good for the development and the repositioning of the Province but my fear is that it is not executive – that if – if not executive – let me repeat. But my
 10 fear is that if not executive correctly it would compromise and embarrass government in the ruling party. Now that we have a sense of how much it will cost us I think the redrafting of the contract, the identification of possible funding sources including possible budget reprioritisation could happen simultaneously. This would then be concluded with a signing of the agreement. I thought I should just tease these issues with you in my capacity as Acting CEO. Regards IJ.”

20 **ADV LEAH GCABASHE SC:** Yes thank you. So between the state law advisors and the Provincial Treasury they expressed concerns? Your evidence is you took those concerns to heart and you had a new agreement drafted.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: I think this might be the time for us to take the tea

break because we started earlier than normal. It is quarter to eleven.

We will resume at eleven o'clock. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes. Let us proceed.

ADV LEAH GCABASHE SC: Thank you Chairman. Mr Thabethe I now want to look at that July agreement that we have now moved towards because we have dealt with the June agreement.

10 **MR MBANA PETER THABETHE:** Okay.

ADV LEAH GCABASHE SC: You will find it on page 6 which would put it in Reference Bundle A. Now the first thing I would like to understand because I know 5 June agreement made a - accommodated the beneficiaries through Zayna.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: With this one how were the beneficiaries accommodated with this 5 July 2012 agreement?

MR MBANA PETER THABETHE: Thank you Chair. My - my understanding of the second agreement was - was the advice that we
20 need to do and complete the project. Thereafter transfer the project to the beneficiaries.

ADV LEAH GCABASHE SC: Now did you interrogate that advice that you were given?

MR MBANA PETER THABETHE: Chair ...

ADV LEAH GCABASHE SC: Did you ...?

MR MBANA PETER THABETHE: Chair ...

ADV LEAH GCABASHE SC: Huh-uh.

MR MBANA PETER THABETHE: Chair this was as per the advice of both the State Law Advisors and Treasury because they emphasised that we need to - we need to revise the original agreement and - and the revise that was done then this - this agreement came forth.

ADV LEAH GCABASHE SC: Well can you then explain to me what the role of the implementing agent would have been because on the generic formula you - you say you used the implementing agent would be
10 holding on behalf of the farmer. You know that is the generic system you have explained to us.

MR MBANA PETER THABETHE: No. The - the implementing agent will be - will be implementing the project on behalf of the farmers. Now my understanding was that once that has been completed then we - we then move the entire project into the structure of the - of the beneficiaries.

ADV LEAH GCABASHE SC: But you see the - the difficulty with that for me certainly Mr Thabethe is we know this is a three year project. Am I correct?

20 **MR MBANA PETER THABETHE:** That is correct.

ADV LEAH GCABASHE SC: We know that when you went to India you looked at a system that made sure that ordinary farmers would benefit. That is what you found when you looked at the system in India. Am I right?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: Here you are saying that ordinary farmers cannot benefit at all until the entire project has been completed.

MR MBANA PETER THABETHE: Chair I - I was of the understanding earlier on that it was very key for me to - to listen to advice and I did take the advice and - because I had an understanding that the - the first agreement as - as it was written to me by the - the State Law Advisors. It would not be the correct one. I thought it was the correct one.

That was my understanding that you bring in the beneficiaries
10 from the beginning but the second one did not bring them on board. In
- in during the construction phase. The intention was that once we
have the - the project then we would be able to say now it is complete.
This is your project. It is operational and we then do also the capacity
building and training in anticipation of them taking over the project -
the eventual - that was my understanding which I did not disagree with.

It was still fine with me. It - it did not matter at which stage
do we bring them in as long as we know that this project belongs to
them. Whether we start with them or we give it to them when it has
been completed. It was still fine with me.

20 **ADV LEAH GCABASHE SC:** My question was simply what you did to
interrogate the advice that you were given because you are the person
who went to India. You understood the Indian model. The Paras model
I should really call it and you knew that that was ideal. This is a
decision you take. That was ideal for South Africa.

So I hear you on the illegalities. I am simply asking how you

interrogated the advice that said wait for three years before the beneficiaries have any benefit at all.

MR MBANA PETER THABETHE: I - I under - I understood it Chair because we did interrogate - we did exchange. We had meetings with the State Law Advisors and we spoke about it and I accepted the advice that if - if you - if you give it to the beneficiaries in the beginning you - at - at stages you may not even get to the end of the project because they may even decide to dispose the project because it now theirs.

So they said make sure that the project becomes operational
10 and then you then give it to them once - whilst it is already running. So I accepted that advice and - and we - we - that is why we signed the second agreement.

ADV LEAH GCABASHE SC: You see the reason I ask these questions Mr Thabethe is because when you made the presentation to Exco you presented a model that said beneficiaries would be involved. They would get five cows each. There would be milking centres. So from as I understood that memorandum and we can go to it your idea was that the beneficiaries would one way or the other be involved from inception.

20 **MR MBANA PETER THABETHE:** Chair, we - we did discuss that. I think it was on Thursday. That the issue of the milking centres and the cows was going follow after we have put these projects into operation. We - we did discuss that. So that part we could still do with this agreement. It - there was nothing that was stopping us to say hand over the project.

It becomes operational and then we move to the farms - of the farms where we allocate them the cattle. We assist them with their own farms now. So that they are able to supply their milk. So that would still be applicable in this agreement.

ADV LEAH GCABASHE SC: I would have thought so too. Especially as you explain it now that you would have people who were offsite not at Vrede Dairy Farm. This is what you are explaining.

MR MBANA PETER THABETHE: That - that is correct Chair.

ADV LEAH GCABASHE SC: Who would have these cows and then
10 bring their cows in either to the dairy - Vrede - or you might have set up other milking centres closer to where they lived.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: Now Mr Thabethe what stopped you from implementing that idea and let us take Quaqua as a quick example because you have told us they already had these farms where they - dairy farms - where they had farmers. What stopped you from implementing that idea and at least saying to beneficiaries this thing is yours?

MR MBANA PETER THABETHE: Chair that was our intention.

20 **ADV LEAH GCABASHE SC:** Huh-uh.

MR MBANA PETER THABETHE: That is - that is what we wanted to eventually achieve. Unfortunately we could not get to that level because you - you will remember Chair in the first year of implementation that is where we had problems. So we could not get there but that was what we intended to do.

ADV LEAH GCABASHE SC: Because you see what we have ended up with now is a situation where to date the beneficiaries have not been involved in that project and I know that is not what you had intended.

MR MBANA PETER THABETHE: That is - that is correct Chair.

ADV LEAH GCABASHE SC: Can I ask you this question? I have understood that legal resources are in with the State Law Advisors in the Premier's Office and I have understood that those are the people you have been talking to. Is my understanding correct?

MR MBANA PETER THABETHE: That is correct Chair.

10 **ADV LEAH GCABASHE SC:** Now normally where you want to get to refine an idea you would go to the State Attorney by way of example and get a second opinion.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: Just to see if there was another way of meeting your objectives but staying within the framework of the law which is what the lawyers were trying to help you with. Did you try doing that?

MR MBANA PETER THABETHE: Normally Chair it will be the - the State Law Advisors that refers you to the State Attorneys. You do not
20 necessarily go there on your own. They - you go to them and then they refer you to the State Law Attorneys.

ADV LEAH GCABASHE SC: But let us move on because what I am understanding you to say is you simply took that advice and implemented the project in the manner in which you had been advised. That is what you are saying?

MR MBANA PETER THABETHE: That is - that is correct Chair.

ADV LEAH GCABASHE SC: Can we go to the agreement itself? I am on page 7 of that agreement.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: And I am in Clause 2. Clause 2.1 is self-explanatory. I just want to point out to you Clause 2 point ...

CHAIRPERSON: I am sorry. I am sorry. You said you at page 7.

ADV LEAH GCABASHE SC: Page 7 Chair.

CHAIRPERSON: When you said that I was at page 6.

10 **ADV LEAH GCABASHE SC:** Oh. Page ...

CHAIRPERSON: And I have got Clause 6. Now you say page 7 but you talk about Clause 2.

ADV LEAH GCABASHE SC: Page 6 is the cover page of the agreement Chairman. We are looking at the agreement of July.

CHAIRPERSON: The one I have page 6 is not a cover page. Let us go back to making sure that we are on - we have the same document.

ADV LEAH GCABASHE SC: It is ...

CHAIRPERSON: The document I have starts at ...

ADV LEAH GCABASHE SC: Reference Bundle A Chairman. Is that A?

20 **CHAIRPERSON:** *Ja*. It is A.

ADV LEAH GCABASHE SC: Yes Chairman.

CHAIRPERSON: And - okay. Now I understand the - the confusion and maybe I am responsible for the confusion. The page 6 that I was talking about where I was - on which I was here is a page 6 of the agreement ...

ADV LEAH GCABASHE SC: Oh.

CHAIRPERSON: But you meant - you may have said page 7 of the agreement but you meant page 7 of the - paginated page 7 of the whole bundle.

ADV LEAH GCABASHE SC: Correct, correct Chairman.

CHAIRPERSON: Which is page 2 of the agreement?

ADV LEAH GCABASHE SC: Correct Chairman.

CHAIRPERSON: Okay, alright. Are you there also Mr Thabethe?

MR MBANA PETER THABETHE: Yes I am there. Thank you Chair.

10 **CHAIRPERSON:** Okay.

ADV LEAH GCABASHE SC: So we are on paginated page 7 top right hand corner and I was imply pointing out that Clause 2.2 it has been included in this agreement and you know we had the debate last week about whether this particular Memorandum of Understanding has any significance at all to what you were trying to do.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: I really just point it out to you. Then we go to Clause 2.3 and you say:

20 “The department met with Paras Dairy the largest
private milk producer in India.”

 Again we covered this briefly last week. I shared David Maree that he did not believe that Paras was the largest private milk producer in India. You continued to disagree.

MR MBANA PETER THABETHE: I - I disagree Chair. Paras is not the largest milk producer but is the largest private. So there is a difference

between the two. It is the largest private milk producer in India.

ADV LEAH GCABASHE SC: Yes I see that. That is what is written here as well. The largest private milk producer in India.

MR MBANA PETER THABETHE: Yes. That is correct Chair. I - I do not agree with - with - if he says it is not the largest milk producer in India I agree with him but this statement is still correct to say it is the largest private milk producer.

ADV LEAH GCABASHE SC: And the reason you went to a private milk producer was because you were looking for a strategic partner who had
10 finance?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: 2.4:

“Estina is the counterpart of Paras Dairy in South Africa and is therefore the sole provider who can execute the project.”

Now we have debated this briefly last week ...

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: And you - I just want to confirm that you accept that Estina when it was set up in 2008 was a management/IT
20 company. It had nothing to do with agriculture or dairy. Do you accept that or do we have to go back to the documentation I pointed you to last week?

MR MBANA PETER THABETHE: Ja. Chair, I - I did not argue the research that had been done of what Estina was before.

ADV LEAH GCABASHE SC: The point is in July when this agreement

was signed Estina was not - its main business was not in the field of agriculture?

MR MBANA PETER THABETHE: Yes Chair. We - we have discussed it and ...

CHAIRPERSON: Yes you did not dispute it?

MR MBANA PETER THABETHE: Ja. I did not dispute.

CHAIRPERSON: You - you said that you had not seen the need to check about that?

MR MBANA PETER THABETHE: Yes.

10 **CHAIRPERSON:** Ja, okay.

MR MBANA PETER THABETHE: Ja, because I had said my - my main concern was - was ...

CHAIRPERSON: Paras?

MR MBANA PETER THABETHE: Paras, yes Chair.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: Then we go across the page to page 8 and we are talking about Estina being willing and able to execute the project. Can I ask you this question in relation that? Who became the Project Manager at Vrede Dairy Project?

20 **MR MBANA PETER THABETHE:** Chair the - the Project Manager was a - a gentleman called Prasad.

ADV LEAH GCABASHE SC: Yes. Now where you able as the department to check on whether he knew anything at all about dairy farming?

MR MBANA PETER THABETHE: Chair we - we did not take - check in

- the individuals that were - were brought on site. The - the - what I had asked and what I was informed that the - the gentleman that was brought in there did work for the Department of Agriculture before in India.

So my understanding was then if he had worked for the Department of Agriculture he would then have an understanding of the dairy projects. That - that is what I had heard but I did not check each individual which was brought in there on - on details.

ADV LEAH GCABASHE SC: No. This was a significant appointment
10 because this is the person who would be running the dairy farm. This is why I specifically go to the person who was in charge of all operations. Your - you are confirming that you did not check on whether he was qualified to run a dairy farm?

MR MBANA PETER THABETHE: No we did not check Chair.

ADV LEAH GCABASHE SC: He obviously was not appointed by yourselves?

MR MBANA PETER THABETHE: No Chair.

ADV LEAH GCABASHE SC: He was appointed by Estina?

MR MBANA PETER THABETHE: He - he was brought to us by Estina
20 Chair.

ADV LEAH GCABASHE SC: He was not an employee of Paras?

MR MBANA PETER THABETHE: I am not aware Chair. I - I do not know. All I knew that the guy came from India and my understanding is that if he comes from India he should have been then recommended by Paras to come here and - and assist with the project.

ADV LEAH GCABASHE SC: Let us - let us continue. Mr Basson is a businessman in Vrede. He did quite a bit of work for the dairy farm. He was here to present his evidence. In his evidence he said and I am just paraphrasing his evidence. He said that he was engaged a number of times to do various things because he has equipment - earthmoving equipment etcetera.

First thing he says is that he assisted Mr Prasad in resolving the feed that the cattle needed - the cows needed because they were dying and they were dying essentially from malnutrition. So in his view
10 who - he has also been a farmer - in his view Mr Prasad had no clue one, about how to run a - a dairy farm. Two, what type of feed needed to be brought in for cattle.

Three, what to do with cattle in terms of moving them around from one pasture to the other and four, when those cattle did die - which I am sure you know about he was brought in to dig trenches to bury them. Do you know anything at all about these incidences?

MR MBANA PETER THABETHE: Ja. Thank - thank you Chair. I - I may not necessarily agree with that he did not know because I had interacted with him a number of times when - when I had visited the
20 farms. He is the one that took me through the design and the plans what to do and where. So I - I got an understanding that he had an idea.

The only problem that I could pick was - was his English. It was very difficult to understand him when - when he speaks English. A - a lot of people may not have wanted to interact with him because

there would be very little you pick and what you not pick but he understood the - the activities. I - I at times to ask him many times to explain what he was actually saying.

So the difficulty was understanding his English but I understood him when he took me through the plans and if - if I understand and I understood him it means he had an idea about dairy. Otherwise I would have picked him up very easy to say but you have no idea.

ADV LEAH GCABASHE SC: Mr Thabethe are you saying that at no
10 stage did you go to the farm and find malnutrition or - malnourished is the right word - malnourished cattle?

MR MBANA PETER THABETHE: No, no, no. I am not saying so Chair. I am referring to his knowledge.

ADV LEAH GCABASHE SC: I am going beyond that.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: Which is why I asked the question.

MR MBANA PETER THABETHE: Ja. The ...

CHAIRPERSON: No, no Ms Gcabashe. I think you - you had asked one question. He answered it. You follow up question created the
20 impression that he had not answered the - the earlier question which he had. So I think the second question is independent whether or not he had visited.

ADV LEAH GCABASHE SC: Absolutely Chairman.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: I have moved on from the other

(intervenes).

CHAIRPERSON: Yes. No but what I am saying is the way you moved on may have created the impression that he - you thought he had not adequately answered the earlier question.

ADV LEAH GCABASHE SC: Can I repeat ...?

CHAIRPERSON: So - so maybe just repeat the - the last question.

ADV LEAH GCABASHE SC: This question?

CHAIRPERSON: *Ja.*

ADV LEAH GCABASHE SC: So what I would like to know because you
10 mentioned visiting the farm and speaking with Mr Prasad. So my question is on the occasions that you visited the farm did you at any stage come across malnourished dairy cows?

MR MBANA PETER THABETHE: Chair I want to - to put the difference between the two because I - I do not want it to look like ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: The cows were dying because he did not have knowledge.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: That is what I am - I am disputing.

20 **CHAIRPERSON:** Yes.

MR MBANA PETER THABETHE: I am not disputing that the cows did die.

CHAIRPERSON: Yes, yes.

MR MBANA PETER THABETHE: They - they did die and the - the - there were reasons for that.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: It was not because he did not have knowledge.

CHAIRPERSON: Yes. Maybe you can immediately go to the reasons as you know them for the death of the - of the cattle.

MR MBANA PETER THABETHE: Yes. Chair the - the difficulty that we - we had it - it was - it was mainly issues of finance. The - the problems that we had when - when the cattle were - were delivered on the farm. It is - it was the time when the media challenges started with
10 the project and we were not able to advance money to the projects anymore due to a number of reasons.

National Department withdrew and we had to pose putting money into the project. Now we had challenges because we were not able to give money to the project and the cattle were standing there. There was no food. He had then eventually because we could realise that all these cattle are going to die. We had even to over and above that to commit to say to a business person please assist and advance us and assist in providing feed for these cattle.

So that when the money becomes available we will then be
20 able to pay you. Now that was the problem. That we were not able to provide the feed because we had - we were having this big problem now of making money available on the ground. Now that has been the problem. It has been in the media because there were, there was no food for them.

ADV LEAH GCABASHE SC: Now this is very interesting what you say.

Who gave you the report that you have just given? That there was no food because there was no money to buy cattle feed for the cattle. Where did you get that from?

MR MBANA PETER THABETHE: No Chair that - that was - remember this came as a media inquiry to us. The media inquiry came to us and we provided the responses to the media.

ADV LEAH GCABASHE SC: No, no.

CHAIRPERSON: No, the answer is the information that you have just given as to what the reason for the problem was where did you get that
10 information from? That is the question.

MR MBANA PETER THABETHE: Chair that - that was the - the response that we - maybe let - let me come in again because they had been requesting us to make money available.

CHAIRPERSON: That is now ...

MR MBANA PETER THABETHE: Estina.

CHAIRPERSON: Mr Prasad?

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: They have been requesting us to
20 make money available and we were not making the money available ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Because we were having a challenge
...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: On our side.

CHAIRPERSON: So the shortage of funds was something you knew as head of department?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: You see I am trying to define the role of the department where the implementing agent has what you have called a turnkey or somebody else called a turnkey project.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: So I would like to think that the key
10 liaison person would be the extension officer. You will correct me if I am wrong.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: How often would the ex - and the extension officer is an agriculturist?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: The extension officer would understand what is going on when he sees malnourished cattle?

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: How often would the extension officer visit
20 the farm?

MR MBANA PETER THABETHE: Ja.

ADV LEAH GCABASHE SC: Just estimate. It really is ...

MR MBANA PETER THABETHE: Ja. Chair the - the problem is not that we did not see. We did see because he would have also come and told us the same thing. These cattle are malnourished. That is why

they are dying. So the fact that there was not enough food was a fact. So it would not help the extension officer coming in there and telling us these cattle do not food when we know they do not have food.

ADV LEAH GCABASHE SC: I am 90 percent sure that the evidence of Mr Basson was not that there was no money and I will qualify that because I must but the first issue was that Mr Prasad could not even recognise that the problem he had here was a problem of getting feed but I very quickly also want to say that indeed he spent his own money to buy the feed and then he was reimbursed in due course once he
10 submitted his - his invoice.

So I do not want to say to you it is not true that there was no money, Basson said he used his own money, and presented an invoice, he got his money back, so I have no problem there. Where I do have a little bit of an issue is as I understood his evidence Mr Prasad had no clue as to what he was doing, that was the essence of his evidence, Basson's evidence.

MR MBANA PETER THABETHE: Ja, thanks Chair. It would not have been Prasad alone it would have been also the Department, because if it was the issue of not knowing whether these animals are malnourished
20 or not we should have also seen it, if that was the issue. Hence I am saying that was not the issue where everybody saw and knew that we had a different challenge.

ADV LEAH GCABASHE SC: And this is why I went straight to the extension officer because it has been explained to us that those are your foot soldiers in a sense.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: Who go to all your projects to make sure that what they are doing at the projects, at project level is aligned to your thinking.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: That is exactly why I went to talk about extension officers. But you are saying that even if the extension officer came back to you with a report that there are malnourished cattle you would not be able to do anything because the money should come from
10 Estina, not from the Department?

MR MBANA PETER THABETHE: The problem Chair that was the time when the media challenges started with the project, and we were at that stage had to put everything on hold, including disbursing money. Now that's where the problem comes in, not that we did not know, we were either, maybe what we could have done was to go and sell the cattle, but at that time everything was put on hold to say wait we have to do an investigation on this, and you cannot take a unilateral decision when already you have been told there is an investigation, those are the challenges that I am having to say how would you then deal with it
20 Chair.

ADV LEAH GCABASHE SC: In fact my colleague has just pulled out the transcript of Mr Basson's evidence and I would just like to read to you what he said, of course through an interpreter, and this is on page 31 of 150 of the transcript Chairman, and the date is the 26th of July 2019. The Chairperson asked this question:

“Did you ever ask Mr Prasad or anybody from the Vrede farm why it was that the cattle were not given cattle feed if there wasn’t enough grass and why they had to die?”

That’s the question. The answer of Mr Basson is:

“I asked him why do you not feed the cattle and he said, but there’s food, there’s grass look they are eating.”

The Chairperson then says:

“And what did you say in response to this answer?”

Mr Basson says:

10 “I explained to him that, that grass you can give to a sheep but not to cattle, they cannot eat that, then they try to get something in but they don’t so I informed him that he has to make a plan to get feed immediately, not tomorrow, immediately.”

Chairperson then says:

“And did he take your advice this time?”

Mr Basson:

 “Correct Chairperson he took the advice but he asked me if I cannot buy feed for them because they do not have the
20 finances, I also had some on my farm, so they reimbursed me eventually.”

etcetera, etcetera. At page 27 of the same transcript Mr Basson describes the cattle in this manner:

“When I arrived on the farm the ribs of the cattle was already showing that is how you see cattle which is very skinny or

underfed.”

Question from the evidence leader:

“And this would have been end of 2012/early 2013?”

And the answer was yes, correct. And he goes on to say:

“He asked me what he can do. Why is this happening; because dead cattle was lying around? Dead calves drifting in the stream or the water. That is why I said that this is an orgy this. You can see the cattle lying around there.”

And then just the Chairperson then asked at page 28, I really am
10 skipping some of it, I am just illustrating the point, skipping some of the evidence. The Chairperson then asks:

“That is how short the grass was...”

Because he had indicated about 10 to 15cm, so the Chair asks that is how short the grass was. Mr Basson correct Chairperson and cattle cannot eat that. Sheep can still eat it shorter but not cattle. And later ...[intervenes]

CHAIRPERSON: Sorry Ms Gcabashe, if you read so much by the time you give him a chance to say anything he will have forgotten a lot of things that you have read, it's much better if you pick point by point
20 and put to him so that he can deal with it.

ADV LEAH GCABASHE SC: Chairman thank you. I really was just – Mr Thabethe just illustrating the point, just to give you a sense of the evidence. I have heard your view, I don't know if you want to comment on what Mr Basson said and I was really just giving you highlights, if you want me to read anything to you again I will certainly do so as the

Chair has instructed. But the purpose was just to give you the actual words of Mr Basson as he described what he found and how he reacted. You are satisfied that that is what he said.

MR MBANA PETER THABETHE: Chair I understand that was the interaction between him and Prasad, that what happened there, so I cannot agree or not agree because that's what he says.

CHAIRPERSON: Yes, is it consistent with your understanding of what the position was on the farm, what the situation was?

MR MBANA PETER THABETHE: Ja, thanks Chair. My understanding
10 is that it is not only Prasad who – or Mr Basson who saw this cattle that were not properly fed, because any ...[indistinct] feed was bought before, so he knew about the feeding and everything, it would not then that after he had done it before all of a sudden he is no longer doing it, because he did feed the cattle before and we ran out of the feed and it – my argument is that it cannot be that then after the feed was finished he does not know that he must feed the cattle, he still knew that the cattle must be fed because they were fed before.

CHAIRPERSON: I got the impression from the Mr Basson, and it might have – this might have been an answer to one of the questions I put to
20 him, I got the impression that he thought Mr Prasad did not even know where to get the feed for the cattle, where to get it from.

MR MBANA PETER THABETHE: Chair he had bought feed before.

CHAIRPERSON: He had bought, that you know.

MR MBANA PETER THABETHE: Yes, he knows because he had bought it before.

CHAIRPERSON: Yes, okay.

MR MBANA PETER THABETHE: When the cattle arrived there were fed and the feed was bought by him.

CHAIRPERSON: Yes okay, so you say it could not be that he did not know where to buy it?

MR MBANA PETER THABETHE: Yes Chair.

CHAIRPERSON: Ja, okay but the problem about funds.

10 **ADV LEAH GCABASHE SC:** Yes thank you Chair. I am at page 11 of the agreement of that July agreement and just briefly hoping to ...[intervenes]

CHAIRPERSON: Well I am happy you are saying you are back at the agreement, I was concerned whether you had left the agreement, because it seemed that you were on the implementation of the agreement whereas I thought at some stage you were still just interrogating the provisions of the agreement, or certain provisions of the agreement.

ADV LEAH GCABASHE SC: Yes Chairman I am trying to do a bit of both, in trying to look at what was agreed here and how it was then implemented at a practical level.

20 **CHAIRPERSON:** Yes.

ADV LEAH GCABASHE SC: Because it is still part of risk mitigation by the head of department.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: If he knew certain things.

CHAIRPERSON: Yes.

ADV LEAH GCABASHE SC: Then what, that is the broad theme that we are working through.

CHAIRPERSON: Yes, well I have got some questions I want to ask very much on the process of the agreement. Mr Thabethe let us revisit a subject that we discussed on Friday, in relation to the agreement. You did confirm that – or you did say that you did not do certain homework on Estina which you said you accept you should have done, or should have been done, you remember that part.

MR MBANA PETER THABETHE: That is correct Chair.

10 **CHAIRPERSON:** Ja, and I think you did say earlier than that also that you had come to appreciate that if you were to go ahead with this project you would need a local entity that would be involved because Paras is a foreign entity, is that right?

MR MBANA PETER THABETHE: That's correct Chair.

CHAIRPERSON: And you ended up with an arrangement in terms of which as you understood the position Paras and Estina had some arrangement between the two of them and Estina was going to be there to play a certain role but you understood Estina basically to be Paras agent, is that right?

20 **MR MBANA PETER THABETHE:** That is correct Chair.

CHAIRPERSON: Yes, now we talked also I think it was on Friday about in terms of risk management the problem that would arise if something went wrong with the project and Estina was responsible for that and the Department wanted to sue Estina if Estina really did not have anything when we're talking about that homework, you remember that?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Ja, now when I look at this agreement I see the agreement is between the Department and Estina and therefore Paras is not a party to the agreement in as a separate entity, is that right?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Yes now some of these things that might be things that are legal and therefore to the extent that you relied on the State Law Advisor to advise you one can understand those things, but one sees that, one, Paras is not a party to this, and two I don't see
10 anything that says Estina is concluding this agreement on behalf of or as an agent of Paras. Is my understanding correct, does it coincide with your understanding?

It seems that Estina is entering into this agreement on its own, there is mention in the I think preamble there is mention of Paras blah-blah-blah but it seems that for all intents and purposes when one looks at this agreement it is simply an agreement between Estina in its own right and the department. Are you able to say anything on that?

MR MBANA PETER THABETHE: Ja, thanks Chair, yes indeed it is like that. If Chair you were to compare the first which covered those
20 issues, in most instances where Estina appeared Paras also appeared, but on the second one in this new draft it was solely specific to Estina and as I was made to understand is that we can only put this obligation to a South African registered company, keeping in mind that there is an agreement between the two and we will then mention it in the preamble that this is what we understood Estina to be signing this agreement and

having that relationship existing between the two of them, hence it is like this.

CHAIRPERSON: But as at the time of the signing of this agreement were you as the Department in possession of any agreement signed between Estina and Paras?

MR MBANA PETER THABETHE: Chair that what I had requested, the first document that was given was a letter and then thereafter then this agreement came through, because we insisted in the agreement, which they confirmed in writing and late then they provided us with the
10 agreement.

CHAIRPERSON: But you were not in possession of any agreement between Estina and Paras as at the time of signing this agreement?

MR MBANA PETER THABETHE: I am not sure whether by that time we had already given it to the State Law Advisors, I cannot remember.

CHAIRPERSON: An agreement between Paras and Estina.

MR MBANA PETER THABETHE: And Estina yes.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: I can't just recall whether it ...[intervenes]

20 **CHAIRPERSON:** At some stage you had it but you don't know whether as at this time you had it.

MR MBANA PETER THABETHE: It was given, ja, I think so.

CHAIRPERSON: Part of my concern is that it seems on this agreement that if Estina did not play its part, even after you might have given it millions of taxpayers' money, because there was no homework

done to see whether if they disappeared, the directors disappeared with the millions coming from the Department that you could have recourse to recover those monies. You did not know that you are dealing with a company that had assets that you could you know go to court and attach and so on, is that right?

MR MBANA PETER THABETHE: Chair I do not know if I must say this Chair.

CHAIRPERSON: You must say what you believe explains your understanding, your point of view as you understood it, this is an
10 opportunity for you to put your side of the story, because part of what this forces us to do is to look at how you as the head of the department handled this, bearing in mind you had an obligation to the South African taxpayer.

MR MBANA PETER THABETHE: Yes Chair, I will respond to the Chair's question.

CHAIRPERSON: Yes, okay.

MR MBANA PETER THABETHE: Chair we have just read a letter before we went on tea.

CHAIRPERSON: Yes.

20 **MR MBANA PETER THABETHE:** Issues that we are saying the agreement that we had had before was illegal. Now illegal it is a very strong term, which I had to listen to, but at the back of my mind I still believe the first agreement was taking away the illegal part of it.

CHAIRPERSON: You believe it protected the interest of the Department.

MR MBANA PETER THABETHE: I believe it – because it protected the interest of the beneficiaries, because we had intended these projects to belong to the beneficiaries, not the Department. So they would from the start be responsible for the project. That is my belief, but the fact that it was illegal then I withdraw that position because it was deemed to be seen to be illegal, hence this one was brought on board.

But this one like Chairperson is saying it did not put Paras or let me rephrase and say it was not binding to Paras ...[intervenes]

CHAIRPERSON: On Paras.

10 **MR MBANA PETER THABETHE:** On Paras, it was just saying Paras ...[intervenes]

CHAIRPERSON: Has got some role outside of the agreement.

MR MBANA PETER THABETHE: Outside of the agreement to play, hence then but Chair if you are in my position you then they normally say there are three people you must listen to, it is your lawyer, it is your doctor and it is your accountant, because ...[intervenes]

CHAIRPERSON: Oh I thought you would say your pastor as well.

MR MBANA PETER THABETHE: Yes Chair.

CHAIRPERSON: Okay, yes.

20 **MR MBANA PETER THABETHE:** So you do – not that we did not ask questions, we did ask questions like I had explained, they said no, no, no this will be done and then you are going to hand over the projects to the farmers and those are the people who had intended to, but as Chair explains it now I see what implication that would mean. I take it that then they would have a recourse in that regard, if any issue in that

regard would come up.

CHAIRPERSON: Ja, no it is a worrying factor because we're talking about a lot of money taxpayer's money that was envisaged to be put into this project, so but also I wanted to go to Clause 2.5 which is on paginated page 8, it says:

“Estina is willing and able to execute the project as defined in Clause 3.1 hereunder, and has the necessary experience and expertise in connection therewith.”

Of course that is not factually correct, it is Paras who had experience
10 and expertise isn't it, not Estina?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: So this was not correct. Yes Ms Gcabashe it would help me if to the extent that you may have questions on certain provisions if we took care of that part and then go into implementation, but of course if there are not then that is fine.

ADV LEAH GCABASHE SC: Thank you Chairman. I just want clarity on the one aspect you were discussing with the Chairman now, we are agreed that the only document that Estina and Paras signed is a memorandum of understanding?

20 **MR MBANA PETER THABETHE:** That is correct Chair.

ADV LEAH GCABASHE SC: Okay that is fine, there is no other document you know of?

MR MBANA PETER THABETHE: That was the only document that we had that the two had signed.

ADV LEAH GCABASHE SC: And as we said last week it was valid for

one year?

MR MBANA PETER THABETHE: That's correct Chair.

ADV LEAH GCABASHE SC: Thank you. Let's go to our page 11 as I'd indicated earlier. The 6.1 deals with the obligations that were to be performed by Estina and they are set out in Annexure A.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: And we have agreed that these are aligned to the same factors we have been debating since last week, you are comfortable with that?

10 **MR MBANA PETER THABETHE:** That is correct Chair.

ADV LEAH GCABASHE SC: Second point is that capital injection of 228million that Estina was going to provide can I ask this question in relation to that, was there a reason for Estina to put up this capital in phase two as opposed to phase one, you know just to be able to say we are a *bona fide* operator, here is our money we are putting up the processing plant now as we start. Was there a reason you shifted it to phase two?

MR MBANA PETER THABETHE: Yes Chair the phase one of the project was the daily project which was to supply the minimum
20 requirement for the processing plant, that was the obligation that the farmers had to put in place, to make sure that there is milk, and in doing that responsibility the department made money available for milk to be made available. Then once the minimum requirement of the milk was made available through the project then Estina then would move to establishing the processing plant, so that was the phase two, so the

Department was to do phase one, Estina will do phase two.

ADV LEAH GCABASHE SC: Did you know how long it would take to put up the processing plant?

MR MBANA PETER THABETHE: Chair they had given us what would you call that, the timelines, already they had given that to us, because it was a requirement in as part of the requirement of the first money that was made available, it was also included that they must provide that to us.

ADV LEAH GCABASHE SC: You see I asked these questions because
10 if you go to reference bundle D, D for Donald, and go to page 1453, page 1453, Bundle D for Donald.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: You will find that these are Estina bank account statements.

MR MBANA PETER THABETHE: That's correct Chair.

ADV LEAH GCABASHE SC: So you have across the top you can identify that this is the director is in a Pty Limited, if you look at the balance brought forward on the 6th, I beg your pardon, on the 18th of June, have you found that, the balance in this account was R320.98,
20 now this is on the 18th of June and this is 2012, because these statements are drawn from the 18th of June 2012 to the 17th of July 2012, you've seen that entry?

MR MBANA PETER THABETHE: That's correct.

ADV LEAH GCABASHE SC: Can I move to the next one? Then there was a management fee and that balance dropped to R285.98, do you

see that entry.

MR MBANA PETER THABETHE: Yes, it's correct.

ADV LEAH GCABASHE SC: The next entry is a service fee and the balance on the 30th of June is at R240.98. Are you there?

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: Then the last one I want to point to for current purposes is on the 4th July. Now you signed this agreement on the 5th July. On the 4th July the balance in this account was R16.98.

MR MBANA PETER THABETHE: That is correct Chair.

- 10 **ADV LEAH GCABASHE SC:** The reason I point this out to you is back again to that risk analysis that we have been working through. You were preparing to give Estina a large amount of money. You were giving them certain responsibilities. They said they had R228 million that they could put into the project but had you looked at their bank accounts you might have had a different discussion with them. You had no reason to call for their bank accounts as you did your due diligence – as you did your due diligence exercise.

- MR MBANA PETER THABETHE:** Ja thanks Chair. We – we had a standard arrangement as a department mostly with implementing agents
20 where we had preferred that if you – that is what we advised them. If you – if you engage with us do not mingle your other business with our business. So we had advised them. I do not know if they did in that case we only advised them that we will need you to have a separate bank account for the activities of the projects that we are dealing with. Now I do not know if in this case they did but that is what we advised

them because we – if required we may want you to provide us with your statements and if they are other businesses in your statement that you may not want us to see we will then be able to see. We do not know if this is what they did in this Chair but what – the question that I am being asked if we did our due diligence on the account if there was money, no we did not.

ADV LEAH GCABASHE SC: Can I – we have had a long discussion about this so I think maybe I should move onto the next point which is 6.

10 **CHAIRPERSON:** Well if you are going to move on let us – let me say this. You see Mr Thabethe up to a certain point with regard to legal matters you may rely on the – you may be able to say I – I had to listen to advice given by the state law advisors. So I am saying up to a certain point because in the end you as the accounting officer of the Department as the Head of the Department you had an obligation to satisfy yourself about certain things before putting your signature on things. And that is why you needed to interrogate what you were being told even the legal advice that you were being given. Even not being a lawyer you say to people explain it to me on the basis that you

20 understand I am not a lawyer I must follow what you are saying. I must understand the rationale. And then if you are not happy you say no, no, no, I am not happy maybe I should go and look for a second opinion. Get somebody else because I am – it does not make sense to me what you are telling me. I am going to be exposing the Department to a serious risk if I go along with your advice. So you yourself had an

obligation to exercise your own judgment. Those other people were simply advising you. They were not taking over your job. You see. So the question that was being put to you is it is linked to what I raised with you earlier on. Is, can you see the risk that you put the Department in by not doing the risk assessment, the homework that we talked about. You are in terms of this agreement expecting Estina to pay more than R200 million into the project but you do not even know if they have got a cent in their account. And what is being said is look – look at the bank statements as at that time. One was how much Ms

10 Gcabashe?

ADV LEAH GCABASHE SC: The – the day before the R30 million went in Chairman there was R16.00.

CHAIRPERSON: R16.00?

ADV LEAH GCABASHE SC: Rand in the account yes.

CHAIRPERSON: How can you expect that entity to give you R228 million where will they get it from? You are the Head of the Department. You have certain responsibilities. You are the Accounting Officer. You must look after the tax payers' money. You must look after the budget of the Department. How do you do that?

20 **MR MBANA PETER THABETHE:** Ja Chair I was well aware that the investment into the project was not coming from Estina. It was coming from Paras because that had been the agreement. And the two projects were split. Although the second phase of the project dependent on the first phase of the project even if Estina/Paras would have said we do not feel like doing the processing plant anymore the dairy on its own

could run. The only thing that you would not have is a processing plant. Because we did not want to mingle the money because if you take their money into the dairy and our money into the processing plant then we would have mingled the money to even be more difficult. So that is why we had said the Department do the dairy, Estina do the processing plant. So the two are two separate direct commitments. So that if we struggle with the dairy it is us, the Department who struggle. If they struggle with the processing plant it is them who struggle with the processing plant. But each one should be able to operate and only

10 the processing plant will depend on the dairy which is the milk production part. Hence we have been then implementing that. I understand what the Chairperson is saying that this person might not have implemented their part which would not have a direct bearing on the first phase which was milk production. Indirectly it would because we would then have the milk but we have then to be dependent on somebody else to do the processing. That is how we have kept the two and that was also the understanding of the state law advisors when they drafted their agreement to say we will keep these two separate so that we have got challenge. We do not have mingling of money. We

20 know this is the Department money and this is what it will do.

CHAIRPERSON: Well you see it is – this speaks to an earlier question. What type of entity must you deal with for such a big project? You see that – that is where it starts. So what you are telling me relates to what measures you are trying to put in place to try and minimise the risk that is already there because the homework was not done. You

understand that?

MR MBANA PETER THABETHE: That is true Chair.

CHAIRPERSON: Ja I would – at a certain stage you need to sift the type of people, type of entities that you can be involved with for certain projects. Entities must meet certain requirements before you can be involved with them on certain big projects. And that there is a reason for that. You see.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Ja okay thank you.

- 10 **ADV LEAH GCABASHE SC:** Can I add as my colleague has just pointed out to me that in the MOU no provision is made or there is no particular clause or a term that says Paras will do the funding, Estina will simply be doing the supervisory oversight functions. You would agree with that?

MR MBANA PETER THABETHE: Chair I agree. Remember now we are talking of the two agreements.

CHAIRPERSON: Yes.

- MR MBANA PETER THABETHE:** And the refined one is the one that eventually took effect. And that is the agreement that does not bind on
20 Paras. Everything that sits there it is the signature of Estina with the understanding at the back of our mind that it represents Paras.

ADV LEAH GCABASHE SC: Yes the simple point was that there is no document that you have certainly no document we have come across that clearly sets out that Paras will be providing the R228 million and Estina will be doing something very different. The only document that

deals with that is this agreement at 5.2 and it says:

“Estina shall provide a capital injection of R228 million. [South African currency].

MR MBANA PETER THABETHE: Chair there is. There is a number of documents that talk to that. All the presentations that I did to the executive council speak to that and also the – the studies talks to that. They are very specific to say who invest where and how much. So that – that has been clarified.

ADV LEAH GCABASHE SC: Maybe we should look at what you did
10 present to EXCO.

MR MBANA PETER THABETHE: Okay Chair.

ADV LEAH GCABASHE SC: The copy I have though in this file is unsigned so you will tell us what the status of this document is. I think it was simply printed off a computer.

MR MBANA PETER THABETHE: Okay.

ADV LEAH GCABASHE SC: But if you go to page 158 of the Reports File and it will be in Bundle B. Now this is an important document because if you are going to confirm this; this is what served before the EXCO as part of your submission.

20 **MR MBANA PETER THABETHE:** That is correct Chair.

ADV LEAH GCABASHE SC: And the purpose is a request for the allocation of additional funds. I will not go into the detail I am really just skimming through it and what I am doing is trying to find a paragraph here that explains that Paras is the entity that will be bringing the capital injection in and not Estina. In the first paragraph it

is purpose. Second heading simply deals with background. I am really just glossing over what is here. Then under the third heading you have discussion and it is a discussion regarding this being a phased investment by partners in the project based on a total projected invested – investment of R570 million. The phased implementation of the above dairy project is based on an initial grant of R30 million by the Department whereby a total of R114 million is required per year. The Department has shortfall of R84 million per year over the next three years to implement this high level project. This will add up to a total
 10 commitment grant of R340 million over a three year period. And then it deals with the high level outcomes that are expected. Again so far there is nothing that says Paras is going to be providing any of the capital that is required. I have turned the page to page 160 which deals with products, marketing and sales, management, deployment model and again I am looking for an indicator that Paras is putting money on the table. Financial model again if you read that there is nothing about Paras bringing money to the project. Over reaching benefits for the Province and the nation those are set out. Again nothing about Paras bringing money.

20 **ADV LEAH GCABASHE SC:** Chair.

ADV LEAH GCABASHE SC: Yes Sir.

MR MBANA PETER THABETHE: Bullet number 2.

CHAIRPERSON: What page are you now on?

MR MBANA PETER THABETHE: Page.

ADV LEAH GCABASHE SC: On page 160 Chairman. Bullet number 2

please read that into the record Mr Thabethe? Bullet number 2 please read that into the record Mr Thabethe.

CHAIRPERSON: Yes okay I have got it.

MR MBANA PETER THABETHE: Yes Chair the bullet says:

“Estina will provide the required capital injection as well as the tactical knowhow which will be provided by Paras.”

ADV LEAH GCABASHE SC: Please interpret that for us in your understanding of the sentence?

10 **MR MBANA PETER THABETHE**: My understanding is that Estina will make that available but it will be provided ...

CHAIRPERSON: What is that?

MR MBANA PETER THABETHE: The capital injection, the technical knowhow has to be provided by Estina which will be provided by Paras to them.

ADV LEAH GCABASHE SC: What exactly is Paras providing? Please tell us what you understand?

MR MBANA PETER THABETHE: The capital injection which is the money plus the expertise. That is what the sentence is saying.

20 **ADV LEAH GCABASHE SC**: No Mr

MR MBANA PETER THABETHE: Then – if we then go to Chair if we then go to page 162. Then you have capital injection which was referred to into that bullet/equipment etcetera which says Estina/Paras and then the budget on the right hand side.

ADV LEAH GCABASHE SC: What – I concede that is what is written

here first. What document do you have where Estina and Paras have agreed to what is written here? This is a document that you the Department prepared. What document informed this?

MR MBANA PETER THABETHE: Chair I understood that there was a memorandum of understanding between the two which relates to the implementation of this project.

CHAIRPERSON: Well I am sorry Ms Gcabashe can we go back to that clause? Do not forget the question you had put but I am still in that clause.

10 **ADV LEAH GCABASHE SC:** In the – in the agreement Chairman?

CHAIRPERSON: The one bullet – second bullet point. It says Mr Thabethe and I know that at page 162 there may be something to be said about it but here at 160 it says “Estina will provide the required capital injection.” Okay

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: And then it says: “As well as the technical knowhow which will be provided by Paras.”

1. The way it is worded it could have been worded in a much more clearer way but I seem to understand it to say:

20 I mean if you did not have – if it stopped at knowhow and it did not say which will be provided by Paras it will be clear that both the capital injection and the technical knowhow would be provided by Estina. If the sentence stopped after knowhow. But what comes after knowhow which is – which will be provided by Paras seems to add something and the one meaning maybe in effect that Estina will provide the capital

injection and when it comes to the technical knowhow Paras will provide that. But I accept that it is not worded in the most – in the clearest ways but what you are saying is your understanding of it is that both will be provided by Paras and Estina.

MR MBANA PETER THABETHE: Paras. That is correct Chair.

CHAIRPERSON: The capital injection and the technical knowhow.

MR MBANA PETER THABETHE: Ja.

CHAIRPERSON: That is how you understand it?

MR MBANA PETER THABETHE: Ja. That it will be provided by Paras
10 through Estina.

CHAIRPERSON: Ja.

MR MBANA PETER THABETHE: But it might not have been worded that way Chair.

CHAIRPERSON: Yes but that was your understanding?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Hm okay.

ADV LEAH GCABASHE SC: Thank you Chairman. Can I then please ask you to pick up Reference Bundle A and go to page 170. Reference Bundle A.

20 **CHAIRPERSON**: And maybe before...

ADV LEAH GCABASHE SC: It is the same issue Chairman.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: It is the same issue.

CHAIRPERSON: Oh it is the same issue okay alright.

ADV LEAH GCABASHE SC: Yes Chairman.

CHAIRPERSON: Yes continue.

ADV LEAH GCABASHE SC: So you looking for page 170 which is the project proposal that was submitted to you by Estina and Paras.

MR MBANA PETER THABETHE: I am there Chair.

ADV LEAH GCABASHE SC: Under business model the following is written:

10 “In line with the agri BEE business norms stipulated
by government Estina proposes that a new special
purpose vehicle SPV be created in which Estina will
hold 49% share – a 49% share while the remaining
51% shares will be distributed to at least three
selected grant recipients.”

Now this is the important section.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC:

“Estina will provide the required capital injection as well as the technical knowhow, which will be provided by Paras.”

MR MBANA PETER THABETHE: That is correct.

20 **ADV LEAH GCABASHE SC:**

“Estina will endeavour to fund the entire project itself and is requesting the government to commit to an annual grant of R100 million per year for five years to ensure that the project remains sustainable and commercially viable.”

So as I understand this document which is a business plan or which is a project proposal prepared by Estina both Estina and Paras' logos are on this document and it is an annexure to the agreement. It is one of the documents you would have had regard to along with the agreement.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: Estina appears to be undertaking the task of providing the funding reading the second sentence. The first sentence is very similar to the one that is in the presentation to the EXCO. How do you interpret this Mr Thabethe?

- 10 **MR MBANA PETER THABETHE:** Chair if I go and negotiate on behalf of me and my partner I will always take it as my responsibility. That is how I understood it. Because the understanding was that they were also talking on behalf of Paras. That is my understanding that they are the ones who will then be – become the vehicle to make sure that money is there. That was my understanding. It was their responsibility to make sure that the money is there.

CHAIRPERSON: But the problem was that you had no agreement as a department with Paras of any kind. So you had no recourse against Paras and yet they were the ones you believed would provide funds.

- 20 And the agreement you signed with Estina said it was Estina who was going to provide the funds. And Estina had no money.

MR MBANA PETER THABETHE: Chair the Chair will remember when we – when I started to explain that it was our proposal that Paras will – will be a challenge for us to directly enter into this relationship. They should either

1. Register as a company in South Africa or have a representative.

Now our understanding is that they were Paras representative.

CHAIRPERSON: But how would you have recourse to Paras on what we know if something went wrong. Now remember that in asking that question I accept that you are not a lawyer. To some extent you relied of state law advisors but I am – I must also remember that you are the Head of the Department. You need to accept that in the end you have to account therefore you must ask certain questions to say will I have an answer if I am asked this question about this project because it is a
10 project of my department. So I ask the question; how would you have recourse to Paras in this situation if something went wrong?

MR MBANA PETER THABETHE: Ja Chair we would not be required to do any recourse to Paras directly because we had not given them money. The entity that ...

CHAIRPERSON: No, no, no hang on I am sorry – I am interrupting you. We are talking soon after you had signed the agreement. We were talking that you have signed.

MR MBANA PETER THABETHE: Yes Chair.

CHAIRPERSON: And we know that your signed without doing certain
20 things which should have been done.

MR MBANA PETER THABETHE: Hm.

CHAIRPERSON: So you – now you have signed the agreement. Somebody says HOD I see this agreement you have signed and you have not checked whether Estina is capable of you know putting in the money that the agreement says should be put in here and I see that you

say you have not done the homework but you say you believe they represent Paras and so on and then they ask the question. If something goes wrong on this project with this agreement that you have how will you have recourse against Paras because you must forget about Estina, Estina has no money.

MR MBANA PETER THABETHE: Hm.

CHAIRPERSON: You - you need as head of department to say - to - to be able to say I will be able to answer this question. I have informed myself sufficiently to be able to answer this question. How will - how
10 will the department have recourse against Paras?

MR MBANA PETER THABETHE: My understanding Chair was that like - like I had tried earlier to explain. Litigations would only be done through Estina if I would have a problem.

CHAIRPERSON: Yes. So in other words you would not have recourse against Paras as such?

MR MBANA PETER THABETHE: No. We would not.

CHAIRPERSON: You - you would have recourse against Estina?

MR MBANA PETER THABETHE: Estina. That is correct Chair.

CHAIRPERSON: And if - as it does appear if - Estina was not worth
20 the paper it was written on then it would spell disaster for the department in case something went wrong with the project?

MR MBANA PETER THABETHE: That - that would Chair - though that would have minimised it because the money was coming in tranches. So we would be able to pick up that here we have a problem. Let us try and litigate on whatever that we would have given but the rest still

protected.

CHAIRPERSON: But of course that could be after R30 million has gone? The first - the first one I think that was sought to be paid. Is it not?

MR MBANA PETER THABETHE: Yes. Yes Chair.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: Well just two points again. We really still looking at that page 11 Clause 6.2 the R228 million.

MR MBANA PETER THABETHE: On - on ...

10 **ADV LEAH GCABASHE SC:** We were - we were looking at the agreement which is in Reference Bundle A - Reference Bundle A ...

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: And we were on page 11 and looking at Clause 6.2 which speaks to the 228 million and who - who - whose responsibility it would be to provide this funding.

MR MBANA PETER THABETHE: If - if ...

ADV LEAH GCABASHE SC: With ...

MR MBANA PETER THABETHE: If you could remind me the page again Chair.

20 **ADV LEAH GCABASHE SC:** It is page 11 - 1-1 - 11.

MR MBANA PETER THABETHE: 1-1?

ADV LEAH GCABASHE SC: Yes.

MR MBANA PETER THABETHE: Okay. Thanks Chair.

ADV LEAH GCABASHE SC: I - I simply make the point and you do not really have to go to this particular page. It is again in the reference

bundle but a different one. It is in B. That when you responded accepting the project proposal for the Vrede Integrated Dairy Agri Business you addressed your letter to the Managing Director Estina (Pty) Ltd Grayston Ridge Office Park 1-1-4 Katherine Street Sandton.

Attention: Sanjeev Gautam and this was on 27 May 2012. I am simply saying it was not addressed to Estina/Paras when you were accepting the project proposal.

MR MBANA PETER THABETHE: That is ...

ADV LEAH GCABASHE SC: It was directly Estina.

10 **MR MBANA PETER THABETHE:** That is correct.

ADV LEAH GCABASHE SC: I - I also want to point out that in the business plan again this time I found a slightly better copy but I do not think it is necessary for you to go there. I will simply tell you what is recorded here. It - it is on page 32 3-2-5 just for the record of the reports bundle - 3-2-5. You have the dairy processing plant costing and we agreed that that 228 million was for the dairy processing plant. Are we agreed on that?

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: So here you have got:

20 “Fixed and working capital then units’ then budget value on this schedule. UHI long life milk plant 149 million. Dairy products manufacturing 46 million. IP marketing capital requirement five million. Total funding required 200 million.”

This is the important part.

“To be funded by Estina - 200 million.”

That is what is written on the business plan. It is not Estina/Paras - Estina and this is a business plan that Estina would have presented to you. It is the business plan you have been working with I believe.

MR MBANA PETER THABETHE: *Ja, ja.* Chair throughout letters and presentation we have been interchangeably using Estina and Paras. Some instances we will say Estina/Paras. There are instances where we will only refer to Estina. So that has been happening throughout.
10 Not consistently - because our understanding is that referring to both of them at the same time was the same thing.

CHAIRPERSON: You see that worries me Mr Thabethe because it maybe an indication that you did not have the appreciation of the distinction that needed to be made between the two. You - you are talking to Estina. You enter - entering into an agreement that says you are entering into an agreement with Estina. That does not say you are entering into an agreement with Paras.

That does not say you are entering into an agreement with Estina and Paras but despite the fact that the document in black and
20 white says the - the parties to this agreement is Estina and the department and does not mention that Paras is - is a party to it. You continued to operate as if what is written here is that Paras is also a party. You understand that?

MR MBANA PETER THABETHE: (No audible reply).

CHAIRPERSON: In other words you - you have got to - if you have got

some informal discussion before the signing of an agreement as to what is going to happen. When the draft agreement comes you have got to check whether it reflects what had been discussed informally but apart from that you also need to say in terms of this agreement who owes the department what obligation and if the agreement says it is Estina you have not grounds to go to Paras. You see?

What you may have had in mind had to be translated into an agreement but the agreement here we are talking about does not place any obligations on Paras. Places obligations only on Estina.

10 **MR MBANA PETER THABETHE:** *Ja* Chair.

CHAIRPERSON: So in other words I am simply saying even what you are saying concerns me because it may reflect that you might not have had that appreciation which I think was quite important because you had this obligation to protect the department from risks and the - protect the taxpayers money. You understand?

MR MBANA PETER THABETHE: *Ja.* I - I understand that Chairperson very well. Hm ...

CHAIRPERSON: So I am saying the fact that you say Paras/Estina you say it is one and the same thing when for example in the agreement
20 that you - you are signing or you have signed it does not say it is one and the same thing. There is only Estina as a party on the Estina other than the department in case obligations by virtue of the agreement. You know? It is - it is concerning.

MR MBANA PETER THABETHE: Yes Chair. I - I agree. I - I do not dispute Chair.

CHAIRPERSON: You accept that?

MR MBANA PETER THABETHE: *Ja.*

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: But Chair I was strongly advised - strongly advised.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: I think there - there is a number of letters we have read ...

CHAIRPERSON: Yes.

10 **MR MBANA PETER THABETHE:** That the instance where we had brought the two together ...

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: Was illegal.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Now - now I am - I am in a corner Chair because I had ...

CHAIRPERSON: You - you ...

MR MBANA PETER THABETHE: To agree ...

CHAIRPERSON: *Ja.*

20 **MR MBANA PETER THABETHE:** Initially. Now I agree with the Chairperson. That is my difficulty because ...

CHAIRPERSON: *Ja, ja.*

MR MBANA PETER THABETHE: When I was earlier advised ...

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: I took that advice.

CHAIRPERSON: Yes, yes.

MR MBANA PETER THABETHE: Hm.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: The Chairperson is putting it differently ...

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: From what I was advised.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: It is (intervenes).

10 **CHAIRPERSON:** And - and you see that way as well?

MR MBANA PETER THABETHE: I see also that way ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: And agree with the Chair. So that is why I say ...

CHAIRPERSON: *Ja*.

MR MBANA PETER THABETHE: I am in a corner Chair.

CHAIRPERSON: *Ja*. Okay. No, no that is fine but I - I just wanted you to have an understanding of what is going on in my mind. So that you could comment on it.

20 **MR MBANA PETER THABETHE:** Thank - thanks Chair.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Thank you Mr Thabethe. I think we should move on to paragraph 6.3 of that agreement on page 11 and it records the following:

“Estina ensured that ...”

CHAIRPERSON: I am sorry. I am sorry. Are you going back - are you going to the agreement?

ADV LEAH GCABASHE SC: To the agreement Chairman.

CHAIRPERSON: The agreement?

ADV LEAH GCABASHE SC: Yes Chairman. Page 11 ...

CHAIRPERSON: Okay. I ...

ADV LEAH GCABASHE SC: Of Reference Bundle A.

CHAIRPERSON: Oh, okay. I have got it here. Thank you. What - what page are you on now?

10 **ADV LEAH GCABASHE SC:** Page 11.

CHAIRPERSON: 11, okay.

ADV LEAH GCABASHE SC: Still on 11 Chairman.

CHAIRPERSON: Alright.

ADV LEAH GCABASHE SC: We are looking at 6.3 - Clause 6.3.

“Estina ensured that the beneficiaries owned 51 percent of the agri-BEE entity. The remaining shares belongs to Estina provided that should Estina decide to sell its shares the department will have the right of first refusal.”

20 Now the only reference I want to make here is again to the business plan and I make this reference in the context of what you say you were advised to do. Take a long term view rather than a short term view of when the beneficiaries should be included. The business plan of October 2012 at page - it is the reports bundle again. Just for the record. Reports bundle page 3-2-7 notes the following under net profit.

Do you want to pick it up?

MR MBANA PETER THABETHE: (No audible reply).

ADV LEAH GCABASHE SC: I am happy to wait. So it is reports bundle ...

MR MBANA PETER THABETHE: (Indistinct).

ADV LEAH GCABASHE SC: Bundle B - Reports Bundle B - Reports Bundle B.

MR MBANA PETER THABETHE: Reports bundle. Okay.

ADV LEAH GCABASHE SC: And this is page 3-2-7. I just want to read
10 the first two sentences to give context. This is what Estina wrote.

“It would take 12 to 14 months for the dairy to
become operational.”

So that is more than a year. The second point:

“This would result in a loss of 8.48 million in
2012/2013 and 1.83 million in 2013/2014.”

So there are two issues here and I really speak here in
relation to that 51 percent of the agri-BEE that Clause 6.3 refers to.
So one, Estina itself says just setting up the dairy side is going to take
more than a year - 12 to 14 months. The second point they make is
20 there will not be any money in any event because they foresee a loss of
- in the first year 8.48 million.

That is in the year 2012/2013 and then 1.83 million in the
year 2013/2014. So for an investment that beneficiaries were
introduced to in 2013 they get to 2014 and the company is still making
a loss according to this business plan. I do not know if you have any

comment to make because I am aligning what I am reading in the business plan to your intention as set out in Clause 6.3 of the agreement. You were trying to benefit beneficiaries by 51 percent shareholding in the company.

MR MBANA PETER THABETHE: *Ja.* Thank - thank you Chair. This - this is a normal cost in - in business operation specifically in agriculture. You do your cash flow and you invest. You then calculate what we normally call your break even where you start making profit. This - this statement is actually saying in the first three years you
10 would not be making a profit but you would have invested money.

You will then begin in the fourth year to get to what we call a break even. You begin to make profit. It means you invest - that is why it says there you are making a loss because that money is not coming back but then you get to a break even where you - you equal. Then beyond a break even then you are making profit. Normally when you do - that is when - when you apply the bank will tell you we need to see your cash flow.

Your investment versus your returns. When are you going to begin to get your returns? Now this is what this statement is referring
20 to. It is not - it is not necessarily saying you are losing money. It is saying you are not making income. You are still at the investment stage of your project. That - that is what it is referring to.

CHAIRPERSON: So remember that whatever money you have put in you want to get it back. Is it not?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Now if you - if this project was going to lose that kind of money is it in the first three years or two years that - is it 84 million?

ADV LEAH GCABASHE SC: Up to - up to 2014 Chairman. So it is ...

CHAIRPERSON: Up to 2014. That is like ...

ADV LEAH GCABASHE SC: It is about roughly 10 million.

CHAIRPERSON: *Ja, ja.* To get to a point where you make enough profit to be enjoyed by so many beneficiaries after having recouped what you put in. How long would it take on your understanding as the department of this project? When would they - when would the
10 beneficiaries start to really benefit to see the - the financial benefits?

MR MBANA PETER THABETHE: Actually Chair in the fourth year.

CHAIRPERSON: The fourth year?

MR MBANA PETER THABETHE: In the fourth year.

CHAIRPERSON: Which would be 2016?

MR MBANA PETER THABETHE: That - that is correct Chair.

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: *Ja.* If I may put another ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: A different example Chair.

20 **CHAIRPERSON:** Yes, yes.

MR MBANA PETER THABETHE: It is like when you go and you buy a tree.

CHAIRPERSON: What?

MR MBANA PETER THABETHE: A tree - fruit tree.

CHAIRPERSON: Huh-uh.

MR MBANA PETER THABETHE: You buy the tree. You buy fertiliser. You dig a hole and you plant the tree. You have incurred costs. You wait for a period of three years for that tree to bear fruits but every year you water the tree. You are not getting any money because you have not seen any fruit out of the tree. Then you water it. You look after it.

All the time knowing that this tree you are going to have it for the next 30 years. You begin to harvest fruits in the first year and then your cost might come maybe in the sixth or seventh year to cover the
10 cost that you have spent ...

CHAIRPERSON: Over time.

MR MBANA PETER THABETHE: To plant the tree.

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: Now that is what we call ...

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC:

MR MBANA PETER THABETHE: Then you begin to earn profit from the project. Now a dairy has a shorter term than a tree. Over a period of three years then you - you can be able - because you - you begin
20 already in the second and the third year to - to receive an income but it is not covering your cost yet. After the third year then you cover your cost.

Then you being to make profit in the fourth year. Now this is what this is saying. It means you - you - unfortunately in the agriculture you have to be patient and wait until you get the fruits of

your investment.

ADV LEAH GCABASHE SC: Now was this explanation given to the beneficiaries when you engaged with them about this dairy project that you were inviting them to be part of?

MR MBANA PETER THABETHE: I - I believe so Chair. We had - we had explained. All the details we had explained to them.

ADV LEAH GCABASHE SC: That is not the - my recollection of the evidence of the beneficiaries who came to give evidence before this Commission. They in fact assumed that they would not only be
10 beneficiaries but they would actually even find employment at the dairy farm. So their expectation was they would be involved from inception.

MR MBANA PETER THABETHE: Chair, we - we had explained it I think very clearly. Yes indeed the community would get employment in the - in the project but the emphasis on the beneficiaries was for them also to have their own cattle because they were farmers at their own right because if - it would mean they will leave their farms. Come and work at the dairy. That - that was not the intention.

We did explain that the - the project will create job opportunities for the community but their plan was also rolled out to
20 them. Hence they had an understanding that they will also be allocated dairy cattle that they will look after and be able to sell their milk. So they - our understanding was that they understood it very well.

ADV LEAH GCABASHE SC: Chairman I am moving on to the land issue - the Phumelela Local Municipality agreements with the department representing province.

CHAIRPERSON: Okay. That is fine.

ADV LEAH GCABASHE SC: I also noticed that - oh, my watch is a bit fast I think. It is five to one. Do you want us to just start with what we have Chairman?

CHAIRPERSON: Maybe let us start. Is that convenient to you?

ADV LEAH GCABASHE SC: That is fine ...

CHAIRPERSON: *Ja.*

ADV LEAH GCABASHE SC: Because it is really just dealing with the ...

10 **CHAIRPERSON:** *Ja.*

ADV LEAH GCABASHE SC: The agreements ...

CHAIRPERSON: Okay, *ja.*

ADV LEAH GCABASHE SC: Of that time.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: So Mr Thabethe when you signed the agreements with Estina on 5 June 2012 - we know that was found to be invalid - and then on 5 July 2012 had you secured land in the Phumelela Local Municipality? The dates are important.

20 **MR MBANA PETER THABETHE:** Chair, we - we had spoken with the municipality but we had not formalised the - the formalisation was what - what came later but we had already - they had already indicated to us that they had no problem. We had spoken to both the municipality - actually and - and the community we had already spoken to them including the farmers that were leasing the land.

We had had discussion with them and they were no

objections. Hence we then proceeded. We - we had spoken but we - we then had to formalise all those agreements.

ADV LEAH GCABASHE SC: The reason I said the dates are important is because on our record your presentation to the Phumelela Local Municipality was on 12 June 2012. Now that first agreement that had given rise to those obligations was on 5 June.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: And this is why I said the dates are important. So maybe we can agree. When you signed the first
10 agreement on 5 June you had not been to the municipality yet?

MR MBANA PETER THABETHE: We - we had been in talking terms with the municipality but we had not officially went to present to the council.

ADV LEAH GCABASHE SC: And is it not correct that it is the presentation to the council that would give rise to legal obligations. Not talking to officials on the telephone?

MR MBANA PETER THABETHE: Chair my - my understanding was that the - the municipality had agreed all that they needed to do was to formalise through a council resolution because we - we wanted to have
20 that as - as part of our documentation.

ADV LEAH GCABASHE SC: What do you understand to be the importance of council meeting to take a resolution?

MR MBANA PETER THABETHE: Can - can she repeat the question Chair?

CHAIRPERSON: What - what do you think is the significance of a

council resolution? I think that is another way of putting it. What is your understanding of the importance of municipality - municipal council taking a resolution on a matter as opposed to just talking and not taking a resolution?

MR MBANA PETER THABETHE: My understanding Chair is that if - if they have taken a resolution it means they have taking a binding agreement as - as a council to say this is what we agree with.

ADV LEAH GCABASHE SC: And this is why I ask the question focusing on what you did on 5 June where you entered into an
10 agreement with a party - so - which agreement gave rise to legal obligations. My question was when you bound your department to Estina on 5 June had you been to the Phumelela Municipality - local municipality to present a case for the Vrede Project to be based in that particular municipality?

MR MBANA PETER THABETHE: Chair we - we had spoken to the municipality except - because there were two options they could decide on. Whether they will table the item themselves or they will request us to come and make a presentation to the council. It depends how they would have felt but what I understood they wanted us also to come and
20 make a presentation to the council which - which they did.

Our understanding was that if they understood the project they would have discussed it in their council without us but in this instance they preferred that we should come and make a presentation.

ADV LEAH GCABASHE SC: Now we have the evidence of Dr Radebe who was a council member at the time and he confirms that your

presentation was not an item on the agenda for that council meeting. So my understanding of that evidence is he certainly was surprised when you arrived. They had no idea that you would be coming to do a presentation on that particular day.

MR MBANA PETER THABETHE: Ja. Chair I cannot comment because we were invited. I - I would not know whether they knew or they did not know.

CHAIRPERSON: Yes I guess that what you should tell me is how it came about that you went to make that presentation. Who spoke to
10 who to make arrangements and so on?

MR MBANA PETER THABETHE: Thank - thank you Chair. I - I had been insisting to the municipality more so to the Mayor that we needed a council resolution and then I was advised by the Mayor that they will be having a council. If we could come and make a presentation to the council. Then - then we went there to make that presentation because ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: We have been insisting that we need a resolution.

20 **CHAIRPERSON:** Yes, okay.

ADV LEAH GCABASHE SC: Now the Mayor was Mr John Motaung?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: And he gave you the impression that there was no difficulty in simply arriving on a day that there was a scheduled council meeting and doing the presentation at that point in time?

MR MBANA PETER THABETHE: Chair I did not no know what kind of a council it - it was.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: All I knew was that we were invited to come and ...

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: Make a presentation.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: When the former Municipal Manager of
10 Phumelela Local Municipality gave evidence at this Commission he gave the impression that the Vrede Dairy Farm and the entire town of Vrede and Thembalihle Township were one thing. So the town and the township even the cemeteries are on this farm. Do you know anything about this?

MR MBANA PETER THABETHE: Chair they later came back to us and indicated to us that there was a - a problem to the - the land issue. So they did make us aware. So when we also went back to look at - at the papers we realised that that indeed was a challenge but we - we had agreed between us and then that we should then resolve that and
20 release that part back to the municipality.

ADV LEAH GCABASHE SC: Now it would be useful if you gave us some dates for this part that you have just testified to. When is it that you became aware that the entire town sat on the 4 400 hectares that you were preparing to lease to Estina? When did you start attending to that matter? When was it resolved?

MR MBANA PETER THABETHE: Chair I will not exactly remember the dates when but it - it was already during the implementation part that was brought into our - our attention and we did not have a problem. Actually when - when they raised that they also alerted the State Law Advisors of this matter which we agreed would not have a problem in making sure that that is corrected Chair.

ADV LEAH GCABASHE SC: So in December 2012 when you signed that agreement of cession and assignment with Mr Moremi were you aware that what you were being assigned - what was being ceded to
10 you was the entire town of Vrede cemeteries and all?

MR MBANA PETER THABETHE: No I was not aware Chair.

ADV LEAH GCABASHE SC: That is December 2012.

MR MBANA PETER THABETHE: No. Otherwise we would have taken the responsibility of the municipality that is what it would actually mean.

CHAIRPERSON: I think we should then adjourn for lunch
Ms Gcabashe.

ADV LEAH GCABASHE SC: Thank you. Thank you Chairman.

CHAIRPERSON: We will adjourn for lunch and we will resume at two.
20 We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Before we proceed, let's see whether we have the same idea of what is likely to happen this afternoon, Ms Gcabashe

what's your estimate of whether we will finish today or not and I want to also check whether, if we are not going to finish today whether there's a chance that we could go over to tomorrow or whether everybody concerned would be available?

ADV LEAH GCABASHE SC: Chairman I believe we should be done between four and four thirty.

CHAIRPERSON: Four and four thirty?

ADV LEAH GCABASHE SC: Yes, I think within the normal time.

CHAIRPERSON: Yes, if we are not done by then did you have
10 tomorrow available in case we don't finish today or what – in terms of the timetable I don't see what's supposed to be there for tomorrow, do you know?

ADV LEAH GCABASHE SC: I'm not sure Chairman but I'm not available tomorrow.

CHAIRPERSON: You are not available tomorrow?

ADV LEAH GCABASHE SC: I'm not available tomorrow.

CHAIRPERSON: Oh now I remember that you're not available from tomorrow so tomorrow is out of the question, because you won't be available.

20 **ADV LEAH GCABASHE SC:** But Chairman I'm very sure that we're going to finish.

CHAIRPERSON: Yes well I will see what happens by what the situation is by the time we reach the point where you have exhausted your questions, I may want to have more time to ask certain questions myself, that might not – we might not have enough time to do that this

afternoon but we – maybe at the time that you are done, I could see the legal representatives in chambers to talk about what is possible and what is not possible and then we'll take it from there. Okay you heard that Mr Thabethe and I know your legal representatives also heard it, okay alright, let's continue.

ADV LEAH GCABASHE SC: Thank you Chairman. Mr Thabethe we were talking about the purchasing of – no the session and assignment of the Phumelela Local Municipality land for the dairy farm. Maybe I should ask you this question, who selected Vrede as the best locality
10 for the dairy farm?

MR MBANA PETER THABETHE: Thank you Chair, the recommendation on the availability of the land was the MEC that indicated to us that Municipality in Vrede does have land that we could then talk to them and see if they could make it available.

ADV LEAH GCABASHE SC: Who is this MEC you refer to?

MR MBANA PETER THABETHE: It's MEC Mosebenzi Zwane because Vrede was his locality so he knew...[intervenes].

CHAIRPERSON: That's where he grew up.

MR MBANA PETER THABETHE: That's where he grew up.

20 **CHAIRPERSON:** Yes.

ADV LEAH GCABASHE SC: In fact you had accompanied him to Vrede to speak to the beneficiaries, had you not?

MR MBANA PETER THABETHE: That's correct Chair.

ADV LEAH GCABASHE SC: How many times did you visit Vrede with MEC Zwane?

MR MBANA PETER THABETHE: Chair on this specific project, I could remember I think about three times.

ADV LEAH GCABASHE SC: And when you went to the presentation at the council offices on the 12th of June 2012 was he in your company or did he join you at any point in time?

MR MBANA PETER THABETHE: No he wasn't there Chair, if I remember very well. There was a mention that he would join but he didn't join.

ADV LEAH GCABASHE SC: I might as well ask, you have indicated
10 that you visited the farm a number of times, the Premier, the then Premier, Mr Ace Magashule visited the Vrede Dairy Farm, were you part of that delegation?

MR MBANA PETER THABETHE: I'm trying to think Chair; I think I was...[intervenes].

CHAIRPERSON: It's been a long time.

MR MBANA PETER THABETHE: Ja I think I was there.

ADV LEAH GCABASHE SC: Do you recall what the purpose of that visit was?

MR MBANA PETER THABETHE: Chair when he visited the farm, it
20 was already when we had problems, he just then wanted to go and see if indeed there was a project because the initial problems was like, there was nothing and money had been spent. So he wanted to go and see whether there was a project indeed, which then I accompanied, if I remember well chair.

ADV LEAH GCABASHE SC: And when you accompanied the Premier

on a visit like that, what would your role be?

MR MBANA PETER THABETHE: Mr responsibility was to respond to questions on site.

ADV LEAH GCABASHE SC: Would you have the Chief Director Services there, would you have Extension Officers there?

MR MBANA PETER THABETHE: That would be, Chair, a requirement that there should be somebody in the department to be able to respond to all the questions.

ADV LEAH GCABASHE SC: Are you saying if you were not able to
10 attend, they would be there.

MR MBANA PETER THABETHE: f I was not able even to answer some of the questions, so they would be there to respond to.

ADV LEAH GCABASHE SC: The technical expertise that was brought to the farm, did you have a sense of what that might have been?

MR MBANA PETER THABETHE: You mean, Chair through you, the people that were brought?

ADV LEAH GCABASHE SC: Well you know the documents here speak of technical expertise and we know that Estina knew nothing about – as a company was not an agricultural company, so I'm
20 assuming the technical expertise would have come from Paras. Now do you know the form of that technical expertise?

MR MBANA PETER THABETHE: Not exactly all of them Chair, but I remember there was a stage where they had indicated there was a vet on site that was brought but I'm no really sure exactly what expertise overall, I think Dr Masiteng would have maybe known exactly what

expertise was on site.

ADV LEAH GCABASHE SC: You know I asked because again Mr Basson gave evidence and said that when the processing plant was being installed, he was there. He was not impressed at all with two things, one, with the three Indian Nationals who were there, he says they rocked up without even a screwdriver, the people who had come to install this particular plant, that's the one thing and the second was the quality of the materials that were used. In my words I would say second-hand materials, very close to scrap. Did you hear anything at
10 all about those materials being sub-standard?

MR MBANA PETER THABETHE: No I haven't Chair, I've also listened to his interview when he mentioned that but none of the officials of the department had come to say, we have a problem, and this is what was happening on the ground.

CHAIRPERSON: Maybe what I was going to ask is exactly what you want to ask.

ADV LEAH GCABASHE SC: No go ahead Chairman, while I find my agreement.

CHAIRPERSON: Well did you just say that you don't know what
20 expertise was brought on to the farm?

MR MBANA PETER THABETHE: That's correct Chair.

CHAIRPERSON: And did you also say that you don't know whether the cession by Mr Basson that the material that was brought onto the farm was not new, looked second-hand and I think he may have mentioned some of it was rusted, I may be wrong, but he certainly said

that the equipment that was brought, I think from India, that was my impression was not new material, it was old stuff. You are not able to say whether that is true or not, is that so?

MR MBANA PETER THABETHE: No I'm not able to say Chair, because I heard it the first time when he was testifying.

CHAIRPERSON: Giving evidence?

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: Yes but on the occasions when you visited the farm, did you know observe any equipment that gave an indication of being
10 too old for a new farm, for a new project. You know sometimes you can look at things and say ja but this project only started three months ago, this looks like five years old, this equipment?

MR MBANA PETER THABETHE: No during my visits Chair I haven't picked it up.

CHAIRPERSON: You didn't pick it up?

MR MBANA PETER THABETHE: No.

CHAIRPERSON: But you can't say that it's not true?

MR MBANA PETER THABETHE: No I can't say.

CHAIRPERSON: Yes well my concern – part of my concern is that the
20 size of this project and the money that the Department was going to put into it were such that I would have thought that, as head of department you would have wanted to establish whether the expertise that you so much wanted to have from Paras was expertise that came or that it did come to the farm and that it's something that you would have wanted to see and also once the – at a certain stage I would have thought that

you would want to go and inspect and see how everything was like and see that everything was as contemplated in the plan, you know. That is what I would have expected, it seems to me that something that would have deserved the attention of the HOD after all you had taken a leading role in selling the idea to the Municipality and to the beneficiaries and you'd taken a trip to India, you'd played a leading role. So I thought you would have taken the trouble to say, the expertise we are expecting from Paras from India, when is it coming here, has it arrived.

- 10 **MR MBANA PETER THABETHE:** Thank you Chair, yes indeed that has been the requirement and I took it that at a certain stage the expertise was required at different levels of the development of the project, which means different people would then come ...[intervenes].

CHAIRPERSON: At different stages.

- MR MBANA PETER THABETHE:** At different stages of the project. So it would mean that during the construction of the dairy there would be different expertise during the processing plant, there would be different expertise. What I would also want to mention was that for the construction it means the operations itself, we had indicated to them
- 20 that we wouldn't want a situation where you bring a contractor from India to come and do the work here. We had indicated to them that they will need to do that sub-contracting to local people so that you don't bring somebody to come and do the work that we can do. What is critical is that you must be here and monitor and make sure that the work being done is what you want to be done. That was my

understanding, Chair, but I would then agree with you that myself, personally, I did not go and verify each – every stage when people were coming to say, is it indeed the people that we expected that were coming. Maybe because I had confidence to the team that I was working with because I understood that if there would be a problem they will then be able to say, hey we have a problem we are not comfortable with the team that was brought and then we will then talk to it.

CHAIRPERSON: Of course it may be that you might not have needed
10 to be - to personally go there but maybe you could ask for reports that would give you the information that you needed, reports such as would tell you who are the people who have been brought in from India, from Paras, what expertise do they have, what experience do they have so that you can see if Paras is sending you what you really need or are they sending you people that won't give you what you were looking for, as I say you know, one approach might be to go there and have a look and then ask questions, see people but another way maybe as HOD you say to your managers I want a report that gives me – that answers the following questions and then if they give you that and you are satisfied
20 with information, then maybe that's fine but I would expect that, at least you would want to know who has arrived, bringing what expertise because this is the expertise that we wanted but you say, that part you did not get to know.

MR MBANA PETER THABETHE: No Chair, I did not go into that detail.

CHAIRPERSON: Yes but also you didn't ask your managers to give

you a report, reports that dealt with that among other things?

MR MBANA PETER THABETHE: No I haven't asked for it Chair.

CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: Just on the same note, if you have a look at reference file D and if you go to page 1357, these are really photographs taken in April of the dairy farm. They start from page 1353 but I want to take you to page 1357 in particular. so it's reference file D and these are photographs of the premises in April 2019. Now you'll recall that Dawie Maree came to the conclusion as did the ENS or the
10 National Treasury Investigators that there was no way the department was going to get value for money from this project, you recall that, the value for money proposition, or do you want me to go over it with you?

MR MBANA PETER THABETHE: Sorry Chair is she referring to the evidence or the...

CHAIRPERSON: I think let her start again so that you – because I could see you ...[intervenes]

ADV LEAH GCABASHE SC: I beg your pardon, I should have waited for you to finish.

CHAIRPERSON: Yes, yes okay.

20 **ADV LEAH GCABASHE SC:** Are you ready?

MR MBANA PETER THABETHE: Yes I'm ready.

ADV LEAH GCABASHE SC: Right so I want us to look at a couple of these pictures, I also want you to look at them in the context of Dawie Maree's evidence. His evidence, both documented and at the Commission was that you did not get value for money from this Estina

project, are you with me.

MR MBANA PETER THABETHE: Ja Chair, indeed the project was not completed so it becomes difficult to say there was no value for money because it came to a halt during it's implementation.

CHAIRPERSON: I understand the statement relating to value for money as having been based on – and Ms Gcabashe will tell me if her understanding is different, as having been based on saying, looking at certain documents in terms of what was contemplated there is no way the department was going to get value for money here. In other words,
10 not necessarily looking at what had been done in terms of the operations. Ms Gcabashe do you have the same understanding as me?

ADV LEAH GCABASHE SC: Absolutely Chairman I'm actually just trying to find the actual documentation to help Mr Thabethe because he wasn't here, much as he's familiar with Dawie Maree's report as I understood it.

CHAIRPERSON: Yes it's the same thing like you remember when I was talking about certain clauses of the agreement of July where I look and I can immediately say but these people are signing an agreement with Estina, Estina as at that time they don't know what it's financial
20 strength is and as it turns out on the financial statements that were referred to, to the extent that those statements may have been a true reflection of Estina's financial situation. They say they're going to give Estina a millions of rand, if Estina, effectively runs away they can't get – recover that money from Estina and they can't recover it from Paras because Paras has got no obligation to them they are not signing

agreement with Paras. Estina has signed an agreement with them but some of it's clauses are questionable but in any event if they receive the money and the directors take the money out and disappear the department won't get anything. So it's something along those lines to say, if you look at the documentation what are the changes that the department will get value for money here. So I understood that statement in that context.

MR MBANA PETER THABETHE: Ja Chair I would not agree with him because my understanding was that the project was progressing well
 10 and it would have been allowed to get to its conclusion there was going to be benefit in terms of value for money.

CHAIRPERSON: Well that's not – the basis for that response is not a proper basis to answer this type of question because the basis for your response is let's wait and see, allow the project to proceed and let's see if there'll be value for money but the question is saying, even before you get to start you need to have documentation that tells you that if we embark upon this journey, there's likely to be value for money. So in other words your answer should be, well I don't agree because when you look at the following documentation maybe the
 20 proposal, the feasibility study if you look at this, even before the operation starts, that gives you a clear idea that there will be value for money. So that's the kind of answer but if you said allow us to work and see, it doesn't answer to the question of whether you should start at all because you shouldn't start a project that won't give you value for money, you must be able to make a judgment call before you start

whether this project is likely to give you value for money.

MR MBANA PETER THABETHE: Ja Chair my understanding of Mr Maree's analysis was that the project itself it did not have a problem with it, he was then questioning the implementation part, that was my understanding because I still believe that on paper we had put everything properly and if you're looking at the documents themselves, you would be able to derive value for money.

CHAIRPERSON: You may be right and Ms Gcabashe will deal with that in due course, you may be right in terms of what he said but I
10 wonder whether he wasn't saying, if you look at how it is proposed, this project will be implemented it won't give the department value for money. I'm saying I wonder if he wasn't talking along those lines but it may be that my understanding is not correct, maybe your understanding is correct, Ms Gcabashe will take it from there.

ADV LEAH GCABASHE SC: If I might just give the example again that Dawie Maree himself uses, of just the locality. So I'm agreeing with the Chairman's analysis but I'm saying that Dawie Maree then illustrates what his talking about, one example being the locality of the dairy farm and he explains the type of cow, the type of herd you need
20 in the Eastern part of the Free State as opposed to what you would require in the Midlands. He actually explained that in the Midlands you have an optimal environment for dairy farming but that your weather patterns, your environmental patterns are quite distinct when you get up to an area like Vrede. So he says just on locality alone you got it wrong, just on locality alone you got it wrong. Then in terms of the

type of cattle you purchased, the type of cows you purchased he had various question marks related to that. The feed and the manner of feeding animals he too raised issues with and at the nub of all the concerns that he raised was the proposition that the department did not get value for money. One not from the original proposal, not from the business plan and certainly not from the feasibility study. What I was trying to do was look at that value for money proposition by having a look at what the farm looks like today, well the part anyway, that Estina party was responsible for. The whole – the pictures of most of the farm
10 here but I was trying to just look – take a snapshot, hence my reference to these particular pictures. I'm going to go back to the Dawie Maree report and just go through his conclusions and recommendations but I think it might help if we look at these pictures and get rid of the pictures first.

ADV LEAH GCABASHE SC: Ja thank you Chair. Unfortunately I never had an opportunity to look at his report and make comments into it.

CHAIRPERSON: Oh even – even as you speak there?

MR MBANA PETER THABETHE: No I mean before he submitted his report.

20 **CHAIRPERSON:** Oh before he came to the commission?

MR MBANA PETER THABETHE: Before – before he submitted to National Treasury.

CHAIRPERSON: You only saw it after?

MR MBANA PETER THABETHE: I only saw it after.

CHAIRPERSON: Oh okay.

MR MBANA PETER THABETHE: It was concluded.

CHAIRPERSON: Yes. Yes.

MR MBANA PETER THABETHE: Because in his report I have got a number of issues that I would have raised and questioned. I did not agree with his report.

CHAIRPERSON: Well even as you sit there if there are things that you do not agree with in the report you entitled to say so and deal with them because his report is part of the material that is placed before me which I may take into account in making decisions and findings and to
10 the extent that it is such a material it is important that somebody like you should have looked at it and taken a view and be able to say I agree with this part I do not agree with this part and this is – this is – this is where – where I am critical of it. And then we can take it from there. So – so what I am saying is that door is not closed because you must get a fair opportunity to deal with these things. And if – if you are not in a position to deal with it today we might have to consider what may need to be done. But it is a report that you ought to be able to deal with insofar as it is critical of the project.

MR MBANA PETER THABETHE: Thank you Chair I would request
20 Chair that I be afforded that opportunity to do that because I took it that it was concluded because it was already in the National Treasury submission or con – report. So we never got an opportunity to respond to it. Neither did I get an opportunity to respond to the Treasury Report. So I was not able to – to engage and be able to say here I agree, here I do not agree and put my points across.

CHAIRPERSON: Yes. Okay alright. I do not know if you want to say anything Ms Gcabashe on this?

ADV LEAH GCABASHE SC: Chairman yes. You – you know that the Dawie Maree Report formed part of the bigger National Treasury investigation report?

MR MBANA PETER THABETHE: Yes I do Chair.

ADV LEAH GCABASHE SC: You okay with that good. You were interviewed by the investigators twice if not more than more that but definitely twice, am I correct?

10 **CHAIRPERSON**: Investigators of Treasury of the commission.

ADV LEAH GCABASHE SC: Of National Treasury. No of National Treasury.

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: It was once Chair.

ADV LEAH GCABASHE SC: The note I have here is that you were interviewed on the 9th October 2013 and the second interview was on the 22nd November 2013. Is that an incorrect recordal by the investigators? I am reading from their report.

MR MBANA PETER THABETHE: Ja I may need to go back and check
20 Chair.

CHAIRPERSON: Yes you might not be sure.

MR MBANA PETER THABETHE: I may not be sure.

CHAIRPERSON: Yes. Okay.

MR MBANA PETER THABETHE: Whether indeed was it twice?

CHAIRPERSON: Hm. It is – there is a possibility it could be twice but

you – you just remember once at this stage.

MR MBANA PETER THABETHE: Ja I remember Chair it – otherwise then it will be three times.

CHAIRPERSON: Ja.

MR MBANA PETER THABETHE: Because the first time it is when they came...

CHAIRPERSON: Well it cannot be three times without being two times first.

MR MBANA PETER THABETHE: I – yes Chair.

10 **CHAIRPERSON**: Before you get to three you must go – you must cross two first.

MR MBANA PETER THABETHE: Ja I am thinking Chair if – if the dates that she indicates because there was the first date when they came and we were not able to agree. That is the first day when I had to send them back. Because they did not bring the necessary documentation with them.

CHAIRPERSON: Ja well so you say you think it was once. You are not sure if it was twice but you think there might even be three?

MR MBANA PETER THABETHE: Ja.

20 **CHAIRPERSON**: You need to check certain things?

MR MBANA PETER THABETHE: I am sure it is twice Chair.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: But if I hear the dates she is mentioning ...

CHAIRPERSON: You think it may therefore be thrice?

MR MBANA PETER THABETHE: It may be therefore three times.

CHAIRPERSON: Okay so but the two – the two – the twice you accept now.

MR MBANA PETER THABETHE: I agree Chair yes.

CHAIRPERSON: Okay.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: And of course the issues they raised with you varied from the Supply Chain Management issues to dealing with the financial obligations that you have to budget and appropriate, get
10 correct appropriations etcetera, etcetera. They dealt with a range of issues when they spoke with you?

MR MBANA PETER THABETHE: Ja. Chair if I remember now very well. The first time – it is three times. The second time it is when they came to request documents.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Mostly it was documents they were requesting. Then the second time it was then an interview.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Where then they asked me question
20 then I responded to them.

CHAIRPERSON: And the third time?

MR MBANA PETER THABETHE: That is the – the first time...

CHAIRPERSON: The third time.

MR MBANA PETER THABETHE: The first time it is when we did not interact.

CHAIRPERSON: Yes they wanted documents.

MR MBANA PETER THABETHE: Yes they wanted documents but they did not bring me letters to say.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Indeed this is an investigation.

CHAIRPERSON: Oh that is when you – you sent them back.

MR MBANA PETER THABETHE: I sent them back.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: Because I had no proof.

10 **CHAIRPERSON**: Ja.

MR MBANA PETER THABETHE: That they were coming from Treasury and they did not bring with them documentation that convinces me that indeed they come from there. So I said I could not – I cannot give you government documents until I am satisfied that this investigation has been authorised by National Treasury. So they went. They came back now with the letters that confirmed that indeed we were coming from Treasury we are looking for these documents. And then the third time it is when they came to do an interview.

CHAIRPERSON: Okay.

20 **ADV LEAH GCABASHE SC**: Of course when you refused to cooperate with them the first time what you could have done as an alternative was simply to phone National Treasury and find out from National Treasury if Mr Dumisani Cele is somebody who works at National Treasury and who is authorised to come and speak with you. You could have done that.

MR MBANA PETER THABETHE: Ja, ja I still Chair an investigation you cannot just confirm on the phone. They need to give me proper letters with terms of reference of the investigation so that I have an understanding of what the investigation is all about. Because I cannot just come and say I am coming to do an investigation without proper document. What is it and what is it all about. So I had requested them to say please prepare the documents for me so that I am able to give you what you are requesting.

ADV LEAH GCABASHE SC: But even where they did give you the
10 documentation Mr Thabethe you were a rather difficult customer were you not?

MR MBANA PETER THABETHE: Chair.

CHAIRPERSON: Well were you a difficult or not?

MR MBANA PETER THABETHE: I do not know whether I was difficult or not.

CHAIRPERSON: Oh were you a soft customer?

MR MBANA PETER THABETHE: I thought I was a very soft customer. Because – because it is – my understanding Chair was that if there would be an investigation in the Provincial Department where there is a
20 – you are sending an official to a Head of Department who is at a lower level with the Head of Department you would have communicated with the HOD first.

CHAIRPERSON: Yes but part of the point that Ms Gcabashe makes is this one. National Treasury does as part of its function as I understand it conduct investigations into how certain departments, government

departments are handling certain things. Am I correct about that?

MR MBANA PETER THABETHE: I agree Chair that that is correct.

CHAIRPERSON: Yes. Now – and one would expect that the attitude of other government departments and their HOD's would be to co-operate whenever the National Treasury sends anybody to conduct an investigation because this is not somebody from outside of government. This is from the same government you know. And that provided you could confirm with somebody senior at National Treasury maybe your counterpart or maybe somebody else senior if your counterpart is not
10 there that the person who has arrived in your department for the purpose of making – conducting some investigation is indeed somebody from National Treasury and has been mandated to do that you would not have need to say I want it in black and white. You would accept. As long as it is somebody from National Treasury you would say, okay let me hear what you – what do you want and we will co-operate and give you whatever it is that you want because it is not like you are competition or anything. You are from within. You understand.

MR MBANA PETER THABETHE: I understand Chair.

CHAIRPERSON: Ja I think that is part of what Ms Gcabashe is saying
20 is namely if as HOD when somebody who says I am from National Treasury arrives and wants to – wants your co-operation investigating something you send them away. You do not even say look let me phone the HOD or the DG at National Treasury or somebody senior to find out if they know about this person who is here and whether he has been mandated. That seems rather hard or it seems like you do not want to

co-operate. The insistence on that kind of formality of wanting documents.

MR MBANA PETER THABETHE: Ja thank you Chair. Indeed in the first meeting but not in the following meetings after that. In the first meeting I insisted that there must be formalised documents. Because I took it that an investigation cannot be taken very lightly. They understood it very well and it has happened to me that a document from National Treasury gets sent to the Province and it gets retracted because the person that did the document did not consult. So those
10 were some of the issues that keep us awake to say I cannot just release these documents until I have a formal letter from National Treasury that says yes indeed we are doing this investigation; release the documents. It saves me because if that happens and it has not been officialised then I am in trouble again to have released those documents. So I wanted certainty to make sure that they give me the correct documentation and then I am able to release the documents.

ADV LEAH GCABASHE SC: Yes but this of course was not the only incident where you refused to co-operate with the investigators from National Treasury, was it?

20 **MR MBANA PETER THABETHE:** No Chair I do not – because I provided documents. The one instance where they had indicated to me that I had refused to give them documents it was documents that we did not have. It is a document that we did not have. They ask us to provide them with all the tender documents, bid committees and so on the Vrede Dairy and we had not done that. The only document we had

was the deviation document. Now there was no way I could give them documents which they wanted which we did not have. So that – that has been the problem. They wanted those documents. It was like we were hiding them. We had them and we indicated that we did not go through that process. So we did not have those documents.

ADV LEAH GCABASHE SC: Can I just give you one or two examples that they note in their report?

MR MBANA PETER THABETHE: Yes Chair.

ADV LEAH GCABASHE SC: At Reference Bundle A page 69 is the
10 page I will be reading from. So Reference Bundle A.

MR MBANA PETER THABETHE: Yes, yes Chair.

ADV LEAH GCABASHE SC: Page 69. You have a section.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: Titled witness interviews. In that first paragraph they say that after their first interview with you Mr Thabethe they approached Estina – approached Estina's director Mr Kamal Vasram. Maybe I should just pause there. Have you met with Mr Vasram?

MR MBANA PETER THABETHE: Yes I have Chair.

20 **ADV LEAH GCABASHE SC:** How often do you – had you met in the period 2011 when you arrived at the Department and 2018 when you left; how often had you met Mr Vasram?

MR MBANA PETER THABETHE: Quite a number of times Chair. I would not remember exactly how many times but we had met.

ADV LEAH GCABASHE SC: When was the first time you met him?

MR MBANA PETER THABETHE: It is when – I am trying to think. I think it was when they came to make a presentation to the Department on the proposal that was submitted by Estina.

ADV LEAH GCABASHE SC: Who had arranged that presentation?

MR MBANA PETER THABETHE: It was arranged by them to us to come and make a presentation on the proposal of the project.

ADV LEAH GCABASHE SC: And when they introduced themselves to you at the time what did they say to you?

MR MBANA PETER THABETHE: Chair but – at the...

10 **ADV LEAH GCABASHE SC:** When they asked for the appointment in other words?

MR MBANA PETER THABETHE: Chair by the time they made appointment I knew they were Estina already. When they came to make the proposal I knew them as Estina to come and make the presenta – the proposal of the project.

ADV LEAH GCABASHE SC: And who had informed you about Estina coming to make a presentation to you?

MR MBANA PETER THABETHE: It was Mr Vasram himself.

ADV LEAH GCABASHE SC: So you knew him quite well?

20 **MR MBANA PETER THABETHE:** Yes I knew him. He did come to the Department.

ADV LEAH GCABASHE SC: So as at about 2012 – early 2012 mid 2012 you would have known him very well?

MR MBANA PETER THABETHE: I – I am not sure what is very well Chair but I knew him.

ADV LEAH GCABASHE SC: Well let us continue here because it is just to give context to what the investigators were asking of you that I ask you these other related questions.

MR MBANA PETER THABETHE: Okay.

ADV LEAH GCABASHE SC: So they say after their first interview with you Mr Thabethe they approached Estina's director Mr Kamal Vasram to discuss the project with him. Mr Vasram is Estina's only director. Mr Vasram would not agree to an interview with ENS and stated that Estina was bound to confidentiality in terms of the agreement signed with the
10 Department. We requested that Mr Vasram produce the agreement giving rise to his duty of confidentiality. Mr Vasram ignored our request and we were not provided with a copy of the agreement. So at our second interview with Mr Thabethe we requested him to waive confidentiality and facilitate a meeting between ENS and Mr Vasram. Mr Thabethe refused to assist ENS and stated that we should conduct our own investigation without his assistance. Is that correct?

MR MBANA PETER THABETHE: No – no Chair. What did they had requested me is that I provide them with Mr Vasram's contacts which I did so that they will be able to talk to Mr Vasram. Then apparently
20 because in the interview the – this happens when they came to do the interview with me. They said they had a problem in securing an appointment with Mr Vasram. They would want to interview him. And from my side I also tried to ask him to interact with them. Now what came out of that was that they had then indicated to me that the investigation is with the Department. Whatever that – they want from

them I should then – it should be asked through me to provide to them. Because they were a third party into this. Otherwise they were indicating that if this investigation is also to investigate a third party then it would have to go through a different process. This interview was the – this investigation was for the Department not for the third party. So that is what they indicated to me that they would not want to be part of the investigation. But if the Department wants any information because they were working with us then they would be able to make that information available but they would not be open for
 10 investigation to be part of the Department.

ADV LEAH GCABASHE SC: I must say your version is very different to what is written here. Because if you look at paragraph 2.3.2 in the middle of the page they go on to say:

“Mr Thabethe stated that he was in contact with Mr Vasram and that he was aware that Mr Vasram refused to meet with us. He was nevertheless unwilling to facilitate a meeting between ENS and Estina.”

MR MBANA PETER THABETHE: Ja that – Chair is correct. I have
 20 indicated to them that I was in contact and he had indicated to me – because if he has indicted that he would not want to do it now it cannot be that I am not willing because I was telling them this is my interaction with him and this is how he sees it. So I do not know where the unwilling comes in because I had contacted him on their request and he has indicated to me and then I have – in my meeting I have spoken to

them this is what he says.

ADV LEAH GCABASHE SC: Mr Thabethe do you have a difficulty with the whole concept of transparency, openness, accountability?

MR MBANA PETER THABETHE: No I do not Chair.

ADV LEAH GCABASHE SC: But when one reads these particular comments amongst other things one gains the impression that you – you prefer being closed in the manner in which you conduct your official not even private like your official duties rather than being open and transparent.

10 **MR MBANA PETER THABETHE:** Ja Chair I am sure I have explained my understanding.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: But this was their report.

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: I do not know how they saw my explanation.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: But if I was to be made to make inputs in this statement I would not agree with it.

20 **CHAIRPERSON:** Hm.

MR MBANA PETER THABETHE: The way it has been put because I had explained that I have done what I was supposed to do and this is what I got and according to this it was like I was not willing to do anything.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: But they acknowledge some of the activities that I had undertaken in terms of contact and in coming back to them.

CHAIRPERSON: You must feel free to say that is what they say but it is wrong because of a,b,c,d or it is not justified what they are saying about me.

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: Because of a,b,c,d.

MR MBANA PETER THABETHE: Thank you Chair.

10 **CHAIRPERSON:** Okday.

ADV LEAH GCABASHE SC: The next example Chairman through you is at paragraph 2.3.3. where it is noted that Mr Thabethe further refused to waive his right to attorney/client privilege so that we could interview Advocate Ditira of the State Attorney's office. We wish to interview Advocate Ditira in respect of the advice she gave Mr Thabethe and the Free State Department of Agriculture and Rural Development in respect of this procurement process and the second contract signed between the Department and Estina. Is that correct you would not waive your right to attorney/client privilege? And this is
20 mind you in respect of state law advisors.

MR MBANA PETER THABETHE: I do not think Chair they needed permission from me.

CHAIRPERSON: Well I am - I am – I also do not – I am not sure that I understand the idea of invoking privilege or – in this kind of situation. It is all government.

MR MBANA PETER THABETHE: It is all – yes Chair.

CHAIRPERSON: It is not your personal matter.

MR MBANA PETER THABETHE: No.

CHAIRPERSON: It is government and if they need to talk to the state law advisors who advised you I do not see why there should be a problem.

MR MBANA PETER THABETHE: Yes.

CHAIRPERSON: And – and those state law advisors must be able to say to them Mr Thabethe came to us and sought the advice on these
10 facts. This is what he told us and this is the advice we told them – we told him, we gave him. That should not as far as I am concerned really be a problem. But to the extent that they say you invoked that privilege if that is what they say then my problem is \

1. With you invoking it but

2. With them thinking that they were precluded from talking to the state law advisors about what advice they had given you and on what basis.

But you must indicate whether what they are saying namely you refused to let them talk to the state law advisors on the basis that you were in a
20 client/attorney relationship with the state law advisors whether that is true. You had a privilege that you would rely on to say they must not speak to your legal advisors so to speak.

MR MBANA PETER THABETHE: Chair I have not done so neither verbally nor in writing. Because I would understand this if I had used private lawyers but these people they are referring to state law

advisors and they are in a higher office than my Department in the office of the Premier. So they had all the rights to go – there was no way I could even tell them do not go there. Because the way it comes across here it is like I have said do not even go to any of those offices to interview which I say it cannot be true Chair.

CHAIRPERSON: But was there ever any discussion of that kind of privilege between you and them?

MR MBANA PETER THABETHE: No Chair.

CHAIRPERSON: Hm.

10 **MR MBANA PETER THABETHE:** It was – it was never discussed. My take is that if they come and do an investigation into the Provincial Government they will then be doing with any other department that feel had interacted with this particular project that would be open.

ADV LEAH GCABASHE SC: Then the third comment they make is that when they asked you to provide them with the name of the CEO of Paras again you declined to do so. They say despite our requests we were not provided with the contact details or the name of the Paras CEO. ENS was therefore not able to contact the Paras representatives that Mr Thabethe alleges he dealt with during this procurement
20 process. ENS is therefore not able to confirm whether or not Paras is actually involved in this agreement. Again just the name of the people you met in India, did you decline to assist them?

MR MBANA PETER THABETHE: Chair the – by this time the CEO of Paras had already been into the project itself. The thing that came up they wanted the letter of invitation that I had sent. Now that is the

letter that we were struggling to find in the Department. We eventually got it after some time because we could not find it but we had sent it through. But then we eventually found the document but by the time we made the document available to them they had said – they had already decided to say we have refused. But there was no time where we had refused to provide information. Because they had most of the documents with them including the presentation of Paras.

CHAIRPERSON: One second. Yes thank you.

ADV LEAH GCABASHE SC: And then finally on page 93 under the
10 heading “Specific Limitations”. Page 93 specific - right at the bottom -
“Specific Limitations” they note the following:

“In this matter it was clear to ENS that Mr Thabethe
and/or other officials may have withheld information
from the investigation team. We may therefore not
have obtained access to all of the document
relevant to this project. ENS was not able to
interview Mr Vasram of Estina or Advocate Ditira of
the State Attorney’s Office because Mr Thabethe
would not facility our access to these witnesses.
20 Our report is therefore based on information
available to us at the time that we finished - that we
finalised the investigation. We have not obtained
Estina/Paras’ version of events.”

Now you would agree that it would have been useful for them
to have obtained Estina’s version of events and of course Paras’

version of events?

MR MBANA PETER THABETHE: Chair the - this item on “Specific Limitations” it is based on the agreements that we had already discussed. I think they were just concluding here what makes them to say they - they have limitations. The - the documents which are at disposal here and to everybody else that has requested the document are the same documents.

There - there is not any of the documents that is different from this that we have. That is why I do not understand what - what
10 documents we may have withheld that they felt we were hiding from them because all what - that we had we provided them. All that they requested except what we did not have. That we were not able to provide to them.

Therefore Chair I - I will not agree with - with that conclusion because if - if you look at them the documents that they have been analysing they - we had given them the document. Except we were not able to give them tender documents which I had indicated. I have explained to them that we - we have never discussed the issue of Advocate Ditira.

20 I do not know where it comes from that I had refused them to go and interview Advocate Ditira. Unless if they would be able to give us a letter to say we gave you this letter. Here is your reply or we met with you. We asked you. You refused. I had explained the issue of Vasram. How - how he felt about - about it sitting outside the department to be party to the investigation of the department which I

had explained to them.

So this “Specific Limitation” Chair should not have brought a limitation to the interview. It should not have.

ADV LEAH GCABASHE SC: That is your version and you are entitled to place it on record Mr Thabethe. I might as well just take you through briefly now that we are dealing with the ENS observation/finding/conclusions and I have not dealt with all of them. I might as well take you through the conclusions and recommendations that emanated from David Maree’s report. He raised the following
10 concerns:

“One, all three documents ...”

That is the proposal - project proposal, the business plan and the feasibility study that you relied on. He says:

“All three documents lacked the information required to carry out a proper analysis of the project. For example information on the detailed costing of equipment.”

Is one example he gives. Two, he says:

“The feasibility study is ...”

20 **CHAIRPERSON:** I think he wants to comment on that one.

ADV LEAH GCABASHE SC: Oh please do.

MR MBANA PETER THABETHE: *Ja.*

CHAIRPERSON: *Ja.*

MR MBANA PETER THABETHE: Thank you Chair. Chair I was of the opinion that we had spoken about this - his report. I had requested

that because I never got an opportunity to respond to his report. I was of the understanding that we would then be afforded ...

CHAIRPERSON: You can ...

MR MBANA PETER THABETHE: An opportunity ...

CHAIRPERSON: Deal with it some other time?

MR MBANA PETER THABETHE: Yes Chair.

ADV LEAH GCABASHE SC: Oh, you will file a supplementary affidavit or something with your comments. You prefer doing that?

MR MBANA PETER THABETHE: I ...

10 **CHAIRPERSON:** I - I think he - I think he - he may or he might not be ready to indicate how he will deal with it ...

MR MBANA PETER THABETHE: Deal with it.

CHAIRPERSON: And he might need advice from his lawyers. I think what - what is accepted is that he will have an opportunity to ...

MR MBANA PETER THABETHE: To look.

CHAIRPERSON: To - to deal with it in one way or another. Maybe when we are done there will be some discussion to see how that can be done. One way is that after having studied it and when he is - he could come back at a later stage so that he then says this - these are the
20 difficulties I have with it and then he can be - his views or his criticism of it can be tested also.

We will see. We will see how - how it should be dealt with.
We will talk later.

ADV LEAH GCABASHE SC: Okay.

MR MBANA PETER THABETHE: Hm.

ADV LEAH GCABASHE SC: If you could just make a mental note that one of the issues I was going to raise with you in any event is that it is only the project proposal that you had when you were signing the agreement. The feasibility study and the business plan are October 2012 documents and those documents you only had in your possession much later.

I am just giving you this as a mental note to make because that is where I would want to engage you on ...

MR MBANA PETER THABETHE: Thank you.

- 10 **ADV LEAH GCABASHE SC:** Next time we deal with this issue. As the Chairman does not like us surprising people. So can we then come back to where we were originally which was with the photographs that were taken in April of this year. Are you ready? That takes you back to page 1-3-5-7 of Bundle D for Donald - Reference Bundle D for Donald. Are you on page 1-3-5-7?

MR MBANA PETER THABETHE: That - that is correct Chair.

ADV LEAH GCABASHE SC: And you have of course photographs 1, two, three, four, five, six and seven on that page?

MR MBANA PETER THABETHE: On that (intervenes).

- 20 **ADV LEAH GCABASHE SC:** Just - no I really will just focus on that page ...

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: Or maybe the next page. Have you been inside this facility that is depicted here? This is the milk processing plant.

MR MBANA PETER THABETHE: Yes I have been Chair.

ADV LEAH GCABASHE SC: You went into the one that belonged to Paras I take it when you were in India?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: How do the - how do the two compare?

MR MBANA PETER THABETHE: Chair these were the pictures I - I understood that it was taken this year - 2019.

ADV LEAH GCABASHE SC: Correct.

MR MBANA PETER THABETHE: Which is almost four to five years
10 after it has been set up.

CHAIRPERSON: Yes but I - I think the question relates to when you were inside the facility in Vrede knowing how the Paras one in India looked like. How did the two at that time compare? I think that is the question.

MR MBANA PETER THABETHE: Chair yes. I am - I would - I would respond to that because ...

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: When I went to Paras I went to a complete project ...

20 **CHAIRPERSON:** Yes.

MR MBANA PETER THABETHE: And the Vrede Project ...

CHAIRPERSON: Hm.

MR MBANA PETER THABETHE: Was - is incomplete.

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: So it would not be a fair ...

CHAIRPERSON: Comparison?

MR MBANA PETER THABETHE: Comparison.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: When did you expect Estina to complete all work on the milk processing plant?

MR MBANA PETER THABETHE: Chair, we - we had agreed that this was a three year plan and when we put everything in - on hold it was in the second - in the beginning of the second year. We had expected that in the third year the constructions and everything and the
10 commissioning would have been completed.

ADV LEAH GCABASHE SC: But Mr Thabethe one of the discussions we had last week Friday was what you signed off on - on 18 January 2013 ...

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: And that was that list of items under Phase 1 and what we did on Friday was interrogate whether you ought to have signed off on all - all of those. Remember?

MR MBANA PETER THABETHE: Yes Chair. That - that was the - the Phase 1 part.

20 **ADV LEAH GCABASHE SC:** So where you satisfied that is what that document indicated - the one we looked at on Friday - it indicated that you were satisfied that all the Phase 1 items had been dealt with.

MR MBANA PETER THABETHE: Ja. Chair the - the document that we went through was the initial 30 million allocated. That is the document that we went through. It - it did not include this part.

ADV LEAH GCABASHE SC: I fully agree with you that the milk processing plant did not form part of Phase 1. It formed part of a different phase.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: But the proposition I am putting to you is the following: if you were satisfied in January 2013 that Phase 1 was complete what was your expectation going forward from Phase 1? What was the next thing you were expecting to see happen at the farm?

MR MBANA PETER THABETHE: Chair I am - I am - because there -
10 there was milestones set and the implementation was following those milestones that we had set because they were very clear that when we finish this one this will be next and this is the budget allocated for it.

By the time when this had happened it was not to its completion stage because we - we had a challenge and we had to put the project on hold. So it was not - this was not signed off because it was not completed. Phase 1 I agree it was completed and we had gone through each last week.

ADV LEAH GCABASHE SC: This particular project the second part are you saying the milk processing plant formed part of Phase 2?

20 **MR MBANA PETER THABETHE:** That is correct Chair.

ADV LEAH GCABASHE SC: Do you recall what the timelines were for Phase 2 to be complete?

MR MBANA PETER THABETHE: Chair I may have to go back to the - to the milestones because they have dates and budget allocations.

ADV LEAH GCABASHE SC: The reason I ask is because between the

time that you signed off on - on the Phase 1 milestones and the time that Estina left the farm that period spans more than a year. Would you agree with me?

MR MBANA PETER THABETHE: Chair the - the period they left and the period when we put the project on hold there are two activities that happened. We had put the project on hold that nothing was happening so that we clear all the investigations everything that was done and we then as we had proceeded during the year realised that from the National Department of Agriculture the money that was allocated to the
10 projects they have withdrawn it to say they will no longer make it available.

Hence we then decided to terminate the contract because we were no longer going to be able to meet our financial obligations. At that time the project was - we had put it on hold so that we can conclude and agree and during that period when we had put it on hold one of the funders which was National Agriculture pulled out.

They wrote to us and said they were withdrawing their allocation from the project on the basis that they had received a letter from National Treasury that we had entered into an illegal agreement
20 which National Treasury was at that stage busy with the investigation.

ADV LEAH GCABASHE SC: Yes indeed. CUSP did withdraw its allocation. In fact I am just looking at two letters here and trying to find the date. On 21 August 2013 you - Mr Thabethe - were - a letter was - was directed to you and the title is:

“The Intention to Withhold Quarter Two Allocations

of CUSP and Ilima/Letsema for 2013/2014.”

So that letter was signed on 21 August 2013.

MR MBANA PETER THABETHE: Yes. I - I agree Chair. I did receive that letter. This - this letter was preceded by a letter that came from National Treasury to National Agriculture informing them that they should withdraw.

ADV LEAH GCABASHE SC: But the fact of the matter - please correct me if I am wrong - the fact of the matter is you had already been allocated your CUSP money for the period 2012/2013?

10 **MR MBANA PETER THABETHE:** That is correct Chair.

ADV LEAH GCABASHE SC: And so it would only have been in - if this letter was written in August 2018 you would have - 2013 - you have been given your allocation for the 2013/2014 year.

MR MBANA PETER THABETHE: That - that is correct Chair.

ADV LEAH GCABASHE SC: So you had enough money from CUSP in terms of their allocations of course?

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: To run for that financial year?

MR MBANA PETER THABETHE: That is correct.

20 **ADV LEAH GCABASHE SC:** You only started running into difficulties in relation to the Vrede Dairy Project as of April 2014. Is that the new financial year? Have I got it right?

MR MBANA PETER THABETHE: Ja. I am - I am trying to think Chair.

ADV LEAH GCABASHE SC: I think so. I think so Mr - I think I have it right because you had - this letter is dated 2013. Yes. August 2013.

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: You had enough money until the end of March 2014. The new financial year would have started in April 2014. So they would not have given you your CUSP allocation - not for Vrede in - in April 2014. Does that sound right?

MR MBANA PETER THABETHE: No, no Chair. Like - like she - she says the letter to me from National was sent on 21 August. They were referring to the budget allocation of that financial year in question. They were withholding - they were saying you should not spend that
10 money into Vrede Dairy.

ADV LEAH GCABASHE SC: So they actually stopped you from spending it in that financial year?

MR MBANA PETER THABETHE: That is - that is correct Chair.

ADV LEAH GCABASHE SC: I thought that what they had done was let you do what you needed to do in that financial year but in the following year limit their conditional grants to other projects not to Vrede.

MR MBANA PETER THABETHE: It - it - Chair they - they stopped it in that financial year. They said they are withhold - withholding it means we - we should not spend in Vrede Dairy and then they later released
20 the money that we should spend in the province in other projects other than Vrede Dairy because it was already in our budget in the province.

ADV LEAH GCABASHE SC: What we are really exploring - we must not lose track of that - what we are really exploring is what could Estina have done and completed before they left in - the cancellation of that contract was 13 August 2014 ...

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: Before they left in August 2014. That is really what we are debating and as part of that debate we are looking at what monies were available? What responsibilities lay with Estina? What other responsibilities lay with the department? Am I - are we on the same page?

MR MBANA PETER THABETHE: Ja. That is - that is correct Chair. We - we had put the project on hold. That is - that - because we did - because when we - we started to have problems we were advised not to
10 proceed spending on the project. Hence we had put it on hold pending the investigation that was going on.

So we would not then be under investigation at the same time we proceed with the implementation of the project. So we allowed that the project investigation should go through and - and that we - we put it on hold. So there was no way that they would then proceed like everything is normal.

ADV LEAH GCABASHE SC: But that of course ought not to have impacted on Estina's contribution to the processing plant. Am I right - what happened with CUSP?

20 **MR MBANA PETER THABETHE:** I - I agree Chair but the question was not on the CUSP allocation. It was on the entire project.

ADV LEAH GCABASHE SC: I - I have a particular interest in the milk processing plant because - and correct me if I am wrong. My understanding is that milk processing plant was going to be built using Estina's money?

MR MBANA PETER THABETHE: I - I agree Chair.

ADV LEAH GCABASHE SC: And that is the same milk processing plant that is depicted in the photographs on page 1-3-5-7?

MR MBANA PETER THABETHE: Chair, I - I hear what she is saying but because of the challenges and the investigation that was going on we decided to put all the activities on site on hold. Whether it was our part or their part. We said let us wait until we - everything is cleared then we will then proceed.

10 So what I am trying to explain is that we - we did not say we are putting only what we were doing and let them proceed with what they were doing because if - if I would have a challenge of not completing the dairy then it will impact on the processing plant.

ADV LEAH GCABASHE SC: What we can agree on though I trust Mr Thabethe is that this milk processing plant has never ever operated?

MR MBANA PETER THABETHE: It - it would not Chair because it was not completed.

ADV LEAH GCABASHE SC: And what we can agree on as well is that the specifications for this milk processing plant were not monitored by the department?

20 **MR MBANA PETER THABETHE:** (No audible reply).

ADV LEAH GCABASHE SC: So the specifications for building this plant those were not monitored by the department?

MR MBANA PETER THABETHE: Ja. Chair I am - because there was a design that was provided of building it which we had looked at it and - and agreed on it. So I would not agree that we had not looked into the

designs of the processing plant. We have.

ADV LEAH GCABASHE SC: Mr Thabethe when is the last time you walked into this facility as - as unfinished as it is?

MR MBANA PETER THABETHE: I - I had gone into it Chair when they were busy with the construction and I had gone into it after the project was put on hold. I think the last time I would have went into the project it could have been around 20 - 2015/2016 Chair.

ADV LEAH GCABASHE SC: Your - your impression of what you saw is important. Do you think that anything can be done with this structure
10 and its contents as it currently stands or as you saw - last saw it in 2016? Can this still be completed or should the whole thing just be pulled down?

MR MBANA PETER THABETHE: Ja. Chair, I - I still believe that the - the project can still be turned around for implementation.

ADV LEAH GCABASHE SC: I - I really want to be very specific to the milk processing plant because you correctly say the two are distinct really.

MR MBANA PETER THABETHE: Okay.

ADV LEAH GCABASHE SC: So let us focus just on the milk processing
20 plant for now. What is your view on this building? These are some of the rooms inside that big warehouse.

MR MBANA PETER THABETHE: Chair what - what - my - my response to that it will - will be - if - if we would want to assess the current status and once the current status has been assessed you would be able to be provided with cost implication so that you do your proper

calculation whether you decide yes indeed.

Let us proceed with the project or no we cannot proceed with the project because it - it is very critical that you understand that financial assessment but at - at the face value I - I believe that more was already spent on putting up the structure. Less would be required in making it operational.

ADV LEAH GCABASHE SC: Seeing that you ventured to the other half of the project the rest of the dairy farm again as at your last visit to the farm. What is your - your view? Is it - is it likely to become
10 commercially viable or will it always have to be supported by Government?

MR MBANA PETER THABETHE: Chair that project can still be made viable. That - that is my belief and understanding. Why I am saying so Chair while we had put the project on - on ice there was a lot of people who had interest from the private sector because they - they were happy with the infrastructure that was set up.
That came and say seeing that Government is not moving with this project why do you not dispose it. When Chair, I know I am jumping the gun, when we were requesting the Free State Development Corporation
20 to manage the project we had also requested that we should look at options. At that time I had three options in mind. One option was to dispose the project and recover the money, dispose it means we sell it, that will be one decision that the State might take. Secondly it would be to revitalise the project for the benefit of the farmers as beneficiaries, that was the second option, but that will then require that

government must make financial resources available for them to benefit.

My third, those were things on my mind, was to say because the capacity that you require there is very high-tech, that we look around and we find a strategic partner that will be interested to jointly work on the project with the farmers. Now that is what I thought we could do, because we had invested in the project and the project is there, and it can be turned around to operate.

ADV LEAH GCABASHE SC: Mr Thabethe you speak of the
10 involvement of the FDC, please just help us understand what their role was when you appointed them, I know they were appointed on the 14th of August 2014.

MR MBANA PETER THABETHE: Yes.

ADV LEAH GCABASHE SC: Help us understand their role.

MR MBANA PETER THABETHE: Ja, Chair we had requested the Free
State Development Corporation to manage the project, this is what was
key because there were cattle, there was milking going on, on the
project. So who didn't then after we have terminated the contract of
Estina and leave the project without anybody attending to it, so we had
20 requested, because there were assets also there, and if you do not
have anybody managing those assets which we believe they belong to
the farmer then you would have a problem of that – in that situation.
Hence then we had made a recommendation to the Executive Council
that we appoint FDC to manage that project, until such time that a
decision is taken.

ADV LEAH GCABASHE SC: Now Mr Roy Jenckelson in his evidence brought it to the Chairman's attention that you were paying the FDC something in the region of R1million a month to manage this project. Is that figure familiar?

MR MBANA PETER THABETHE: Chair we had made available to the FDC an amount of R20million from the Department to assist us in managing the project.

ADV LEAH GCABASHE SC: R20million to cover what period Mr Thabethe?

10 **MR MBANA PETER THABETHE:** Chair we had allocated, we had said to them Chair if we were to go to the agreement we have entered into, because I don't want now to say things which were not part of the agreement, we had made an agreement ...[intervenes]

CHAIRPERSON: Yes.

MR MBANA PETER THABETHE: ...with the FDC that what they should achieve in managing the project, because there were other things that we had asked them to look at.

20 **ADV LEAH GCABASHE SC:** Just before we go to that can I get some clarity on one aspect, the FDC was brought in as an implementing agent?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: The FDC was simply appointed by yourself, they did not go through any competitive process?

MR MBANA PETER THABETHE: No Chair.

ADV LEAH GCABASHE SC: Explain the reason for that.

MR MBANA PETER THABETHE: Our understanding was that the Free State Development Corporation is the State owned enterprise, which might mean that the State can allocate duties and responsibilities to this State owned enterprise and then allocate them the budget to do so.

ADV LEAH GCABASHE SC: That's a very novel way of approaching it because the FDC's core competency was not in agriculture was it?

MR MBANA PETER THABETHE: Chair the FDC is responsible for I would say small business development across, it would not be specific to say only in these areas, so we were looking across in terms of
10 assisting small business development. If I may go back a little bit Chair when FDC was formed there was amalgamation of different programs of which one of them was what we had called an agricultural development corporation in the previous administration, so we understood it that they would assist in all respects of business development and we understood Vrede Dairy to be a business and hence we then allocated it to them.

ADV LEAH GCABASHE SC: So just clarify this in terms of which prescript would you then have appointed the FDC?

MR MBANA PETER THABETHE: Chair again we went to the State Law
20 Advisors, to deal with this, which they advised us and they also assisted us in drafting that agreement, so we took it that they very familiar with the prescripts that were operating because they looked at that, so they assisted us and they advised that – then we drafted that agreement which we then signed with the State Development Corporation.

ADV LEAH GCABASHE SC: Really Mr Thabethe with all due respect you cannot pass the buck all the time when you are the Head of Department, you have to take responsibility for some things, you have to interrogate certain things. You cannot say advised, lawyers advise, you take the final decision, that is how it operates in the private sphere and in the public sphere as in Government, so you had decisions to take, much as you might be getting advice from lawyers, so I find it difficult to accept an answer that says our lawyers took care of all of this. That is the essence of what you are saying.

- 10 **MR MBANA PETER THABETHE:** Yes Chair the action of the State Law Advisors is the action of the Department, that is how I understand it. In responding that way I was responding to the question that was saying did you understand the prescripts, were they allowing you, hence I went to consult so that they assist and advise. They would have said if it was not no do not go that direction, so my understanding is that they had looked at that and they had said it is possible, it could be done.

ADV LEAH GCABASHE SC: Do you recall which prescripts they said they relied on?

- 20 **MR MBANA PETER THABETHE:** Chair that was not disclosed to me, because all that I needed whether it was possible, if it was possible then we should be assisted to draft that agreement, which they did.

ADV LEAH GCABASHE SC: You see the difficulty I have is that you are now taking funds that are made available to your Department and using those funds to pay over to a different entity that is your new

implementing agent without there being a clear understanding whether the supply chain management prescripts would apply to this implementing agent you have brought in, one. Two, without there being a clear understanding on the degree of sub-delegation or sub-contracting of services that that entity is entitled to embark on. Three, it then puts into question your oversight role as a Department. Am I explaining my difficulties clearly?

MR MBANA PETER THABETHE: Chair I hear what she is putting across.

10 **CHAIRPERSON:** Yes.

MR MBANA PETER THABETHE: We had I think the contract that we had entered into between us and FDC was very clear what we expected them to do, now we did not give responsibilities and we did not allocate a budget for them to do so, because it was our responsibility to make sure that the project is being managed, and hence we entered into an agreement so that nobody comes and say but I do not know what is my role, we have cleared that.

ADV LEAH GCABASHE SC: Please turn to the court record bundle I don't think we have used it today, so if you go to the court record
20 bundle page 760.

CHAIRPERSON: A or B?

ADV LEAH GCABASHE SC: B Chairman.

CHAIRPERSON: Okay.

MR MBANA PETER THABETHE: If I can ask the page again?

ADV LEAH GCABASHE SC: 760, and this time the black numbering

is aligned to the red numbering. Are you ready?

MR MBANA PETER THABETHE: Yes Chair.

CHAIRPERSON: I think you said B.

ADV LEAH GCABASHE SC: I did say B Chairman.

CHAIRPERSON: Yes, 760?

ADV LEAH GCABASHE SC: 760 Chairman.

CHAIRPERSON: Thank you.

ADV LEAH GCABASHE SC: So you have it before you Mr Thabethe?

MR MBANA PETER THABETHE: That is correct.

10 **ADV LEAH GCABASHE SC:** And here again it is an agreement entered into by the Department and the Free State Development Corporation.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: You had wanted to take us through however briefly the obligations of the parties which you will find on 762, page 762.

MR MBANA PETER THABETHE: Chair that is item number three obligations of the parties. I will read from item 3.1 going down.

CHAIRPERSON: Which ones do you – Ms Gcabashe do you want him
20 to read?

ADV LEAH GCABASHE SC: He had wanted to explain that there are distinct obligations that each party would have Chairman.

CHAIRPERSON: Oh okay.

ADV LEAH GCABASHE SC: And so I was giving him the opportunity by giving him the document to look at.

CHAIRPERSON: Okay.

MR MBANA PETER THABETHE: Yes Chair that – I am not sure if I read through into the records.

CHAIRPERSON: You don't need to, if you can just explain, if you wanted to refresh your memory then you can just explain what you need to explain.

MR MBANA PETER THABETHE: Yes Chair, what we had requested the FDC to do, because together with this agreement there was also a list of assets that went with it. So we had clearly outlined what we had
10 expected FDC to do which was managing the project clearly identifying the assets and all those things, so if we would have had a problem with any of the assets we would be able to go back to Estina to say but we have a problem here, we are not agreeing with your list of assets that you have handed over, the following things that were part here were missing and so on, so we had also agreed with that, with the FDC, and Chair I think this is what I wanted to explain that we had made it very clear to the FDC what we had expected them to do.

CHAIRPERSON: Yes, okay.

ADV LEAH GCABASHE SC: I find that last explanation a little
20 difficult to understand, you did not monitor Estina as an implementing agent, as I have understood your evidence, am I correct?

MR MBANA PETER THABETHE: No Chair we did.

ADV LEAH GCABASHE SC: All you got from them were reports, monthly reports, quarterly reports, but you would not have any ideas to how many cattle were at the dairy at any one time, would you?

MR MBANA PETER THABETHE: Chair those reports were verifications to us to say if you go on site this is what would have been happening, because that is what we would then use to say what has happened, how far are you and then they will give us the report and you then use the report for ...[indistinct] purposes, that's what I understood why we then requested to give us monthly and quarterly reports.

ADV LEAH GCABASHE SC: Now ...[intervenes]

CHAIRPERSON: So, so, so what you are saying is – is what you are saying that you used the reports that you received to keep yourself
10 abreast of what was happening, and to then where necessary decide if you want to go and see whether what the reports tell you is what the situation is on the ground?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: But did you ever go to see for yourself whether the reports were telling you the correct position?

MR MBANA PETER THABETHE: That's true Chair, I did.

CHAIRPERSON: You did.

MR MBANA PETER THABETHE: That's correct.

CHAIRPERSON: Okay.

20 **ADV LEAH GCABASHE SC:** How often would you go Mr Thabethe?

MR MBANA PETER THABETHE: Personally myself Chair I would very infrequently go.

ADV LEAH GCABASHE SC: Infrequently?

CHAIRPERSON: Infrequently?

MR MBANA PETER THABETHE: Infrequently myself.

CHAIRPERSON: Yes okay.

MR MBANA PETER THABETHE: Taking that then there would be other official that will go more frequent.

ADV LEAH GCABASHE SC: You see I ask the question because we have witnesses who have come here to say cattle were being stolen from the farm, feed was being stolen from the farm, milk was sold in town, and there was a question mark about whether that milk was being sold legitimately or not, and this is why I ask or I make the statement that the Department did not monitor this project closely while Estina
10 was the implementing agent.

MR MBANA PETER THABETHE: Ja, Chair the fact that things were happening does not necessarily mean we were not monitoring. Let me put one example. After we had done the physical verification of the cattle there was a time when we realised that cattle were missing, not all the cattle were there. The missing of the cattle does not mean that we did not verify because if they were stolen, they were stolen but we knew that there was a problem the verification of the cattle were not enough.

So what I am trying to say is that our physical verification may
20 not mean that we did not know those things, if we did not know it will mean that we were not aware what was happening on the ground, so we knew what was happening on the ground.

ADV LEAH GCABASHE SC: I have my doubts that the Department knew what was happening at Estina and this is why I have a difficult even with the inventory list that the FDC prepared, they arrived, they

counted what assets they could, made a list, there was no list that you could compare the FDC list with when the FDC had completed their exercise. Tell me differently if there was.

MR MBANA PETER THABETHE: Ja Chair I am not sure which list she is referring.

ADV LEAH GCABASHE SC: So you have told us that there was an inventory list that the FDC prepared.

MR MBANA PETER THABETHE: No Chair, the inventory list was prepared by Estina on the handover. So this list was given to FDC so
10 that the FDC together with the Department went to do verification of what Estina had said these are the assets so that when we hand them over to FDC they know and they have verified themselves that indeed what was on the paper and what they were receiving was there. That's what we did.

So that list was prepared and given to us by Estina. Then we took that list together with FDC, verified the list and handed them over to FDC.

ADV LEAH GCABASHE SC: Please go to page 769 of the same court record bundle, it just follows on from what we're looking at, and you are
20 saying that this document was prepared by Estina?

MR MBANA PETER THABETHE: Chair we prepared that document but the inventory list contained in the document was provided by Estina to us, and then we prepared this handover of asset document.

ADV LEAH GCABASHE SC: If you look at page 771 you there have a detailed list of assets being handed over on August 12 2014.

MR MBANA PETER THABETHE: That's correct Chair.

ADV LEAH GCABASHE SC: Are you saying this list was prepared by Estina?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: How would you know whether this list was a complete list? How would you know whether all the assets that had been purchased with government money were recorded on this list?

MR MBANA PETER THABETHE: Chair on a monthly basis we were receiving reports on what has been done, and what has been
10 purchased, so our assessment of this list was to verify and just check if everything that was in the monthly report indeed was in the asset register.

CHAIRPERSON: Well that could not be adequate Mr Thabethe, that could not be adequate could it, because if the reports themselves on which you relied did not have correct information then you would not know. The only way to know would be to have gone to the farm itself and physically check that – and not just at the end, with the handover, but as the reports, monthly reports were coming to have – to make sure that from time to time you go and check whether what the reports are
20 telling you, monthly reports are telling you is what there is, is true, isn't it?

Because otherwise if you did not do that before Estina left and you just assumed that the reports, the monthly reports that they gave you correctly reflected the situation on the ground the if you take the handover list and check that then you are entirely in Estina's hands. If

they had decided not to tell you about certain things then you would not know, you would say no this list is fine, but actually it is not fine.

MR MBANA PETER THABETHE: Ja, I hear Chair, that would be possible on minor items, but on the major items we would have been able to pick up.

CHAIRPERSON: Ja, I am sure on certain big machines those you could, but of course you know some things that might be minor they might end up being quite something big financially if it is a number of things that are put together. I mean I see here references even to
10 wheelbarrows, anyway that is fine. The answer you have given is that you relied on comparing the list, the handover list with the monthly reports that you got?

MR MBANA PETER THABETHE: That is correct.

ADV LEAH GCABASHE SC: Mr Thabethe can you please go back to reference bundle D for Donald. Leave that one open, yes, just go to D, and please go to page 1407. Now this is a monthly financial report, is this the kind of report you are referring to? Page 1407 Chairman, it is just one sample of a monthly financial report.

CHAIRPERSON: Yes.

20 **MR MBANA PETER THABETHE:** That is correct Chair.

ADV LEAH GCABASHE SC: Now when you compare this report to the report in that court records bundle that I said you should not close, they are completely different, so the record you have on this detailed list of assets being handed over on August 12 2014 those assets are not reflected on this particular – I will talk about this particular monthly

report, which is one for the 31st of January 2013.

MR MBANA PETER THABETHE: Ja, Chair on the monthly report the report will say we have spent 120 000 to buy a tractor. In the asset register they will tell you it is a John Deere whatever size that report, because the report is not an asset register, it would not give you all those details, it will just tell you that we bought a tractor. Then you can do verifications on the tractor in terms of the month report if you want to do so, but the asset register must then give you the details of what tractor is it.

10 So that is the difference, but what you would then do you would know that in November 2012 a tractor was bought in such and such a time if there was another tractor a tractor was bought so you would know the number of tractors that were eventually bought then you can compare them in your asset register to check if indeed all the tractors that were bought are in your asset register.

ADV LEAH GCABASHE SC: But of course there is also – I am just compounding the issue, there is also the evidence of Mr Basson who says that there were so many of the tractors that belonged to the farm that were parked in his yard because he fixed tractors and various
20 forms of equipment. Did you know about that?

MR MBANA PETER THABETHE: Chair my understanding is that they had agreed with him to provide services for the tractors on the farm, as a local business person, the the tractors will then go there for repairs and services that would happen, so I would not disagree with that.

ADV LEAH GCABASHE SC: In any event the long and short of it Mr

Thabethe is these reports are not comparable, what you call the detailed list of assets and what we are looking at as a monthly financial report are not documents that speak to each other. I trust we can agree on that at least?

CHAIRPERSON: In other words Mr Thabethe the proposition is your reliance on monthly reports to establish the accurateness, your correctness of the handover list was misplaced, because the monthly reports did not contain all the information that they would have had to contain if that comparison was going to give you the correct answer.

10 What do you say to that?

MR MBANA PETER THABETHE: Chair I would still say for the sake of a monthly report it did contain the information we required ...[intervenes]

CHAIRPERSON: No, no, no, not for the sake of the monthly report, for the sake of determining whether the handover list of assets that was given to you was a correct reflection of the assets that were supposed to be handed over to you, I think it was the question if I understood it correctly was in that area, did I misunderstand something?

ADV LEAH GCABASHE SC: No, no absolutely Chairman.

20 **CHAIRPERSON:** Yes, so in other words the question was you were given, you said you were given this handover list by Estina and you took this handover list and went to FDC and together you wanted to check and then I think that is where you said you looked at the monthly reports to see whether in effect you had been given the correct information on the handover list and the proposition is if you look at the

kind of information you were being given in monthly reports your reliance on the monthly reports for that purpose was misplaced. What do you say?

MR MBANA PETER THABETHE: Chair I agree that the monthly report will not give you the details, the monthly report will say farming equipment we spent 42 000 to buy farming equipment, and then the asset register will then say what are these farming equipments that you are referring to. All that we have been looking at to say there has to be farming equipment in terms of the monthly report. Then you come to
10 the asset register and say you had spent so much money in buying farming equipments where on the list are those farming equipments. That is the comparison.

I would say even though it may not give you the full details, but it will be able to respond to your question.

CHAIRPERSON: So is your answer therefore that you had to look at the monthly reports together with the asset register to see whether the handover list was correct?

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Okay.

20 **ADV LEAH GCABASHE SC:** Can I move on to a different aspect.

CHAIRPERSON: Let us take a short break before we move on, it is about four minutes past, we will resume at quarter past four.

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Ms Gcabashe.

ADV LEAH GCABASHE SC: Thank you Chairman. Chairman the legal team on both sides has had a brief discussion then we approached you to ask you if we could adjourn at this time. Our colleagues have a long way to go only because they have been – they travelled into Johannesburg this morning and they have to go home. There is quite a bit of material that we still have to cover and I think it would not be fair to rush Mr Thabethe in his answer or to rush evidence leader in her
10 questions. So in the circumstances Chairman we ask if you would please consider adjourning at this time. It is half past four and what we hope you will be able to do is give a date sometime in September. We believe we should not need more than an afternoon to complete the evidence of Mr Thabethe. I saw my colleagues approach Mr Thabethe so I have assumed that he too will be available or will make himself available for the September date. So that is what we are requesting DCJ.

CHAIRPERSON: Okay no we are going to adjourn at this stage without Mr Thabethe having finished his evidence simply because it is clear
20 that we are not going to finish with his evidence today and we cannot continue tomorrow because not everybody is available tomorrow. Another date will be arranged. There have been discussions on – by the legal team of the commission and Mr Thabethe's legal team and myself. A date will be arranged for Mr Thabethe to come back and there are some documents that will be exchanged in the meantime in

order to make sure that when he comes back he is able to deal with certain matters – certain matters as well including statements that might come through from some individuals from the Department of Agriculture in the Free State as well as he will get a chance to also deal with one of the reports to which reference was made during his evidence. So we are going to stop at this stage Mr Thabethe and you will come back. Is that fine?

MR MBANA PETER THABETHE: That is fine Sir.

CHAIRPERSON: Yes. Probably we will not need the whole day for you
10 when you come back. It should be maybe three hours or thereabout and then we should be able to finish. That hopefully will be sometime in September but the date will be given to you in due course. So we are going to adjourn. With regard to tomorrow there will not be any sitting of the commission tomorrow but with regard to Thursday and Friday there was a witness who was going to give evidence but her state – a statement will be issued tomorrow as to whether that witness can be heard on Thursday and Friday. There is a possibility that we might not sit on Thursday and Friday either. If we do not sit on Thursday and Friday we will still nevertheless sit on Monday and the
20 media statement that will issued will indicate which work stream the witnesses who will be giving evidence next week will come from – from Monday onwards. So we are going to adjourn then now. The proceedings are adjourned.

REGISTRAR: All rise.

INQUIRY ADJOURNS SINE DIE