

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

**HELD AT**

**PARKTOWN, JOHANNESBURG**

10

**04 OCTOBER 2019**

**DAY 177**

20

**PROCEEDINGS COMMENCE 4 OCTOBER 2019**

**CHAIRPERSON:** Good morning Ms Gcabashe, good morning everybody.

**ADV LEAH GCABASHE SC:** Good morning DCJ.

**CHAIRPERSON:** We are starting late because of partly me, partly matters of the commission. Okay let us – are you ready? Let us start if you are ready.

**ADV LEAH GCABASHE SC:** We are ready DCJ.

**CHAIRPERSON:** Yes.

10 **ADV LEAH GCABASHE SC:** DCJ I thought I should just place on record that...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** After your enquiry yesterday regarding local dairy companies and the contact that was made with them our investigators have tried to work on that overnight.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** And have been able to find two documents. One appears to be a report – a feasibility study. As soon as that comes to hand – a hard copy comes to hand I will make sure  
20 that my colleague Mr Buthelezi gets a copy.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** Of that document.

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** So that Mr Thabethe can look at it.

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** The second one is I think are a couple of affidavits that deal with the same issue that appeared to be in the bundle that the NPA had. Again as soon as those documents are to hand we will give Mr Buthelezi a copy again so that Mr Thabethe can deal with them.

**CHAIRPERSON:** Okay. No that is fine.

**ADV LEAH GCABASHE SC:** As I understand matters Mr Thabethe has in any event requested that he prepares a supplementary affidavit.

**CHAIRPERSON:** Yes.

10 **ADV LEAH GCABASHE SC:** He may wish to deal with those matters.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** And whatever else in that affidavit.

**CHAIRPERSON:** Ja. Okay No that is fine.

**ADV LEAH GCABASHE SC:** Thank you DCJ.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** In relation to the questions Mr Thabethe good morning again.

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

20 **ADV LEAH GCABASHE SC:** We were yesterday going through your annexures. The annexures to your 2017 affidavit. Those are to be found in Exhibit HH10 Volume B. And that is the volume that starts with your 2017 affidavit and then has tabs where all the annexures ought to be.

**MR MBANA PETER THABETHE:** Thank you.

**ADV LEAH GCABASHE SC:** Are you good with that? Thank you. The

DCJ will have to hear whether you are comfortable with what I have said or not.

**MR MBANA PETER THABETHE:** Ja Chair I wanted just to interject.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** If the Chair would allow me to make a statement regarding the discussion we had yesterday.

**CHAIRPERSON:** Yes okay.

**MR MBANA PETER THABETHE:** Ja Chair thank you very much. Maybe Chair I need to come back and maybe the statement that I made  
10 might not have been appropriate regarding the issue of the media.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** I am aware we made a debate yesterday.

**CHAIRPERSON:** Yes, yes.

**MR MBANA PETER THABETHE:** Regarding the media.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Stopping the project.

**CHAIRPERSON:** Yes, yes.

**MR MBANA PETER THABETHE:** Ja what I am saying maybe it might  
20 not have been appropriate to say it is the media that stopped the project.

**CHAIRPERSON:** Yes, yes.

**MR MBANA PETER THABETHE:** I think what is correct is that after the media article.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Then there were a lot of enquiries that were made.

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** And during that period maybe two things that happened. The one which I have referred yesterday which led to treasury doing an investigation. And the second one which was the media enquiry that was also made to Paras which also made them to – to be very reluctant to proceed because of the – of the status of the project because Paras was – is a multinational company.

10 **CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** So they get worried about the – the media. So that is the issue not necessarily meaning that it is the media that stopped the project.

**CHAIRPERSON:** Yes, yes.

**MR MBANA PETER THABETHE:** I think that is what I want to [indistinct].

**CHAIRPERSON:** To clarify. Okay no that is fine.

20 **ADV LEAH GCABASHE SC:** Thank you Mr Thabethe. We were dealing with Annexure 6 if you go to Tab 6. And it is a report that we have actually dealt with largely in your previous evidence. I would just like you to deal with one small aspect that I do not believe we have touched on and that you will find on page 316 under Processing Plant. The reason of that I have a great interest as a – the evidence leader in the processing plant of course you know is because that is money that Estina/Paras was going to be providing.

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

**ADV LEAH GCABASHE SC:** Yes. Now this state of the art ISO9001/2000 and HACCP certified facility that they were going to put up you mention it in that report in the very last paragraph.

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

**ADV LEAH GCABASHE SC:** Can you maybe we are not as technically inclined as you are can you just explain what exactly they were supposed to put up because this is what you were expecting from them. This certified facility.

10 **MR MBANA PETER THABETHE:** Ja Chair why we had included that those are the certification already they were having in their possessions. Those are the assessment that are being made and then if a company meets those requirements then they are given those certificates which determine a certain level of compliance. So hence then we refer to them. So it is a very technical kind of a certificate that is given that qualifies you to be able to issue – to be able to do processing at that level.

**ADV LEAH GCABASHE SC:** So it is a certificate that says that they have the capacity and capability to do processing at the level at which  
20 you had specked was specified the processing plant?

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

**ADV LEAH GCABASHE SC:** Thank you. It helps. Because we will later on deal with what exactly they did then put up and we will come back to this.

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

**ADV LEAH GCABASHE SC:** And again we will rely on your assessment.

**MR MBANA PETER THABETHE:** Okay that is fine.

**ADV LEAH GCABASHE SC:** And your knowledge on this. MPT7 which is the next annexure we have dealt with. Because of the presentation that we have just spoken about the MPT the annexure 6 you then were able to secure resolution from the Provincial cabinet. MPT8 the next tab, annexure 8 we have not received. This is the invitation letter that you would have received – I beg your pardon – you would have sent to  
10 the CEO of Paras. If you go to paragraph 12 of your affidavit MPT8 is dealt with there. So if you go to paragraph 12 just same document – same document.

**CHAIRPERSON:** I am sorry we are going to his affidavit?

**ADV LEAH GCABASHE SC:** Same file – his affidavit, same file.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** The same file just the beginning Chairman. And we go to page 247 of the same file. You mention here that you invited the CEO of Paras by way of a letter.

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

20 **ADV LEAH GCABASHE SC:** All I am saying is we do not have that. I do not know if you want to add anything at all but I am saying I do not know if you still have a copy of that letter. It is not in the file.

**MR MBANA PETER THABETHE:** Okay. Yes Chair the – it was when this affidavit was deposed a copy of that letter was attached. It is one of those documents that are no longer in – in my possession Chair.

**ADV LEAH GCABASHE SC:** That is fine. I do not think anything in particular turns on it because we know that Mr Kumar did come to South Africa. We have discussed that previously.

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

**ADV LEAH GCABASHE SC:** Then 9 if you go to Tab 9 that is the original project proposal by Estina dated the 15 May 2012. We have dealt with that.

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

**ADV LEAH GCABASHE SC:** In our previous hearings.

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

**ADV LEAH GCABASHE SC:** At the end of that you have annexed the deviation – what we have been calling the deviation memorandum. Again it is something we have dealt with. And that deviation memorandum would have been MPT9. Okay? It is just at the end after 8 comes 9.

**MR MBANA PETER THABETHE:** Okay thank Chair yes it is that.

**ADV LEAH GCABASHE SC:** And you will find it there. We have dealt with that – that issue.

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

20 **ADV LEAH GCABASHE SC:** We then move onto 10 which is the acceptance of the proposal. You have again dealt with that.

**MR MBANA PETER THABETHE:** Okay.

**ADV LEAH GCABASHE SC:** In your evidence.

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

**ADV LEAH GCABASHE SC:** And the only point I want to confirm with



you is that though you mention a partnership agreement in paragraph 2 of this letter you have explained that you had not intended to establish a PPP. That is my understanding of your evidence.

**MR MBANA PETER THABETHE:** If you can repeat again Chair I am not [indistinct].

**CHAIRPERSON:** Yes okay.

**ADV LEAH GCABASHE SC:** What I will actually ...

**CHAIRPERSON:** Or maybe...

**ADV LEAH GCABASHE SC:** Do is read.

10 **CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Read the sentence.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** Chairman.

**CHAIRPERSON:** Maybe let me put – let me say she is saying she understands your evidence to be to the effect that you did not at any stage intend to establish public / private partnership.

**MR MBANA PETER THABETHE:** No that is correct, that is correct Chair.

**CHAIRPERSON:** Hm.

20 **ADV LEAH GCABASHE SC:** And the only reason I ask for confirmation is because this paragraph 2 mentions a partnership agreement. Just to make sure that we are on the same page. Thank you.

**MR MBANA PETER THABETHE:** Yes.

**ADV LEAH GCABASHE SC:** Thank you Chairman. We then go to 11 – Annexure 11. We did not receive that. It refers to the verification of

account details and this verification was supposed to be done by the Provincial Treasury. Again I do not think much turns on that. We will deal with matters relating to the Provincial Treasury when the Treasury witness or witnesses come in. MPT12 is the agreement of the 7 July it is also called the Agreement of the 5 July. We have traversed much of the content of this agreement previously. There are just a couple of things that we had not looked at in that agreement which I would like you to just give a short explanation on. The first is – so if you go to 12 which is the agreement.

10 **MR MBANA PETER THABETHE**: Yes I am there Chair.

**ADV LEAH GCABASHE SC**: And you look at Note 11.2 or Clause 11.2. The heading there is Intellectual – Ownership of Intellectual Property. And what I understand you to have agreed with Estina here is they must and I underline the word must return without delay to the department all materials in their possession which belonged to the department. Most importantly is the next bit.

“Regardless of whether or not such materials were  
originally supplied by the department to Estina.”

You are comfortable with that?

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

**ADV LEAH GCABASHE SC**: And there is no further explanation that your understanding is the same. Estina had to give everything back to you.

**MR MBANA PETER THABETHE**: Back to – yes.

**ADV LEAH GCABASHE SC**: Hm.

**CHAIRPERSON:** Just to refresh my memory we did deal with the agreement at quite some length earlier but I – and I do know that one of the issues I think I raised with you was the fact that this agreement was with Estina and not with Paras. Is that right?

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

**CHAIRPERSON:** Yes. My memory is not very clear now by the way did you say there was some agreement that the department had with Paras – separate agreement or was there just a letter?

**MR MBANA PETER THABETHE:** Ja Chair the agreement was between  
10 the Memorandum of Understanding was between Estina and Paras.

**CHAIRPERSON:** Yes. But there was no – nothing – there is no agreement.

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** Directly between Paras and the department?

**MR MBANA PETER THABETHE:** And the department – no Chair.

**CHAIRPERSON:** Ja. There was some mention I think of some letter maybe it was a letter from Paras saying Estina would be their partner or something.

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

20 **CHAIRPERSON:** It was just a letter?

**MR MBANA PETER THABETHE:** It was just a letter.

**CHAIRPERSON:** That was addressed to the department.

**MR MBANA PETER THABETHE:** Department yes Chair.

**CHAIRPERSON:** Yes. Because I know that you – you said I think that from your point of view your partnership was with Paras and Estina was

Paras' partner or agent or something ja.

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

**CHAIRPERSON:** Is that right?

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

**CHAIRPERSON:** Ja. But it would seem and this is maybe a point that we did deal with before but I just want to make sure. So it would seem that for all intents and purposes in terms of records the only entity that you had as a department you had a partner – an agreement with or a partnership with was Estina?

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

**CHAIRPERSON:** Not Paras.

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

**CHAIRPERSON:** That is correct ja.

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** Thank you Chairman.

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** We have dealt with 11. Can you please look at Clause 12 Financial Control and it says:

20 “This agreement is subject to the provisions of the Public Finance Management Act 1999”

What had you intended here Mr Thabethe if you could explain? Because this is part of your agreement with Estina.

**MR MBANA PETER THABETHE:** Ja Chair – Chair this means that we will – we will do all transactions in line with the PFMA. That is what it

is saying.

**ADV LEAH GCABASHE SC:** You see I ask the question because we have had discussions around transfer payments.

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

**ADV LEAH GCABASHE SC:**

1. We have had discussions around the how the PMFA gives effect to Section 217 of The Constitution.
2. We have had discussions around the Treasury regulations and how those too of course give effect ultimately to Section 217.

10 **MR MBANA PETER THABETHE:** That is [indistinct].

**ADV LEAH GCABASHE SC:** My understanding of your evidence has been that the transfer payment – well first monies that were paid to Estina were transfer payments?

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

**ADV LEAH GCABASHE SC:** How were you going to account for those transfer payments within the framework of the Public Finance Management Act that is all I am asking you to explain? You may have done so before but...

**MR MBANA PETER THABETHE:** Yes.

20 **ADV LEAH GCABASHE SC:** If you could just go over it.

**MR MBANA PETER THABETHE:** Yes Chair transfer payment are in the PFMA.

**ADV LEAH GCABASHE SC:** Can you just take us through the particular portions that you think are directly relevant to this?

**MR MBANA PETER THABETHE:** Yes I may not be able to do it right

now.

**CHAIRPERSON:** Yes. Yes no, no, that is fine but your understanding is that there are provisions that deal with that?

**MR MBANA PETER THABETHE:** Transfer payment yes Chair.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Can – can...

**CHAIRPERSON:** Yes okay.

**ADV LEAH GCABASHE SC:** Can you then explain your essential understanding of how you would be holding Estina to account with the  
10 PFMA in your hand? And the reason I ask this is because I do not know if I should just bring it forward rather than leave it where it is. There is an Auditor General report.

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

**ADV LEAH GCABASHE SC:** That speaks to monitoring etcetera. Can I deal with it where I have put it? It somewhere towards the end?

**MR MBANA PETER THABETHE:** That is fine.

**ADV LEAH GCABASHE SC:** So I have understood from the Auditor General report which we will look at.

**MR MBANA PETER THABETHE:** Yes.

20 **ADV LEAH GCABASHE SC:** That there is a monitoring mechanism. I just thought you might be able to talk us through that monitoring mechanism?

**MR MBANA PETER THABETHE:** Yes Chair the – what we had set up in the department for monitoring is that on a monthly basis we going to get monthly reports – monthly financial reports. And on a quarterly

basis we will also get quarterly reports. Now the payment was paid in tranches so that in any event you have a problem you will then be able to say wait let us talk to this report before you proceed. So those mechanisms were in place. Now on an annual basis then the Auditor General also comes in and they also go inside they do their monitoring and they do their assessment and they issue a report in that regard. So monitoring mechanisms are in place in the department and also oversight outside the department.

**ADV LEAH GCABASHE SC:** Thank you. I know I can explore that  
10 further with different examples but I am – I am – I understand what you saying. Can we then look at Clause 15.3? 15.3 is part of the termination set of clauses and it is – it is a bit of a tricky one when you look at the proviso which is the last two lines of that paragraph. Maybe again it is useful Chairman just to read the whole provision in because it is going to come up again.

**CHAIRPERSON:** That is fine.

**ADV LEAH GCABASHE SC:** In relation to the FDC.

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** Mr Thabethe would you like to read that  
20 into the record please?

**MR MBANA PETER THABETHE:** Chair are you referring to 15.11.

**ADV LEAH GCABASHE SC:** No Sir. 15.3 on page 349.

**MR MBANA PETER THABETHE:** Exhaustion of Funds.

**ADV LEAH GCABASHE SC:** Correct.

**MR MBANA PETER THABETHE:**

“It is also agreed that should funds no longer be available to pay for the execution of the project the department may terminate this agreement in its own discretion or temporarily suspend all or part of the project by notice to Estina who shall immediately make arrangement to stop the performance of the project and minimise further expenditure. Provided that Estina shall hereupon be entitled to payment in full for the services delivered up to the date of termination or suspension.”

10

**ADV LEAH GCABASHE SC:** So my question is, can you just clarify what the services delivered would be in the same sentence?

“So Estina shall be entitled to payment in full for the services delivered.”

What are those services?

**MR MBANA PETER THABETHE:** Chair there could be a range of services. There could be work done, paid for but maybe the department did not pay for them. It could have been orders that would have been placed for delivery. It could have been work done hence the choice of services so that you cover all areas that money was spent for but not paid for by the department.

20

**ADV LEAH GCABASHE SC:** The reason I have been struggling with this since you started giving evidence is because we know that Estina was appointed as both an implementing agent and a management agent.



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

**ADV LEAH GCABASHE SC:** Now nobody goes into an arrangement without there be some commercial value for them. And I have been grappling with how they were paid either as implementing agent – was there a fixed fee? Or as the management agent. Can I maybe give you the example of FDC which seems a little easier for certainly for me?

**MR MBANA PETER THABETHE:** Okay.

**ADV LEAH GCABASHE SC:** Because with the FDC there appears to be a fixed contract price and I – you will talk about it later. I have  
10 assumed that that price was the – the payment for being an implementing agent. Then they sub-contracted to E'tsho Civils who were being paid a separate amount and I have assumed – I will – all subject to what you will be telling us later that that payment would then be for the managing agent part of things. So the FDC arrangement is a little easier for me to understand. I cannot quite grasp the same differentiation between implementing agents and how they are paid here? Can you help me with that?

**MR MBANA PETER THABETHE:** Ja Chair the FDC one was very clear because they were required to do management but in this instance  
20 when you have a responsibility to set up a project then when you set up a project it means you are setting up the project you cannot then claim management fee until you hand over the project. It means it is your responsibility to look after the assets until it comes to a stage when you say now I am done with the project I am handing it over. It is completed. Then beyond that then you can charge management fee. If

then you hand it over and you are not able to get the owner to receive it. But my understanding is that we should not – they should not be claiming management fee other than direct cost.

**ADV LEAH GCABASHE SC:** For work done?

**MR MBANA PETER THABETHE:** Direct cost.

**ADV LEAH GCABASHE SC:** Or for items procured?

**MR MBANA PETER THABETHE:** Yes direct cost then should be paid.

**ADV LEAH GCABASHE SC:** You see Mr Thabethe I really just want to debate this for a bit and I suppose I also have the shareholding  
10 structure in mind where originally you had 49% going to Estina and 51% of the original Zaina[?] if you remember which was then going to become Mohoma Mobung.

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

**ADV LEAH GCABASHE SC:** Going to the beneficiaries.

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

**ADV LEAH GCABASHE SC:** So there Estina would be a shareholder and I can see the commercial benefit for them as equity holders they would be getting payment of some kind. That shareholding did not come into this agreement did it?

20 **MR MBANA PETER THABETHE:** No Chair. The – you will remember that it – after I had been advised by the state law advisors we ended up with this agreement versus the first agreement. Now this agreement was saying first finish the project before the shareholding kicks in, do and finish it and then you revert back to the shareholding structures.

**ADV LEAH GCABASHE SC:** So I beg your pardon were you going to

continue?

**MR MBANA PETER THABETHE:** No I am...

**ADV LEAH GCABASHE SC:** You finished?

**MR MBANA PETER THABETHE:** Yes.

**ADV LEAH GCABASHE SC:** So what was in it for Estina here? You know in Johannesburg it is – when I got here it is an expression I learnt what is in it for me. What was in – what value was Estina going to get out of its association with this project? Were they happy just to assist and not get anything at all?

10 **MR MBANA PETER THABETHE:** As an investor?

**ADV LEAH GCABASHE SC:** I do not know explain to me.

**MR MBANA PETER THABETHE:** They would have a shareholding. Remember the shares that we had agreed on will then be held by Estina. It means they were working as an investor.

**ADV LEAH GCABASHE SC:** But I thought you said that arrangement was not carried forward in to the new July agreement.

**MR MBANA PETER THABETHE:** Immediately. The advice that is why the agreement was revised so that it does not say outright that this is the shareholding. Finish the project, the construction and once it is  
20 finished Chair then – then you transfer the whole asset into the shareholding structure. Then that shareholding structure is the one where everybody then will be holding shares. Because I am sure you – we have looked at it on the letter that was sent by the state law advisors to advise us to say at any given point if the beneficiaries whoever was there would then decide we are the owners they would

sell their shares even before you finish it. That is why the decision was saying finish the project and then transfer the entire project into that structure which is a shareholding structure.

**ADV LEAH GCABASHE SC:** Now when you started this was supposed to be a two year project, am I correct when this started it was supposed to be completed in about two years?

**MR MBANA PETER THABETHE:** It is a three year project.

**ADV LEAH GCABASHE SC:** What – three year project. Okay.

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

10 **ADV LEAH GCABASHE SC:** So you are saying Estina was happy to wait until year three before it reaped any real benefits from the project because that is when you would bring them into the shareholding?

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

**ADV LEAH GCABASHE SC:** Is that – was that the arrangement?

**MR MBANA PETER THABETHE:** That was my understanding Chair.

**ADV LEAH GCABASHE SC:** Was that arrangement written anywhere?

**MR MBANA PETER THABETHE:** Chair I understood it that they signed this agreement that did not carry the wording of the first agreement which means they understood this agreement when they entered and  
20 signed it.

**ADV LEAH GCABASHE SC:** Did you share the opinion of the State Attorney with them and tell them why they would have to wait the three years before they became shareholders?

**MR MBANA PETER THABETHE:** We - we did Chair when we submitted the second agreement. They - they were able to - to see that it will not

be in - in it.

**ADV LEAH GCABASHE SC:** And the fact that they started putting money into the project is confirmation of the fact that they - I am just trying to understand what you saying - is confirmed - was confirmation to you that they understood the terms?

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

**ADV LEAH GCABASHE SC:** I am going to explore with you a little later when we look at the monthly and the quarterly reports ...

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

10 **ADV LEAH GCABASHE SC:** And a line item that says Directors fees.

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

**ADV LEAH GCABASHE SC:** So we will talk about those. You can think about it and I will show you the line item and in the context of this discussion ...

**MR MBANA PETER THABETHE:** Of this discussion, okay.

**ADV LEAH GCABASHE SC:** I will then ask you to explain what those Directors fees might be.

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

20 **ADV LEAH GCABASHE SC:** I have now understood 15.3 for services delivered but strictly and it is the next one that I wanted us to look at is invoices. I think somewhere here we talk - you talk about invoices must be presented at - on a regular basis. In fact it was 13.5. We dealt with invoices. If you just go a page back.

**MR MBANA PETER THABETHE:** Okay.

**ADV LEAH GCABASHE SC:** Yes. So those services delivered you

could easily assess because you would have an invoice ...

**MR MBANA PETER THABETHE:** Invoice. Yes. That is correct.

**ADV LEAH GCABASHE SC:** That backed up the services that they were claiming for?

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

**ADV LEAH GCABASHE SC:** I am good. If we then look at Clause 1-9 - 19.2. It is under miscellaneous. It is on page 3-5-1. It is - it reads:

“Estina shall not sub - subcontract with any person  
for the carrying out of any of its obligations under  
10 this agreement without in each case the prior  
written consent of the department which consent  
shall not be unreasonably withheld or delayed.”

That is an important clause.

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

**ADV LEAH GCABASHE SC:** It is part of your monitoring as I understand it.

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

**ADV LEAH GCABASHE SC:** Were you able to give effect to this clause? Were you able to put it into operation?

20 **MR MBANA PETER THABETHE:** Chair, I am - I am thinking whether there was any discussion we held on subcontracting because subcontracting means you are getting somebody to - to implement a portion on your behalf. It is different from appointing a contractor to do that. So I - I may not remember exactly whether we had anybody to be subcontracted.

**ADV LEAH GCABASHE SC:** You - you see just by way of example again I will deal with it when we are dealing with the - what I call the financials.

**MR MBANA PETER THABETHE:** Okay.

**ADV LEAH GCABASHE SC:** We are going to be talking about the feasibility study. Remember in Phase 1 ...

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

**ADV LEAH GCABASHE SC:** We dealt with October 2012 the feasibility study was conducted and completed ...

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

**ADV LEAH GCABASHE SC:** And they were able to show you the - and we have a - a feasibility study here in the bundle of documents.

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

**ADV LEAH GCABASHE SC:** There are people who conducted that feasibility study.

**MR MBANA PETER THABETHE:** Ja.

**ADV LEAH GCABASHE SC:** So I would want to know and it is a group of people who are - from my recollection not South African. So I would want to know from you whether 19.2 would have been applicable to  
20 those particular people conducting the feasibility study. So again you may want to reflect on that and when we get to the specific example say to me oh I know these people.

I signed off on them coming in. There gateway invoices I am going to be presenting to you and you say oh I know these people. I signed off on them giving us particular or giving the - the - Estina

certain items even though they were subcontracted. Okay.

**MR MBANA PETER THABETHE:** (Intervenes).

**ADV LEAH GCABASHE SC:** So that is my interest in 19.2. I just want you to bear it in mind when we get to looking at those invoices.

**MR MBANA PETER THABETHE:** That ...

**ADV LEAH GCABASHE SC:** Good.

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

**ADV LEAH GCABASHE SC:** But the principle of the matter is in terms of 19.2 subcontractors had to be vetted by the department?

10 **MR MBANA PETER THABETHE:** (Intervenes).

**ADV LEAH GCABASHE SC:** That is the principle ...

**MR MBANA PETER THABETHE:** That is - that is ...

**ADV LEAH GCABASHE SC:** That is recorded here. Implementation Mr Thabethe is what we always come back to at the end of the day. So it will be implementation. How did we implement 19.2?

**MR MBANA PETER THABETHE:** Point two.

**ADV LEAH GCABASHE SC:** Ja. We then look at just one aspect; no let us look at MPT13 which is the presentation you made to D-A-F-F to DAFF the National Department. So it is 13 - flag 13.

20 **CHAIRPERSON:** Are you moving away from the agreement?

**ADV LEAH GCABASHE SC:** I am Chairman.

**CHAIRPERSON:** Oh you are?

**ADV LEAH GCABASHE SC:** Yes.

**CHAIRPERSON:** Oh okay. Maybe before that Mr Thabethe some of the questions that I might ask you about the questions that linked to



questions that we dealt with before but it has been quite some time.

**MR MBANA PETER THABETHE:** Yes sir.

**CHAIRPERSON:** You see we talked a few minutes ago about the fact that the records of the department would only show Estina as being the department's partner in this project. Is that right?

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

**CHAIRPERSON:** Yes, because the agreement was with Estina. Excuse me - and - and it did not say that Estina was entering into the agreement as an agent of - of Paras. You would know that it did not  
10 say that even though that might have some legal issues that maybe only lawyers can - would look at.

I do not want to be unfair to you but it was Estina in terms of the agreement.

**MR MBANA PETER THABETHE:** The agreement. That is correct Chair.

**CHAIRPERSON:** Yes. Now I see that - in terms of the agreement Clause 8.1.1 which is at page 3-4-5 the parties say:

"Estina warrants that it is the counterpart of Paras."

I pause to say whatever counterpart means.

20 "...it is the counterpart of Paras and the sole provider for the services and the project."

That seems to suggest to me - and I would like your comment - that seems to suggest to me that that clause meant that the department could not if services that Estina was supposed to provide in terms of the agreement could not go to somebody else. In other words you could not go to Paras and say you know you people are not

providing services - the services - the agreed services satisfactorily because you had signed an agreement that said Estina was the sole provider of those services.

Paras would say no we might have some arrangement with Paras but you cannot sue us or you cannot come to us. Do you wish to comment on that?

**MR MBANA PETER THABETHE:** *Ja.* Thank - thank you Chair. The - the understanding that I had on that statement was that we expected a certain level of - of deliverables in the project that should be certified  
10 by Paras to say. We - we will be able to deliver what we had agreed on, on this project in terms of the standard.

It - it would then be a problem if we bring somebody else and say construct one, two, three and then they come back and say but that that does meet our standard. Then it becomes our problem. Hence - hence we say Estina being a counterpart will always be directed by Paras to say to meet our standard this is how it should be done.

So they cannot come back and say we have constructed this role because we did not understand how it should have been done. Hence - hence we say then they should be the sole provider so that we  
20 - we should not have a misunderstanding.

**CHAIRPERSON:** Yes, but you see the sole provider in terms of that clause of the services as I understand it. You might have a different understanding. The sole provider is said to be Estina.

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

**CHAIRPERSON:** Yes. So what I am - what I am putting to you is it

seems to me therefore that if anything went wrong with the services that Estina was supposed to provide to the department in terms of this project the only people that you could legitimately really complain to would be Estina because it was Estina who was the sole provider.

They were not the sole provider - they were not the provider or co provider of the services with Paras. They were the sole provider of the services.

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

**CHAIRPERSON:** Yes. You - you accept that?

10 **MR MBANA PETER THABETHE:** Yes. We - we accept Chair.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Chair also in - in the earlier discussion we had ...

**CHAIRPERSON:** Yes, yes.

**MR MBANA PETER THABETHE:** Was that this - this was done so for - for litigation purposes ...

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Because if we - if we would have brought in Paras ...

20 **CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** Into the agreement ...

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** Then international issues then kicks in.

**CHAIRPERSON:** Yes, but there is nothing wrong with international

issues.

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** I know you are not a lawyer but ...

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** But if you need to involve international issues to protect yourself and to protect taxpayers money why not bring in those international issues because remember we discussed this earlier within the context of the fact that you did not ensure that there was proper checking of what Estina business was.

10                    Maybe I am inaccurate in - in putting this - putting it that way but even its financial situation was not checked.

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

**CHAIRPERSON:** And I think last time. It was revealed that I think on the day on which they signed the agreement or around the day when they signed the agreement they had only about R16,00 in the bank account.

**MR MBANA PETER THABETHE:** Huh-uh.

**CHAIRPERSON:** So it is in that context because as I said previously part of what one is looking at is to what extent was this project handled  
20 in a manner that protected taxpayers' money in light of what we know happened. So - so this question that the sole provider of the services was Estina and that is put in the agreement means that for example to the extent that you might have difficulties with their services.

                  You are stuck with them and if you speak to Paras they speak to you as a favour if they want to but there is no agreement signed that

compels them to come in if Estina fails to provide services.

**MR MBANA PETER THABETHE:** Hm.

**CHAIRPERSON:** You - you understand?

**MR MBANA PETER THABETHE:** I - I understand Chair.

**CHAIRPERSON:** And you accept that?

**MR MBANA PETER THABETHE:** Ja. I - I accept Chair ...

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Because I had very limited knowledge  
...

10 **CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** In - in drafting of agreements ...

**CHAIRPERSON:** Yes, yes.

**MR MBANA PETER THABETHE:** But I took it that it was fine.

**CHAIRPERSON:** Yes.

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

**CHAIRPERSON:** Did - and - and the - and the State Law Advisors did -  
were involved in the drafting of this agreement?

**MR MBANA PETER THABETHE:** Yes Chair. You will - you will  
remember that after the ...

20 **CHAIRPERSON:** The first one?

**MR MBANA PETER THABETHE:** The first agreement the State Lawyers  
requested that they assist in drafting of this one.

**CHAIRPERSON:** Hm. Of course - of course what the lawyer drafts  
depends also on what he or she is told by the client ...

**MR MBANA PETER THABETHE:** Hm.

**CHAIRPERSON:** And of course what she is - she or he is told by the client also depends on what questions he or she asked the client in terms of information but - but it seems to me and I just want you to comment. It seems to me that you - you - one of the things you ought to have said to them is you know if we are going to enter into a contract with - with Estina these are the protections that we need to have in - in the agreement as far as I am concerned.

How you put them in the legal language might be something else but this is what - what I want and you - that you would have said  
10 actually as far as the department is concerned it is Paras that is really our partner. Estina is - has an arrangement with Paras but as far as we are concerned it is Paras that we want to really partner with and hold liable in case something goes wrong. You - you understand that?

**MR MBANA PETER THABETHE:** Yes. I - I agree with you Chair.

**CHAIRPERSON:** Hm, hm.

**MR MBANA PETER THABETHE:** In - in - what was brought to my attention ...

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** Was that in the first agreement where  
20 we had brought in Paras.

**CHAIRPERSON:** Hm, hm.

**MR MBANA PETER THABETHE:** Was illegal ...

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** Because at my level I did not have a delegation ...

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** To sign an agreement with an international partner.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** So that - that is why then it would be illegal ...

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** To bring in Paras ...

**CHAIRPERSON:** Yes.

10 **MR MBANA PETER THABETHE:** Into the agreement.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Hence then it was reduced to an agreement between the department and Estina.

**CHAIRPERSON:** Yes. What - what should have - the question that should have arisen - maybe I should not put it like this but there may be an argument that says the question that should have arisen in your mind and/or the mind of the lawyers or the State Law Advisors is if the intention was to have Paras as a partner and there is - there is not going to be an agreement with Paras ...

20 **MR MBANA PETER THABETHE:** Huh-uh.

**CHAIRPERSON:** How do we make sure that the entity with whom we enter into an agreement meets the same standards that made us comfortable to select Paras as a partner? Let us look into those things and only when we are satisfied about those things do we then go ahead and sign an agreement.

Part of this might be linked to what we discussed already but you might wish to say something.

**MR MBANA PETER THABETHE:** No Chair. I - I would want to add anything.

**CHAIRPERSON:** Yes. You - you are in agreement?

**MR MBANA PETER THABETHE:** Yes. I agree with you Chair. Yes.

**CHAIRPERSON:** Yes, okay. Thank you.

**ADV LEAH GCABASHE SC:** Thank you Chair. Thank you Chairman.

**CHAIRPERSON:** Oh I think there is just one more that I - one more  
10 question that I want to raise. I saw something quite strange here in  
paragraph - in Clause 9.1 of the agreement. Namely that:

“Estina shall monitor its performance in the delivery  
of the project and shall implement appropriate  
monitoring and management procedures in respect  
of the project including any reasonable monitoring  
procedure as the parties may - may from time to  
time agree.”

Then 9.2:

20 “On the notification of any failure or complaint  
regarding the quality of its performance Estina shall  
attend to such notification with the agents  
appropriate to the nature of the failure or  
complainant.”

So the most obvious question about 9.1 is why - why was  
Estina to be the one to monitor its own performance?



**MR MBANA PETER THABETHE:** Hm.

**CHAIRPERSON:** But - but maybe to fair to you I must point out that nine - Clause 9.4 has a clause about monitoring where it places the obligation on the department. It says:

“The department shall monitor the performance of Estina and may at any time in addition to the report in Clause 3.3 request any further information.”

So on the one hand there is a clause that says Estina will monitor its own performance which I find strange and then on the other  
10 there is a clause that says the department shall monitor also. Are - are you able to throw any light on this?

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

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** We - what we intended here was to say to Estina you must have your own internal monitoring processes. The - there are instances in - in agriculture where the department is - is responsible for - for monitoring compliance. Our responsibility is monitor compliance. Now in instances where ...

**CHAIRPERSON:** When you say compliance is that as opposed to  
20 performance?

**MR MBANA PETER THABETHE:** As opposed to performance.

**CHAIRPERSON:** Yes and do you want to deal with the distinction?

**MR MBANA PETER THABETHE:** Ja. We want to deal with that.

**CHAIRPERSON:** Ja.

**MR MBANA PETER THABETHE:** So that we - we do not go there and

monitor implementation and then we come and monitor compliance at the same time.

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** So we - we - hence we have said let them monitor - do the monitoring of the implementation of the project. We will come and monitor compliance because in terms of the Act there are issues the department must monitor compliance on.

**CHAIRPERSON:** Which Act are you talking about?

**MR MBANA PETER THABETHE:** The - the Agricultural Act.

10 **CHAIRPERSON:** Act.

**MR MBANA PETER THABETHE:** Yes. So we have delegations to be responsible in - in the entire industry of agriculture to do monitoring on certain aspects. So those - those - you do not want to mingle those two ...

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** And - and you do the job and you come back the following day and say now I am coming to monitor compliance. So we said do your monitoring internally. We will also do our monitoring in terms of your compliance.

20 **CHAIRPERSON:** Well compliance would relate to what? To statute - to the performance of statutory obligations?

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

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Like - like you - you will have to have a - an environment impact assessment who will come and say for you to

be able to do this do you have a PFMA. Excuse me Chair ...

**CHAIRPERSON:** A certificate for (intervenes).

**MR MBANA PETER THABETHE:** A certificate that you have been given permission ...

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** For you to be drawing water from this dam. Do you have ...?

**CHAIRPERSON:** Have you got a licence?

**MR MBANA PETER THABETHE:** Do you have a licence?

10 **CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Those things. We then come and do the monitoring.

**CHAIRPERSON:** Oh. So - so when you say the department was going to monitor compliance those are the types of things you are talking about?

**MR MBANA PETER THABETHE:** We - we are talking about, yes.

**CHAIRPERSON:** And in terms of the monitoring of Estina's performance of its obligations other than compliance with statutory requirements.

20 **MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** It was going to monitor its own performance?

**MR MBANA PETER THABETHE:** Yes and remember they will then still give us a monthly report.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Then over and above that we will

monitor the implementation ...

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** And also monitor the compliance at the same time.

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** So we do both but they must give us a report of their own monitoring to say this is what - because we - we do not want them at a particular stage to come and claim ignorance that we did not know.

10 **CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Hence if - if there is any failure that they pick. Then they must be able to - to address it immediately.

**CHAIRPERSON:** Well my - my concern with the idea or notion that a party to the agreement is given the obligation to monitor itself as opposed to or is - is given the right to monitor itself and that right not being given to the other party is that I do not understand why that would be so.

I mean if I employ you as a - as somebody to do some work in my company. I monitor you. You know because I must satisfy myself  
20 that you are doing the job properly and when I am satisfied it is fine. If I am not satisfied I raise issues with you and - and I do not rely on - I do not give you the right to monitor yourself.

**MR MBANA PETER THABETHE:** Hm.

**CHAIRPERSON:** You see and - and here it seems that the department was giving Estina the right to monitor its own performance and - and

that seems to me to suggest that if you try to monitor their performance they would be entitled to say hang on. You are in breach of the agreement. We are supposed to monitor ourselves ...

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

**CHAIRPERSON:** And that sounds strange to me.

**MR MBANA PETER THABETHE:** *Ja.* Chair our understanding - maybe let me use the Government scenario. Each department will have its own monitoring unit to monitor itself over and above the external monitoring that comes in. So this - this you do so that you are able to  
10 pick challenge earlier yourselves. Now that is what we were intending them to do. So that ...

**CHAIRPERSON:** That - that is what you - you wanted to do?

**MR MBANA PETER THABETHE:** Yes. They must then do monitoring internally if there are problems they are able to pick them early. So that whoever comes and do the monitoring they are aware ...

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** Already and they are able to say this is how we are going to resolve it.

**CHAIRPERSON:** Hm. Well I would imagine that anybody would do  
20 their - what you call internal monitoring with or without any clause because you want your own performance to be in accordance with your commitments and the agreement. You want to perform well. You do not want the other party to accuse you of failing to perform as required but it may be that from your side if you say we want to see mechanisms that you put in place that will help you to detect as early as possible

their problems in performance.

**MR MBANA PETER THABETHE:** In performance.

**CHAIRPERSON:** That might be fine. The only question would be that must not take away your right to - to monitor. My concern is that from what you have said it seems to me that Clause 8-4 which seems to talk about the department's right to monitor.

**MR MBANA PETER THABETHE:** To monitor.

**CHAIRPERSON:** From what you say maybe it could be relating to compliance but I see that it does say performance. It does not say  
10 compliance.

**MR MBANA PETER THABETHE:** It ...

**CHAIRPERSON:** Did you see that?

**MR MBANA PETER THABETHE:** Yes, yes. Chair we do both ...

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Because - because by the Act we have to do certain compliance ...

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** And - and there is work that we do ...

**CHAIRPERSON:** *Ja.*

20 **MR MBANA PETER THABETHE:** That we also have to do compliance on. Some of them might not have been mandated by the Act ...

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** But we still have to do those ...

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** That monitoring.

**CHAIRPERSON:** But - but maybe I must take your evidence to - to amount to this that although there are two clauses talking about monitoring performance and one says Estina will monitor its own performance and the other says the department shall monitor performance what actually was sought to be done is the department will retain the overall right to monitor performance ...

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** But internally Estina should also monitor its own performance so that maybe they can pick up things even before the  
10 department picks them up. It does not mean that the department was not going to monitor Estina's performance?

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

**CHAIRPERSON:** Okay, alright.

**ADV LEAH GCABASHE SC:** Thank you Chair.

**CHAIRPERSON:** I think - I think those were the two questions I wanted to - two areas on which I wanted to ask questions, *ja*.

**ADV LEAH GCABASHE SC:** Thank you Chairman.

**CHAIRPERSON:** Thank you.

**ADV LEAH GCABASHE SC:** It has given me the opportunity to just go  
20 back to two issues in the same agreement.

**CHAIRPERSON:** Yes, okay.

**ADV LEAH GCABASHE SC:** With your leave.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** If we just very briefly go back to page 338 it's still the agreement but what I'm looking at is clause 1.2 page

338, 1.2 gives us the address of Estina, Block A, first progress in which 144 Catherine Street, Sandton, the question is were you aware at the time that 144 Catherine Street, Sandton, that address is the address of a number of entities that are associated with the Gupta enterprises?

**MR MBANA PETER THABETHE:** I may not have been aware at that time Chair, although I've been to these offices, the relation during that time was not clear but now I am aware Chair.

**ADV LEAH GCABASHE SC:** And the relation between Estina and in Particular Kamal Vasram and the Gupta enterprises, I'll put it as  
10 generally as that, was not clear at that time?

**MR MBANA PETER THABETHE:** At that time Chair.

**ADV LEAH GCABASHE SC:** Mr Thabethe then the last question on the agreement is clause 10, confidentiality it's on page 346. When the National Treasury investigators from ENS tried to have a discussion with Mr Kamal Vasram who was the sole director at the time of Estina, when the ENS investigators and the National Treasury investigators tried to talk to Mr Vasram about this agreement, about the relationship between Estina and the department, your department, Mr Vasram refused to speak with them because he relied on this confidentiality  
20 clause as I understand matters. He said at the time that he had to get permission from you. Do you recall him ever coming back to you to say to you, there are these particular people from National Treasury who want to speak to me, can you release me from clause 10 of our agreement?

**MR MBANA PETER THABETHE:** Chair I have not received the



request from Estina although I remember discussing this with the investigators.

**ADV LEAH GCABASHE SC:** Yes my junior has just pointed me to correspondence from Mr Vasram on this issue and maybe for your information it might be useful just to read what his response was.

**MR MBANA PETER THABETHE:** Okay.

**ADV LEAH GCABASHE SC:** He is writing this letter to a Miss Jacobs and he copies Mr Thele who you know came to give evidence here on some of these matters and he says,

10            “We strongly object to the content of your mail which seems to  
imply that we are deliberately not cooperating with you. At the outset  
please note that we have already communicated to you that we do not  
consider it prudent to respond to your request in the absence of an  
approval from the department to do so. This is in line with the  
confidentially clause in the agreement, signed with the  
department which can be verified with the department. Your  
continued insistence on breaking protocol appears to be  
motivated by an agenda that we do not understand and under  
the circumstances, anything we say will probably be  
20            misconstrued. All the relevant documentation and information  
in relation to this project is available with the department and  
if there are any gaps in the information we are more than  
willing to assist you, provided that this is done with the active  
participation of department officials. This is an inter-  
departmental matter which in which our participation in any

form, if warranted can only be initiated in the presence of department officials or at the very least with their approval, best regards, Kamal Vasram”.

So hence the question, my understanding of the report of Mr Tele and Co. was that you did not release Vasram from this confidentiality clause.

**MR MBANA PETER THABETHE:** Chair the investigation team did discuss the matter with me, requesting that I give them permission to investigate, the investigation that they were doing was the investigation  
10 of the department. We said – because they needed an exclusive investigation without the participation of the department because there you are going to investigate a third party. Now if you investigate a third party with the exclusion of the department, now that I can’t give that permission I would only give permission to do the investigation in the inclusion of the department, that’s where we differed. I said we’ve agreed to do the investigation because this investigation is being done to the department if you proceed to do that investigation of Estina, inclusive of the department I have no problem, that we’d agreed but they wanted an exclusive investigation to which – of which I did not  
20 have the power to say, go and investigate a third party. It had to be limited to the application of the project, that is the situation that we had.

**ADV LEAH GCABASHE SC:** Well the report – just to tidy this issue up, the report that was prepared by those investigators is in the reports bundle Chairman at page 34 you may wish to look at it later and this is

bundle B – reports bundle B, it's under the – it's under witness interviews...(intervenes).

**CHAIRPERSON:** Do you think it would be necessary to look at it or not necessarily?

**ADV LEAH GCABASHE SC:** Chairman if – with your leave I'll simply read this into the record.

**CHAIRPERSON:** That's fine ja.

**ADV LEAH GCABASHE SC:** Thank you and it reads – if you'd like to I don't mind waiting for you to find it....[intervenes].

10 **CHAIRPERSON:** Yes if you wish to look at it, it's fine, just for my purposes ja.

**ADV LEAH GCABASHE SC:** Reports bundle and it should be B, little b and it's in b and the page is 34 and the paragraph is paragraph 2.3 it deals with witness interviews.

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

20 **ADV LEAH GCABASHE SC:** 2.3.1 as you can see Mr Thabethe says,  
“After our first interview with Mr Thabethe we 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 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. 2.3.2, at our second interview with

Mr Thabethe we requested him to waive confidentiality and facilitate a meeting between ENS and Mr Vasram. This is he important part please Mr Thabethe, Mr Thabethe refused to assist ENS and stated that we should conduct our own investigation without his assistance. 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. Thereafter ENS again requested an interview with Mr Vasram but he refused to attend an interview. As a result, we were not able to interview Mr Vasram/Estina in this investigation to obtain their perspective and explanations regarding the project. The correspondence between ENS and Mr Vasram is attached as exhibit 18”,

That's the correspondence I read to you. What's your final comment maybe on this, I know we've dealt with it previously but just having given it, at least context in terms of the agreement?

**MR MBANA PETER THABETHE:** Chair this is exactly what I was explaining that they needed an exclusive interview outside the department which I could not do. We've agreed that we could do the interview of Estina with the department, so we'd bring them in and we'd all sit and then they will do the interview. So we could facilitate but they wanted an exclusive, them and Estina, without the department. That was the difficulty that I had, that I could not give permission to them to go and do an investigation to a private party.

**ADV LEAH GCABASHE SC:** Why not?

**MR MBANA PETER THABETHE:** Because I did not know what they would – that's why we said we wanted – we'd send a lawyer of the department to go with them and sit with Estina.

**CHAIRPERSON:** But why would you need to send a lawyer of the department Mr Thabethe?

**MR MBANA PETER THABETHE:** Chair we had signed a disclosure agreement, they had said to us as a private company they have issues to protect which they would not want to be exposed when we negotiated  
10 these things with Paras as international role player. So we did not know what would be those issues at stake. Hence we said we would want that to happen but then we wanted to make it in line with what National Treasury has requested us to do. National Treasury has requested that we want to do an investigation of the department in the implementation of Vrede Dairy of which Estina is a party in [indistinct] we don't have a problem with that.

**ADV LEAH GCABASHE SC:** Of course Mr Vasram, in that correspondence that I read to you, he says, if you gave approval he was happy to talk.

20 **MR MBANA PETER THABETHE:** That's correct.

**ADV LEAH GCABASHE SC:** To the investigators number one.

**MR MBANA PETER THABETHE:** Yes.

**ADV LEAH GCABASHE SC:** Number two, these are investigators that are doing work for National Treasury you are part of the same government.

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

**ADV LEAH GCABASHE SC:** Why did you have reservations about allowing National Treasury to speak to Estina who, at the end of the day, was an implementing agent or was about to be an implementing agent handling funds that, essentially come from the same National Treasury?

**MR MBANA PETER THABETHE:** No I did not have a problem Chair in...[intervenes].

**CHAIRPERSON:** Well there is something you say – you said you had a  
10 problem with and you must tell me if my understanding is wrong, it seems that you had a problem with investigators interviewing Estina without you or without anybody representing you there.

**MR MBANA PETER THABETHE:** In the department, that's correct Chair because I would not want to be seen giving an investigator permission to investigate a private company.

**CHAIRPERSON:** No Mr Thabethe, Estina has an agreement with your department.

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

**CHAIRPERSON:** And it is going to benefit from tax payer's money.

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

**CHAIRPERSON:** Treasury is there to look after the tax payer's money.

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

**CHAIRPERSON:** They want to investigate, one would have expected that you would have said to them, oh you want to speak to Estina, please by all means go there and actually if you want I can pick up the

phone and say they must please make sure they meet with you.

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

**CHAIRPERSON:** Whether I'm there or not, whether somebody from the department is there or not is neither here nor there, go and meet with them, why didn't you say that, what was the problem with saying that?

**MR MBANA PETER THABETHE:** I hear you Chair, maybe that time then there was a misunderstanding because my problem – I'd never had a problem to have the investigators speaking to him. My thinking was that they want permission from me.

10 **CHAIRPERSON:** Yes but you – well they may or may not have wanted permission from you but I don't see even why they thought it's necessary to get permission from you if they thought they needed permission but that might be for – that might be because of what I don't know in terms of how National Treasury operates and Public Service operates but the fact of the matter is, Estina had an agreement with the department in order for them to properly investigate the project, the had to speak to Estina and actually if Estina refused to speak to them it seems to me it would have fallen upon you to say, you can't have an agreement with us being part of government and you refuse to talk to

20 government because Treasury is government. When they are investigation, if that's your attitude then maybe we are not going to continue this agreement with you. If you enter into an agreement with part of government you will be investigated, so what's your problem? So that's what I would have expected you to say to Estina if they resisted. So I don't know why you seem to have a problem, I don't see

why you had a problem and why you would even have wanted to have a lawyer of the department to go there and be there when the investigators talk to Estina, why?

**MR MBANA PETER THABETHE:** Chair I hear you but the thinking that I had that time was a different thinking. Now that we are speaking and the investigation is done, I hear your understanding.

**CHAIRPERSON:** You see the point?

**MR MBANA PETER THABETHE:** I see the point.

**CHAIRPERSON:** Yes.

10 **MR MBANA PETER THABETHE:** My problem was that, also not being very clued with legal issues, I thought – because I had said to them, I don't see any problem in them doing an investigation directly with Estina without asking permission from me. The problem was that why should the permission be asked from me. If the permission is asked from me, therefore I would then need to have somebody to sit with them, if I had given such a permission.

**CHAIRPERSON:** Well from what Miss Gcabashe has read there, it seems to me that Estina was saying they were quite happy to be interviewed by the investigators if you gave permission. Did you ever  
20 get to know that, that was their attitude?

**MR MBANA PETER THABETHE:** No Chair the letter she's referring to had never been made available to us, his letter to the investigators.

**CHAIRPERSON:** Yes did - as far as you know, as far as you remember did the investigators ever say to you, Estina is prepared to talk to us but they want to know that you are permitting them to talk to



us or permitting us to talk to them, did the investigators ever say that to you?

**MR MBANA PETER THABETHE:** Chair in the meeting that we had they requested me to waive the agreement so that they are able to go to speak to Estina that is what they had asked?

**CHAIRPERSON:** And what did you understand the waiving of the agreement to refer to or is that the permission you are talking about?

**MR MBANA PETER THABETHE:** Yes to give them permission to do the investigation.

10 **CHAIRPERSON:** Yes and you did not do that?

**MR MBANA PETER THABETHE:** Yes because there were like – there are two issues Chair, I did not see why they needed permission to do investigation because the agreement says they were not allowed to give information without the consent of the department.

**CHAIRPERSON:** That is Estina?

**MR MBANA PETER THABETHE:** That is Estina.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Now if Estina would have then written to the department to say, we request permission from you, we  
20 would then have granted that permission.

**CHAIRPERSON:** I'm sorry where in the agreement does it say they would need your permission?

**ADV LEAH GCABASHE SC:** Page 346 Chairman and it's the confidentiality clause which says,

“Estina will not, during the term of this agreement and

thereafter without the prior written consent of the department, disclose any confidential information relating to the department and the project to anyone other than those persons who are connected to the department and/or Estina and who are required to have access to such...[intervenes].

**CHAIRPERSON:** Oh I'm sorry I think I missed this part but then this appears to clearly say you must give permission.

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

**CHAIRPERSON:** So why did you say to the investigators – or at least  
10 you said to me earlier on, you didn't see why the investigators needed your permission.

**MR MBANA PETER THABETHE:** To do the investigation.

**CHAIRPERSON:** Yes, so in the light of this clause, are you saying they did not need your permission?

**MR MBANA PETER THABETHE:** Yes the clause is saying, Chair, if they wanted permission from us to go and do the investigation, we said we don't have any problem for them to do the investigation but then we would organise the meeting for them to come and do the investigation but that's not what they wanted. They wanted an exclusive without the  
20 department.

**CHAIRPERSON:** Ja you see what you referred to as an exclusive, you mean an exclusive interview with Estina between the investigators and Estina without the department?

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** Yes and why was that a problem?

**MR MBANA PETER THABETHE:** Chair like I explained, my understanding of what we are talking about at that time, is different I would have responded differently now.

**CHAIRPERSON:** Yes okay.

**MR MBANA PETER THABETHE:** As now I had responded before.

**CHAIRPERSON:** Yes, no that I appreciate but I want to understand your understanding at that time, what did you see as a problem at that time, in the light of this clause?

**MR MBANA PETER THABETHE:** Yes what I saw as a problem is me  
10 giving permission to investigate a private company.

**CHAIRPERSON:** Yes but you knew that their request for permission arose from this clause isn't it?

**MR MBANA PETER THABETHE:** Yes, yes Chair.

**CHAIRPERSON:** And in terms of this clause Estina was prohibited from disclosing certain information to other people?

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

**CHAIRPERSON:** And obviously the investigators, if they interviewed Estina they would have wanted Estina to disclose certain information about the project to them?

20 **MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** Yes so they would need your permission then.

**MR MBANA PETER THABETHE:** Yes, Chair maybe I'm not – all I asked was that we bring Estina, the department and National Treasury and we sit and we discuss and we agree, we would have come up with a solution in that meeting to say, okay proceed with the investigation

this is now all our understanding.

**CHAIRPERSON:** Ja but why do you want an understanding, they are investigating and they want to interview Estina people?

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

**CHAIRPERSON:** Why don't you give them permission, the clause says Estina must get permission from you in order to disclose certain information?

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

**CHAIRPERSON:** So why don't you give them?

10 **MR MBANA PETER THABETHE:** I hear you Chair, like I say the understanding I have now...[intervenes].

**CHAIRPERSON:** Yes you would give the permission now.

**MR MBANA PETER THABETHE:** I would give the permission now.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** But at that time my thinking and understanding of legal issues was different.

**CHAIRPERSON:** Yes but remember I said I understand that, I appreciate that in terms of now, I'm trying to understand what it is that you would have seen as a problem at that time because it seems to me  
20 quite clear. It seems to me that any head of department who was really interested in National Treasury being satisfied that everything was in order would have said, oh yes Estina you have got my permission to disclose whatever they may ask you, these are not people who are coming from outside government, they are part of government?

**MR MBANA PETER THABETHE:** I agree with you Chair

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** At that time my thinking was different from what – if you had to come to me I would have said go and investigate.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** At that time my understanding was that I'm afraid of giving permission for an investigation of a private company. That was my understanding, then what I would say Chair, I made a mistake that time for not allowing them

10 **CHAIRPERSON:** Yes but I do want you to – well if that is all you are able to say in terms of what the basis was for our not being prepared to give permission that's fine, but I'm looking at it because I don't know if, when all evidence is heard there might be a suggestion that it was more than that, you know and I just want to make sure you get an opportunity to deal with it, but Miss Gcabashe might be having questions around the issue.

**ADV LEAH GCABASHE SC:** Chair, maybe just two questions and really Mr Thabethe it's – they were not investigating Estina as a private company they were asking to investigate the project that you and  
20 Estina were partnering in, I'll use that word very loosely, partnering in. You were satisfied that, that was all they were really asking to investigate?

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

**ADV LEAH GCABASHE SC:** The second thing is I can't quite understand the nature of the confidential information that you sought to

protect under this clause, maybe that will help us understand your attitude? What is the nature of the confidential information you thought needed to be protected and this is why you were refusing access to Estina without your being there?

**CHAIRPERSON:** Well I see you look at me Mr Thabethe and you're not sure whether to start answering and that's simply because I'm thinking that, from your answer you – well maybe not really what I'm thinking about. You don't seem to have been concerned about the department you seem to have been concerned about Estina.

10 **MR MBANA PETER THABETHE:** Chair...[intervenes].

**CHAIRPERSON:** So but having said that, answer the question that Miss Gcabashe has put to you I'm just articulating this because you did realise that I seem to be wanting to say something but now you know what I was thinking but you can answer her question.

**MR MBANA PETER THABETHE:** Yes, Chair the question was that – what I had in mind was that Estina – Paras, through Estina would be doing products on the project and they're the sole owners of those products, they brand their name, like any other company that has got [indistinct] property on certain products. Now the problem comes when  
20 you give permission, to what extent are they going to request permission to expose some of those issues. Like when you get into the project, they do the construction in such a way, hence they said to us, when we do construction of the processing plant we normally don't allow people to come and take pictures because we are exposing our intellectual property so people know how we achieve the production of

this brand. Now that information becomes very confidential because they were going to bring that information of that project in the construction phase so that at the end it comes up with that particular brand of a product which they've got a sole intellectual property, nobody else will produce it that same way because it has the brand name of that product. Now the understanding when we had discussed that was in line with saying, the department becomes – we are giving you information that is exclusive in your construction, we wouldn't want that information to be exposed to everybody because any vendor then  
 10 would manufacture our product, they know how we do it. Now that's the difficulty, hence it's very difficult to say it seems I was protecting Estina more than the department...[intervenes].

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** But this is what they had said to us, we are willing to come and assist you on those basis that you don't allow people to come and see how we deal with this product because it's our intellectual.

**CHAIRPERSON:** Yes I see Miss Gcabashe certainly has more question for you on the issue, I'm not surprised. Let's have the tea break and  
 20 we'll resume – it's twenty past we'll resume and twenty five to twelve, we adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** You may continue Ms Gcabashe.

**ADV LEAH GCABASHE SC:** Thank you Chairman. Mr Thabethe really just to tidy this up just for my own understanding.

1. I did not understand from reading the ENS National Treasury Report that they wanted to go on a site visit – go to a factory and investigate the type of products that were being manufactured. I would have thought that the ambit of National Treasury's enquiry would be

1. To get a copy of the agreement which you apparently refused to give and that would have helped them.

10        2. To understand what funds had already been transferred to Estina. And once they understood what funds had been transferred to understand what other conditional grants might have been agreed or might be proposed to be given to Estina to handle. And then just to monitor how this – how these funds would be applied.

That would have been my understanding as a public official as a HOD talking to colleagues through you. That was not your thinking at the time?

**MR MBANA PETER THABETHE:** Ja thanks Chair. Chair if that would  
20        have been the understanding at that time there should not have been a problem.

**ADV LEAH GCABASHE SC:** Then I just want to clear up Mr Thabethe these emails that really give a different version to what you say because I am not going to read all of them. I have read the most important one it is just the one we read into the record. That one was



dated the 5 December 2013. But before that on the 1 December there was an email sent by again Ms Jacobs to Mr Vasram saying

10        “You have further not responded to my request to inform us on what basis you and or Estina and or Paras are claiming confidentiality. During our meeting with Mr Thabethe on Friday the 22 November he informed ENS that he had discussed our request with you and that you were not willing to meet with ENS or to cooperate with this investigation. We therefore have no option but to deduce that you are not willing to cooperate with this investigation and the request from National Treasury. So the important thing there is we have spoken to Mr Thabethe on the 22 November.”

**CHAIRPERSON:** Just repeat Ms Gcabashe who that email was from and who it was addressed to?

**ADV LEAH GCABASHE SC:** So the date of the email Chairman it is on page 249 of the Reports bundle page 249 and it is an email dated the 1 December.

20        **CHAIRPERSON:** I am sorry please give me the Reports bundle.

**ADV LEAH GCABASHE SC:** The Reports bundle.

**CHAIRPERSON:** Yes but ...

**ADV LEAH GCABASHE SC:** It is bundle B.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** It will be small b. Yes and page 249

please.

**CHAIRPERSON:** Yes thank you.

**ADV LEAH GCABASHE SC:** They are filed back to front in a sense Chairman so I will just help you navigate through – through those.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** Emails.

**CHAIRPERSON:** Yes but you can just reiterate who it was from and who it was addressed to and then he can respond.

**ADV LEAH GCABASHE SC:** So it is from Jacobs dated 1 December to  
10 Vasram and copied to Cele, there is a Barnard as well and the title is clear Vrede Integrated Dairy Project. So it was very clear.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** As to what they were trying to investigate.

**CHAIRPERSON:** Yes. But maybe before – before it – I just want to go back to the answer that Mr Thabethe gave to your question before the break. Remember at least part of what I was hoping would emerges whether I was right in thinking that you seemed to be more concerned about protecting Estina than really the department. Now you gave an answer and you talked about intellectual property and so on and so on.  
20 Am I right to say your concern was more with Estina than with the department in terms of confidentiality if there was any concern on your part on confidentiality?

**MR MBANA PETER THABETHE:** Not exactly Chair the way you putting it.

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** I did have a concern with Estina with regard to the intellectual property.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Because – that – but it is not – it does not mean that I had more concern about Estina than the department.

**CHAIRPERSON:** Okay but let us clear this one at a time. As far as your refusal to give permission to the – to the National Treasury investigators to interview Estina people without anybody from the  
10 department your concern was with regard to the confidentiality of Estina's intellectual property, is that right?

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

**CHAIRPERSON:** And then was there any other concern that formed the basis of your unpreparedness to give the permission?

**MR MBANA PETER THABETHE:** Chair during the meeting that I had with them they were not – they were not able to say to me our interest goes up to this far. Because if that should have been the case I should not have had the problem.

**CHAIRPERSON:** You mean in the investigators?

20 **MR MBANA PETER THABETHE:** The investigators Chair.

**CHAIRPERSON:** What do you mean – what did you want them to say about their interest as to how far their interest went. Exactly what is it that you wanted them to say?

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** Is it about the scope of investigation?

**MR MBANA PETER THABETHE:** Yes. Chair the scope of investigation it would not have gone to an extent because I told them that if it would not go to the extent they should indicate to me that it would not go to the extent of dealing with issues of intellectual property. Then there would not have been a problem. But they did not want me to limit the investigation. It means they would have wanted to investigate any other thing inclusive.

**CHAIRPERSON:** About the project?

**MR MBANA PETER THABETHE:** About the project which would have  
10 also included the issue of intellectual property.

**CHAIRPERSON:** Yes no I will talk about the intellectual – your concern about the confidentiality.

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** Of the intellectual property and Estina. But as far as the department is concerned what if anything was there that formed the basis of your unpreparedness to give permission? In other words what interest of the department were you trying to protect against people from – investigators from National Treasury in relation to in not wanting to give permission?

20 **MR MBANA PETER THABETHE:** Ja Chair let me go back again. We – we had written a letter to the Director General of National Treasury.

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** It was actually a letter of complaint.

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** We had given information

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** To the investigators.

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** And that information we had handed over to the investigators was in the weekend meeting.

**CHAIRPERSON:** Was in the weekend newspapers?

**MR MBANA PETER THABETHE:** It was with the newspapers.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** We wrote a letter through the Director  
10 General of the Province complaining to say National Treasury has done  
investigation. Here is information we have given them and that  
information was in the media on the weekend. Now we complained to  
the DG at National in writing. We received a response to our  
communication to the DG and the response that we are receiving comes  
from the investigator. The letter we wrote to the DG was responded by  
the investigator. Now we – and then we have – we had a problem  
because our understanding was that the DG would then say how did  
this happen? You release information you gave to the investigator and  
the information straight goes to the media. We had the problem with  
20 that hence we wrote the letter and say we have a problem please assist  
us in dealing with this thing until the investigation has been completed.  
We cannot have a situation where investigator comes collect  
information and release it to the media. But we – we – we were not  
able to be assisted because we received a response from the  
investigator answering our letter we sent to the DG.

**CHAIRPERSON:** But how did that form a basis for you not being prepared to give permission to the investigators to go and see and interview the Estina people?

**MR MBANA PETER THABETHE:** Why I am giving this example Chair.

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** To say what then came to my mind if – if then we would speak to them and they will say no we do not want you to limit us.

**CHAIRPERSON:** Hm.

10 **MR MBANA PETER THABETHE:** Including the issues of the intellectual property. It means they would have wanted to investigate any other thing in that relation. Now that is where the problem came in because if they would have agreed to say no we will – we are investigating implementation and all those things your transfers, your payment and whatever we are not going to get into the issues of the intellectual – then I would not have a problem because those things are not mine. I cannot give permission.

**CHAIRPERSON:** Well you see that is part of the problem. From what you have said it seems to me that there really was no – there really  
20 was nothing that formed – there was nothing relating to the department that formed the basis for your not wanting to give them permission. The only thing that seems to have formed the basis of your unpreparedness to give permission was your concern about confidentiality relating to the intellectual property of Estina. Now I just want you to confirm whether my understanding of your evidence is

correct?

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

**CHAIRPERSON:** It is correct?

**MR MBANA PETER THABETHE:** It is correct yes.

**CHAIRPERSON:** Okay. Now why would you be so concerned about any intellectual property of Estina when you were being requested to give permission such as is contemplated in Clause 10.1 of the agreement about confidentiality? Because if you gave permission and Estina thought you gave permission for the investigators to interview Estina

10 people

1. That might have nothing to do with any intellectual property.

Therefore the investigation would go on but

2. Even if there was something they wanted to talk about in relation to intellectual property or to see Estina could protect interest by refusing so why could you not say look as far as I am concerned I am giving you permission. If Estina has any problem you will deal with them.

**MR MBANA PETER THABETHE:** Chair they had – I had raised it in the meeting with the investigators. That is my only limitation which they were not willing to agree with.

20

**CHAIRPERSON:** What the intellectual property?

**MR MBANA PETER THABETHE:** The intellectual property yes.

**CHAIRPERSON:** But that is where I have a problem. Why you being head of the department were more concerned actually from what I think Ms Gcabashe read earlier on it looks like you were more concerned

about Estina's intellectual property than Estina itself. Because it seems that Estina was saying they were prepared – saying to the investigators they were prepared to – to meet with them if you would agree. They did not seem to have the same concern that you had about confidentiality and their intellectual property.

**MR MBANA PETER THABETHE:** Chair it – the issue is the issue of a condition.

**CHAIRPERSON:** What condition?

**MR MBANA PETER THABETHE:** Because anybody who had to  
10 investigate and you agree with him and then you come and you expose the issue of the intellectual property then it becomes a problem in my understanding Chair.

**CHAIRPERSON:** Yes but – but if Estina had a problem they would raise the issue and also you could pick up the phone with – and phone Estina and say the investigators want me to give permission for them to interview you and therefore I propose to give them the permission. You do have any problem? You did not do that, did you?

**MR MBANA PETER THABETHE:** No it has been done.

**CHAIRPERSON:** Yes.

20 **MR MBANA PETER THABETHE:** And I have also said to the investigators.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** That I have been in communication with Estina.

**CHAIRPERSON:** Yes.



**MR MBANA PETER THABETHE:** With regard to this issue.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** And in our discussion with Estinal.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** And this has been the problem.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** This is – this one item has been the problem.

**CHAIRPERSON:** Ja.

10 **MR MBANA PETER THABETHE:** When I was discussing with Estina and when I was discussing with the investigators.

**CHAIRPERSON:** Yes. But from your side you see the permission that must come from you as far as outsiders are concerned I would imagine is really more to protect information relating to the department. Because you as – in terms of the agreement you could have – you could have seen whatever you needed to see from Estina.

**MR MBANA PETER THABETHE:** Hm.

**CHAIRPERSON:** But as I understand it I think that your permission was put in more to protect the department's information and of course I  
20 do not see why there will be a problem with National Treasury people seeing information of a government department as such and of course you have not said that was your concern. It is – you said it was with intellectual property. But I think – I think that is fine we have reached a stage where we agree that your concern was with intellectual property – that you say that your concern was with intellectual property of

Estina.

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

**CHAIRPERSON:** And did you know what intellectual property Estina had there in relation to anything in the project?

**MR MBANA PETER THABETHE:** Chair that is the problem.

**CHAIRPERSON:** Yes but you cannot fight so much to protect something that you do not know. Did you know what intellectual property they had?

**MR MBANA PETER THABETHE:** Chair I had – I had – they had  
10 discussed with me the issue of the intellectual property.

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** But those documents of the intellectual property were not handed over to us.

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** So I understood what – what is – was at stake in terms of the intellectual property because they had to use some of those in the configuration of the project.

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** So that the output gets to what they  
20 are looking for.

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** So I understood and I saw those documents which they were referring to.

**CHAIRPERSON:** Hm. Ms Gcabashe.

**ADV LEAH GCABASHE SC:** Thank you Chairman. You recall Mr

Thabethe that we showed you documents that indicated that Estina was a commercial company IT company. It operated in that space.

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

**ADV LEAH GCABASHE SC:** I understood your evidence earlier to speak about production lines specific issue – specific products that you would have wanted ordered for the dairy farm.

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

**ADV LEAH GCABASHE SC:** Was that what you were communicating.

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

10 **ADV LEAH GCABASHE SC:** So in fact as the Chairman has been asking you it was Paras' intellectual property?

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

**ADV LEAH GCABASHE SC:** That you were concerned with?

**MR MBANA PETER THABETHE:** Yes.

**ADV LEAH GCABASHE SC:** Not Estina's?

**MR MBANA PETER THABETHE:** Yes it was Paras intellectual property in the hands of Estina. Because they were implementing. Let – Chair

**CHAIRPERSON:** Yes, yes, ja.

**MR MBANA PETER THABETHE:** I do not know if I can explain this?

20 **CHAIRPERSON:** Yes explain it is fine.

es explain it is fine.

**MR MBANA PETER THABETHE:** In a – in a simple layman's language. A recipe for baking cookies, particular cookies. You may not have until the person says here is the recipe go and do it so that you are able to produce this. And these things are exclusively mine. Otherwise if you

do not use them the way they are you are not going to achieve that product. Now I am just using that example.

**CHAIRPERSON:** Ja, no, no I think everybody understands that. He says Ms Gcabashe will continue with dealing with that.

**ADV LEAH GCABASHE SC:** Thank you Chairman. Mr Thabethe I think I really do not want to belabour this very much further because my understanding of the emails and Chairman I just commend them to you.

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** They run from page 249.

10 **CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Through to page 251.

**CHAIRPERSON:** Hm

**ADV LEAH GCABASHE SC:** And they will give further context to the same discussion.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Or at least the evidence is there.

**CHAIRPERSON:** Yes. Yes.

**ADV LEAH GCABASHE SC:** They are – end of 2013.

**CHAIRPERSON:** Yes.

20 **ADV LEAH GCABASHE SC:** Discussions that is what they reflect.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** And they reflect Mr Thabethe's attitude.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** So I think I will just commend

**CHAIRPERSON:** Ja.

**ADV LEAH GCABASHE SC:** These to you because Mr Thabethe has spent quite a bit of time.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Explaining his position.

**CHAIRPERSON:** Yes. I think – I think maybe what you – you – what you should nevertheless do is to put to him if that is the case that a reading of those emails and you can specify them without going through each of them. A reading of those emails is not consistent with his version now on this point if that is the position. So that he gets a  
10 chance to respond to that. If he wishes to look at those emails before he responds then that can be done and we can if necessary he can look at that over the lunch break and then after lunch he can answer that question if he needs to.

**ADV LEAH GCABASHE SC:** Thank you Chairman.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** In fact it boils down to this Mr Thabethe. The email dated the 1 December 2013 to Mr Vasram communicates clearly that you Mr Thabethe informed ENS that you Mr Thabethe had discussed ENS's request with Mr Vasram and that Mr Vasram was not  
20 willing to meet ENS. That is what you communicated to ENS.

**MR MBANA PETER THABETHE:** No it is not correct Chair.

**ADV LEAH GCABASHE SC:** Okay. So that is what that email dated the 1 December communicates.

**CHAIRPERSON:** And that email is from who to whom?

**ADV LEAH GCABASHE SC:** It is from Jacobs to Vasram.

**CHAIRPERSON:** So – so Jacobs – Mr Jacobs was confirming that according to Mr Thabethe

**ADV LEAH GCABASHE SC:** Yes.

**CHAIRPERSON:** Estina was unwilling to meet with them.

**ADV LEAH GCABASHE SC:** Correct.

**CHAIRPERSON:** Okay. So – but you are saying that you never told anybody that Estina was unwilling to meet with the investigators?

**MR MBANA PETER THABETHE:** No, no I have not Chair. The bone of contention in my meeting.

10 **CHAIRPERSON:** Hm

**MR MBANA PETER THABETHE:** With the investigator was them wanting to go and investigate without any reservation.

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** Which I discussed with them and I told them [indistinct] the only issue which is a problem unless they were confirming that I said they refused to do investigation into the issues of intellectual property then it would be correct.

**CHAIRPERSON:** But as far as you know why would they be interested in intellectual property?

20 **MR MBANA PETER THABETHE:** Chair ...

**CHAIRPERSON:** Why would that really be of interest to National Treasury Investigators about this project?

**MR MBANA PETER THABETHE:** I am – I am looking at my senior counsel.

**CHAIRPERSON:** You are wondering whether he should stand up and

object. He will not assist you to answer the question. He will leave it to you to answer the question. You know some questions just need you.

**MR MBANA PETER THABETHE:** Ja.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** I hear you Chair.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Ja it is ...

**CHAIRPERSON:** You do not know?

10 **MR MBANA PETER THABETHE:** I – I do not want to speculate Chair.

**CHAIRPERSON:** Yes, no do not speculate but I am trying to understand the thinking.

**MR MBANA PETER THABETHE:** The answer that I would give you ...

**CHAIRPERSON:** Would be speculation?

**MR MBANA PETER THABETHE:** Would be a speculation.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** So that is why I say I do not want that. That is why I am saying I am looking at my senior counsel.

**CHAIRPERSON:** Yes so I guess that is – the correct answer then is –  
20 would be that you also do not know why intellectual property would be of interest to National Treasury investigators?

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

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** Why I am afraid. Yesterday I made a statement about the issue of the meat.

**CHAIRPERSON:** Yes, yes.

**MR MBANA PETER THABETHE:** I had to retract this morning.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** And...

**CHAIRPERSON:** But you see you do not have to be afraid of anything as long as you are telling the truth. If you make a mistake you say I made a mistake I have thought about it you know. So in other words as long as you are honestly giving the answer that you believe to be true if it turns out later to be mistaken or to be wrong as long as it is what you  
10 believe honestly to be the truth there is no problem.

**MR MBANA PETER THABETHE:** Ja because you see Chair the other fear I have I have seen statements being made at the commission and thereafter people were sued. So hence I am saying...

**CHAIRPERSON:** Ja.

**MR MBANA PETER THABETHE:** I do not want to go to that area and make a statement and then I get into trouble.

**CHAIRPERSON:** Yes okay alright. But...

**MR MBANA PETER THABETHE:** Hence I am saying I am afraid to get there.

20 **CHAIRPERSON:** Ja but – but you accept that it seems that the only answer is the one I have suggested?

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** Ja okay. Thank you. Ms Gcabashe.

**ADV LEAH GCABASHE SC:** Mr Buthelezi would like to address you Chair.



**CHAIRPERSON:** Has Mr Buthelezi been inspired too?

**ADV LEAH GCABASHE SC:** No. I think I will let him deal with the issue he would like to raise Chairman.

**CHAIRPERSON:** Mr Buthelezi. Yes.

**ADV NQABAYETHU BUTHELEZI:** Thank you Chair.

**CHAIRPERSON:** Yes.

**ADV NQABAYETHU BUTHELEZI:** Mr Thabethe's difficulty with regards to this question because we did pursue it with him as well is that there is a certain level of a version towards making unsubstantiated  
10 statements which may in due course open him up to legal liability from parties outside these proceedings who may then have – go ahead and say you said XYZ at the state capture commission and we now want to sue you for those statements. So he says he has information that he has from his position as person having operated in the Department of Agriculture. And the nature of this information and that was shared with him in confidence in the implementation of the project was of interest to other persons outside the process.

**CHAIRPERSON:** Yes.

**ADV NQABAYETHU BUTHELEZI:** But he cannot make that as a  
20 statement of fact.

**CHAIRPERSON:** Ja.

**ADV NQABAYETHU BUTHELEZI:** He may state it as an opinion.

**CHAIRPERSON:** Hm

**ADV NQABAYETHU BUTHELEZI:** Or a thought that he has for himself however even in stating it as an opinion he then renders himself liable.

**CHAIRPERSON:** Hm.

**ADV NQABAYETHU BUTHELEZI:** By those third parties now pursuing him for having made such opinion.

**CHAIRPERSON:** Hm.

**ADV NQABAYETHU BUTHELEZI:** On such a – in such a hearing.

**CHAIRPERSON:** Hm.

**ADV NQABAYETHU BUTHELEZI:** That is the only difficulty Chair.

**CHAIRPERSON:** Hm.

**ADV NQABAYETHU BUTHELEZI:** So maybe between myself and Ms  
10 Gcabashe we could just confer for like five minutes.

**CHAIRPERSON:** Hm

**ADV NQABAYETHU BUTHELEZI:** So that we clarify what the position needs to be.

**CHAIRPERSON:** Hm

**ADV NQABAYETHU BUTHELEZI:** Because ultimately he needs to assist the commission, get to the bottom of the issues.

**CHAIRPERSON:** Hm

**ADV NQABAYETHU BUTHELEZI:** And without any fear.

**CHAIRPERSON:** Hm.

20 **ADV NQABAYETHU BUTHELEZI:** Of reprisals from outside.

**CHAIRPERSON:** Hm.

**ADV NQABAYETHU BUTHELEZI:** And we need to then couch that information or those statements in such a way that they are helpful to the commission.

**CHAIRPERSON:** Hm.

**ADV NQABAYETHU BUTHELEZI:** But they do not leave him vulnerable for civil liability outside this process.

**CHAIRPERSON:** Hm. Well maybe we can leave it on the basis that maybe during the lunch break the two of you can talk.

**ADV NQABAYETHU BUTHELEZI:** Thank you Chair.

**CHAIRPERSON:** Talk to each other about it and then when I come back after lunch if we need to revisit the issue we can look at that.

**ADV NQABAYETHU BUTHELEZI:** Yes Chair if ...

**CHAIRPERSON:** Having said that I just want to say that the question  
10 was – I ask the question because it did not seem to me that one would necessarily think about National Treasury investigators being concerned about intellectual property and if I am correct in that thinking then - there may be a question as to why the approach taken was not that you people you go there.

Do as much as you can and Estina will - if Estina raises problems about anything let us deal with it at that stage and try and solve it at that stage but maybe the two of you can confer over lunch and then depending on the need we - we can then revisit it after lunch.

**ADV NQABAYETHU BUTHELEZI:** Thank you chair.

20 **CHAIRPERSON:** Ja.

**ADV NQABAYETHU BUTHELEZI:** If - if I may ...

**CHAIRPERSON:** Hm.

**ADV NQABAYETHU BUTHELEZI:** Add an additional point.

**CHAIRPERSON:** Hm.

**ADV NQABAYETHU BUTHELEZI:** The issue in this instance was not so

much National Treasury itself but what had emerged was that National Treasury had outsourced to an independent outside investigator to conduct the investigation on behalf of National Treasury. Now that now places it in the realm of an independent third party doing the work for National Treasury itself and if that information is now sitting with the independent third party it is no longer in the exclusive control of National Treasury.

**CHAIRPERSON:** Yes. Well accept that National Treasury can put conditions to the appointment of a third party to say because you will  
10 be doing this for us these are the limitations. You know. So that - that third party is not exactly in the same position as would be somebody from National Treasury doing the same thing.

**ADV NQABAYETHU BUTHELEZI:** Indeed so Chair ...

**CHAIRPERSON:** *Ja.*

**ADV NQABAYETHU BUTHELEZI:** But I accept your point Chair.

**CHAIRPERSON:** Yes.

**ADV NQABAYETHU BUTHELEZI:** We will take it up during the lunch break.

**CHAIRPERSON:** Okay. No that is fine.

20 **ADV NQABAYETHU BUTHELEZI:** Thank you.

**CHAIRPERSON:** Thank you. Ms Gcabashe.

**ADV LEAH GCABASHE SC:** Thank you Chairman. I just want to put the second proposition.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** So the first one related to the email of

1 December 2013 Mr Thabethe and what is recorded here is that you said that Mr Vasram was not willing to speak to the investigators. You have denied this?

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

**ADV LEAH GCABASHE SC:** The second proposition is there is the email dated 5 December from Mr Vasram to the investigator Ms Jacobs and in this he says. The very last line is:

“At the very least if you approve ...”

This is his attitude if the department approves he is happy to  
10 speak to the investigators. What is your comment on that?

**MR MBANA PETER THABETHE:** That - that is correct Chair. The indication here is that if - if we would say proceed. Then they would do so having - after having cleared what we have been told is their concern because they had communicated to us their concern.

**CHAIRPERSON:** I am sorry. The last one it - it is an email from whom to whom?

**ADV LEAH GCABASHE SC:** It is an email Chairman from Mr Vasram.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** It is on page 2-4-9.

20 **CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** It is dated 5 December.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** It is to Ms Jacobs ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** And it is copied again to Mr (indistinct)

and Mr Barnard ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** And Mr Vasram writes that and I am just reading the last sentence which is - sentence which is the most relevant.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** That:

10                    “This is an interdepartmental matter in which our participation in any form if warranted can only be initiated in the presence of department officials or at the very least with their approval.”

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** And it is the very last ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Three words.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** He was prepared to talk to them ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** As long as Mr Thabethe approved ...

20   **CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** The interview.

**CHAIRPERSON:** Do you accept Mr Thabethe that at least as at 24 December 2013 Estina - Mr Vasram were prepared to speak to the investigators. I am tempted to say about anything relating to the project as long as at least they knew that you had no problem. Do you

accept that ...

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

**CHAIRPERSON:** That was factually the position?

**MR MBANA PETER THABETHE:** Chair - Chair that was - that was correct ...

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Because in the discussion between me and him hence he had put it down was that for us to be able to have a clear understanding of - of what they would ask him. He - he said if  
10 the department was there so that you make sure when they go to the area where we are not comfortable he would be able to assist us.

That - that we said it is fine. If I were to give an approval I would have then requested the investigator to say to me we are not interested in the intellectual property. We therefore give you permission to proceed with the investigation. So those were the two things Chair.

**CHAIRPERSON:** But he - he seems not to be concerned about that. All he seems to be wanting is if there is no - no official from the department at the interview ...

20 **MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** At least you should be - you should be able to say you are okay with there being no official from the department and they can continue and interview and go into the interview. He - he does not say - as I understand it. He does not say we - we are happy to - we - we are happy to discuss with you everything except intellectual

property.

**MR MBANA PETER THABETHE:** *Ja, ja.* Chair what - what I am ...

**CHAIRPERSON:** I hope - I hope I am right Ms Gcabashe in terms of what they say - Estina - that they do not seem to say we are happy to discuss anything with investigators other than intellectual property. They do not seem to say that.

**ADV LEAH GCABASHE SC:** They - they do not speak ...

**CHAIRPERSON:** About.

**ADV LEAH GCABASHE SC:** To the issue of intellectual property ...

10 **CHAIRPERSON:** *Ja*, at all.

**ADV LEAH GCABASHE SC:** At all.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** They simply speak to the approval which is what ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Clause 10 deals with.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** If you give us permission.

20 **CHAIRPERSON:** So they do not raise that issue at ally. You were concerned about it but they based on this it is not their concern - their concern and they - they are not saying - they are not - there is nothing here that shows that they want you to refuse permission. There seems to be nothing suggesting that they want you to refuse permission. They just want you to make up your mind.

**MR MBANA PETER THABETHE:** *Ja, ja.* Chair I am - I am responding



on the basis of my communication with Vasram.

**CHAIRPERSON:** Yes, yes.

**MR MBANA PETER THABETHE:** Hence I am - I am commenting on this

...

**CHAIRPERSON:** *Ja.*

**MR MBANA PETER THABETHE:** Not directly as it is ...

**CHAIRPERSON:** *Ja.*

**MR MBANA PETER THABETHE:** Because it was their communication.

**CHAIRPERSON:** Hm.

10 **MR MBANA PETER THABETHE:** My input into it ...

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** Is what we had agreed on.

**CHAIRPERSON:** Hm. Okay.

**ADV LEAH GCABASHE SC:** I suppose my closing comment is you - you actually went with the ENS investigators to the farm in October 2013. That is correct. Is it not?

**MR MBANA PETER THABETHE:** *Ja.* I am - I am trying to think. I cannot remember Chair.

**CHAIRPERSON:** Yes. Okay.

20 **MR MBANA PETER THABETHE:** I cannot remember.

**ADV LEAH GCABASHE SC:** The date is not important.

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** The important fact is you accompanied them to the Vrede Dairy Farm on a site visit.

**CHAIRPERSON:** Do you have any recollection?

**MR MBANA PETER THABETHE:** Hm.

**CHAIRPERSON:** You might not recall?

**MR MBANA PETER THABETHE:** I am - I am not recalling Chair.

**CHAIRPERSON:** Okay. You ...

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

**CHAIRPERSON:** Might be able to help him.

**ADV LEAH GCABASHE SC:** Page 48 of the Reports Bundle. Hopefully it is the same one you have. It should be the same ...

**MR MBANA PETER THABETHE:** Yes.

10 **ADV LEAH GCABASHE SC:** But just go to page 48 - paginated page 48.

**MR MBANA PETER THABETHE:** Reports Bundle?

**ADV LEAH GCABASHE SC:** B. Reports Bundle B. That is where the emails were.

**CHAIRPERSON:** Where the email was.

**ADV LEAH GCABASHE SC:** Yes.

**CHAIRPERSON:** The one you were having.

**ADV LEAH GCABASHE SC:** (Intervenes).

20 **CHAIRPERSON:** The one in front of you that has the email that we were looking at just now. Ja. Page 48.

**MR MBANA PETER THABETHE:** Page 48. No Chair. The one I am looking at is HH10B.

**ADV LEAH GCABASHE SC:** No, no. That is - you are trying to find Reports Bundle. Reports Bundle.

**MR MBANA PETER THABETHE:** Okay.

**ADV LEAH GCABASHE SC:** Small b.

**MR MBANA PETER THABETHE:** I have - I have got.

**ADV LEAH GCABASHE SC:** Thank you.

**MR MBANA PETER THABETHE:** Page 14?

**ADV LEAH GCABASHE SC:** No. 4-8 - 48.

**MR MBANA PETER THABETHE:** 4-8. Okay. I have got it Chair.

**ADV LEAH GCABASHE SC:** And it is just that very first line at clause or paragraph 6.1.1.

10                    “In October 2013 ENS visited the Vrede Dairy  
Project site accompanied by Mr Thabethe.”

You cannot recall that visit? Very first sentence at 6.1.1.

**MR MBANA PETER THABETHE:** I am - I am thinking Chair. I am not denying it but I am trying ...

**CHAIRPERSON:** I cannot remember?

**MR MBANA PETER THABETHE:** Ja. I - I cannot remember. I might have been there ...

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** Because I have been there with a number of people.

20    **CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Hm.

**CHAIRPERSON:** So it is possible that ...

**MR MBANA PETER THABETHE:** Doing investigation but I cannot remember exactly ...

**CHAIRPERSON:** With them.

**MR MBANA PETER THABETHE:** How many people - there were - there were so many people because ...

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** I think this is the fourth investigation.

**CHAIRPERSON:** Hm, hm.

**MR MBANA PETER THABETHE:** So there - there were many ...

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** Instances I went there. So I cannot remember (coughing). I might have been there.

10 **CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** Well I do not think that the investigators would put a fact into a report ...

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

**ADV LEAH GCABASHE SC:** They have prepared for National Treasury if that would be fact especially something like going to on a site visit.

**MR MBANA PETER THABETHE:** On a site visit.

**ADV LEAH GCABASHE SC:** Would not be verifiable or - or correct. If you go to page 51 of the same report. They actually conclude - 5-1 - 51:

20                    “That is was clear that progress was being made on the construction of buildings and that a number of cows had been purchased.”

But they go on to say:

“At 6.2.2 that ENS was not provided with access to the financial records of the project and as a result

we were not able to comment on whether the project is progressing. To date the department has only invested funds it was required to invest in the 2012/2013 financial year. No further payments have been made to our knowledge. It is therefore likely that the project may be experiencing cash flow difficulties.”

And I read this only to indicate that I would have thought that this really is what National Treasury’s interest is. How are funds that  
 10 come from the fiscus being spent on this project? That would have been their core mission.

**MR MBANA PETER THABETHE:** Hm.

**ADV LEAH GCABASHE SC:** I do not know if you want to comment on that.

**MR MBANA PETER THABETHE:** Ja. Chair - Chair I - I do not know why - why they would have struggled in the department to get that information because I had given them access to the department supply chain which had all these documents in terms of payments and what payments had been done. So they - they had been there.

20 They were able to - to access this information. So I - I read that they were not able to access information. I - I - it - I - I do not agree that they would not have had access to this information because that formed the basis of the investigation and they were given access to the department’s supply chain to be able to do so.

**ADV LEAH GCABASHE SC:** Mr Thabethe if I - my recollection - my

memory serves me well. At - when we postponed this matter we gave you a file that had the ENS Report ...

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

**ADV LEAH GCABASHE SC:** Because you had indicated that you did not really have access to it. You may want to read it again and look at some of the issues that they raise and - and deal with those because I think you are at complete opposite ends of the spectrum in relation to what was provided, what permissions were granted or not granted and what progress this investigation could make in the given circumstances.

10 **MR MBANA PETER THABETHE:** *Ja.* Chair - Chair they had never complained me about refusing them access to the department. So they had access to whatever they wanted to investigate. What I had said before was that this report came to my attention for the first time in the court's records. I - I was never given an opportunity to respond to the report.

I would have - because when a report is being issued normally they will then give you a copy and say this is the findings. Do you have any comment to make on this report? Now I was never given that opportunity to do so. I would have corrected a lot of things in the  
20 report which might not have been properly done if they would have given me a draft saying this is our outcome.

We cannot find that. We cannot find that. We cannot find that in the report. Either to correct or to make available that information which they are saying they are not able to get. Now I saw this report when - when the first draft that I had also made available to

the Commission. I got the first draft before this report was issued from the legislature and I had a copy that was given to me at the legislature which - which was talking to the - to these issues before they - they released the report.

Now the - then the question kicks in Chair where Counsel says but how - how was this working? Everybody else had a copy of the report except the department and when I went to the legislature I went to answer questions on the basis of a report that I was not provided and then that is what I said and I was given a copy by the  
10 legislature and when they gave me a copy they wrote on top of the copy that I cannot use it for any other purpose other than responding to the questions of the legislature which is what I did.

Now that report which I got versus this report that was in - in court did not bear the same date but I had used the report at the legislature for responding to - to their question. Now my question has always been and if you also read the - the Public Protector's Report it - it comes out very clear in a number of areas that I did not have the copy of the report.

It seems they had a copy of the report because they were  
20 asking me questions about it but I did not have and they, from their side never - they never gave me a copy of the report to be able to - to talk to the report. Until, I - I then went to court and then I got a copy of the report. So the - that is - that has been my problem with regard to this report. I would have made my inputs before the report would have been released.

**ADV LEAH GCABASHE SC:** Chairman I do not think I want to ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Pursue this particular point ...

**CHAIRPERSON:** That is fine.

**ADV LEAH GCABASHE SC:** Any - any further.

**CHAIRPERSON:** That is fine.

**ADV LEAH GCABASHE SC:** I would like to move onto the next ...

**CHAIRPERSON:** *Ja.*

**ADV LEAH GCABASHE SC:** Aspect. Mr Thabethe we are back at your  
10 annexures to the 2017 affidavit and so that is HHB. Yes. You have got  
the right document there.

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

**ADV LEAH GCABASHE SC:** If you look at flag number 13 - 1-3. That  
is a report - a presentation actually that you made to the National  
Office - the Department of Agriculture and Fisheries - Forestry and  
Fisheries. Is that correct?

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

**ADV LEAH GCABASHE SC:** And when would you have made this  
presentation?

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

**ADV LEAH GCABASHE SC:** Can you recall?

**MR MBANA PETER THABETHE:** I am - I am trying to recall sir. I may  
not remember the exact date.

**ADV LEAH GCABASHE SC:** Just the period because my assumption is  
that the purpose was to get funding ...



**MR MBANA PETER THABETHE:** Funding. That is ...

**ADV LEAH GCABASHE SC:** Conditional funding.

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

**ADV LEAH GCABASHE SC:** So just give us ballpark ...

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

**ADV LEAH GCABASHE SC:** Dates.

**MR MBANA PETER THABETHE:** I think Chair it - it could have been - I do not want to make a mistake because between us going to the Provincial Executive Council I am not sure whether it was before or  
10 after. I think it could have been before because when I went to the Executive Council I was then able to say what is - what is possible from us.

I think it was during that time for us to be - to - to make sure and ascertain but it - it - I am - I am just trying to think I cannot recall properly. It could have been after the Executive Council says to us go and - and look for money. Then we went also to - to National to say we have this proposal and ...

**ADV LEAH GCABASHE SC:** I - I would suggest that it is probably the latter because if you go and look at page 3-7-3 and 3-7-4. It would  
20 appear especially at 3-7-4 that you are setting out the additional funding ...

**MR MBANA PETER THABETHE:** Okay.

**ADV LEAH GCABASHE SC:** Required in the current financial year.

**MR MBANA PETER THABETHE:** Okay. Ja. I - I think so Chair. It could have been after I have received approval to then go to National

to present this project to source funding.

**ADV LEAH GCABASHE SC:** What I found interesting was that the feasibility study substantially reflects the same information that is in this presentation. Now the feasibility study was completed at the end of October 2012.

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

**ADV LEAH GCABASHE SC:** My question is which document informed the content of the other? Did the feasibility study inform the content of this document or did this document possibly inform the content of the  
10 feasibility study?

**MR MBANA PETER THABETHE:** Chair there - there are two documents. There is a prefeasibility study that was done which was short and concise and then there was then the detailed feasibility study. So the initial feasibility study also went into the big feasibility study.

**ADV LEAH GCABASHE SC:** Now just to - to get absolute clarity on this the big feasibility study is the one that you signed off on when you signed off on the Phase 1 milestones that had been completed. Is that correct?

20 **MR MBANA PETER THABETHE:** *Ja.* Chair, I am - I am trying to bring it back to perspective again.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** When we went to the Executive Council and they gave us the first tranche of payment part of that money was also to do that feasibility study. Hence then when we

signed off we then also got that money then to go and do the detailed feasibility study but then the prefeasibility study was already done which was positive at that time but we wanted the detailed one for us to be able to say yes indeed.

**ADV LEAH GCABASHE SC:** I am sorry. I just want to understand your answer. Are you saying the first 30 million that was paid was for purposes of doing the prefeasibility study or the larger piece of work?

**MR MBANA PETER THABETHE:** Chair it was also - it was supposed to do the larger.

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

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

**ADV LEAH GCABASHE SC:** And that is why the larger was part of Phase 1?

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

**ADV LEAH GCABASHE SC:** Because that would be consistent with what you have said before that your understanding ...

**MR MBANA PETER THABETHE:** Yes.

**ADV LEAH GCABASHE SC:** Of the 30 million ...

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

20 **ADV LEAH GCABASHE SC:** Because it was supposed to cover Phase 1?

**MR MBANA PETER THABETHE:** Yes.

**ADV LEAH GCABASHE SC:** Okay. Can I very briefly take you through Mr Dawie Marais' report which we have also furnished you with.

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

**ADV LEAH GCABASHE SC:** If I am not wrong and I know you have given us one or two comments before. So I am just going to go through this very quickly. The bundle you need ...

**CHAIRPERSON:** Please remind me where to find it.

**ADV LEAH GCABASHE SC:** The bundle Chairman is Report's Bundle B.

**CHAIRPERSON:** Yes. What page?

**ADV LEAH GCABASHE SC:** And the first page will be page 2-8-8.

**CHAIRPERSON:** 2-8-8 does not look the first page but no I think my  
10 2-8-8 ...

**ADV LEAH GCABASHE SC:** It is paragraph 1.4 Chairman.

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** Page one - the cover page is ...

**CHAIRPERSON:** Report's - Report's Bundle B?

**ADV LEAH GCABASHE SC:** Report Bundle B Chairman.

**CHAIRPERSON:** And page 2-8-8?

**ADV LEAH GCABASHE SC:** The cover page is page 2-8-4 - the cover  
page ...

**CHAIRPERSON:** 2-8-4, okay oh.

20 **ADV LEAH GCABASHE SC:** Would be 2-8-4.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** 2-8-5 is the next one.

**CHAIRPERSON:** I think it is the same thing. It is just that I thought you said the first page would be 2-8-8. Maybe you meant the first page to which you want to talk.

**ADV LEAH GCABASHE SC:** I see.

**CHAIRPERSON:** *Ja.*

**ADV LEAH GCABASHE SC:** It is in fact - it is paragraph 1.4. That is where I want to start Chair.

**CHAIRPERSON:** *Ja, okay.*

**ADV LEAH GCABASHE SC:** And here he - he comments on location essentially and the - the essential point made about location was that this was a rather arid part of the country. It has never been dairy milk cow farming territory. He speaks to the coast - the midlands really  
10 being perfect for - for dairy farming and then he goes into the number of producers who have shutdown.

I do not know - I know you read the - the document. You may just want to give us a comment on - on what Mr Marais' issues are with - with regard to location.

**MR MBANA PETER THABETHE:** *Ja.* Thank - thank you Chair. Maybe - maybe I am - I am seeing it differently.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Than the one he sees it.

**CHAIRPERSON:** Hm.

20 **MR MBANA PETER THABETHE:** Before I comment to that I want us to look at his - his table.

**ADV LEAH GCABASHE SC:** Yes.

**MR MBANA PETER THABETHE:** Just below that.

**CHAIRPERSON:** At - at?

**MR MBANA PETER THABETHE:** 1.4 under "Background" table number

one.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Now his table number one is looking - it is giving months and number of milk producers per province.

**CHAIRPERSON:** Yes. In different years.

**MR MBANA PETER THABETHE:** In different years. Now I - I take it January 2006 the Free State had their highest number of milk producers.

**CHAIRPERSON:** 1 067.

10 **MR MBANA PETER THABETHE:** 1 006.

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** Which we have raised in our report that ...

**CHAIRPERSON:** Sorry. Did you say the same number?

**ADV LEAH GCABASHE SC:** No. 1 067 was correct.

**MR MBANA PETER THABETHE:** 1 067.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Sorry Chair.

**CHAIRPERSON:** Oh, I thought you said 1 006.

20 **MR MBANA PETER THABETHE:** Sorry Chair.

**CHAIRPERSON:** Ja. Okay.

**MR MBANA PETER THABETHE:** 1 067.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Now if you look at his report you will see how quick the decline is specifically in the Free State. It will mean

dairy farming was doing well in the Free State irrespective of the statement that he is saying it is inland.

**CHAIRPERSON:** You must - you say declining means it was doing well?

**MR MBANA PETER THABETHE:** The number - it was doing well and then it started to ...

**CHAIRPERSON:** In - initially?

**MR MBANA PETER THABETHE:** Initially and then we started to see the decline.

10 **CHAIRPERSON:** Ja, in 2006 it was - in 2006 they were - there was a great number of milk producers in the Free State.

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** Ja.

**MR MBANA PETER THABETHE:** Then - then it started going down.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** On top of the Free State ...

**CHAIRPERSON:** By 20 - before you do that - by 20 - by January 2012 ...

**MR MBANA PETER THABETHE:** Yes.

20 **CHAIRPERSON:** The number of milk producers in the Free State in terms of that information there had gone down - had decreased by something in the region of two/thirds.

**MR MBANA PETER THABETHE:** By - by almost half Chair.

**CHAIRPERSON:** Hm?

**MR MBANA PETER THABETHE:** By almost half.

**CHAIRPERSON:** Oh no. I - I think you are right. I am looking at - I was looking at 3-2-2 which is for KwaZulu-Natal.

**MR MBANA PETER THABETHE:** Yes, yes Chair.

**CHAIRPERSON:** By - by half, *ja*.

**MR MBANA PETER THABETHE:** By half.

**CHAIRPERSON:** By almost half, *ja*. You are right, *ja*.

**MR MBANA PETER THABETHE:** Yes.

**ADV LEAH GCABASHE SC:** Of course Mr Thabethe Mr Marais does say in that first paragraph that his decline is:

10                   “A result of higher production in the pasture based areas or the coastal areas. The cost of milk production inland provinces is a key factor due to the increase maize prices and other input costs.”

So he puts this decline to environmental factors. I am calling them that.

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

**ADV LEAH GCABASHE SC:** I just wanted you to factor that into your answer or to take into consideration.

20                   **MR MBANA PETER THABETHE:** Yes - yes Chair. I - I just do not want to forget to answer your - your first question.

**CHAIRPERSON:** Earlier question *ja*.

**MR MBANA PETER THABETHE:** Yes, because he was saying the Free State is - is an area where you would not do dairy. That - that is my understanding. Why did you choice the Free State?

**ADV LEAH GCABASHE SC:** Today, *ja*.



**MR MBANA PETER THABETHE:** As Free State ...

**ADV LEAH GCABASHE SC:** Hm.

**MR MBANA PETER THABETHE:** Because we - we are in the Free State. We cannot choose another ...

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** Province to do dairy ...

**CHAIRPERSON:** Ja.

**MR MBANA PETER THABETHE:** Other than the Free State.

**CHAIRPERSON:** Hm.

- 10 **MR MBANA PETER THABETHE:** Nationally will do it differently but we had an understanding that the Eastern Free State is the highest rainfall area, the arid part of the Free State is the worst in the Southern part towards Garieb, that is the arid. Now the Eastern Free State is a very high rainfall area, hence we have got fruit production there, we have got dairy concentration and all that, so I would not agree with him that in the Free State you would not do dairy.

**CHAIRPERSON:** Well do you accept his figures that between January 2006 and January 2012, in six years, if I'm correct, the situation in the Free State, which I take to refer to the whole of the Free State.

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

**CHAIRPERSON:** The situation was that the number of milk producers went down by half over six years, do you accept that statement?

**MR MBANA PETER THABETHE:** I accept that statement Chair.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Yes, but I want to talk to that

statement also to say this decline was a national decline, it was not only the decline of the Free State so the entire country in terms of dairy production we were declining, not on the basis of arid but on the basis of cost to do dairy. There was – the cost of doing dairy versus the return on the price of milk farmers were not making it, hence they were leaving dairy.

Now that has been our opening statement when we started Vrede Dairy, we say we want to deal with that issue because we saw in the Free State the rate at which the number of dairy farmers were declining were very high, so we had to do something, so I agree with his statement, his figures, but the statement he is mentioning here it is a country statement, it is not a statement specific to the Free State, because everybody has been declining, so that decline cannot only accorded to the Free State Province, because it was the true statement for each province, all provinces declined.

**ADV LEAH GCABASHE SC:** Yes, continue, I am trying to give you the opportunity Mr Thabethe to deal with the issues including the second question, because ...[intervenes]

**MR MBANA PETER THABETHE:** Yes Chair I have responded to the first question to say this is what is my understanding and his figures are correct.

**CHAIRPERSON:** Ja okay.

**ADV LEAH GCABASHE SC:** His figures are correct?

**MR MBANA PETER THABETHE:** His figures are correct in the table but the reasoning behind it is the one I do not agree with.

**ADV LEAH GCABASHE SC:** Continue.

**MR MBANA PETER THABETHE:** I am not saying the Free State did not decline but it is not only the Free State that declined.

**CHAIRPERSON:** *Ja.*

**MR MBANA PETER THABETHE:** So it cannot be accorded to the Free State.

**CHAIRPERSON:** *Ja*

**ADV LEAH GCABASHE SC:** But you admit that by 2013 there had been a substantial decline?

10 **MR MBANA PETER THABETHE:** Decline yes.

**ADV LEAH GCABASHE SC:** In the Free State.

**MR MBANA PETER THABETHE:** In the Free State but we had provinces that declined more than the Free State.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** If you look at the last column on the right in terms of the percentage, the Free State had declined by 57, and then if you look further down the other Provinces had declined more than 57.

**CHAIRPERSON:** Mmm.

20 **MR MBANA PETER THABETHE:** So the issues at play here there were many issues, they cannot be accorded to one area to say this is exactly the reason, so it is a number of issues.

**CHAIRPERSON:** Well I would imagine that you wouldn't go into a business sector which had – which had effectively driven away 50% of businesses unless you had a solution for the problem that drove those

businesses away. What was your solution, what was driving them away and what was your solution?

**MR MBANA PETER THABETHE:** That is correct Chair, further on in the report he is saying the only reason why in other countries dairy farming is a success is because of government involvement in his report he says because government is assisting the farmers, he normally calls it in the United States and Europe a tariff, in South Africa we call it a grant. That way we assist the farmers. The problem was that you had farms that had infrastructure for dairy, the  
 10 infrastructure is in existent and those farmers are pulling out they say we can't make it, the costs become too expensive, so we needed an intervention of government to come in and say we will make it easier for you by bringing in a grant because this project was going to be built with a grant from government, which is not going to be costly for the farmer to be able to go back to dairy farming because the distance for the supply will be closer and they would be able to focus in the production and then the cost element is then going to be reduced. Now that was the thinking that made us to go back to say we need to assist, we can't allow the decline of dairy in the Free State, being the  
 20 fourth largest producer of mealies in the country. I agree with him the coastal provinces were doing much better because of environmental factors, but the Free State did very well because in all the inland provinces, I would say in the inland provinces it was number one.

So we wouldn't say we wouldn't do it there because we are inland, environmental issues are not so good for us, when before that

we had proved that it can be done.

**ADV LEAH GCABASHE SC:** Yes I really, I am just trying to move on.

**CHAIRPERSON:** Yes, well let's talk about that Mr Thabethe. If you are into milk producing as a business person and on your own I know that you are going to fail, because I know about five hundred other milk producers have failed over the past six years in the same province, and it seems that the reason you failed is because you did not produce enough or you – the business required you to spend too much on it than  
10 you were getting in and now I say well I don't like this idea that you are failing, I want to assist you, I will put in money.

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

**CHAIRPERSON:** Okay, one of the questions that must cross my mind is if I look at what I may have to put in, the money that I may have to put in to assist you I must also look at what you will get out of the business and see whether it will be worth it because it cannot – it would not make sense if on your own if you rent the business on your own you are going to go under, I come in, I put in a lot of money, and you still go under. It might also not make sense even if you are not going to go  
20 under once I have put in my money if nevertheless whatever you will get maybe just be enough for you to float, you know.

Now the question is was there a study that looked at that to say what will these farmers get out of this realistically speaking and when we look at what government, the department will put in for X number of farmers and what they will get out will it be worthwhile.

Now we know that over what three years you were going to put in about over R300million, that is a lot of money.

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

**CHAIRPERSON:** Did you know what was realistically expected they would get out of their business over the three years?

**MR MBANA PETER THABETHE:** Ja, thank you Chair. We had looked at that, the National Agricultural Marketing Council had done a study, and the study was indicating if this rate of decline of dairy farmers in the country would proceed the way it was proceeding it would mean  
10 that the country must then come with a plan of how to import milk, because our own dairy farmers were not making it. It means that's the direction because if you don't come in with an intervention strategy it means you will end up with all the small dairy farmers going out, only the large will remain.

So the report was saying something needed to be done, we cannot allow it to disappear because it is a food security issue now, if you look at the country, we cannot rely on milk that we are importing. It is a problem but we have to do something to make sure that we still have producers of milk in the country, otherwise we must decide we are  
20 going to import milk from somewhere, we have failed producing milk, we are leaving it.

And this intervention when we looked at this we thought the issues that were being raised to be the cause of the decline could be addressed. If you look specifically at the Free State, I think we have discussed this also earlier Chair that dairy – people that are selling

milk are price takers, somebody comes and says I can buy your litre of milk for so much, take it or leave it. It means you cannot decide how much you want to sell your milk, they tell you, you are a price taker, they tell you we can buy so much of your litre of milk, if you don't take that price sorry, you are out of the market.

That's what we wanted to address, because for the Free State producers of milk it was very expensive, one of the elements that was making it very expensive was that cost of transport, because that cost of transport to come and collect your milk it is actually charged on you,  
 10 the seller, that it costed me to send a truck to come and collect your milk, if I can't buy your milk at that price.

Hence then Chair you will remember I said that's why then we reverted on the model Paras, because Paras was the one sending the trucks, collecting the milk, bringing it into the processing facility, hence we are saying this processing facility will solve the problem of most of the farmers because it will – the milk will be collected, closer and the price will be much better, because the facility, nobody needs to pay for the facility because government has paid for the facility, because if a private person comes and put up the facility or have borrowed money to  
 20 the bank he must make sure he makes enough money to go and pay for the facility if the farmer has done that, but in this instance nobody owes it because government has invested into the facility for all farmers to benefit into it.

Now that was our first model to say let's implement this one, we believe it will succeed, and then we will address the decline of the

farmers because the prices will now be better because of the investment of government into that.

**CHAIRPERSON:** But well you see if the real problem was transport and if that transport costs could be solved by having a truck, a government truck going around that is much more less than the R300million that you had used for the first three years and obviously you were going to still use a lot of – many more millions after. So why don't you just do exactly that, to say this is where we will assist you because this is where the problem is.

10 **MR MBANA PETER THABETHE:** *Ja*, Chair it is not only that, I have just put that one ...[intervenes]

**CHAIRPERSON:** *Ja* what would be the other one?

**MR MBANA PETER THABETHE:** Remember in this model the farmers were also shareholders into the factory, this is not privately owned.

**CHAIRPERSON:** Yes, but let us go back to what the situation was before you came with the produce.

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** You see there's a problem.

**MR MBANA PETER THABETHE:** Yes.

20 **CHAIRPERSON:** The number of milk producers going down drastically.

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** And you say one of the problems is their prices cannot be affected by the transport costs.

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** And if government can take over the transport costs



that could go a certain, a long way.

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** What were the others?

**MR MBANA PETER THABETHE:** But over and above that Chair also being a shareholder because it means per litre of milk you are getting more, more than only selling the milk to the processing part it means you are also a participator in the value chain, you are not only selling your milk to the private sector and that's it, it means your beneficiation ...[intervenes]

10 **CHAIRPERSON:** You mean the farmer?

**MR MBANA PETER THABETHE:** The farmer yes.

**CHAIRPERSON:** Yes but what I am talking about is why don't you say okay here identify farmers who are milk producers, and say we understand that this is where the problem lies, that's where we will come in. You will continue as normal but our – we will give you a helping hand in relation to costs but otherwise you continue and then you should be able to sell more of your milk because now you don't have to worry about transport costs, government will take care of those.

**MR MBANA PETER THABETHE:** It is not enough Chair.

20 **CHAIRPERSON:** Yes, what were the other challenges, if that was solved in that way?

**MR MBANA PETER THABETHE:** Yes, that is why I am saying Chair if you are in – if you are part of ownership of the company that do processing you will get more money than only being provided with the transport so it becomes a lucrative business to go into.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Because you will also get money in the processing which when you are only selling, you are not beneficiary to it, so it will then encourage even more farmers to get into it because you don't only get the money for your milk and transporting for free but you also get money after your milk has been processed.

**CHAIRPERSON:** But that was the only other one or were there other issues, costs and being shareholder.

**MR MBANA PETER THABETHE:** Costs and being shareholder that  
10 ...[intervenes]

**CHAIRPERSON:** Transport costs and being shareholder.

**MR MBANA PETER THABETHE:** *Ja, ja*, that was the part that will then assist them.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** And hence they will then have enough money to be able to deal with the issue of the production costs.

**CHAIRPERSON:** Mmm, okay.

**ADV LEAH GCABASHE SC:** Mr Thabethe of course the issue of water I am still dealing with the location.

20 **MR MBANA PETER THABETHE:** That's correct.

**ADV LEAH GCABASHE SC:** And then you talked about rainfall patterns etcetera, that is not arid. Water is critical to running a dairy farm you will agree with that?

**MR MBANA PETER THABETHE:** *Ja*, Chair water is critical but the Eastern Free State is not arid, we don't have a problem of rainfall.

**CHAIRPERSON:** Mmm.

**MR MBANA PETER THABETHE:** That will be a concern in an arid area.

**ADV LEAH GCABASHE SC:** That is a view that you hold Mr Thabethe. If we turn to page 293 of the same document so it's 293, I just want us to look at that feasibility study and his comment regarding water which is right at the bottom of that report, resources for site evaluation. Water is one of the major considerations when establishing a dairy, a sustainable clean source of water is very important. There is no clear  
10 indication in the feasibility study on the source of water, you would agree with that comment?

**MR MBANA PETER THABETHE:** Chair I do not agree, because we have a license form Water Affairs for access to water, which was issued by the Department of Water Affairs, so the problem he might have had he only focus the documents that he was provided with were three documents without any other supplementary information and he never came back to the Department to say but I do not see anything that will assist you in here, what other information do we have, so – and he has a disclaimer on that in the report, to say this is the only documents that  
20 were made available to me by the investigator, because he was not interacting with us, the investigator provided him with this document and he had no access to any other document because they were not asked from us, but we had permission from Water Affairs to access water, and hence I say I do not agree with the statement.

**CHAIRPERSON:** Well when you say you had permission from Water

Affairs to access water that gives me the impression that you are talking about a river or rivers or dams as opposed to depending on the climate as such.

**MR MBANA PETER THABETHE:** That is correct Chair. That ...[intervenes]

**CHAIRPERSON:** Were the rivers ...[intervenes]

**MR MBANA PETER THABETHE:** That gave access to the dam that was on the farm and also access to do boreholes on the farm for additional water.

10 **CHAIRPERSON:** Well I don't know enough about boreholes, so I don't know whether the position is that as long as you dig deep enough you will find water or whether it is only certain areas where you will be able to do boreholes and find water.

**MR MBANA PETER THABETHE:** Ja, it depends on the strength of the area Chair, some areas the water availability strength is low, in some areas the water availability strength is high depending on the water table, and also depending on the rainfall in the area where you are, and the area that we are talking about had more than enough water.

**CHAIRPERSON:** So you're saying that the area where the farm was,  
20 farm is, is such that in terms of the requirements for finding water using boreholes that you would easily have been able to have boreholes and find water.

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

**CHAIRPERSON:** That's what you are saying.

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

**CHAIRPERSON:** And that is based on the knowledge of the climate in the particular area.

**MR MBANA PETER THABETHE:** In the particular area.

**CHAIRPERSON:** Oh, okay.

**MR MBANA PETER THABETHE:** And I agree with him when he says water is key in a dairy, you would not start a dairy when you are not happy with the amount of water.

**CHAIRPERSON:** Mmm, okay.

**ADV LEAH GCABASHE SC:** Chairman I notice that it is just on one  
10 o'clock, this might be a convenient time.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** To take the lunch break.

**CHAIRPERSON:** Yes thank you, let us take the lunch adjournment, we will resume at two. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Let us continue.

**ADV LEAH GCABASHE SC:** Thank you Chairman. Mr Thabethe my  
20 next question is one where I have tried to collect a few things from the Maree Report. So Mr Maree also questions the irrigation and mechanisation cost, the rain fed mechanisation cost, the cost of cattle and the cost of the bulk cooling tanks, the dairy products manufacturing plant and pasteuriser, the annual feed plant and grain old seed mill. You will find this at Table 5 on page 295 of the same document that is

Reports B. So my question to you is you have now read those observations made by Maree. Did you interrogate the costing in the same manner that he did when you were given this – the feasibility study, the business plan?

**MR MBANA PETER THABETHE:** Ja thank you Chair. I have went through his report on page 294 where he was talking to a number of issues.

**ADV LEAH GCABASHE SC:** Yes.

**MR MBANA PETER THABETHE:** But what I want to get into Chair was  
10 – I am trying to get to the exact statement where he talks about – because he has got a disclaimer on this.

**ADV LEAH GCABASHE SC:** Yes.

**MR MBANA PETER THABETHE:** Where he says his comment is only subject to an economist to do the evaluation and comparison. Which he says he has not done. Which makes it very difficult for me to agree with him because it is just his observation but he has not done any exercise to do comparison to say yes indeed. Because you cannot say it is expensive when you have not done comparison to say what informs you to say this is too expensive. So it is a statement that cannot be  
20 substantiated. He should have gone and said this is the price of this and this is the price of this why did you pay so much.

**ADV LEAH GCABASHE SC:** So are you – are you saying that when the feasibility study was done, when the business plan was done, the ones that were submitted to you.

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

**ADV LEAH GCABASHE SC:** You had specialists who interrogated the issues such as economists and would have dealt with the costing?

**MR MBANA PETER THABETHE:** Yes what – what we provided Chair in our submission were cost estimate but when we were implementing then we presented the actual cost. Now he assessed the plan not the actual cost. Because those were two different things. He looked at the document and he did the assessment in terms of the plan.

**ADV LEAH GCABASHE SC:** Yes that is what he had before him.

**MR MBANA PETER THABETHE:** Yes. Because there you put  
10 estimation of the cost and then when you then implement the project then you get actual. Sometimes it is cheaper sometimes it more expensive than what is on the plan.

**ADV LEAH GCABASHE SC:** Now that actual document that you are talking about what is – what – where is it?

**MR MBANA PETER THABETHE:** The actual documents Chair where the actual cost are it is when you implement and then you – we have those monthly reports to say this was done and this was the cost.

**ADV LEAH GCABASHE SC:** Oh I see. No then I am with you.

**MR MBANA PETER THABETHE:** Yes.

20 **ADV LEAH GCABASHE SC:** If you are saying that the numbers you are talking about that you can relate to are in the monthly reports and the quarterly reports.

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** Okay.

**MR MBANA PETER THABETHE:** Because he assessed the original

document before the implementation.

**CHAIRPERSON:** Ja.

**MR MBANA PETER THABETHE:** Then on the basis of that he says it looks expensive.

**ADV LEAH GCABASHE SC:** And he...

**MR MBANA PETER THABETHE:** But he does not say it looks expensive he says it is an expensive exercise. Still I say to him he could still have done comparison to say why he says expensive because he has checked this tractor and this tractor – this size of a  
10 tractor in the market this is what is costs and in your plan it says this much therefore we do not agree with you. He is giving a general statement that this is expensive, this is expensive without doing any comparison.

**ADV LEAH GCABASHE SC:** Yes. No I have understood what you have said and will deal with the detail when we get to the monthly reports.

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

**ADV LEAH GCABASHE SC:** But now that you mentioned tractors. Do you – I – the evidence we have heard is that the department supplied a number of tractors to this particular project, do you recall that?

20 **MR MBANA PETER THABETHE:** No Chair.

**ADV LEAH GCABASHE SC:** You – are you saying that the department did not supply tractors?

**MR MBANA PETER THABETHE:** Yes. Now I think he is confusing. There was a separate program called Ilema/Letsema where the department supplied tractors in that area to assist small farmers to do



ploughing.

**ADV LEAH GCABASHE SC:** Yes.

**MR MBANA PETER THABETHE:** So those tractors were not meant for this project. There was in a particular stage where we requested assistance from those farmers to come and assist before we could acquire tractors for the project but they were never bought and supplied by the department. In fact those tractors came from National. They were donated to the Province and there were specific farmers that had to be assisted with those tractors.

- 10 **ADV LEAH GCABASHE SC:** You know that is a bit strange because we had the evidence of the Mr Basson who said he has a number of tractors belonging to the department that are parked in his yard – on his premises. Now if you have got departmental stock and that is in Vrede.

**MR MBANA PETER THABETHE:** Yes.

- ADV LEAH GCABASHE SC:** Departmental tractors that are parked in Vrede you are saying that you would rather still use money that has been allocated to the Vrede Dairy Project to buy new tractors and not try and use stock that belongs to government that is sitting in Vrede  
20 and doing nothing at all. What is the distance? A five kilometre distance between Basson's premises and the farm – less?

**MR MBANA PETER THABETHE:** Ja. Chair the department do not have tractors. He might have been referring – I am not sure which tractors he was referring – he might have been referring to the tractors of the project which were being serviced by him that is the Vrede Dairy

Project because the project has been servicing those tractors and repairing those tractors with him. He might have alternatively been referring to these tractors which were given to farmers by the department which are in the hands of the farmers. So they are not depart – they are not tractors that belongs to the department.

**ADV LEAH GCABASHE SC:** If I – my recollection serves me well the donation was mentioned in Mr Jankielsohn's evidence.

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

**ADV LEAH GCABASHE SC:** Mr Basson spoke about tractors that  
10 belonged as I have – I understood him to the project. And as you say that he had been repairing. So I think that these are two separate sets of tractors.

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

**ADV LEAH GCABASHE SC:** I think that would be correct because there are two different individuals who gave us this evidence.

**MR MBANA PETER THABETHE:** That is correct Chair. So I am not sure what – which tractors Mr Basson is referring to whether those of the project or he is referring to the set of tractors that were donated to farmers.

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

**MR MBANA PETER THABETHE:** I am not sure which ones were standing with him.

**ADV LEAH GCABASHE SC:** But if you were referring to tractors that belonged to the project that have been repaired by him that are still sitting in his premises you would be checking the invoices to see why a

new tractor is being purchased whereas three months back a tractor was in fact purchased. Is that how you would monitor the expenditure on tractors?

**MR MBANA PETER THABETHE:** No Chair. There is a plan of how many tractors need to be bought for what purpose.

**ADV LEAH GCABASHE SC:** Yes.

**MR MBANA PETER THABETHE:** Now those tractors at a given time will go there for repairs, they will go there for services. Now I am not sure why he referred to those standing but it could be that when the  
10 projects came to a stop because then they were not operational anymore then he might be referring to those tractors still standing. I do not know I am just – because I am not able to say exactly what tractors is he referring to that are standing with him. I do not – it is difficult for me to answer Chair.

**ADV LEAH GCABASHE SC:** That is fine because the point really I had been making at the beginning was the extent to which stock that is available is used for the dairy project as opposed to purchasing new items when the money for the new item could be used for something totally different.

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

**ADV LEAH GCABASHE SC:** That is what I was trying to explore at the time.

**MR MBANA PETER THABETHE:** Ja. No there was not stock readily available Chair hence we had to purchase tractors.

**ADV LEAH GCABASHE SC:** Your understanding is that everything that

was purchased for the dairy farm was new?

**MR MBANA PETER THABETHE:** That is my understanding Chair.

**ADV LEAH GCABASHE SC:** Thank you Mr Thabethe I want to move on because we have a long way to go and we have got a couple hours this afternoon. If we then go back to your annexures to the 2017 affidavit MPT14 – Annexure 14 at Tab number 14 was not received. This is the preliminary – all the detailed business plan. I was not too sure which one you were really referring to. If we just go to paragraph 16 of your affidavit. So just go to the front of that same doc – same file. If you –  
10 paragraph 16 you will find on page 249.

**MR MBANA PETER THABETHE:** My apology Chair.

**ADV LEAH GCABASHE SC:** Yes.

**MR MBANA PETER THABETHE:** Which flag number?

**ADV LEAH GCABASHE SC:** We are talking about 14, 14 and 14 says not received. So when you go to the affidavit to see what it is that has not been received.

**MR MBANA PETER THABETHE:** Okay.

**ADV LEAH GCABASHE SC:** We go to paragraph 16. You know we were trying to give content remember Mr Thabethe to what you say in  
20 your affidavit. We had the affidavit but no annexures. So now we are just putting the two together. So MPT14 refers to the preliminary.

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

**ADV LEAH GCABASHE SC:** Or to the detailed business plan?

**MR MBANA PETER THABETHE:** As per the binding agreement Estina was requested to develop a feasibility study and a business plan. I

think Chair this is the big business plan. The latest one not the preliminary.

**ADV LEAH GCABASHE SC:** So if you go Mr Thabethe to Reports bundle B – Reports bundle B.

**CHAIRPERSON:** Well that is the one we were using just now.

**ADV LEAH GCABASHE SC:** That we were using earlier Chairman.

**MR MBANA PETER THABETHE:** Ja that is correct.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** And you go to page 3 – no this is a  
10 feasibility study. We go to page 321. Can you identify this and tell the  
Chairman whether this is the preliminary or the full business plan that  
was commissioned? Page 321 Reports bundle B.

**MR MBANA PETER THABETHE:** Yes. Chair the one where we are now  
is the preliminary.

**ADV LEAH GCABASHE SC:** Is this the preliminary?

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

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** This is the only copy as far as I am aware  
that the commission has. Is there a bigger document than this?

20 **MR MBANA PETER THABETHE:** There is a bigger business plan than  
this one Chair.

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** You might as well tell us about the  
feasibility study which is the very next document at 331 just now that  
we talking about final and interim documents. The commission has

understood certainly the evidence leaders have understood that that document that runs from page 331 all the way to page 396 is the final feasibility study of October 2012. Is that correct?

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

**ADV LEAH GCABASHE SC:** Excellent.

**MR MBANA PETER THABETHE:** I think what we are having here this is – the first document is the...

**CHAIRPERSON:** 32 – page 321 you say is the preliminary?

**MR MBANA PETER THABETHE:** Is the preliminary.

10 **CHAIRPERSON:** And then page 332 – 331.

**MR MBANA PETER THABETHE:** Is the bigger plan.

**CHAIRPERSON:** Is the big – is the final?

**MR MBANA PETER THABETHE:** Yes that one.

**ADV LEAH GCABASHE SC:** Of the feasibility.

**CHAIRPERSON:** Feasibility study ja.

**MR MBANA PETER THABETHE:** Yes, yes Chair.

**CHAIRPERSON:** Okay. So they are just together.

**MR MBANA PETER THABETHE:** Together yes.

**CHAIRPERSON:** But they are different...

20 **MR MBANA PETER THABETHE:** They are two different.

**CHAIRPERSON:** Ja Okay.

**ADV LEAH GCABASHE SC:** Yes. Thank you. Then we have Annexure 15 which is the deviation memorandum. We have discussed that we do not need to go into that at this point in time. If we go to 16. Now at 16, Annexure 16 you have given us Annexure 16A, B and C.

**CHAIRPERSON:** Okay. Have we moved away from the feasibility study?

**ADV LEAH GCABASHE SC:** Oh Chairman we are back yes – we are back to HH...

**CHAIRPERSON:** But I should close it. You will come back to it.

**ADV LEAH GCABASHE SC:** Do not close it Chairman.

**CHAIRPERSON:** Ja.

**ADV LEAH GCABASHE SC:** Thank you.

**CHAIRPERSON:** Okay.

10 **ADV LEAH GCABASHE SC:** HH10 we are back with the affidavit and the annexures.

**CHAIRPERSON:** And the...

**ADV LEAH GCABASHE SC:** We are at Tab number 16.

**CHAIRPERSON:** 16?

**ADV LEAH GCABASHE SC:** 16 Chairman. And here you have actually – it is just that the photocopying has chopped off some of the letters at the top. But you have got a 16A which is on page 424. 16B is legible on page 425. 16C...

**CHAIRPERSON:** Well – my one does not reflect A oh you say it is 16A  
20 and the...

**ADV LEAH GCABASHE SC:** Yes the A has been chopped.

**CHAIRPERSON:** Ja 16 A and the A has been...

**ADV LEAH GCABASHE SC:** A little Chairman yes.

**CHAIRPERSON:** Ja okay I think we need to

**ADV LEAH GCABASHE SC:** Reinstate it.

**CHAIRPERSON:** Make sure that otherwise one thinks that one is not on the right page. Okay then the next one is 16B

**ADV LEAH GCABASHE SC:** So that is 16A. The next one Chairman is 16B.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** That one is legible. And the third one is 16C.

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** Those are the ones I want to deal with  
10 right now. You mention them at paragraph 18 of your affidavit. So if we go to the front again give us context?

**CHAIRPERSON:** What did you say these are at 16A, 16B and 16C?

**ADV LEAH GCABASHE SC:** Chairman it is a record of payments that were made to Estina.

**CHAIRPERSON:** To Estina.

**ADV LEAH GCABASHE SC:** Yes.

**CHAIRPERSON:** Oh okay.

**ADV LEAH GCABASHE SC:** They are not very legible.

**CHAIRPERSON:** Okay.

20 **ADV LEAH GCABASHE SC:** But I will – I will deal with them as best I can.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** So if we go to paragraph 18. They are actually set out in this schedule here Chairman.

**CHAIRPERSON:** Okay ja.



**ADV LEAH GCABASHE SC:** In fact Mr Thabethe what you have at paragraph 18 and then you explain it in 19.

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

**ADV LEAH GCABASHE SC:** Is – these are the payments that you believed had been made?

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

**ADV LEAH GCABASHE SC:** To Estina.

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** Okay. Of course we have agreed that the  
10 first R30 million that was paid in July 2012 is not recorded here?

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

**ADV LEAH GCABASHE SC:** Because at the time you prepared this affidavit you were not aware?

**MR MBANA PETER THABETHE:** That is correct Chair. The – I had not received proper confirmation which I had later then received.

**ADV LEAH GCABASHE SC:** Yes. So you knew that the money had been paid but because nobody could give you the receipts.

**MR MBANA PETER THABETHE:** The proof of the payment yes.

**ADV LEAH GCABASHE SC:** You were reluctant to deal with the  
20 amount?

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

**ADV LEAH GCABASHE SC:** Okay. But we ...

**MR MBANA PETER THABETHE:** Because I had to provide evidence to that in attachment but then later then we got that.

**ADV LEAH GCABASHE SC:** Yes. So...

CHAIRPERSON: Well I am sorry.

ADV LEAH GCABASHE SC: Yes Chairman.

CHAIRPERSON: Let – the first line of paragraph 18 says the table shows the – reflects the manner in which payment was done. Does the manner in which payment was done refer to the times when payments were made and the amounts that were made.

MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: That were paid.

MR MBANA PETER THABETHE: That is correct.

10 CHAIRPERSON: Okay.

ADV LEAH GCABASHE SC: If – so in a financial year 2013/2014 if you look at that schedule at 18 – at paragraph 18 the amounts were R34 950 000.00. You have got it there.

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: Yes. The second amount was R30 million. You have it there?

MR MBANA PETER THABETHE: That is correct Chair.

ADV LEAH GCABASHE SC: That is the second item. And these are both April payments that were effected.

20 MR MBANA PETER THABETHE: That is correct Chair.

CHAIRPERSON: Ten days apart hey?

ADV LEAH GCABASHE SC: Just a few days apart Chairman yes.

CHAIRPERSON: Hm.

ADV LEAH GCABASHE SC: Yes. And then the third one is R19 050 000.00. That is the third one. That is 16.

**CHAIRPERSON:** And that is eight days later than the second one.

**ADV LEAH GCABASHE SC:** Yes.

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** Now I have a copy of the – the AG's report. My colleague is just getting the reference I made the error of not putting the reference in here. I normally write it in. My apologies Chair just if you would please indulge us. In essence a total of R113 950 000.00 was paid.

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

10 **ADV LEAH GCABASHE SC:** In that particular financial year.

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

**ADV LEAH GCABASHE SC:** I actually want to point you to a particular note in that AG's report. Well I will come back to this point because I actually am trying to cover a bit of time. Coming back to the same paragraph 18 we then find that in 2014 an amount of R30 million was paid. That you will find at 16E – Annexure 16E. And before that of course the R29 950 000.00 which you will find at Annexure D – 16D. I just want – all I am asking you to do is to confirm these amounts that you are happy with these amounts Mr Thabethe?

20 **MR MBANA PETER THABETHE:** Yes I am – I am Chair.

**CHAIRPERSON:** So you confirm that these were – these amounts were paid?

**MR MBANA PETER THABETHE:** That is correct Chair. I confirm because these were the amounts that proof of payment ...

**CHAIRPERSON:** Was available to you.

**MR MBANA PETER THABETHE:** Was available to me.

**CHAIRPERSON:** ja.

**MR MBANA PETER THABETHE:** To include yes Chair.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** Thank you. My colleague has located the document that I was looking for. So we are looking at Reference bundle F that is the one that was admitted into the record yesterday F. Are you there?

**MR MBANA PETER THABETHE:** Yes.

10 **ADV LEAH GCABASHE SC:** And the page is 106. Oh they did say that. Chairman can I explain this? My colleague is correct.

**CHAIRPERSON:** Ja.

**ADV LEAH GCABASHE SC:** Because we took these...

**CHAIRPERSON:** What page first?

**ADV LEAH GCABASHE SC:** It is page – if it is – there are two numbers – two page numbers. Please use the centre page number.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** And that is 1968. Because these came out of a different bundle Chairman the one in the corner belongs to the  
20 other bundle. For this bundle we are using EST reference 1968.

**CHAIRPERSON:** Ah.

**ADV LEAH GCABASHE SC:** So in the middle...

**CHAIRPERSON:** I wonder whether it might not be better that even later on somebody crosses out the corner...

**ADV LEAH GCABASHE SC:** The one on the right?

**CHAIRPERSON:** Ja so that there can never be any confusion.

**ADV LEAH GCABASHE SC:** We will do that Chairman.

**CHAIRPERSON:** Ja. Okay.

**ADV LEAH GCABASHE SC:** It is Tab number 91 if your bundle is tabbed.

**MR MBANA PETER THABETHE:** Yes I have got it Chair.

**ADV LEAH GCABASHE SC:** Now at note 5.4 what I found instructive was the second paragraph. Because it deals with these transfer payments that we have been trying to come to grips with. And the note  
10 is as follows in paragraph 2.

“Departments are requested to provide the name of  
the transferee.”

**CHAIRPERSON:** I am sorry I am at...

**ADV LEAH GCABASHE SC:** Yes Chairman.

**CHAIRPERSON:** 1967 middle number.

**ADV LEAH GCABASHE SC:** 1968 which is the next page. The – one  
the far right it will be 1060.

**CHAIRPERSON:** Oh okay.

**ADV LEAH GCABASHE SC:** But it is 1968 that is the correct number.

20 **CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** Paragraph 2 Chairman is the one that I am focussing on.

**CHAIRPERSON:** Oh okay so when you said paragraph 2 I was looking for a number 2.

**ADV LEAH GCABASHE SC:** I see. Yes.

**CHAIRPERSON:** Whereas – because there is 5.4.

**ADV LEAH GCABASHE SC:** It is 5.4.

**CHAIRPERSON:** Ja.

**ADV LEAH GCABASHE SC:** But it is the second paragraph.

**CHAIRPERSON:** Okay it is the second paragraph under 5.4.

**ADV LEAH GCABASHE SC:** Thank you. Yes. So it reads as follows

Mr Thabethe:

10 “Departments are requested to provide the name of  
the transferee, the purpose for which these funds  
were transferred, did the department comply with  
Section 38.1J? The amount transferred. The  
amounts spent from the transfer. Received by the  
transferee and in bracket [excluding individuals or  
social grants payments]. And the reasons for  
unspent funds by the transferee. Departments must  
also comment on monthly monitoring systems or the  
lack thereof to monitor spending on such transfers.  
If such monitoring did take place departments must  
provide details of difficulties experienced and what  
20 steps if any were taken to rectify such difficulties.”

So you then have the table below that and I – my assumption is that all  
of this has come from the Department of Agriculture and Rural  
Development, it would be correct? These numbers would have come  
from you?

**MR MBANA PETER THABETHE:** That is correct Chair. You mean the

numbers that are in the ...

**ADV LEAH GCABASHE SC:** In this – that column that first column?

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

**ADV LEAH GCABASHE SC:** Aha I thought so. So the name of the transferee here the name you have put in is Vrede Dairy?

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

**ADV LEAH GCABASHE SC:** Is there any reason that it is Vrede Dairy and not Estina because Estina is the implementing agent and it is Estina that is held to account? I just failed to understand that but I  
10 knew you would be able to explain it.

**MR MBANA PETER THABETHE:** Yes Chair the name of the name on which the budget is gazetted it is Vrede Dairy. It is not Estina. So when you report you report the budget allocation under Vrede Dairy.

**ADV LEAH GCABASHE SC:** So you report against the project not against the implementing agent?

**MR MBANA PETER THABETHE:** You report against the project because if this money is gazetted under a certain topic to say this amount of money goes to Vrede Dairy then when you present your report otherwise then it will confuse somebody which budget are you  
20 relating to. Hence it says Vrede Dairy.

**ADV LEAH GCABASHE SC:** You see...;

**MR MBANA PETER THABETHE:** That is the name under which the budget was allocated.

**ADV LEAH GCABASHE SC:** I understand. My - my ...

**CHAIRPERSON:** Well ...

**ADV LEAH GCABASHE SC:** Difficulty I suppose arises from the fact that when you want to hold somebody to account having the project name there can be misleading because it is the implementing agent who is the person you want to hold to account. You do not think that would present any difficulties at all?

**MR MBANA PETER THABETHE:** Yes. I - I hear you Chair. Hence the comment that they are giving but remember the audit that is done by the Auditor-General ...

**ADV LEAH GCABASHE SC:** Yes.

- 10 **MR MBANA PETER THABETHE:** They do the audit on our financial statement. Now the financial statement says so much money was allocated and - and this much. Then they are then saying moving forward departments must then also reflect that - that is my understanding of the statement that we will then have also to reflect to whom the money was transferred? How much was spent and so on.

- ADV LEAH GCABASHE SC:** Yes and that is where I - I just want to spend a little bit of time because one of the things the Chairman is enjoying to do is make recommendations on how to improve systems that are in place. Systems that are not as clear as they might be if a  
20 different modality was adopted ...

**MR MBANA PETER THABETHE:** Hm.

**ADV LEAH GCABASHE SC:** And this is why I debate this with you because at least you have some knowledge of - of these matters.

**MR MBANA PETER THABETHE:** Ja. Chair - Chair my knowledge on this is very limited. The - the CFO and the - the finance section of the



department deals with this. So they know the details of - of doing the financial statements which eventually get to the Auditor-General. I am only explaining my understanding of these but I will not be able to go into the details.

**ADV LEAH GCABASHE SC:** Yes Mr Thabethe but as the HOD - you are the Accounting Officer for everything - finances - for absolutely everything. So your team - you have got people who report into you who explain things to you. It does not matter which division they may sit in. Yours is to at least have a - a strategic overview of what is  
10 going on in the department.

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

**ADV LEAH GCABASHE SC:** So you - money is important. You will have a very close relationship with the CFO. Am I right?

**MR MBANA PETER THABETHE:** Ja. Chair - Chair I agree but I would not have gone otherwise I - I will be a very super person to know the details of - of each - because this - this is going into the details. What I would know is that so much money has been paid and - and the details then the CFO comes in because they are trained into these issues.  
20

They will understand even what Treasury - what the Auditor-General is saying here. They will understand far much better than - because if I will try and explain these I may not be telling the correct thing. What is it that they are saying?

**ADV LEAH GCABASHE SC:** But this is a simple proposition because this table that very first table accords with what you have put in

paragraphs 18 and 19 of your affidavit. We - we agreed on that earlier?

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

**ADV LEAH GCABASHE SC:** That the total amount spent between April 2013 and March 2014 was R113 905 000,00.

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

**ADV LEAH GCABASHE SC:** Ja. So I mean there is no - there is no rocket science thinking that goes into this. You know that that is definitely correct. Yes. That number is correct. I am just starting at  
10 the easy thing.

**MR MBANA PETER THABETHE:** Yes. I agree the number is correct Chair ...

**ADV LEAH GCABASHE SC:** Yes.

**MR MBANA PETER THABETHE:** But what - what is on top those statements that are on top are - are very key.

**ADV LEAH GCABASHE SC:** Yes.

**MR MBANA PETER THABETHE:** They need - they need somebody who understands to be able to implement what they say.

**ADV LEAH GCABASHE SC:** No and the reason I say they do not need  
20 somebody who is a specialist in finance is because as a lawyer I was able to read this and understand exactly what is required and I have no financial background at all ...

**MR MBANA PETER THABETHE:** Hm.

**ADV LEAH GCABASHE SC:** And I have never been a Head of Department. So I am challenging you to help me work this through this.

From my position of never having been a Head of Department. Let us go Mr ...

**CHAIRPERSON:** Well ...

**ADV LEAH GCABASHE SC:** Thabethe.

**CHAIRPERSON:** Ms Gcabashe please do not forget your line of thinking.

**ADV LEAH GCABASHE SC:** Yes.

**CHAIRPERSON:** I just want to see whether we are on the - our concern is the same or not.

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

**CHAIRPERSON:** You see Mr Thabethe you said that in effect it was in order that they wrote Vrede Dairy in the column where they were supposed to write the name of the transferee. You remember that?

**MR MBANA PETER THABETHE:** I - I hear you Chair, yes.

**CHAIRPERSON:** Yes. I have difficulty with accepting that because if you look at the third column in that table. It says purpose for which the funds were used.

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

20 **CHAIRPERSON:** So each column you are supposed to enter only the information that is required. Now under name of transferee obviously what is required is you must say who was paid and then - and then the next column says type of organisation ...

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

**CHAIRPERSON:** And one assumes that there is a reason why they would even want type of organisation that might not be apparent to me.

Maybe to Ms Gcabashe as well as lawyers but they - we - we have to assume they have a reason to want that information. Then the next - the third column is purpose for which the funds were used and then you see what is written there is project implementation.

If you ask me that is where the reference to Vrede Dairy Project would come in.

**MR MBANA PETER THABETHE:** Hm.

**CHAIRPERSON:** So - so that if I am correct about that then writing Vrede Dairy under name of transferee could not be correct because that  
10 is not the person who was paid.

**MR MBANA PETER THABETHE:** Ja. Chair - Chair that - that is correct.

**CHAIRPERSON:** Hm, hm.

**MR MBANA PETER THABETHE:** What I was explaining Chair is that we - we are looking at this table. We do not know what informs how they put it in this table. May - maybe the - the mistake could have happened on the budget side.

**CHAIRPERSON:** But I am inviting you to concede that it was wrong for them to write Vrede Dairy when they were supposed to disclose the  
20 name of the person to whom the money was transferred because there is a column ...

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** Where they needed to disclose what the payment was for ...

**MR MBANA PETER THABETHE:** Hm.

**CHAIRPERSON:** Which is where they would have written implementation of Vrede Dairy Project or just Vrede Dairy Project.

**MR MBANA PETER THABETHE:** I - I hear you Chair.

**CHAIRPERSON:** You - do you accept that?

**MR MBANA PETER THABETHE:** I accept that Chair.

**CHAIRPERSON:** Okay, alright. I do not know whether we (intervenes).

**ADV LEAH GCABASHE SC:** That is exactly ...

**CHAIRPERSON:** Oh ...

**ADV LEAH GCABASHE SC:** Absolutely Chairman ...

10 **CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** Because I think it just makes it much clearer.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Hm.

**ADV LEAH GCABASHE SC:** Irrespective of where that record sits.

**MR MBANA PETER THABETHE:** Sits.

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** Whether it is in your annual financial statements, in your strategic plans.

20 **CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** The same explanation. As I understand what that paragraph that I read into the record requires. You really - it is - it is asking for transparency.

**MR MBANA PETER THABETHE:** That is right.

**ADV LEAH GCABASHE SC:** Quite frankly. It - so that we know exactly

who is handling the funds and - and I was actually going to suggest that it could even be Estina/Vrede Dairy. So that your needs are catered for as the department. You know that that is the project ...

**MR MBANA PETER THABETHE:** Hm.

**ADV LEAH GCABASHE SC:** But we must know the implementing agent that is handling that money ...

**MR MBANA PETER THABETHE:** Ja.

**ADV LEAH GCABASHE SC:** Because when the issue of monitoring the spending on such transfers arises and that is line one, two, three, four  
10 in the middle of the same paragraph. One then interrogates how the monitoring of the spending of these monies was conducted. So we are talking - it is implementation.

We are really talking about how the department implemented the obligations that arose in relation to the dairy farm and accounting to the public for the monies that had been dispersed. You have understood ...

**MR MBANA PETER THABETHE:** Hm.

**ADV LEAH GCABASHE SC:** That - that line of thinking anyway?

**MR MBANA PETER THABETHE:** Ja. I - I just want to check Chair ...

20 **CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Because I - I only see the extract of three pages.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** I am - I am not sure if this was a final report.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** It makes it very difficult for me to ...

**CHAIRPERSON:** To - to ...

**MR MBANA PETER THABETHE:** To talk to it whether was it a draft. At this time whether it was already final. I am - I am not sure.

**CHAIRPERSON:** Hm. Of course you can preface your comments on by saying well if it was not final this is what I have to say. If it was final ...

**MR MBANA PETER THABETHE:** Yes.

10 **CHAIRPERSON:** This is what I have to say.

**MR MBANA PETER THABETHE:** Yes. I - I take it Chair they took it from the final ...

**ADV LEAH GCABASHE SC:** It - it is. Chairman I must say that where we got this from it came to us in this format ...

**CHAIRPERSON:** Oh.

**ADV LEAH GCABASHE SC:** But I asked one of our investigators ...

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** To print the entire document ...

**CHAIRPERSON:** Hm.

20 **ADV LEAH GCABASHE SC:** For me ...

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** Because I wanted to be sure ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** when I say the AG.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** I am actually speaking about the AG's report ...

**CHAIRPERSON:** Yes, okay.

**ADV LEAH GCABASHE SC:** And I must say that it is sitting on my desk. I looked at it ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** But in the rush to get here this morning ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** And I really knew that this issue might  
10 arise ...

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** Which is why I know ...

**CHAIRPERSON:** Yes. *Ja*.

**ADV LEAH GCABASHE SC:** I have the - I can actually ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** If it is important Mr Thabethe ...

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** When we adjourn we can go across the road and I will give you - it is actually quite a thick document.

20 **MR MBANA PETER THABETHE:** Hm.

**ADV LEAH GCABASHE SC:** I could give that to you.

**CHAIRPERSON:** Hm, but it - it depends whether you want to look at something in that - in the report or whether you just wanted to know whether it was final or not.

**MR MBANA PETER THABETHE:** *Ja, ja*. Chair I have a number of



other questions because if - if it was the final report because we would have then have engaged with the Auditor-General to say but why is column ...

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** B empty?

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** We could have then engaged with that because ...

**CHAIRPERSON:** Yes.

10 **MR MBANA PETER THABETHE:** Our - our audit statement leaves from us to Provincial Treasury.

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** If there would be any problem Provincial Treasury will say no, no we do not agree with your ...

**CHAIRPERSON:** Hm, hm.

**MR MBANA PETER THABETHE:** Your statement. One, two, three, four is not there.

**CHAIRPERSON:** Hm.

20 **MR MBANA PETER THABETHE:** Before then it goes to the Auditor-General.

**CHAIRPERSON:** Hm, hm.

**MR MBANA PETER THABETHE:** That - that is the reason why I am asking if ...

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** Indeed this has gone through all - all

our hands and we are not able to pick it. Hence it is an issue now.  
That - that is the basis why I am asking ...

**CHAIRPERSON:** *Ja.*

**MR MBANA PETER THABETHE:** Chair.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** Can I suggest to you that it did go through  
your hands and that - that is the precise question ...

**MR MBANA PETER THABETHE:** Yes.

**ADV LEAH GCABASHE SC:** I was going to ask you. In relation to  
10 these empty columns ...

**MR MBANA PETER THABETHE:** Yes.

**ADV LEAH GCABASHE SC:** Because not only type of organisation is  
empty. You have not - there is no entry - there is no entry here ...

**MR MBANA PETER THABETHE:** Okay.

**ADV LEAH GCABASHE SC:** And my assumption is the department did  
not supply that information but there may have been an explanation for  
that ...

**MR MBANA PETER THABETHE:** Okay.

**ADV LEAH GCABASHE SC:** And then the column that says amount  
20 spent by the entity ...

**MR MBANA PETER THABETHE:** Hm.

**ADV LEAH GCABASHE SC:** Again does not have an - an entry and I  
am sure you would have had that amount ...

**MR MBANA PETER THABETHE:** (Intervenes) Chair.

**ADV LEAH GCABASHE SC:** Readily available.

**MR MBANA PETER THABETHE:** Yes.

**ADV LEAH GCABASHE SC:** So that you could account for it ...

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

**ADV LEAH GCABASHE SC:** In all the records that you need to prepare prior to the AG being given information.

**MR MBANA PETER THABETHE:** Yes. Hence my comment Chair because even the Provincial Treasury would have referred it back to us to say but you are giving us a - a financial statement that has gaps.

**CHAIRPERSON:** Hm, hm.

10 **MR MBANA PETER THABETHE:** That is why I am asking but ...

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** It might be that it - it might have slipped through ...

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** All of us ...

**CHAIRPERSON:** Ja.

**MR MBANA PETER THABETHE:** Without this information ...

**CHAIRPERSON:** Hm.

20 **MR MBANA PETER THABETHE:** And - and I take it Chair that in that particular year we got unqualified audit.

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** They said to us your financial statements are absent.

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** In - indeed so. I am coming to that.

**MR MBANA PETER THABETHE:** (Intervenes).

**ADV LEAH GCABASHE SC:** I was surprised but pleasantly surprised. I have got - I have actually - I have got it. Do not worry. I am - I am very fair Mr Thabethe.

**MR MBANA PETER THABETHE:** Yes.

**ADV LEAH GCABASHE SC:** I made a note of that.

**MR MBANA PETER THABETHE:** Okay.

**ADV LEAH GCABASHE SC:** Yes. Of that opinion. You are quite correct about that but we are going to get to it in a minute. In fact ...

10 **CHAIRPERSON:** *Ja.*

**ADV LEAH GCABASHE SC:** It is the very next document we are looking at ...

**CHAIRPERSON:** Well ...

**ADV LEAH GCABASHE SC:** Chairman.

**CHAIRPERSON:** You - you must remind me now Mr Thabethe ...

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

**CHAIRPERSON:** Because at some stage I had a clear understanding of these things about qualified and unqualified audits ...

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

20 **CHAIRPERSON:** But I know that some people used to get them mixed up ...

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** And I think right now I am - I am not sure that I am - because I think if you follow with just the general understanding. Sometimes you understand it in a certain way. Just go back qualified

and unqualified.

**MR MBANA PETER THABETHE:** Hm.

**CHAIRPERSON:** You see unqualified to the general lay person's mind

...

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

**CHAIRPERSON:** Might - might give the idea that it is good ...

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** There is no qualification. There is - there is no condition you know.

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

**CHAIRPERSON:** So there is no dark spots.

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** You know, but if you say also qualified. You know qualified is supposed to - if somebody is qualified it is good but also if it is qualified it can be - it means it is condition - it could mean it is conditional.

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** So it is a very basic thing but I just realised that I have just forgotten and ...

20 **MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** Exactly which one is good which one is bad?

**MR MBANA PETER THABETHE:** Ja. The one on top Chair is the clean audit.

**CHAIRPERSON:** The unqualified?

**MR MBANA PETER THABETHE:** No. The clean audit is the one where

they cannot say anything.

**CHAIRPERSON**: The first prize?

**MR MBANA PETER THABETHE**: It is the first prize.

**CHAIRPERSON**: Clean audit?

**MR MBANA PETER THABETHE**: Clean audit.

**CHAIRPERSON**: Okay.

**MR MBANA PETER THABETHE**: Just below clean audit is unqualified.

**CHAIRPERSON**: Unqualified?

**MR MBANA PETER THABETHE**: Yes. Unqualified says your finances  
10 are fine but we have the following comments to make to you to improve  
on.

**CHAIRPERSON**: But why do you say unqualified because it is like they  
are qualifying?

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

**CHAIRPERSON**: It is - it is like yes, but.

**MR MBANA PETER THABETHE**: Yes. That is - that is ...

**CHAIRPERSON**: You see.

**MR MBANA PETER THABETHE**: That is how it is Chair.

**CHAIRPERSON**: Maybe that is why it is - it is confusing. You know. It  
20 is like you say to a student you have passed but you must focus on this  
on this otherwise you will fail next time.

**MR MBANA PETER THABETHE**: Next time. That is correct Chair.

**CHAIRPERSON**: You see. That is the - that is the unqualified. The  
one that says that. That is the unqualified?

**MR MBANA PETER THABETHE**: Yes. That is the unqualified.

**CHAIRPERSON:** *Ja.*

**MR MBANA PETER THABETHE:** That is the second from the top.

**CHAIRPERSON:** *Ja.*

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

**CHAIRPERSON:** But, but can you understand what I am saying?

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

**CHAIRPERSON:** From a lay person's person it is like I am approving but my approval is qualified.

**MR MBANA PETER THABETHE:** Yes.

10 **CHAIRPERSON:** But it is called unqualified. It is like - it is - it is okay but if you do not fix A, B, C next time there will be a problem.

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

**CHAIRPERSON:** *Ja* and then the qualified?

**MR MBANA PETER THABETHE:** And then the qualified one has a bit of holes ...

**CHAIRPERSON:** *Ja.*

**MR MBANA PETER THABETHE:** In - into it ...

**CHAIRPERSON:** Yes.

20 **MR MBANA PETER THABETHE:** And - and then there - there are two which are at the bottom.

**CHAIRPERSON:** *Ja.*

**MR MBANA PETER THABETHE:** Which ...

**CHAIRPERSON:** Which are very bad?

**MR MBANA PETER THABETHE:** Which are very bad.

**CHAIRPERSON:** *Ja.* Just remind me what are those again.

**MR MBANA PETER THABETHE:** The - the last one is a disclaimer.

**CHAIRPERSON:** Disclaimer, *ja*.

**MR MBANA PETER THABETHE:** (Intervenes).

**CHAIRPERSON:** Then that is ...

**MR MBANA PETER THABETHE:** It means you are not (intervenes).

**CHAIRPERSON:** That is a disaster?

**MR MBANA PETER THABETHE:** Yes. You are not even ...

**CHAIRPERSON:** It is chaos.

**MR MBANA PETER THABETHE:** You ...

10 **CHAIRPERSON:** Yes. It is just - it is a mess.

**MR MBANA PETER THABETHE:** It is a mess Chair.

**CHAIRPERSON:** It is a mess. The documents of records are not there.

**MR MBANA PETER THABETHE:** You - you are not even able to present your financial statements.

**CHAIRPERSON:** Yes. *Ja, ja*.

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** That is the worst.

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

**CHAIRPERSON:** That is - that is ...

20 **MR MBANA PETER THABETHE:** That is the bottom.

**CHAIRPERSON:** Disclaimer.

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

**CHAIRPERSON:** The one above that?

**MR MBANA PETER THABETHE:** The - it is - it is not actually - it is - it is normally what you ...



**CHAIRPERSON:** Or better than that?

**MR MBANA PETER THABETHE:** Will - will talk to but it is not a category.

**CHAIRPERSON:** Oh, okay.

**MR MBANA PETER THABETHE:** Yes. What do they call it? I am trying to go back to it now.

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** It has been some time Chair that (intervenes).

10 **CHAIRPERSON:** Oh, but do not worry if - if you cannot remember it.

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** Okay. So - so you say what - which one did you get this - this time around that you are telling me about?

**MR MBANA PETER THABETHE:** It is - it is the unqualified.

**CHAIRPERSON:** The unqualified?

**MR MBANA PETER THABETHE:** Ja.

**CHAIRPERSON:** Which is like second best?

**MR MBANA PETER THABETHE:** Yes.

20 **CHAIRPERSON:** Oh, okay. Ms Gcabashe I was - was I alone in this confusion?

**ADV LEAH GCABASHE SC:** Unfortunately yes Chairman.

**CHAIRPERSON:** Well at least at some stage I understood it very clearly. I do not know what happened recently.

**ADV LEAH GCABASHE SC:** No.

**CHAIRPERSON:** Ja.

**ADV LEAH GCABASHE SC:** I would probably be in the same position next week Chairman when I have not been looking at these documents.

**CHAIRPERSON:** Ja.

**ADV LEAH GCABASHE SC:** But - yes in fact can I just go a step back because I have now found the - the other document that I was looking for and it is really just to corroborate in a sense ...

**MR MBANA PETER THABETHE:** Hm.

**ADV LEAH GCABASHE SC:** What you had put in your paragraph 18. Now these - if I can ask you to look at Reference Bundle D for Donald  
10 and the page there is 1-4-5-2. D - Reference Bundle D and it is towards the back. Reference Bundle D ...

**MR MBANA PETER THABETHE:** Which one is that one?

**CHAIRPERSON:** And the page?

**ADV LEAH GCABASHE SC:** The page is 1-4-5-2 Chairman. Towards the back Mr Thabethe. Page 1-4-5-2. I am at the same time still looking at paragraph 18 of your affidavit which is on page 2-4-9 of HH10B and all I am saying Mr Thabethe is that when I look at the figures you put out ...

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

20 **ADV LEAH GCABASHE SC:** In paragraph 8 you will find the very same figures in Reference Bundle B page 1-4-5-2.

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

**ADV LEAH GCABASHE SC:** Save that that first 30 million that we have agreed ...

**MR MBANA PETER THABETHE:** Yes.

**ADV LEAH GCABASHE SC:** Is the very first one that - that is recorded there. So in July - on 9 July Estina was given R30 million?

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

**ADV LEAH GCABASHE SC:** On 18 April 2013 it receive another R34 950 000,00. On 26 April 2013 it received R30 million. On 3 May 2013 it received 19 050 000. On 20 December 2013 it received the amount of 29 950 000. Then on 25 July 2014 just before you cancelled that contract.

**MR MBANA PETER THABETHE:** Okay.

10 **ADV LEAH GCABASHE SC:** They received 30 million.

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

**ADV LEAH GCABASHE SC:** After cancellation on 8 May 2015 they were paid 60 million and the last payment they received was on 5 May 2016 and that was R46 252 652,00. The total that was disbursed is there.

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

**ADV LEAH GCABASHE SC:** 280 200-and - I beg your pardon.

**CHAIRPERSON:** 280 million.

**ADV LEAH GCABASHE SC:** It is - it is big money to some of us.

20 **CHAIRPERSON:** Well I thought ...

**ADV LEAH GCABASHE SC:** DCJ.

**CHAIRPERSON:** These - these amounts are ...

**ADV LEAH GCABASHE SC:** And ...

**CHAIRPERSON:** Quite familiar to Counsel.

**ADV LEAH GCABASHE SC:** No and I was doing so well with all the

others. You know DCJ. It is because I have been looking at them for so long but now I go back to my old style of knowing. I - I handle thousands. I do not have to live - but let us go back to - thanks DCJ. R280 202 652,00.

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

**ADV LEAH GCABASHE SC:** So essentially R280 million is what they were paid. That is the number I want you to lock in your head.

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

**ADV LEAH GCABASHE SC:** Because we will be coming back to talk  
10 about it ...

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

**ADV LEAH GCABASHE SC:** And - and the reason I produce this particular document is just to compare it to what you had produced and say you are spot on save for that little error at the beginning. Otherwise you are quite correct ...

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

**ADV LEAH GCABASHE SC:** About what you had disclosed at the time.

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

**ADV LEAH GCABASHE SC:** I think if we just finish off with these  
20 annexures - I am trying to get them out of the way.

**CHAIRPERSON:** Ms Gcabashe I am sorry.

**ADV LEAH GCABASHE SC:** Chairman.

**CHAIRPERSON:** I just do not want to forget this am I correct to say throughout the period until the cancellation of the agreement Estina had not made any payment in terms of the amounts that it was

supposed to pay in terms of the agreement?

**MR MBANA PETER THABETHE:** No Chair.

**CHAIRPERSON:** It had not? I - I know - well what I have not double checked now is whether the last agreement like the first or the second - I cannot remember - still had a provision that said Estina was to put in a certain amount. You remember that?

**MR MBANA PETER THABETHE:** *Ja, ja.* The difficulty Chair the way you put ...

**CHAIRPERSON:** Hm.

10 **MR MBANA PETER THABETHE:** Is difficult for me to say you are not correct Chair.

**ADV LEAH GCABASHE SC:** Can I - it is a very simple answer. No, no Mr Thabethe. You have read the quarterly and the monthly reports ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** And you have seen the numbers that were submitted by Estina.

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** So the answer to the Chairman is  
20 Chairman you are wrong ...

**MR MBANA PETER THABETHE:** Yes.

**ADV LEAH GCABASHE SC:** Because the quarterly and the monthly reports reflect a different version.

**MR MBANA PETER THABETHE:** Yes. That is what I am - I am saying Chair but it ...

**CHAIRPERSON:** Oh.

**MR MBANA PETER THABETHE:** What I am saying is difficult to say to the Chair you are wrong.

**CHAIRPERSON:** Okay. Ms Gcabashe just explain that again.

**ADV LEAH GCABASHE SC:** So Chairman ...

**CHAIRPERSON:** Your remember initially there was a clause which said Estina would put in a certain amount and the department would put in a certain amount and we were looking at the question of where Estina would get the money from.

10 **ADV LEAH GCABASHE SC:** Correct Chairman.

**CHAIRPERSON:** Yes. So I was saying I have not looked at the last agreement whether that provision was carried throughout or whether it was dropped and if it was not dropped whether Estina ever made that contribution.

**ADV LEAH GCABASHE SC:** When we get to the monthly and quarterly reports which I am hoping we can still get to today Chairman.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** We will see the reports from Estina where they say we have put in 250 000. We have put in 3.6 million.

20 **CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** This is what they say ...

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** But it is all in the ...

**CHAIRPERSON:** Huh-uh.

**ADV LEAH GCABASHE SC:** Documentation ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** That was presented ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** As per the agreement to the Head of Department or to the department maybe not to the head ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** And we will go - go there.

**CHAIRPERSON:** So ...

**ADV LEAH GCABASHE SC:** At the end ...

10 **CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Of the day you really want to know compared to the - so they were supposed to put in 228 million.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** For the processing plant.

**CHAIRPERSON:** Yes. Yes.

**ADV LEAH GCABASHE SC:** We are talking you there Chair.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** We are talking you to a valuation of the ...

**CHAIRPERSON:** Yes.

20 **ADV LEAH GCABASHE SC:** Processing plant ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** That was done in 2017 ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** And then we are comparing ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Numbers.

**CHAIRPERSON:** But just to put me at ease. Is the position that they did pay - do their part in terms of payment or ...

**ADV LEAH GCABASHE SC:** I - I think ...

**CHAIRPERSON:** Is that unclear?

**ADV LEAH GCABASHE SC:** Once we show Mr - it is unclear - Mr ...

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** Thabethe the evidence that is in those quarterly reports ...

10 **CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** We would like an explanation ...

**CHAIRPERSON:** *Ja.*

**ADV LEAH GCABASHE SC:** On why the last two payments were made after the contract was ...

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** Was cancelled ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Because those were claims in terms of that Clause 15.3 I referred to earlier ...

20 **CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** But whether they were justifiable claims only Mr Thabethe possibly can help us.

**CHAIRPERSON:** Okay. I - I think I just want to mention this so that even if I were to forget at least one of you will not forget. It is important for - I - I do want to know whether one that obligation



continued through on the part of Estina to make a contribution.

Whether it made the - the contribution that was envisaged and - that is two, but three I am interested in the timing of the payment by them. In other words did - did they not pay with the money that you paid them.

**ADV LEAH GCABASHE SC:** Exactly Chairman. Oh, sorry.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** But that is where we are going.

**CHAIRPERSON:** *Ja.*

10 **ADV LEAH GCABASHE SC:** It is called round tripping.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** I have learned a lot Chairman.

**CHAIRPERSON:** Oh. There is a term for it.

**ADV LEAH GCABASHE SC:** There is a term for it.

**CHAIRPERSON:** *Ja.*

**ADV LEAH GCABASHE SC:** It is called round tripping.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** You pay and then they round trip it. It comes back.

20 **CHAIRPERSON:** *Ja, ja.*

**ADV LEAH GCABASHE SC:** Your money.

**MR MBANA PETER THABETHE:**

**CHAIRPERSON:** *Ja.*

**ADV LEAH GCABASHE SC:** Then they say we are money into the budget ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** But Mr Thabethe is going to assist us ...

**CHAIRPERSON:** Yes, okay. No that is fine.

**ADV LEAH GCABASHE SC:** Because we can only speculate.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Really on the basis of documents that ...

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** That are available ...

**CHAIRPERSON:** Yes.

10 **ADV LEAH GCABASHE SC:** But I think it will be fair to ask him to help  
us ...

**CHAIRPERSON:** *Ja.*

**ADV LEAH GCABASHE SC:** Analyse what we can.

**CHAIRPERSON:** Okay. No that is fine.

**ADV LEAH GCABASHE SC:** Thank you Chairman. Mr Thabethe let us  
just get rid of these annexures very quickly. We are almost done with  
it. We are now looking at - with ...

**CHAIRPERSON:** Okay. Alright. Do I push aside this file now?

**ADV LEAH GCABASHE SC:** Just for a minute Chairman. I - to your  
20 left possibly because I can see on your right you have got other files or  
the other way.

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** From where I am sitting.

**CHAIRPERSON:** To my - to my right ...

**ADV LEAH GCABASHE SC:** To your ...

**CHAIRPERSON:** And your left?

**ADV LEAH GCABASHE SC:** To your - please put it on your right.

**CHAIRPERSON:** Ms Gcabashe are you one of those people who need to do this ...

**ADV LEAH GCABASHE SC:** Yes.

**CHAIRPERSON:** To say whether it is left or not?

**ADV LEAH GCABASHE SC:** I am. I will admit very quickly. Do not ask me left or right hand. I have got to think or turn right. I - I have to think Chairman.

10 **CHAIRPERSON:** Alright.

**ADV LEAH GCABASHE SC:** But they say creative people Chairman. I like that. That is a (intervenes).

**CHAIRPERSON:** Okay. We - we go back to the annexures.

**ADV LEAH GCABASHE SC:** So we are back to the annexures Chairman simply because I think I would like to get this file out of the way as - as soon as we can. So we have been dealing with 18 and - and ...

20 **CHAIRPERSON:** I - I just cannot resist this remark. That if Estina had R16,00 when the contract was entered into. It is highly unlikely they paid with any money other than the money they got from the department.

**ADV LEAH GCABASHE SC:** We are going there Chairman.

**CHAIRPERSON:** Okay, but Mr Thabethe might be able to explain and say ...

**ADV LEAH GCABASHE SC:** Exactly.

**CHAIRPERSON:** No, no it is not like that. Okay, thank you.

**ADV LEAH GCABASHE SC:** Yes sir. If - if - Chairman if you really want to go there immediately if you give me a five minute adjournment I will find the spot in my questions and we can actually deal with that immediately because I have got the ...

**CHAIRPERSON:** If - if it is convenient. If it is convenient otherwise I am happy to go at your pace. It is just that it was something worrying me. I - I am easy about it.

**ADV LEAH GCABASHE SC:** Chairman I - I literally just need two  
10 minutes to collect - to ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Just to find - let us look at those monthly  
...

**CHAIRPERSON:** *Ja*, okay.

**ADV LEAH GCABASHE SC:** Monthly reports. If you just give me two minutes to pull out the right documentation.

**MR MBANA PETER THABETHE:**

**CHAIRPERSON:** *Ja*. Okay. Let us adjourn for five minutes, *ja*.

**ADV LEAH GCABASHE SC:** And let us do that. Thank you. Thank you  
20 sir.

**MR MBANA PETER THABETHE:**

**CHAIRPERSON:** Okay. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Yes Ms Gcabashe?

**ADV LEAH GCABASHE SC:** Chairman so we are dealing with reference Bundle D for Donald, reference Bundle D, and I think that is probably going to take us at least an hour Chairman, I doubt we are going to use any of the others, but it is Reference Bundle D that has the monthly and the quarterly reports.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** And the page number Chairman is 1398, Mr Thabethe page 1398 is where it starts, and I am hoping that  
10 these are semi-familiar Mr Thabethe because this report or these reports, because there are a number of them were submitted in terms of that 7<sup>th</sup> of July agreement, it's part of how you implemented that agreement, it is one of the ways in which you monitored the spend that you had transferred to Estina, okay.

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

**ADV LEAH GCABASHE SC:** So the first one we're looking at is September 30 2012, and in the background paragraph just to touch on what is set out there they really say that the project was initiated on the 5<sup>th</sup> of July 2012. Okay Mr Thabethe?

20 **MR MBANA PETER THABETHE:** Yes.

**ADV LEAH GCABASHE SC:** We know of course that that's the date on which you signed the agreement, and that's what they are calling the initiation. The first phase obligations that are set out on that same page 1 – we have dealt with, these are the ones that the Chairman interrogated, I interrogated and you will them, I just want us to get a

clearer copy, if we go to page 1378 of the same document, the same file, 1378. And again you will find this looks familiar Mr Thabethe, those were the phase one obligations that we interrogated a while back with you.

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

**ADV LEAH GCABASHE SC:** The same obligations which appear in the agreement if you keep your finger on 1378 are the ones which are in this red print and that are not particularly clear. If you turn the page there's an explanation on the project, I am going to the third paragraph  
10 there, which says that Estina is awaiting the signing of a lease agreement for the said property and an official handover of said property to enable them to commence work on the project. Do you see that?

**CHAIRPERSON:** I'm sorry are you reading from 1378?

**ADV LEAH GCABASHE SC:** I am reading from 1399 Chairman, my apologies, it is 1399 now Chairman, and it is the third paragraph.

CHAIRPERSON: Yes.

**ADV LEAH GCABASHE SC:** And I will read the fourth paragraph,  
"Estina would like to make the Department aware that all its  
20 obligations can only commence from the date of official handover of the land to Estina."

You were aware of this Mr Thabethe at the time, that they were waiting for the – this is the September report remember.

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

**ADV LEAH GCABASHE SC:** The lease was only signed on the 14<sup>th</sup>

of December 2012.

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

**ADV LEAH GCABASHE SC:** So you were very much aware that between September and the signing of the lease in December their view was they couldn't do much?

**MR MBANA PETER THABETHE:** Yes Chair I think that was the issue that was also discussed in the Commission, I think it was the State Law Advisors in terms of dealing with the issue of the land.

**ADV LEAH GCABASHE SC:** Yes that is a different topic which I will  
10 also address with you at a later stage. But I know that you were involved in ensuring that that lease was signed.

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

**ADV LEAH GCABASHE SC:** In December of 2012.

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

**ADV LEAH GCABASHE SC:** Then the very last paragraph on page 1399 reads ...[intervenes]

**CHAIRPERSON:** I'm sorry.

**ADV LEAH GCABASHE SC:** Yes Mr Chairman?

**CHAIRPERSON:** Again Ms Gcabashe you will tell me if there's  
20 something I am missing here, could it be Mr Thabethe that by ensuring that there was a provision to this effect in the agreement that is Estina, namely all its obligations would only commence from the date of the official handover of – or this is of the land, I thought there was a provision that was a little similar but relating to the handover of the shareholder company or the handover of the project to the farmers, at

some stage, but at least this relates to the handover of the land?

**ADV LEAH GCABASHE SC:** Of the land Chairman.

**CHAIRPERSON:** Ja, okay, no, no.

**ADV LEAH GCABASHE SC:** And it is evidence that Mr Morreme gave at the hearing because he was at that point the Municipal Manager of Phumelela Municipality.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** And this land is located, this farm is located, in fact it is all of Vrede plus at that municipality.

10 **CHAIRPERSON:** I think I probably had something else in mind, *ja*, okay.

**ADV LEAH GCABASHE SC:** My colleague thinks you may be thinking of the handover of assets because you have been reading your documents, there's also the FDC taking over at some point Chairman.

**CHAIRPERSON:** *Ja*, what I was concerned about whether Estina ensured that the agreement had a clause which would make sure that they did not have to put in any money until a certain stage but that stage could only be reached after the department had made payment to them therefore allowing them to be able to perform their obligations in  
20 terms of putting in their contribution with the money from the department that's what my thinking was, but ...[intervenes]

**ADV LEAH GCABASHE SC:** Chairman you are correct.

**CHAIRPERSON:** We might not need to bother about it until later maybe.

**ADV LEAH GCABASHE SC:** In fact it is the evidence of Mr



Thabethe.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** That there was a phase one and a phase two, am I correct Mr Thabethe?

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

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** And your evidence was phase one the milestones for phase one are the ones on page 1378.

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

10 **ADV LEAH GCABASHE SC:** The most important milestone for phase 2 was the establishment of the milk processing plant?

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

**ADV LEAH GCABASHE SC:** And that is the plant Chairman that Estina was going to pay for in total and you had a debate with Mr Thabethe at the time about whether the money was coming from Estina or from Paras and I think that's the evidence you have.

**CHAIRPERSON:** Oh yes at the back of my mind.

**ADV LEAH GCABASHE SC:** At the back of your mind.

**CHAIRPERSON:** *Ja* okay.

20 **ADV LEAH GCABASHE SC:** But that phase 2 according to Mr Thabethe, correct me if I'm wrong, would only kick in once phase one had been signed off.

**CHAIRPERSON:** Yes, yes.

**MR MBANA PETER THABETHE:** That's correct yes.

**ADV LEAH GCABASHE SC:** Thank you Mr Thabethe.

**CHAIRPERSON:** And the department's obligations to pay the R250 or whatever million it was during phase one or phase one some phase two?

**ADV LEAH GCABASHE SC:** Chairman it was a three year program.

**CHAIRPERSON:** Yes, *ja*.

**ADV LEAH GCABASHE SC:** It was rounded off at 114million for each year.

**CHAIRPERSON:** For each year, okay, okay, and phase one was within the first year?

10 **ADV LEAH GCABASHE SC:** Phase one was within the first year.

**CHAIRPERSON:** Okay, okay.

**ADV LEAH GCABASHE SC:** And as Mr Thabethe explained if we just very briefly look at page 1378, these are matters we did debate with him.

**CHAIRPERSON:** Yes okay.

**ADV LEAH GCABASHE SC:** On the 18<sup>th</sup> of January 2013 he signed off on the completion of phase one.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Because he at the time was satisfied that  
20 all the phase one obligations had been met.

**CHAIRPERSON:** Been met, okay.

**ADV LEAH GCABASHE SC:** And I know that by the end of the discussion on this he had conceded that there were a few of them that had not been met.

**CHAIRPERSON:** Yes okay.

**ADV LEAH GCABASHE SC:** But the record will show the nature of that discussion.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** So those are the – because we are in September of 2012 Chairman we are still talking about those phase one milestones.

**CHAIRPERSON:** Yes, okay, okay.

**ADV LEAH GCABASHE SC:** And this is why what's written in the pinkish/reddish colour is the environmental impact assessment, you will  
10 find it on that phase one schedule at 1378, the feasibility study, water reticulation and then electricity connections and applications, that's what is written just above the last paragraph.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** Am I correct Mr Thabethe?

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

**ADV LEAH GCABASHE SC:** Thank you sir. Then the report goes on to say in the very last paragraph Chairman that all the above activities can only be initiated after the land is officially handed over to Estina, however Estina has already commenced work on the feasibility studies  
20 which should be completed by the 30<sup>th</sup> of October 2012.

And Mr Thabethe if I recall your evidence you understood that first R30million to be allocated to in part that feasibility ...[indistinct]

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

**ADV LEAH GCABASHE SC:** Thank you. Over the page at page 1400 the identity of the BEE entity and the set up of the BEE entity in the

agreement, I think it is clause 7.1 Mr Thabethe if the department, I actually went back to verify, you did say the department took responsibility for identifying the beneficiaries, not for setting up the BEE structure but certainly for identifying the beneficiaries.

**MR MBANA PETER THABETHE:** Correct Chair.

**ADV LEAH GCABASHE SC:** Am I correct, thank you.

**MR MBANA PETER THABETHE:** Yes.

**ADV LEAH GCABASHE SC:** Chairman then you have in that ...[intervenes]

10 **CHAIRPERSON:** Just remember to raise your voice a bit Mr Thabethe, I know it is late in the afternoon, it has been a long day so that your answers are recorded, just remember to raise your voice a bit.

**MR MBANA PETER THABETHE:** Thanks Chair.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** Now Mr Thabethe I need your input on that first paragraph, in fact everything that follows under the Agri BEE entity. What is written here is the following:

20 "In terms of the agri BEE entity Estina has already set up an entity called Zana Investments Pty Limited having registration number 2012/037526/07 in February 2012. Estina have now applied to the registrar of companies to change the name of the above company to Mohama Mobung Dairy Project Pty Limited in line with the vision of the project."

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

**ADV LEAH GCABASHE SC:** Two things arise Mr Thabethe, number

one this is September 2012, we know that the Zana Investments Pty Limited entity was part of the 5<sup>th</sup> of June 2012 agreement.

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

**ADV LEAH GCABASHE SC:** We know that you accepted the advice of the State Law Advisors when they told you that that particular agreement was not a valid agreement.

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

**ADV LEAH GCABASHE SC:** Hence the signing of the new agreement on the 5<sup>th</sup> and the 7<sup>th</sup> of July. When you saw this entry that still spoke  
10 about Zana Investments on receipt of this September 2012 report from Estina what did you do? Did you – what was your reaction? How did you start dealing with this issue?

**MR MBANA PETER THABETHE:** Chair I am going back to say this was a report of September 2012, which we have already ticked, that the shelf company has been registered. Because the department had changed the conditions which then delayed, because it then became our responsibility to come forward and say here are the beneficiaries into which must be registered into the company and then proceed with the shelf company and the beneficiaries from the side of the  
20 departments are the following, we need the beneficiaries from the side of Estina to be then into shell, so the shelf company existed in the name Zana. All that they are telling us is that we had said to them we would want it to be in line with the project to be called Mohama Mobung so that's what they needed just to change but it already existed.

**ADV LEAH GCABASHE SC:** I see so you were intent on using the

same company once the dairy project was established.

**MR MBANA PETER THABETHE:** Yes.

**ADV LEAH GCABASHE SC:** Is that what you are saying?

**MR MBANA PETER THABETHE:** That exactly Chair, that would be the shareholding company.

**ADV LEAH GCABASHE SC:** So you did not deregister it for that reason?

**MR MBANA PETER THABETHE:** No Chair it was not deregistered, it was the company that was supposed to be the shareholding company  
10 and that is what we had ticked off to say the company is in existence, it has been done. Then the change of the name and the inclusion of the beneficiaries into the shelf company then remained with us and that is the part that we have been dealing with, with the State Law Advisors.

**ADV LEAH GCABASHE SC:** It is clearer to me, can we look at the next paragraph which reads as follows:

“The Department has via [or vide] through its letter dated  
August 22 2012 nominated one Mr Frans Oupa Mokwena to be  
the custodian of the 51% shares on behalf of the  
beneficiaries until further notice. A shareholders agreement  
20 is being drawn up to clearly outline the roles of the various  
shareholders.”

Who is Mr Frans Oupa Mokwena?

**MR MBANA PETER THABETHE:** Chair this is exactly the point where we had agreed with the State Law Advisors to put that on hold, because we could not have an individual who will hold the shares until further

notice, when we were busy in the process of finalising the beneficiaries to come into the entry, hence then that process did not happen, because this was their report to us to say this is what they believe should happen and we did not agree with this implementation.

**ADV LEAH GCABASHE SC:** So you are telling the Chairman that you set up a company, Zana Investments, you asked for a change of name to Mohama Mobung Diary Project Pty Limited.

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

**ADV LEAH GCABASHE SC:** But the only custodian or shareholder on  
10 behalf of the beneficiaries whom you had nominated was told that you were changing the shareholding structure, or what exactly – because you have told us the company existed, so who were the shareholders?

**MR MBANA PETER THABETHE:** No Chair, the responsibility for Estina to do was to go and register a company.

**ADV LEAH GCABASHE SC:** A shelf company?

**MR MBANA PETER THABETHE:** Yes. Then they came back to us to say the company is registered, here is the registration number, here is everything so that is done. What then was required from us is to put the shareholder and then what they are suggesting to us is that at the  
20 meantime let's keep this person as a shareholder into the company, which we did not agree with, hence the shareholding issue was delayed until the end of the project, we said the shareholding, the putting of the shareholders into the company let's delay it once the project has been completed, hence it was not in the agreement that we had signed with them, so that was the understanding.

**ADV LEAH GCABASHE SC:** I think it is going to be important for us to understand whether you are talking about a shelf company, that's one that's already in existence.

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

**ADV LEAH GCABASHE SC:** And then you just take it over.

**MR MBANA PETER THABETHE:** Yes.

**ADV LEAH GCABASHE SC:** Or a shell company, which as I understand it a shell company is a company that has no shareholders, but you have got to correct me on this, what did you understand Estina  
10 to have done for you?

**MR MBANA PETER THABETHE:** Chair I might not have been giving you the correct name, my understanding is that there was a company registered that was then presented to us to say here is the company, and their proposal was that at the meantime let us put one person, I am not sure how it was approved, whether it was approved as a company or how the process that was followed but the company was then presented to say here is the company.

**CHAIRPERSON:** Well there wouldn't be a company without shareholders isn't it?

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

**CHAIRPERSON:** Yes, so if there was a company there would be shareholders to the company. Ms Gcabashe is that right, or is that not right?

**ADV LEAH GCABASHE SC:** ...[Indistinct – mic off]

**CHAIRPERSON:** Yes, I am saying isn't the position that there won't be



a company without shareholders, if there is a company there must be shareholders, or at least a shareholder.

**ADV LEAH GCABASHE SC:** In fact Chairman my colleague has just given me the Mohama Mobung Dairy Project Pty Limited.

**CHAIRPERSON:** Oh there was even a company called that?

**ADV LEAH GCABASHE SC:** Yes this is what is reflected in that first paragraph Chairman that they were changing the name from Zama Mohama Mobung Dairy Project Pty Limited, so that document is in reference Bundle B, which is the one, no you have D Chairman, B is a  
10 different one.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** At page 426, you may just want to make a note.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** So as the enterprise name, they've got a registration number here, there's the enterprise name which is Mohama Mobung Dairy Project, the registration date is the 11<sup>th</sup> of October 2013, the business start date is the 11<sup>th</sup> of October 2013. Enterprise it just says private company. Enterprise status "in business", financial year  
20 end February. Main business/main object entered here "no restriction on business activities". Postal address 111 Shimbali Sands, Naviyasha Road, Sunninghill, Gauteng, 2192, that is Mr Kamal Vasram's address, I know that off by hand, by heart.

**CHAIRPERSON:** [laughing]

**ADV LEAH GCABASHE SC:** Company the address of the registered

office again Mr Vasram's Sunninghill address Chairman.

**CHAIRPERSON:** So the concept of ...[intervenes]

**ADV LEAH GCABASHE SC:** If I might just clarify the last point  
Chairman I can just see where your question is going.

**CHAIRPERSON:** *Ja.*

**ADV LEAH GCABASHE SC:** I think.

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** On the following page at 427  
...[intervenes]

10 **CHAIRPERSON:** *Ja.*

**ADV LEAH GCABASHE SC:** You then have directors.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Which is where I think you were about to  
go to.

**CHAIRPERSON:** *Ja, ja.*

**ADV LEAH GCABASHE SC:** And the surname and first name Vasram  
Kamal, status active, ID number, director type is a director,  
appointment date the 11<sup>th</sup> of October 2013, postal address again that  
Sunninghill address.

20 **CHAIRPERSON:** Mmm, mmm.

**ADV LEAH GCABASHE SC:** So you have a company that has been set  
up ostensibly the same company that this report speaks to, the same  
company that the HOD knew was going to be set up to house the  
beneficiaries of the Vrede Dairy Project, is that correct?

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

**ADV LEAH GCABASHE SC:** Does that help Chairman, you may still want to ask your question.

**CHAIRPERSON:** Yes, no, no, it is very helpful, it is very helpful. Yes.

**ADV LEAH GCABASHE SC:** The last document Chairman is just a CIPRO registration certificate which reads concerning Mohama Mobung Dairy Project Pty Limited and the registration number. The above company has been registered in terms of Section 14 of the Companies Act 2008. In accordance with the notice of incorporation the registration of the company takes effect on the 11<sup>th</sup> of October 2013. In  
10 conjunction with this certificate the Commission has not issued another notice contemplated in Section 12(3).

So there is a legitimate company that was established called Mohama Mobung Pty Limited.

**CHAIRPERSON:** Yes, okay.

**ADV LEAH GCABASHE SC:** We come back to you Mr Thabethe because we now have Estina whose sole director is Mr Vasram.

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

**ADV LEAH GCABASHE SC:** We now also have Mohama Mobung certainly by 2013.

20 **MR MBANA PETER THABETHE:** Yes.

**ADV LEAH GCABASHE SC:** In 2012 it would still have been Zana.

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

**ADV LEAH GCABASHE SC:** But again sole director Mr Vasram.

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

**ADV LEAH GCABASHE SC:** Mr Frans Oupa Mokwena then had

nothing to do with any of this?

**MR MBANA PETER THABETHE:** Remember Chair I had – you read a statement from the report that says we vide that it should be him, where we then said we did not agree because we will provide the beneficiaries, all that we needed that time is that that company must be registered and must be in existence. That's then when he went to correct that then he put it in his name, so the shareholder at that time ...[intervenes]

**ADV LEAH GCABASHE SC:** Who is he?

10 **MR MBANA PETER THABETHE:** Kamal, Kamal Vasram the director.

**ADV LEAH GCABASHE SC:** Vasram.

**MR MBANA PETER THABETHE:** Then he registered and opened the company now in his name, in anticipation that we will then come and say here are the beneficiaries.

**CHAIRPERSON:** Mmm. Well I think that reference at page 1400 to the paragraph that has got “vide it's letter” I think that its somebody who is used to – I do not want to say old English – I think that vide means see, see letter.

**ADV LEAH GCABASHE SC:** In fact you are correct, it is letter, you  
20 are correct.

**CHAIRPERSON:** Yes, *ja*, so in other words whatever he is saying in that paragraph he says go to that letter if you want to see what he is talking about.

**MR MBANA PETER THABETHE:** What he is talking about.

**CHAIRPERSON:** *Ja*.

**ADV LEAH GCABASHE SC:** Thank you, thank you Chairman. Then at – I would like to come back to you at some point in relation to Ms Su-Jong taking over as the sole director of Estina, maybe I should just deal with it now and get it out of the way. Did she then also take over as the sole director of Mohama Mobung? What is your information, what was your information?

**MR MBANA PETER THABETHE:** Ja, my understanding of the shell company it did not matter who you put there, but during the time when then you are ready to put your beneficiaries into it then that discussion  
10 would be entered at that time, to say here are the beneficiaries from the farmers, who are the beneficiaries from Estina's side, then they will decide who they want to put.

**ADV LEAH GCABASHE SC:** Sorry to interrupt you Mr Thabethe she was appointed as the sole shareholder, sole director of Estina on the 1<sup>st</sup> of July 2015.

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

**ADV LEAH GCABASHE SC:** The issue with her is that she is not a South African National, she is from Korea, so that complication means that you don't have a BEE company holding the Estina – being the  
20 director of Estina, because she is from Korea, and if she was also holding the Mohama Mobung shares again your whole idea behind creating that BEE culture and doing things in terms of the BEE thinking falls apart, but I do not know what you recall of the facts as they related to these issues at the time.

**MR MBANA PETER THABETHE:** Ja. Chair, I - I am aware of the letter

she is referring to of the change of the Directors of Estina in 2015 ...

**ADV LEAH GCABASHE SC:** Yes.

**MR MBANA PETER THABETHE:** But in 2015 we had already terminated the agreement with the department. The - we had terminated in 2014 to say that relationship has been ended.

**ADV LEAH GCABASHE SC:** Hence my question. Mohuma Mobung who remained the sole Directors of Mohuma Mobung to your knowledge?

**MR MBANA PETER THABETHE:** Chair that - that was the - the - because that relationship had collapsed because it would not be -  
10 because we have terminated the relationship between ourselves and Estina. What my understanding is that that shell company because it is our shell company it would then revert to us and - and become our asset whether we want to use it in the future or not but it had - from after the termination it had nothing to do with Estina anymore.

**ADV LEAH GCABASHE SC:** You - you say it would. Do you not recall what in fact happened during your term as HOD?

**MR MBANA PETER THABETHE:** We - we never came to the stage of transferring the projects to the beneficiaries. That - that is why it did not happen. We - we requested the Free State Development  
20 Corporation to manage it until such a decision would have been agreed upon.

**ADV LEAH GCABASHE SC:** That is fine. We - we will just check - do a check on CIPC to see what the status of Mohuma Mobung (Pty) Ltd is ...

**MR MBANA PETER THABETHE:** Ja.

**ADV LEAH GCABASHE SC:** Currently.

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

**ADV LEAH GCABASHE SC:** So next time we speak to you we can tell you. Okay.

**MR MBANA PETER THABETHE:** Yes. I - I whoever is there now would have decided differently from what I would have.

**ADV LEAH GCABASHE SC:** Do not worry Mr Thabethe.

**MR MBANA PETER THABETHE:** I do not know what would they have decided to do with it.

10 **ADV LEAH GCABASHE SC:** No. Do not worry. I will only be speaking to things that happened up to April 2018 ...

**MR MBANA PETER THABETHE:** Okay.

**ADV LEAH GCABASHE SC:** Because that is when you left the department.

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

**ADV LEAH GCABASHE SC:** The - the next few paragraphs really just speak to the project plan. They say it is appended to this report. The following paragraph confirms that the capital injection by Estina will be coming in Phase 2.

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

**ADV LEAH GCABASHE SC:** Conclusion - they just say again that lease agreement please could you have it signed. So that is the September report. The very first one that you received. Do you recall receiving it?

**MR MBANA PETER THABETHE:** Chair these reports to do not - did not

come to me directly. They - they were sent to the Chief Director. They - they are not reports that go to the HOD because in receipt of this letter he need to go and confirm whatever that is being carried here if indeed it has been done.

By the time he tells me he says I am happy because I do not need to also go there myself. He confirms it. Then - then it is accepted.

**ADV LEAH GCABASHE SC:** That sounds ominous Mr Thabethe only because there are - the very next report deals with monies and how  
10 monies were - were spent and I would have thought that you would be keeping a close eye on this mega project and the monies that would be spent. It is a lot of money 500 000 put together the Estina and the departments.

500 million putting together the Estina and the department contributions but let us look at the next report. October, the 31<sup>st</sup> 2012 on page 1-4-0-1. Again paragraph 1 just again is an executive summary. There they acknowledge that 30 million was received on 9 July 2012. Paragraph 2 is interesting Chairman because this answers one of the questions you have asked.

20 **CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** They say that:

“There was ...”

In the third line or fourth line:

“There has been no activity from July to September  
due to the non-availability of additional funding



from the department.”

And they go on to say:

“However Estina has in good faith decided to start making capital contributions to enable the project to commence operations and has injected 250 000 in the month of September. In consideration of the allotment of land in October Estina has made a further capital contribution of 3.75 million in October to enable the procurement of urgently  
10 needed farm equipment and accessories and they ask the department to expedite the release of the balance of 84 million since they have in good faith made a capital contribution of four million into the project till the date as bridge finance to enable them to commence work on the project.”

Over the page Mr Thabethe are the numbers that speak to this narrative I have just spoken about but what is really interesting here Chairman is a question again that you have asked. The opening balance in July 2012 that first column there is nothing at all.

20 **CHAIRPERSON:** At 1-4-0-3?

**ADV LEAH GCABASHE SC:** At 1-4-0-3 Chair.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** So it is cash flow position of Estina (Pty) Ltd from July 2012.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Vrede Dairy Project. Source of funds on the left and then you have got three/four months reflected here because it is a quarterly report. July 2012, August 2012, September 2012 and October 2012. The very first line says opening balance there is nothing at all recorded in that.

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** So Estina did not reflect any money it might have had.

**CHAIRPERSON:** Hm.

10 **ADV LEAH GCABASHE SC:** Am I correct in what I am saying?

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

**ADV LEAH GCABASHE SC:** Then I am just look ...

**CHAIRPERSON:** Is - is there any reason to - is there any reason to take that to mean anything other than that there was no money?

**ADV LEAH GCABASHE SC:** Chair to be ...

**CHAIRPERSON:** There was no money that was transferred.

**ADV LEAH GCABASHE SC:** To be fair to Mr Thabethe ...

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** An explanation he has given ...

20 **CHAIRPERSON:** *Ja*.

**ADV LEAH GCABASHE SC:** To the Commission.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Is that his understanding was that Estina ...

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** Was not going to co mix its money ...

**CHAIRPERSON:** Oh, yes. I can remember that yes.

**ADV LEAH GCABASHE SC:** With project money. Am I correct in what I recollect you saying?

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** Yes, okay. Alright.

**ADV LEAH GCABASHE SC:** So that is ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASH:** A ...

10 **CHAIRPERSON:** An explanation.

**ADV LEAH GCABASHE SC:** Possible explanation Chairman.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** I am simply repeating what Mr ...

**CHAIRPERSON:** *Ja, ja.*

**ADV LEAH GCABASHE SC:** Mr Thabethe had told you.

**CHAIRPERSON:** But the R16,00 we saw was in - in a different account.

**ADV LEAH GCABASHE SC:** In - in Estina's account Chairman.

**CHAIRPERSON:** In Estina's account that ...

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

**CHAIRPERSON:** They are not mixing with the project money according to that explanation.

**ADV LEAH GCABASHE SC:** Or they are too embarrassed to put here Chairman as the balance on that account whichever Chairman ...

**CHAIRPERSON:** *Ja.* Yes.

**ADV LEAH GCABASHE SC:** Or Mr Thabethe is correct in his explanation.

**CHAIRPERSON:** *Ja*, okay. Alright. Okay.

**ADV LEAH GCABASHE SC:** Yes.

**MR MBANA PETER THABETHE:** Hm. *Ja*.

**CHAIRPERSON:** You want to say Mr Thabethe?

**MR MBANA PETER THABETHE:** *Ja*. Chair although I may not go to the details of this during - during the - the investigation that was done by the Hawks in - into the investigation of the - of the banks. They  
10 confirmed to me that there was a loan that Estina had - had taken. I think in - in one of the statements. I would not be able right away now to go in there ...

**CHAIRPERSON:** Yes, yes

**MR MBANA PETER THABETHE:** And - and show you but there was that proof which they had actually brought to say we ...

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** We are aware that there was a loan that was taken.

**CHAIRPERSON:** Hm.

20 **MR MBANA PETER THABETHE:** Even though when - during the implementation they had never explained to us that they had taken a loan ...

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** For us to be able to deal with that ...

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** But there was later on confirmation that indeed a loan was - was done by them.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** I may not remember exactly how much the amount was now ...

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** But there was such a document.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** So whether it was later or and so on  
10 but there - there was something like that that existed. Now what was of interest to us if they would come to us and say as Estina we have paid this money and we have bought a tractor we would then go and check if indeed there was a tractor and then if the tractor did exist we will then tick and say we have seen the tractor that you have bought.

So that - that is what we would do. So that when they say we have done one, two, three we will check that and say okay we are - we are happy with that because it has happened. You are telling us it has happened. We have seen it.

**CHAIRPERSON:** Of - of course if they had - if Estina had borrowed  
20 money in order to be able to carry out its obligations of making a contribution into the project that might not help it if it got that money on the basis of the fact that it was going to get this money that would come from the project.

It - it would help it in terms of its financial position when we look at whether it was the type of entity with which the department

should have entered into an agreement involving such big amounts.

**MR MBANA PETER THABETHE:** Yes, yes Chair.

**CHAIRPERSON:** You accept that?

**MR MBANA PETER THABETHE:** In - in the agreement Chair during the  
- this phase of implementation.

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** They would not have started with their  
implementation.

**CHAIRPERSON:** Hm, hm.

10 **MR MBANA PETER THABETHE:** Hence they say we want to start with  
your part of the implementation ...

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** But it is your obligation. It is not  
Estina's obligation ...

**CHAIRPERSON:** Huh-uh.

**MR MBANA PETER THABETHE:** But we are now beginning to pay our  
money ...

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** Into your obligation of Phase 1.

20 **CHAIRPERSON:** Huh-uh.

**MR MBANA PETER THABETHE:** So that we - we do not stall the  
process.

**CHAIRPERSON:** Huh-uh.

**MR MBANA PETER THABETHE:** Which we believe when your money  
becomes available you will then make that money available.

**CHAIRPERSON:** Hm. Well we - we might or might not be talking at cross purposes. I am just going back to the concern that ...

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** I had raised earlier and much - even much earlier in terms of Estina if in terms of finances it really had R16,00 in its bank account at the time when it concluded an agreement in terms of which it was supposed to inject millions of Rands into the project.

That suggests that they were not the type of company - entity that should have been in - been involved - with which the department  
10 should have been involved in such a project and I am saying it seems to me that even if they were - even if the position was to be that they had borrowed money in order to carry out those obligations provided the position is that they had borrowed that money on the strength of the money that they were going to get out of the project from the department that should not change their position.

The - the same concern would remain unlike if maybe they had loss of properties and so on and so they - they got money. They got a loan from the bank on the basis of their property portfolio for example. You know.

20 **MR MBANA PETER THABETHE:** Hm.

**CHAIRPERSON:** But if they went to the bank and said please lend us RX million and the bank said how are you going to pay it back. They said look - look at this agreement. We have signed with the Department of Agriculture. We are going to be getting a lot of money. So we will be able to pay you back. That would not help them. That is

what I am suggesting.

**MR MBANA PETER THABETHE:** Chair that - that is- is possible.

**CHAIRPERSON:** Yes, yes.

**MR MBANA PETER THABETHE:** What - what I am coming is that the - the portion which they had been implementing was the portion that we were responsible for the cost but here the indication is that they started paying for the cost that we should have paid for ...

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** As a department.

10 **CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** It means they - they - because we - in actual fact we were waiting for the new financial year because that is where ...

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Our money was sitting ...

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** And - and if - if they would not have proceeded with the project.

**CHAIRPERSON:** Hm.

20 **MR MBANA PETER THABETHE:** It means it would have stalled the - the whole activity.

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Hence then they proceeded - hence in their statement they are saying with the understanding that the money that will then be paid to us ...



**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** Will then cover that money that we ...

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Are spending.

**CHAIRPERSON:** Yes. You ...

**MR MBANA PETER THABETHE:** Which is correct.

**CHAIRPERSON:** You said you - you are comfortable ...

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** In that context?

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

**CHAIRPERSON:** And you accept that that does not address the earlier concern that we talked about?

**MR MBANA PETER THABETHE:** That - that is ...

**CHAIRPERSON:** That is just a separate concern/issue?

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

**CHAIRPERSON:** Okay.

**ADV LEAH GCABASHE SC:** Mr Thabethe the - the difficulty with what you are saying is found in the very next line. Grant received from DARD 30 million. Total source of funding up to July 2012 R30 million.

20 Then we have under application of funds. So far nothing to creditors. Then you have got a line that says reserved for parlour equipment R29 million ...

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

**ADV LEAH GCABASHE SC:** And that is where I thought you differed with Estina ...

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

**ADV LEAH GCABASHE SC:** Because I understood your evidence to be that that 30 million was supposed to pay for Phase 1.

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

**ADV LEAH GCABASHE SC:** That was your explanation?

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

**ADV LEAH GCABASHE SC:** They took that 30 million.

**MR MBANA PETER THABETHE:** Yes.

**ADV LEAH GCABASHE SC:** Kept one million in this bank account.

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

**ADV LEAH GCABASHE SC:** Took 29 million out of circulation. Did not use it.

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

**ADV LEAH GCABASHE SC:** Took it out and said they were reserving it for parlour equipment. Not buying parlour equipment. Reserving it for parlour equipment and this is why I was hoping you would be able to explain to us how they justified that and yet at the same time they say to you we are having to put money into Estina because - I beg your pardon - into the Vrede Dairy Project because you are not giving us  
20 money.

Did you inter - my question really is did you interrogate this and say why are you putting money in? We gave you 30 million ...

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

**ADV LEAH GCABASHE SC:** On 9 July 2012?

**MR MBANA PETER THABETHE:** Yes, yes. Chair I remember we - we

discussed this ...

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** And - and I had indicated to you that we had engaged them because we had not agreed with them ...

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** That they should - they should do that ...

**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** But their - their understanding was  
10 that when - when they were doing inquiries into the - into the dairy project itself which is the parlour, the machine that does the - the milking. They were supposed to place an order and if they place an order then it had to be - to be manufactured and you would not just place the order.

You - you have to guarantee that if they start manufacturing that equipment for you. You would be able to - to pay. So if - if your money is sitting in a bank. The bank will - you cannot touch it once you have issued a guarantee on that particular money for them to be able to construct.

20 Now hence I said they - they have done that but we were not happy because we had agreed that this money was meant for specific purposes for us to be able to proceed and - and that was those things that we had listed that they - they should have done in that particular stage.

**CHAIRPERSON:** So in other words they were using money given to

them for one purpose ...

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** For another purpose?

**MR MBANA PETER THABETHE:** Yes. This - this money was put aside ...

**CHAIRPERSON:** But maybe using might not be ...

**MR MBANA PETER THABETHE:** Hm.

**CHAIRPERSON:** The right term.

**MR MBANA PETER THABETHE:** Yes.

10 **CHAIRPERSON:** I am not sure but maybe, yes.

**MR MBANA PETER THABETHE:** Yes. What I had said they should have first - because it was a correct - it was a necessary thing to do but our problem was that they had not consulted with us before. We could have also agreed but the issue was that then do not delay the issues that the money was meant for.

It - it should not do that. Hence then they had then to go and - and find money so that those issue happen. They had to happen and - and we - we did not have a problem with that but we did pick up a fight with them and say you should not have done it but we are  
20 comfortable.

We know you have reserved it and here is the papers and here is what you are saying to us you - you have done. So that - that is - that is what I had explained also before Chair.

**ADV LEAH GCABASHE SC:** You see Chairman and Mr Thabethe my difficulty with what you are saying is this was your project. It was not

Estina's Project.

**MR MBANA PETER THABETHE:** Yes.

**ADV LEAH GCABASHE SC:** It is a department project.

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

**ADV LEAH GCABASHE SC:** These are public funds.

**MR MBANA PETER THABETHE:** Yes.

**ADV LEAH GCABASHE SC:** You had not even received let alone approved the feasibility study ...

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

10 **ADV LEAH GCABASHE SC:** At this point when they took the 29 million and put it in a different account. Why could you not say to them bring it back? We have not - we do not even know in terms of our feasibility issues what we will or will not be able to do. So how do you start thinking of placing an order to manufacture anything when we - we have - we are not even out of the starting brackets yet.

**MR MBANA PETER THABETHE:** Ja. I - I hear Chair what - what she is saying. We - we had engaged that after they have provided us with the report to say this is not what we had agreed but we were convinced with the explanation with the understanding that it - it is something that  
20 we have to place and order on time for you to be able to get it because during - earlier on when they had not engaged with these none of us had known how much time we will require to do that ...

**ADV LEAH GCABASHE SC:** You ...

**MR MBANA PETER THABETHE:** But then they said to us Chair on all these activities that you expect us to do there would not be any delay

because that part - that part of the - of the equipment was still part of our responsibility to deal.

**CHAIRPERSON:** But you see Mr Thabethe you are dealing with a different question that she did not ask.

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

**CHAIRPERSON:** I think the question she is asking is what you may do or what may be done ...

**MR MBANA PETER THABETHE:** Hm.

**CHAIRPERSON:** With money before there is a proper feasibility study.

10 So she is saying why allow that to happen. Why allow Estina to take the money and put it into another account? Such a lot of money. When actually you do not even know what the feasibility study will say. That is what she is asking you.

**MR MBANA PETER THABETHE:** Oh - oh - yes. No. I - I hear it now Chair.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** And can I add to that. So my question was why did you not say it is our money. Bring it back.

**CHAIRPERSON:** Because you are putting it at risk now.

20 **MR MBANA PETER THABETHE:** Yes Chair. The - the understanding that we had Chair we - we were doing the detail feasibility study. We had already done a preliminary feasibility study which already gave an indication to us that in - indeed these projects can be done but then we were going into the details of the project.

**CHAIRPERSON:** And what was the rush Mr Thabethe? Why not do the

study - a further study finish properly and then start involving more money? What was the rush about?

**MR MBANA PETER THABETHE:** Chair - Chair there - there was not any rush. We - we had already agreed and spoken how the money would be allocated.

**CHAIRPERSON:** Yes, but then ...

**MR MBANA PETER THABETHE:** The terms.

**CHAIRPERSON:** Why do you not wait until the - a final feasibility study is done? You see what outcome it gives you ...

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

**CHAIRPERSON:** And then you proceed properly.

**MR MBANA PETER THABETHE:** That could have been done Chair.

**CHAIRPERSON:** Why was it not done? That is my question.

**MR MBANA PETER THABETHE:** It is a difficult one Chair to answer.

**CHAIRPERSON:** But you were the HOD.

**MR MBANA PETER THABETHE:** Yes, yes Chair.

**CHAIRPERSON:** You - you were in charge. I mean you could - you were -you were the HOD. You were in charge. You were the Accounting Officer.

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

**CHAIRPERSON:** You knew that if anything went wrong with the taxpayers' money ...

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** You would have to answer ...

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

**CHAIRPERSON:** And if you started spending some money and a lot of money before there was a final study that told you that what you are - what you are - you want to get involved in is viable you would be putting the taxpayers money at risk and you would have to answer. So the question is why did you not wait until all of that was done properly?

**MR MBANA PETER THABETHE:** Chair I was convinced that there would not be any problem.

**CHAIRPERSON:** *Ja*, but what - what will - if - even if you are convinced is it not the right thing to get the paperwork first right - get  
10 the paperwork right and then start?

**MR MBANA PETER THABETHE:** Is it ...?

**CHAIRPERSON:** So why - why start before - before that - that stage is done?

**MR MBANA PETER THABETHE:** *Ja*. Chair - Chair in - in - I am - I am trying to - to put it the correct way Chair.

**CHAIRPERSON:** Yes, okay.

**MR MBANA PETER THABETHE:** Is that - heads - Heads of Department works within a time frame. When you come in and you say this is what is going to be my deliverables in terms of my contract. You have to  
20 make sure that the deliverables happen as per your contract because if - if you do not deliver as per your contract then you would not have delivered what is expected of you.

So I had the contract and - and those things were part of my deliverables of - of the contract. So delaying those would mean you have not delivered in terms of your contract that has been agreed upon.



**CHAIRPERSON:** Hm.

**MR MBANA PETER THABETHE:** So I - I had also to work within time frames to say by this time as in my contract this has to be delivered.

**CHAIRPERSON:** But your contract I take it did not require you or entitle you not to do things the right way.

**MR MBANA PETER THABETHE:** No, no it did not Chair.

**CHAIRPERSON:** Yes and doing the feasibility study first. Finishing it, seeing what the outcome is before engaging in certain expensive aspects of the project would be the right way. Is it not?

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

**CHAIRPERSON:** Yes. Ms Gcabashe I - I leave it at that. You - you had your own angle.

**ADV LEAH GCABASHE SC:** Chairman in fact I was simply going to draw a parallel with questions you asked at an earlier hearing.

**CHAIRPERSON:** Yes, yes.

**ADV LEAH GCABASHE SC:** When the CFO went to ask for the 30 million ...

**CHAIRPERSON:** Yes, yes.

**ADV LEAH GCABASHE SC:** And wanted it on a Friday afternoon

20 **CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** At 3 o' clock.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** You asked similar questions.

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** Why the urgency.

**CHAIRPERSON:** Hm, hm.

**ADV LEAH GCABASHE SC:** I do not know if you have seen the transcript or the evidence given by Ms Anna Fourie. She dealt with that aspect ...

**MR MBANA PETER THABETHE:** Thank you.

**ADV LEAH GCABASHE SC:** And the Chairman asked the same questions but the issue I want to raise is the following. Your contract could not have been the reason that you were rushing this because the Executive Council was well aware that they only approved the  
10 implementation of this project ...

**MR MBANA PETER THABETHE:** Huh-uh.

**ADV LEAH GCABASHE SC:** On 13 June 2012. Now that was quite a way - three months into the new financial year. Is that not correct?

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

**ADV LEAH GCABASHE SC:** Not only that Mr Thabethe. The same Exco knew that you had hoped to allocate a budget of 114 million per annum to this project. Am I correct?

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

**ADV LEAH GCABASHE SC:** The same Exco was well aware that you  
20 had to find 84 million for the remainder of this financial year. Am I correct?

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

**ADV LEAH GCABASHE SC:** So they were aware of the constraints that you were operating under.

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

**ADV LEAH GCABASHE SC:** Why would you feel that your contract compelled you to make sure that this project got under way in that particular financial year to the extent that as much of the 114 million you had hoped to spend would in fact be spent?

**MR MBANA PETER THABETHE:** Ja. Chair in - in my thinking hence we - we - like I have indicated this is what had agreed and this is what Estina had explained to us which I have indicated that we are not comfortable but then after their explanation on the reasons we then agreed with them.

10                    On the basis that they spent their money to complete what we had. It means if there was going to be any loss in that money it would not be a loss of the department because what we would have asked them to do with the money they had would have been done. So that - that guarantee after we have discussed with them.

                      We said it is fine you can guarantee that the activities that we had money available for must happen.

**CHAIRPERSON:** Well I - I do not know if - if that addresses the - the real issue that Ms Gcabashe is - is drawing your attention to.

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

20    **CHAIRPERSON:** She is saying the explanation you give for having done things the wrong way - the wrong way in terms of my discussion with you. The correct way would have been to do the feasibility study. Have a final feasibility study. See the outcome and then start things. You said well there were certain constraints placed upon you by your own contract with the department.

**MR MBANA PETER THABETHE:** That is correct, yes.

**CHAIRPERSON:** With the MEC or premier whoever it was. So she is saying but that could not have been the reason.

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

**CHAIRPERSON:** Do you accept that?

**MR MBANA PETER THABETHE:** Ja. I - I accept Chair.

**CHAIRPERSON:** You accept that. Ja.

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** So then the - the next question is that if you accept  
10 that there could not have been any constraints on your contract that justified you doing things not in the correct way. What then was the reason for the rush if it was not the contract because you were suggesting it was your contract?

Now you accept that it was not your contract. So what then was the reason for the rush?

**MR MBANA PETER THABETHE:** Ja. Chair there - there was not - there was not a reason for the rush because all - all that I needed was to be seen delivering what I had made commitment to deliver.

**CHAIRPERSON:** Hm, but when you - when - did you not want to be  
20 seen delivering in the correct way by doing things the right way?

**MR MBANA PETER THABETHE:** At - Chair at that time my thinking was that after we have interrogated and discussed it. We - we then proceeded.

**CHAIRPERSON:** Well if you still felt - if you - if you accepted that there was a need for a final feasibility study.

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

**CHAIRPERSON:** Then I want to suggest to you that you should only have started doing something before the - the final feasibility study was completed if there was some special reason. Otherwise you just wait for the outcome of the feasibility study. Then you - you continue. So but if you say there was really nothing then it seems to me that you may have done things the wrong way for no reason really.

**MR MBANA PETER THABETHE:** *Ja.* May - maybe Chair it is difficult for me to understand - to get into your thinking. I am - I am trying to  
10 see what is it that is ...

**CHAIRPERSON:** Okay. No. Let us go back. There is - there is the correct way of doing things and there is a wrong way of doing things.

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

**CHAIRPERSON:** Okay.

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** And I thought you and I agree that if in order to embark on a project it is necessary to do a feasibility study ...

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

**CHAIRPERSON:** The right way of doing things is to do the feasibility  
20 study first - first. A final one if you want to call that.

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

**CHAIRPERSON:** See that it is outcome is before you start the project ...

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

**CHAIRPERSON:** Or you incur a lot of expenses. We agree so far?

**MR MBANA PETER THABETHE:** *Ja, ja.* We agree Chair.

**CHAIRPERSON:** Yes, so far.

**MR MBANA PETER THABETHE:** on - only to the point to say ...

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** The detailed feasibility study ...

**CHAIRPERSON:** Yes.

**MR MBANA PETER THABETHE:** Will then give you the details. The -  
the initial feasibility details will give you the go ahead to say there is  
no problem in - in doing this project but then you need to go into the  
10 details of - of doing everything to say this is how this is going to be  
done.

So the detailed feasibility study you go into it because you  
already have a green light to say there is no problem in doing this  
project hence you can then move to the next.

**CHAIRPERSON:** But you - you accept that normally the best thing  
would be to get everything in order in terms of the study. Understand  
everything and see exactly what you need to be careful about before  
you - you move ahead but you are saying that well the preliminary  
study gave you what you needed in terms of the - the approval to say  
20 you can go ahead with this ...

**MR MBANA PETER THABETHE:** With this, yes.

**CHAIRPERSON:** But you - the final study was going to give you some  
details ...

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

**CHAIRPERSON:** That you needed?

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

**CHAIRPERSON:** Ms Gcabashe.

**ADV LEAH GCABASHE SC:** Thank you Chairman. I just want clarity on one aspect. Earlier on when we looked at the business plan and then we looked at the feasibility study did I understand you to say that that short business plan was in effect the feasibility study - the preliminary feasibility study that we are talking about?

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

**CHAIRPERSON:** I see we are past 4 o' clock.

10 **ADV LEAH GCABASHE SC:** Yes Chairman and I was ...

**CHAIRPERSON:** But may - maybe - I thought we would stop at four because more or less our plan is that Mr Thabethe would come back but we could - we could go up to half past if it is - if - if that is necessary to complete whatever you want. I am - I do not have a problem.

**ADV LEAH GCABASHE SC:** Chairman I would prefer to stop now. I just want to ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Place on record that the business plan  
20 that Mr Thabethe had identified as the preliminary ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Plan is the one in the Reports Bundle which we spoke of earlier today.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** That runs from page 321 up to page 320 -

330 ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** And that it is Mr Thabethe from what you are saying is on the basis of this ...

**MR MBANA PETER THABETHE:** Of this ...

**ADV LEAH GCABASHE SC:** Very thin document I am holding up ...

**MR MBANA PETER THABETHE:** Yes.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** That you were prepared to rush this  
10 project?

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

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** Chair if we might adjourn.

**CHAIRPERSON:** Okay. Okay.

**ADV LEAH GCABASHE SC:** That is ...

**CHAIRPERSON:** No that is fine. We - we are going to adjourn  
Mr Thabethe. We have not finished and we are adjourning in  
circumstances where I am not announcing now when you must come  
back but I think Counsel will see me after this and there will be a  
20 discussion about when you must come back but it will - it will not take  
long before you come back.

So your - your Counsel will - will let you know what date we  
have talked about and then if necessary the Commission can send  
written notification of what the date is afterwards.

**MR MBANA PETER THABETHE:** I am fine Chair.



**CHAIRPERSON:** Is that alright?

**ADV LEAH GCABASHE SC:** Chairman ...

**CHAIRPERSON:** Is that fine? Huh-uh.

**ADV LEAH GCABASHE SC:** Very briefly. I am sorry to interrupt you ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** But it is an important point my colleague has just pointed out to me.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** That the date of that business plan ...

10 **CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** The so called preliminary feasibility plan ...

**CHAIRPERSON:** Hm.

**ADV LEAH GCABASHE SC:** Is October 2012.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** So I leave you with that so you can prepare for next time.

**CHAIRPERSON:** *Ja.*

**ADV LEAH GCABASHE SC:** That we will interrogate that with you.

20 **CHAIRPERSON:** Hm, hm.

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

**ADV LEAH GCABASHE SC:** Thank you Chairman.

**CHAIRPERSON:** And were - were in September ...

**ADV LEAH GCABASHE SC:** Hm.

**CHAIRPERSON:** In terms of what we were talking about?

**ADV LEAH GCABASHE SC:** This was July Chairman.

**CHAIRPERSON:** Oh, okay.

**ADV LEAH GCABASHE SC:** This was actually July ...

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** All the way through. It is July, August, September ...

**CHAIRPERSON:** Ja.

**ADV LEAH GCABASHE SC:** But the money was - the first amount was paid in July ...

10 **CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** But it is ...

**CHAIRPERSON:** So - so in other words the point being there could not have been the comfort that he says the preliminary report study - feasibility study would have given him - could not have given him because it was not there at the time. That is the point.

**ADV LEAH GCABASHE SC:** Yes and I misunderstood your question. Sorry Chairman.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** In September ...

20 **CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** They started putting money in.

**CHAIRPERSON:** Yes, okay.

**ADV LEAH GCABASHE SC:** If that was - the first 250 000 and then ...

**CHAIRPERSON:** Yes. That is what I was talking about.

**ADV LEAH GCABASHE SC:** Yes and the next 3.7 million.

**CHAIRPERSON:** Yes.

**ADV LEAH GCABASHE SC:** They put in, in September and October.

**CHAIRPERSON:** Yes, okay.

**ADV LEAH GCABASHE SC:** I misunderstood your question.

**CHAIRPERSON:** Okay. Okay, alright. Alright we will adjourn then and then we will talk about dates just now. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS TO 7 OCTOBER 2019**