

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

04 AUGUST 2020

DAY 244



Gauteng Transcribers
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 04 AUGUST 2020

CHAIRPERSON: Good morning Mr Pretorius.

ADV PRETORIUS SC: Morning Chair.

CHAIRPERSON: Good morning everybody. I thought I would do without a jersey this morning because I thought it is beginning to be warm but I remembered that this venue is very cold so I put it on. So I see you also do not seem to have a jersey on. But you might not feel the cold here the way I do. Yes are we ready?

- 10 **ADV PRETORIUS SC:** Yes Chair. The evidence to be led this week or for most of this week Chair involves the Free State and a particular project that took place in the Free State, the Asbestos Project it has come to be known as.

Evidence was led by Mr Dukwana last year in relation to the conduct of that project and since then there has been an extensive investigation on the part of the commission and the fruits of that investigation are contained in the bundles now before you Chair.

There are a number of bundles that you have.

- 20 **CHAIRPERSON:** Just one second Mr Pretorius. The lighting could be better than it is I think. I can see – I can obviously see Mr Pretorius but it is rather dark. So I think the technical people will do what needs to be done. Yes.

ADV PRETORIUS SC: Okay we will look at that Chair.

CHAIRPERSON: Hm.

ADV PRETORIUS SC: A number of bundles before you I trust that two years down the line we have got the numbering and marking of the bundles ready.

CHAIRPERSON: I am sorry again Mr Pretorius. It may be – I do not know if it is that light that is behind you. I do not know whether they normally put it there and it is – ja okay. I am sorry Mr Pretorius please continue.

ADV PRETORIUS SC: In any event Chair you have a number of bundles before you which contain both the ...

10 **CHAIRPERSON:** I am sorry. I am trying to get them to help me with the lighting.

ADV PRETORIUS SC: Alright I will wait until all that is in order Chair.

CHAIRPERSON: But if I am wrong about thinking it is normally somewhere there then – then maybe I just misunderstand – ja that is much better. Yes. You may continue Mr Pretorius.

ADV PRETORIUS SC: Thank you Chair. The bundles in front of you contain the statements or records of interviews
20 with a number of witnesses that have been the subject of investigation some of whom you will hear from this week.

They also contain the report of the present Public Protector who made several findings in relation to the project. There are court papers I will refer to those in the course of an opening. There are transcripts of the interviews

which may become relevant in questioning. There is certain additional documents but what we have done because this investigation involves a range of issues both broad and some of fine detail the investigation team has with the assistance of the legal team prepared a comprehensive investigators report in which all the fruits of the investigation have been put and analysed so that you have in Exhibit TT18 which is in Bundles 8, 9 and 10 a complete record of the investigations and an analysis of the interviews of witnesses.

10 That investigation report has been signed by the investigators and will be referred to in the end. But it does at the end of the day comprise an analysis of both documentation produced during the course of investigations as well as the transcripts and statements relating to individual witnesses and it is a comprehensive document.

 The witnesses for today Chair are two. Firstly, a Mr Roets who is an expert in relation to asbestos. The reason he has been called is that this is more than an issue of procurement and state expenditure as well as the distribution
20 of the benefits of state expenditure.

 It is also an issue as to whether the Free State Provincial Government has carried out its duties, constitutional duties in fact in relation to the preservation of health and welfare of its inhabitants particularly in relation to the prevalence of asbestos and low cost housing. And that

is another aspect of the evidence that you will hear this week.

In order to assist Chair in presenting a comprehensive record of what actually occurred in relation to the Asbestos Project I have taken the trouble to prepare a rather lengthy opening which will record the story from beginning to end so that when one gets to aspects of the evidence in due course it will all fit into an overall picture and be understood by the commission and by the public
10 hopefully in its proper context.

So if I may just address you in regard to that Chair? The evidence in relation to the substance asbestos will be given by the expert. The substance asbestos in its various forms was in the past particularly pre-1994 Chair because of its various qualities used extensively in housing and industry and elsewhere. But particularly in low cost housing. And what is so sad about this series of events they – it is still there. It is a risk to life. It is highly dangerous. Causes a number of serious health conditions and commendably at
20 least initially the present executive took a number of decisions to eradicate asbestos.

What happened however is that hundreds of millions of Rands have been spent on this project but the asbestos is still there? People are still exposed to the danger of asbestos with few minor exceptions but they do not affect

that principle. That evidence will be given by the expert.

Then Chair a number of persons have been involved in this project and it is well to name them so that their role can be understood when reference is made to them in due course. Mr Dukwana a former member of the Executive Council and MEC in various portfolios in the Free State government has already given his evidence.

That evidence has been contested by amongst others witnesses who will come forward this week. Mr Mokhesi is
10 the Head of Department – Free State Department of Human Settlements. It is that department under the rubric of which this project was carried out.

Mr Matlakala who agreed to give evidence today and will address you in relation to his evidence in due course is the Head of Procurement Free State Department of Human Settlements.

Mr Makepe is the Chief Engineer in the Project Management Unit the PMU of the Free State Department of Human Settlements. He did some verification the extent and
20 quality of which will be addressed in evidence.

There is a Mr Ignatius Mpambani often referred to as Ego. He was a member of the Joint Venture which obtained the contract through the procurement processes which will be the subject of extensive evidence. He was unfortunately recently murdered and is therefore not available to assist the

commission obviously.

Then there is a Mr Sodi who is the CEO of an entity called Blackhead Consulting PTY Ltd. He was the other member of the Joint Venture.

In evidence Chair you will hear reference to Mr Mpanbani or Mr Sodi but it was always in their capacity mostly in their capacity as members of the entities which form part of the Joint Venture which is at the centre of the evidence.

10 There is a Mr Sydney Radebe he is the Director of a sub-contractor.

A Mr Manyeke a Director of a sub-contractor to the sub-contractor and those details are informative.

There is a Ms Diedericks who is not going to be called this week. She is the former acting Head of Department Gauteng Department of Human Settlements and the involvement of Mr Sodi and Blackhead Consulting in the Gauteng project is relevant for issues which will become clearer later.

20 Mr Thabani Zulu will appear this week. He is the – was the Director General at the National Department of Housing. He is now Director General at the Department of Energy.

Mr Magashule a former Premier of the Free State.

Ms Cholata who has given evidence.

Ms Morake who has also given evidence who worked in the office of the Premier.

Mr Martin Zwane is another sub-contractor but sub-contractor to the Joint Venture.

Mr Matow [?] an engineer who was appointed to work on the asbestos audit and Mr Jimmy Tow [?] a beneficiary of monies emanating from Blackhead Consulting.

All those persons feature in the story that is about to be told this week.

10 The story begins Chair in Gauteng. In Gauteng a panel of service providers was appointed. There were two panels that were appointed ultimately.

The first panel was a general panel to do work of a general nature in the area of housing.

The second panel a much smaller panel was appointed to do work on the eradication of asbestos.

I may say at this stage that you will hear of various phases of asbestos eradication. The contracts one is deal with here are merely for the assessment of the prevalence
20 and existence of asbestos in low cost housing. The idea was to identify the extent of asbestos in low cost housing to meet the needs – constitutional rights in fact of people who could not afford housing of their own and were as it were stuck with housing containing asbestos and could nothing about it.

There is no evidence of any competitive bidding that

occurred in relation to the appointment of either panel. That was because of the procurement processes which followed. But we know that a panel of eight contractors was appointed to do an asbestos audit in Gauteng and they so on the basis of instructions to perform work within the rubric of the panel appointment.

The price that Blackhead charged for the assessment not the eradication, the assessment of the existence of asbestos was R650.00 per unit and that documentation is
10 contained in the bundle.

That procurement was declared at a stage irregular by the Auditor General. Importantly Chair there was no individual contract in existence between Blackhead and the Gauteng Department relevant to this evidence. At the time that contract was – and I use the word loosely transferred to the Free State. Nor is there any evidence that a fair tender process preceded the conclusion of any contractual arrangement between Blackhead and the Department of Human Settlements in Gauteng.

20 You will hear the detail or more detail of the precise timelines involved but at a stage a procurement process was entered into which I will describe in a moment which allowed Blackhead and I stress Blackhead for the moment and allowed the Free State Department of Human Settlements to participate in the contract in Gauteng.

That process was entirely flawed for a number of reasons and we will deal with it in detail in a moment.

The other aspect of the Gauteng evidence Chair is that the evidence of Mr Sodi shows that the profits were massive. Sodi is clear that he paid – he was paid for his investigation assessment of the prevalence of Gauteng and the areas that he was asked to do. He was paid almost R230 million or in the region of R230 million and his profit on his own version was in the region of R100 million.

10 He says that all the others involved in the same project but in other areas in Gauteng their profits ranged between 50 and 60 percent. That evidence you will hear in due course.

But I stress two things. No contract was in existence at the time the contract in Free State was signed. Secondly the Gauteng contracts do not appear to have involved any competitive bidding whatsoever. And this all a background to the fact that the contracts in the Free State did not involve any competitive bidding whatsoever. And that casts a
20 shadow over the Free State procurement processes.

There are two aspects to procurement in the Free State. The one is what is called the participation process the other is the unsolicited bid process. Both were entirely flawed.

Treasury Regulation 16A6.6 is the one relevant to the

participation process. It reads Chair:

“The accounting officer or accounting authority may on behalf of the department constitutional institution or public entity for the purposes of this matter the accounting officer of the department may participate in any contract arranged by means of a competitive bidding process by any other organ of state subject to the written approval of such organ state and the relevant contractors.”

10 The idea behind that provision is that if there is a competitive bidding process say in one department that produces a contract binding on those two parties. The second organ of state or second department may participate in that contract. It is not anything that allows the formation of a new contractual relationship. There must be an existing contract entered into by mean of a competitive bidding process and the participation is in that contract not a new contract.

There will be detailed submissions to you in that regard.

20 **CHAIRPERSON:** Just to make sure I follow. If the contract in which Free State department may participate I a contract relating to the Gauteng province/government does the Treasury or does the regulation of instruction mean that simply an expansion of the scope of the Gauteng contract include Free State but otherwise everything else is the same

contract? At a practical level if one says, it is not creating a new contract how would that work practically?

ADV PRETORIUS SC: Yes. We have consulted with a person in Treasury who may well have to come and explain it to you but we have his views recorded. Those will either be presented in the form of submissions but insofar as a practice has developed under the rubric of the provisions and the regulations it may be necessary for him to explain those things in more detail.

10 **CHAIRPERSON:** Yes.

ADV PRETORIUS SC: But for the present to answer your question Chair.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Where there is a contract for sale of goods for example.

CHAIRPERSON: Hm.

ADV PRETORIUS SC: Free State – well Gauteng would enter into a contract with a supplier for a 100 widgets.

CHAIRPERSON: Hm.

20 **ADV PRETORIUS SC:** Only 80 would be provided and so another entity could engage or participate in that contract to obtain the other 20. That is the principle with goods.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Of course, with services it is different.

CHAIRPERSON: Hm.

ADV PRETORIUS SC: Because services inevitably are as you would point out and as underlies your question Chair services are inevitably confined within a particular personal relationship or relationship between contractor and entity.

CHAIRPERSON: Hm.

ADV PRETORIUS SC: So we understand that it is miscible for the services to be extended, the practice is that it should be done by way of an addendum to the original contract. But
10 other than that all the terms and conditions must be the same.

CHAIRPERSON: Hm.

ADV PRETORIUS SC: The parties must be the same.

CHAIRPERSON: Hm.

ADV PRETORIUS SC: The services must be the same.

CHAIRPERSON: Hm.

ADV PRETORIUS SC: The price must be the same. There can be no adjustment to suit particular conditions because then it is a new contract.

20 **CHAIRPERSON:** Hm.

ADV PRETORIUS SC: And then the competitive bidding which was the origin of the first contract becomes anility – becomes superfluous because there is a new set of terms of conditions which happened here Chair.

CHAIRPERSON: So would it as you understand it would it

amount to saying in the context of Free State and Gauteng in effect would it amount to Gauteng saying to the party with whom it has a contract you go to the Free State and provide the same services and then that is what happens. The addendum would effectively say that.

ADV PRETORIUS SC: Yes. The steps would be the following Chair. There would be a competitive bidding process in Gauteng.

CHAIRPERSON: Ja.

10 **ADV PRETORIUS SC:** It would produce a contract with a party on certain terms and conditions including price. The nature of the service is what is important here.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: The price is what is important and the party that was party to that Gauteng contract is also important. What happens then is with the permission of the Head of Department in the receiving entity and the contractor agree that Gauteng contract stands it is still in existence but the Free State may participate in that existing
20 contract.

CHAIRPERSON: Ja not a new contract.

ADV PRETORIUS SC: Not a new contract.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Although the services inevitably will be in a different region.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: And that would require an addendum to the existing contract.

CHAIRPERSON: Hm.

ADV PRETORIUS SC: So it is an existing contract entered into by means of a partici – fair bidding process competitive bidding process with a particular party under certain terms and conditions of the contract.

CHAIRPERSON: Hm.

10 **ADV PRETORIUS SC:** None of those requirements were met in this case. But I will deal with it in details.

CHAIRPERSON: Yes okay.

ADV PRETORIUS SC: The first point Chair is that different parties were involved. In Gauteng it was Blackhead Consulting PTY Ltd. Sometimes it was described by another name but for present purposes we can accept Blackhead Consulting PTY Ltd in Gauteng.

In the Free State it was a different party. It was a joint venture between Blackhead Consulting and Diamond
20 Hill Investment. That was a rarely be entity to which Mr Mpanbani operated.

Now one may say that this is really a minor distinction what is the difference between Blackhead and the joint venture. But the significance is this Chair. Mr Mpanbani according to Mr Sodi had no knowledge or

experience or capacity to deal with asbestos eradication. He contributed nothing to the contract at all save to unlock the opportunity in the Free State through his contacts with officials in the Free State. For that he got 50% of the income.

Now anyone who fairly and responsibly examined this contract before signing it in the Free State would say, well why must we pay double the price charged by Blackhead for doing all the work? Well they did not do all the work and
10 that is part of the developing story Chair but let me not distract you. Why would we pay double the price charged by Blackhead which is the entity with the experience and capacity supposedly to a joint venture? This does not make sense in ordinary and legitimate circumstances.

So the participation contract going to a joint venture is significant and it is more than just a heading or a title of a party.

The second thing that should be noted is that it is apparent from the correspondence between the officials who
20 enabled this participation process both on the Gauteng side and the Free State side but what was transferred was not a particular contract with Blackhead. What was transferred was the panel participation and the panel – the panel arrangement was transferred. So in other words, either 50 or 60 in the general panel arrangement or 8 contractors in

the asbestos removal arrangement that was transferred.

But what resulted on the Gauteng side and what was accepted was one contract with one entity the Joint Venture.

So there is a huge question mark – in fact it is not even a question mark – there is a huge problem and irregularity in relation to what was transferred from the one side and what emerged on the other side.

A panel arrangement on the one side. A particular contract with a particular party on the other. And that
10 correspondence will be dealt with in the evidence to show that.

But the other point is that the Gauteng contract had expired. Both the panel contract and the original – well the original panel contract the narrower panel contract particular – particularly aimed at the eradication of asbestos and any arrangements that might have existed with Blackhead they had all expired. So at the time of the participation there was nothing in existence to participate in and new contractual arrangements had to be made on the Free State side. Of
20 course, the joint venture on the Free State side, not Blackhead, and I have explained that Chair, was appointed not as a participant in a joint... in a panel arrangement, which the officials purported to allow participation in, but was appointed in its own right with its own price.

It was now no longer R 650,00 per unit but R 850,00 per

unit. Different price, different terms of conditions, different parties, no contract on the other side.

On every count it must have been, and we will submit in due course, apparent to the officials who were dealing with this process that there was no lawful justification as participation and the relevant Treasury Regulation for the contract in the Free State.

What is important is that the participation process allowed the contractual arrangement to be entered into the
10 Free State... in the Free State without any competitive bidding process.

The fact that there was no competitive bidding process and that it was not transparent, just two of the requirements of the Constitution, Section 217 means that one could enter into a contract that is entirely inflatable.

And it seems not unreasonable Chair to draw the conclusion at the end of the evidence, which we will submit to you, that the participation process was really quite a clumsy sham to cloak the Free State Department contract
20 with the joint venture with veneer of legality and successfully on examination.

So in the event Chair, what happened in the Free State was an entirely new contract, an arrangement was entered into with a new party on new terms and conditions including a higher price without any transparent competitive bidding

process having been entered into.

And as a result, the third requirement of Section 217, an entirely non-cost effective arrangement was entered into.

Now several state officials participated in that process Chair. The initials of some of them appear in a document presented to the Commission by Mr Dukwana entitled “Cost of Business”.

And against initials of people whose initials happened to coincide for the moment Chair because we have got to go
10 through the evidential process, with officials involved in this participation process, where are sums of money allegedly disbursed in whole or in part to them.

That “Cost of Business Schedule” has been the subject matter of extensive investigation and the evidence in relation to that will be presented to you in due course but I will deal with it in more detail later on.

And then it is perhaps important to emphasise because we are coming now to the participation of Mr Mpambani in this whole venture and project.

20 We emphasise that the appointment of the JV entitling Mr Mpambani and his entity in the joint venture with 50% of the income of the project, effectively doubling its price to R 255 million.

All... he had no expertise, no capacity, no ability to contribute to the work, except he had to unlock the

opportunity through engagement with Free State
...[indistinct]

For that, he was... he became entitled to half of R 255 million but that was the value of his engagement and I will come to more of that in due course.

Then there was another process ...[indistinct] would say it can be Chair. The origins of the contract that was ultimately entered into, arguable had a different procurement source, one equally deficient in law, we might add and we
10 will make those submissions in due course, and it happened as follows and these were the facts of significance.

On his own admission, Mr Sodi and his entity, Blackhead, made significant profits in Gauteng, R 100 million. And he, therefore, saw that there was a similar opportunity in the Free State.

So Mr Sodi and Mr Mpambani meet at a function in Welkom and they meet again later to discuss a possible Asbestos Project in the Free State.

The initiative, therefore, for this project does not come
20 from any entity in the Free State which is anxious to protect the lives and health of its inhabitants, rather it comes from Mr Sodi and Mr Mpambani.

By all accounts, it appears that Mr Mpambani was well-connected and influential politically in the Free State. It is apparent from the evidence of Mr Sodi, and this will be put

to him when he comes on Friday, that Mr Mpambani had no knowledge or experience of the asbestos removal.

In Mr Sodi's own words and in the words of the partner, his task was to "unlock the opportunity". For this he would get a 50% share in the income of the newly, the formed venture, what we referred to as the joint venture.

Mr Sodi is explicit. It was his job to engage with the officials that would allow this project to continue in order to ensure that the contract was granted to the joint venture.

10 **CHAIRPERSON:** I just wonder... I know I am interrupting you. I just wonder what unlocking of opportunities there should be in the public service with government work?

ADV PRETORIUS SC: Well, exactly. Well, we have a system in place. It is clear.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Where there is a need for work to be done.

CHAIRPERSON: Yes.

20 **ADV PRETORIUS SC:** There is an opportunity for all to participate.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: Now one must... the opportunity here was not for a contract to be given generally to contractors out there for a fair bidding process. The opportunity was for the joint venture to do the work. That was the opportunity

that had to be unlocked.

CHAIRPERSON: H'm-h'm-h'm.

ADV PRETORIUS SC: What had to be achieved through engagements with the officials was a particular contract with a particular party. For that, the idea was, at least in the beginning, that Mr Mpambani and his entity would get R 127 million for unlocking.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: That is all. That is all he could do
10 but he could do it and that is all did do and he did do.

CHAIRPERSON: Well, I guess there may be an argument that says it is not very different from the Commission, not for doing work but for unlocking because you do not do any work at all.

You speak to the relevant people and then a contract gets achieved. And then I guess you say to Blackhead: "I am responsible for getting this. You can... you will do the work. Maybe you would not have gotten the work without me".

20 **ADV PRETORIUS SC:** Yes, one can label it in various ways
Chair but what happens here is that ...[intervenes]

CHAIRPERSON: A facilitation fee.

ADV PRETORIUS SC: [laughs] Or "Cost of Business" is the
...[intervenes]

CHAIRPERSON: [laughs] Or "Cost of Business".

ADV PRETORIUS SC: Yes. Or “Business Development”.

We have heard the term throughout.

CHAIRPERSON: Ja, development, “Business Development Fees”.

ADV PRETORIUS SC: Yes. But if one takes away the label and looks at what happened, two persons with an interest in state contract get together.

The one says, “I will do the work or I will ensure the work is done and there is more to come on that score. For that, I will get my R 127 million.

All you do is, you go and speak to certain officials to make sure I get the contract but please make sure I get the contract.

I do not want any nonsense with competition and an open bidding because I am going to charge a lot of money. But that is all you have to do. Go and speak. And for that you can get have R 125 million, round it off to R 127 million commission”.

It is the facts that reveal... the task of Mr Mpambani was not simple to do what was lawful and proper by the way of “Business Development”.

It was to ensure that the procurement process was so arranged, and one could go to so far as to say manipulated, to ensure that the contract at that price was obtained without a competitive bidding process by the joint venture.

CHAIRPERSON: And of course, it seems quite logical that in that kind of scenario the party that has the ability, the skills, expertise to do the work, will not do this work, will not accept this contract if what it will get in terms of the fee or the price, would be lower than what it would be entitled to generally for doing that kind of work and that amount of work.

Therefore, if what that party got... if one looks at what that party got, one is likely to say that can be lower or much
10 lower than what it would normally be entitled to.

Therefore, to the extent that the price for the whole job included the other party's 50%, then the whole price must be highly inflated in order to make sure that there is this 50% for the other party.

ADV PRETORIUS SC: Precisely.

CHAIRPERSON: Because if I normally do this job for R 1000,00 I am not going to agree to do this job for R 500,00 just because you must get the 50%.

ADV PRETORIUS SC: Correct.

20 **CHAIRPERSON:** So the price will have to be inflated ...[intervenes]

ADV PRETORIUS SC: Yes.

CHAIRPERSON: ...to R 2000,00 or whatever. So I still get, at least, what I would normally get if not more. So but then you get your own but in the process the one who pays, pays

an exorbitant amount.

ADV PRETORIUS SC: Yes. Chair, that is exactly right. That analyses is exactly what happened here.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: What is interesting is the corollary to that.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: The person investigating the value for money in that contract before signing on behalf of the department would look at it and say, "But you are doing all the work for R 1000,00. Why must we pay taxpayers money for "Business Development" and unlocking opportunities for your JV partner?"

It does not make sense. And so that is also ...[indistinct] but of course, the person who is examining the contract, arguable were the persons unlocked. But we will come to that during the course of the ...[indistinct]

CHAIRPERSON: Ja, okay.

ADV PRETORIUS SC: Subsequent to the engagement between Messrs Sodi and Mpambani Chair, they did make an approach for Mr Mpambani for his R 127 million commission or "Business Development Fee", went to see the HOD of Human Settlements in the Free State and they said, "Give us a proposal". Alright.

An unsolicited proposal was prepared and presented and

it resulted in a Service Level Agreement being entered into. Now this Service Level Agreement, as you will learn in due course, was deficient in a number of respects.

It did not contain any information as to the overall price. That is the price per unit. So there was no mention of R 255 million in the service.

It had a different price per unit to what happened out there. It had a number of provisions regarding an interim what had to be done to earn the payment, which apparently,
10 were ignored in the execution of the contract.

But what is interesting about this. There was no budget for this project. One must recall, this initiative did not come from the Free State department. It came from Messrs Sodi and Mpambani.

They went and said, “Look, let us do this work and enter into an SLA”. So the money had to be found somewhere. So what the SLA, the Service Level Agreement said, quite oddly, is that the joint venture would see to the funding of the project. Now that is an extraordinary clause.

20 **CHAIRPERSON:** It is very strange. I saw that and I wondered what it meant.

ADV PRETORIUS SC: Yes. Well, clearly it cannot have meant Chair that the joint venture would pay for the project itself. It was not, as will be apparent and has been apparent in the Gauteng in the business of charitable work.

And clearly, it was not its intention to go out and as it were a crowd fund, the project, by way of public donation. What it meant, clearly, in the context Chair was that the joint venture and in particular Mr Mpambani would continue to complete the unlocking of the alternative process by ensuring that sufficient budget re-arrangements were made to allow the Free State to pay for the project.

In other words, there had to be some “environment”, it is the word that is used, or any other arrangement, a
10 reallocation of priorities for another arrangement to make sure that the budgetary provisions were changed or altered in such a way as to allow the Free State to fund the project.

So all this unlocking of the opportunity was happening without a budget provision. What happened was that matters were so arranged that the budget was... became available and that is where Mr Zulu will testify.

What ultimately happened, of course, is that the funding came via the national department from another province and that was done after the approach, not before the approach.

20 But once again importantly, for the conclusion of the Service Level Agreement, no competitive bidding process was entered into.

Now where one has an unsolicited bidding process Chair, there is a requirement in order to safeguard the fiscus that all the arrangements inherent in the unsolicited bidding

process must be published by a request for a quotation.

So that is where transparency comes in so that there is publication and any bidder, any organisation can say, “Oh, the joint venture is going to do this work for R 255 million. I can do it for R 50 million. I want to put in a competing bid”.

There was no transparency. No request for quotations was issued in this case. It was entirely secretive.

So there was no ability for the department to test the market, assuming, as we must when we start Chair, that all
10 the officials in the Free State were acting in good faith and properly.

They would receive this proposal. They would look at it. They would see that they were paying half of R 255 million for the “Commission Business Development”, whatever you want to call it sonically.

Or in Mr Sodi’s own words “unlocking the opportunity and engaging the officials who facilitate the project”. They would say, “But why are we paying for that? That is your costs. That must come out of your amount”.

20 But they would say, “Look, we are not experts in this. Let us test the market. Let us see whether your price can stand open and fair competition as required by the Constitution. Transparent, fair, equitable, cost-effective, says Section 217 of the Constitution. “

They did not do that. No request for qualification was

entered into at all and that should have been done in terms of Treasury Regulations and Practice Note.

Nor was there any due diligence exercise conducted in respect of the joint venture. Had that been done, the contract would have been examined and it would have been discovered that at least half the joint venture at that stage had no qualifications to do any of the work.

But in any event, if one goes... that is the factual position Chair. If one goes to the law, none or very few of
10 the requirements for the consideration of an unsolicited bid were met. In order for an unsolicited proposal that does not go to an open bidding and tender process to even be considered certain prerequisites are laid down by Treasury.

There must have been a comprehensive and relevant project feasibility study to establish a clear case. The product or service must involve and innovative design. No innovative design here, you had eight contractors in the Free State and the expert will tell you that there are many that can do what was done.

20 It must involve and innovative approach to project development and management, no evidence of that and it must present a new and cost-effective method of service delivery.

Clearly, as the facts will show here, none of those provisions were here and so it is difficult not to draw the

conclusion in this case that insofar as this contract was sought to be justified by reference to the unsolicited bid process this was again nearly a sham to cloak an entirely improper and irregular procurement process.

Chair, let me deal briefly with the budget issue. I have stated that there was no provision in the provincial budget at the time the contract was entered into for the R255 million cost of the project. To cater for the non-existence in the budget of a budgetary provision for this
10 project, for this R255 million, that clause that I referred to earlier, was put into the contract but the costs – the joint venture takes all responsibility for dealing with the costs of the project.

So you have here a department entering into a contract with a contractor who says do not worry, department, I will see to the costs and that had to be achieved and that was achieved ...[intervenes]

CHAIRPERSON: I wonder - when I was looking at that in the agreement, I wondered to what extent – I mean, the
20 impression I got, I do not know about you, when I saw it, it was like the department was not going to have to pay anything and that, of course, that sounds strange but that is my first impression of what it meant but you say that it was understood by those concerned that the joint venture would see what it needed to do to make sure that the

department had the budget.

ADV PRETORIUS SC: There can be no other explanation for those facts.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Because the service level agreement is now entered into. The joint venture does not say do not worry about the costs we are going to pay everything, it says we are going to charge R850 per unit but we will find the money to pay us. Not that we do it for
10 free or that we will raise the money but not charge.

And the only reasonable explanation for that clause was that the money did not exist in the budget and budgetary provision had to be made because that is what happened because what happened then, Chair, is that Mr Mokhesi and Mr Zulu were engaged and a process was then carried out whereby the budgetary – the absence of a budgetary provision was cured by the rectification of the budgetary provisions to allow payment of R250 000.

So there can be little doubt that what the parties
20 meant when they said you will see to the provision of the funds was that you would unlock any obstacle that existed into the budget.

It was at all times to contemplated that the joint venture would receive income for the project. And it said so in the SLA. It said in the SLA you will be paid and you

will be paid on presentation of an invoice and you will be paid R850 per unit but where the funds comes from, it is your problem and that problem, on the probabilities, can only have been finding the money from official sources which was actually then carried out. So what happened, gives an indication, looking back on the contractors what that contract meant.

What had to be done, of course, was that the provincial department then had to present a revised
10 business plan. So Mr Mokhesi says we need money in the budget and he speaks to the Director General National, Mr Zulu, and they then – and this is all on the correspondence, Chair, they – and we got it in the investigator's report, Mr Zulu says but you must give me a new budget plan and a new provincial business plan because the province has a business plan for the expenditure of its money, it now needs a new business plan to justify the introduction of R255 million for the asbestos
20 budget, now there is for a particular project, the business plan must reflect that project.

So a business plan was prepared and presented to national and that unlocked the funds. But what is important, in fairness to Mr Zulu, a gross misrepresentation was made to him in the business plan. You will recall,

Chair, that there were two phases to the asbestos eradication project.

Firstly, inspection of houses, and the assessment to show that in the Free State there are 36 000 houses approximately that contained asbestos that must be removed. That is the project that was the subject of the charge of R255 million. It was entirely an audit and assessment project. Once that has been done, of course, all that information and in this case the expert will tell you
10 it was insufficient information, but all that information is used by a certified asbestos remover, a joint venture Blackhead was not certified, to take that asbestos out of the house, replace the roof, if it is an asbestos roof, take it to an official dumping site and dispose of it in a manner which does not cause a problem to the health of the community. That is the eradication phase. So you have the assessment phase and the eradication phase.

What Mr Zulu was told in the revised business plan is that the weight will be to conduct door to door
20 assessment at R850 per house excluding VAT, all asbestos will be removed and disposed of as laid out in the Occupational Health and Safety Act and Regulations of 1993 and that is followed by the following:

The above unit rate, R850 in the revised business plan, includes the following. Submitting a works plan,

notifying the Department of Labour of our intention to remove and dispose contamination, rubble asbestos, contract for the services of an approved inspection authority for purposes of air monitoring, supply experienced medically fit staff and supervision for the purposes of removal, the supply of all safety equipment and relevant PPE, cordon off the area to be stripped and replace relevant signage. So when you go to the house you are destroying asbestos, the fibres are then airborne
10 and you have got to take stringent statutorily controlled precautions to protect the community within in which this activity is taking place. Transport of the asbestos to a registered disposal site, disposal cost of the asbestos, all relevant paperwork pertaining to health and safety legislation.

So what Mr Zulu was told, at the rate of R850 per unit not only would the assessment take place but the removal and disposal would take place. A gross misrepresentation because neither Mr Mokhesi in the
20 department nor any representative of the joint venture remotely contemplated the removal and disposable asbestos as being included in the unit cost of R850, it was complete misrepresentation.

If I may just then deal with certain clauses in the service level agreement. The service level agreement is

also, as I have said, sparse and confusing as to what work was contracted for but it appeared that although the price of R850 was for the assessment and audit part of the whole project it seems that the service level agreement appointed the joint venture, actually appointed the joint venture to do the removal as well.

I am not going to go through the particular onerous provisions of the SLA which were disregarded in the execution of the contract but every claim for payment had
10 to be accompanied by a report and had to be accompanied by a detailed verification of the reason why the amounts were particularly charged. It does not seem that that was done at all.

The project for which the joint venture was appointed was described in the SLA as the appointment of the service provider to assess, audit houses roofed using asbestos material, handling and disposal of asbestos sheets to an approved designated disposal site, phase one and phase two. That was the appointment. Quite improper
20 to appoint JV for either for that particularly and especially for the latter task. That requires accreditation, statutory accreditation and the expert will tell you about that in due course.

Chair, what is also important is the lack of attention given to detail. One is not simply buying pen and paper for

a stationery department within a government department, one is dealing here with life, the livelihood and the health of inhabitants of dangerous materials in houses, life threatening at the relevant houses. If one looks at the description of the project, it is all about roofs but the expert will tell you that asbestos in these houses may exist in water pipes, it may exist in fascia boards, it may exist in ceiling boards, it is not enough to look, as happened here, at a desktop image, Google Maps, for example, of houses
10 and say that is an asbestos house, we had better go and look because its roof is made of asbestos, it is entirely superficial and unprofessional approach to the problem but that will come out in the detail, Chair.

As a result of the SLA an instruction to perform work was issued which said what amounts making up the R255 million would be paid at what stage and here is another interesting fact, Chair, there was a prepayment of R51 million and you will learn that the cost of the whole project would not have exceeded in the amount in the
20 region of 51 million. So upfront, before any work is done, all the costs of the project are seen by way of prepayment but we will deal with that in more detail in due course.

Then, Chair, subcontracts, the intrigue in relation to this joint venture project does not stop there because what the joint venture does, it appoints a subcontractor,

MasterTrade. To do, subject to a minor qualification – and I stress minor qualification, to do all the work, the JV says to MasterTrade - and MasterTrade will come and talk to you here – the JV says to MasterTrade, here is what we have to do, you do it and we will pay you R54 million. All the work, Chair, bar a minor qualification.

Now it is one thing for a contractor to go to a government department and without qualifying or minimising what happened in this case on the part of the
10 contractors, you have a person in the department who allows this to happen without properly interrogating a competitive bid, a ranging thing so that there need be no competitive bid, without interrogating the costs in any way, to allow a R255 million contract to be done at R55 million.

Now the evidence will be, Chair, that it was done at far less than 54 million, so even that R54 million was an inflated price. On the evidence of MasterTrade the profit made by them was 19 million.

In any event, the SLA or service level agreement
20 and the unsolicited proposal which preceded the SLA made no mention of the fact that virtually all – in fact all of the work to be done on the project would be done by an appointed subcontractor. And at what price? Of course that was not mentioned.

The truth is, that they did the work, the

subcontractors did the work at a fraction of the total cost. In fact, what MasterTrade did, was it subcontracted once more to another entity, ORI, and ORI did all the work for R21 million.

Chair, perhaps before I go into the detail would this be a convenient time?

CHAIRPERSON: Yes, okay, let us take the tea adjournment. We adjourn.

INQUIRY ADJOURNS

10 **INQUIRY RESUMES**

CHAIRPERSON: Yes, continue, Mr Pretorius?

ADV PRETORIUS SC: Thank you, Chair.

CHAIRPERSON: So you, before we adjourned, you were making the point that Blackhead or the joint venture subcontracted the work to MasterTrade and MasterTrade subcontracted the work to another company.

ADV PRETORIUS SC: Yes, Chair.

CHAIRPERSON: Yes.

20 **ADV PRETORIUS SC:** And that latter company did most if not all of the work on its version at a fee of R21 million on the version of MasterTrade for a consulting fee of R5 million with MasterTrade paying the expenses. But, Chair, I will – perhaps it is appropriate to deal with it now.

The details of the subcontracting arrangements and the prices attached to these are a matter of intense dispute

between all involved so the joint venture is suing the department for 30 million unpaid. Blackhead is suing the estate of the deceased partner in the joint venture.

One subcontractor is suing the main subcontractor. So there is a flurry of litigation between all these parties, each alleging something else but what is manifest in all this is that there is no legitimate or reasonable comparison between the cost of the work actually done in the region of R50 million, probably much less with its built-in profit and
10 the R255 million grant.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: That is the point for present purposes. The details we have, the various versions we have, they are all in the investigator's report.

CHAIRPERSON: Ja because the effect of all of this must be that the entity that did all the work, if it could do the work or the price that it charged it must mean that a reasonable price for the work cannot be too – much higher than more or less what the entity charges.

20 **ADV PRETORIUS SC:** Yes. The final subcontractor in the line bid to do the work at R21 million.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: And on its version made a substantial profit.

CHAIRPERSON: Yes, yes.

ADV PRETORIUS SC: On that score and has not been paid.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: But that detail will come out in the wash, as it were. But what it does show is that the value of competitive bidding because any one of these entities could have bid in its own right for the contract.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: If the contract had been properly
10 advertised and properly opened to a competitive transparent bidding process.

CHAIRPERSON: And I guess ultimately one of the questions or the government – relevant government officials is on what basis did they believe that the price that they agreed to pay was reasonable when there were, as a matter of fact, entities who could do the job for far lower.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: In terms of the price.

20 **ADV PRETORIUS SC:** Well, that is the purpose of a proper bidding process, a transparent bidding process so that all parties who can do the work and wish to do the work can put in their bids on a fair competitive transparent basis and have those fairly and properly assessed. Of course, in order to justify a contract for this work at R255

million one could not have a fair competitive bidding process. It had to be avoided at all costs and was successfully avoided in this case.

CHAIRPERSON: And, of course, if it is shown that the job could have been done at R50 million, R40 million, R20 something million but the department paid over 200 million then if that is shown then there must be a way of getting back from the people who did not do their job or who decided to conduct themselves in a certain way to the
10 prejudice of the taxpayers.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: To get as much from them as possible.

ADV PRETORIUS SC: Exactly. You will see further on in the narrative that the matter was investigated by the Public Protector, the current Public Protector and a report – I will summarise the main findings in the report and is in fact being investigated by law enforcement agencies at the moment.

CHAIRPERSON: Okay.

20 **ADV PRETORIUS SC:** Chair, so to summarise in relation to the subcontractors the joint venture, or 50% of the joint venture because the other 50% is busy unlocking opportunity, the 50% of the joint venture arranges for subcontractor one, MasterTrade. MasterTrade's quote for all the work are a small and not monetarily significant part

of the work, R44 million. MasterTrade then says to ORI, you do the work, I will keep an eye on you, 21 million.

The expenses, according to ORI, for the work and the contract of the second subcontractor, approximate R9 million, so these details are important but it is all relative because this is a squabble in a confined space, as it were, whether it is 5, 21 or 44 million. The truth is that all those figures pale in comparison to the overall price of R255 million and it is not I think the task of this Commission,
10 Chair, to work out which of the subcontractors in their various disputes is correct, the point is clear, in relation to the overall cost to the fiscus of this project, and the expert will tell you a little more about the quality of the product for R255 million was paid and you will hear in a moment, Chair, about where some of this money was disbursed.

Chair because the expert will deal with some more detail in relation to what was done in relation to this contract, we have already told you that the service level agreement was sparse and unprofessional, quite frankly.
20 But according to the Chief Engineer of the department, Mr Makepe, his idea of what would be done, not contained in the service level agreement, was that the houses containing asbestos would be audited – in other words, the number of houses containing asbestos would be audited and there would be an assessment accompanying that in

relation to detail that the expert will explain.

Those houses would be labelled or identified with geo- positioning, GPS identification, there would be some details provided regarding the structural integrity of the houses. Does not seem that that was done. In other words, if the house is about to collapse then the whole house should be simply be demolished and rebuilt and also removing asbestos in a house which was not structurally sound has its own dangers and all that information would
10 be collated in a report and provided to the project management unit so that they could go take the next step.

Now, Chair, the way this is done of course is that sit at a desktop computer and you look at aerial maps of the region and you say that looks like and asbestos roof. You then train people from the community to take a laptop – or not a laptop, a device, to the house and take a photograph of that house and all that information then is collated and put into a report.

Mainly there would be a picture of the roof taken
20 because remember, the SLA, Chair, talked about roofs of houses, not water pipes or pressure boards or anything like that and that data is then used to produce reports. Notionally, that date then allows the second phase of the project to take place at a later stage which the business plan and the SLA appointed MasterTrade to do. But the

expert will tell you this has to be done properly because you are taking out a life threatening substance, you are exposing fibres, those fibres are carried in the air, people breathe them and they, quite frankly, die.

I have referred to the several disputes between the parties involved but again they are disputes within the confines of a limited amount of funding.

The established facts show, just to summarise, the provincial government undertakes to pay R255 million. 10 MasterTrade quotes R44 million to do most of that work, bar R10 million. The MasterTrade's quote of R44 million includes a R17 million profit, right, and there are expenses listed differently in the evidence of different witnesses. So, for example, MasterTrade said they would spend R3 million on data for the digital devices to take the photographs. The expense list in ORI's subcontract is 60 000. So there are all sorts of question marks when one digs into the detail of even the reduced amounts of 44, 21 and the like.

20 So just if one takes all those versions together - and again perhaps this is an area of too much detail for present purposes - it is all in the report in all its detail - either the second subcontractor, ORI, a Mr Manyeke, does all the work for approximately R21 million involving R9 million expenses, so more than 50% profit. Or between

them, MasterTrade and ORI do the work for R44 million, less expenses, or according to Mr Radebe of MasterTrade, the field work is done by Manyeke as a consultant for R5 million. Whatever version finally went the day in the courts there is no question of a gross overcharge in contract between the joint venture and the department.

Then there is the question of invoices, Chair. Once again it seems that the payment of invoices and the recordal of work done to justify the payment is wholly
10 inadequate and bordering on the improper. Or, not bordering, simply improper.

It may be – and this requires further investigation, but it may be that the documentation which accompanied the payments of the invoices contained gross misrepresentation. There are documents which show, Chair, when a payment, for example, of R50 or R30 million is paid, in a column in the document that asbestos was removed, but before taking that further, it would require an answer. We do not have the answer yet, but there are
20 huge question marks around, firstly, the adequacy of the documentation accompanying payments and secondly, regarding the representations made in those documents.

Ultimately, audit reports were provided, several reports were provided as a result of the conduct of the work under the contract, the joint venture contract and

these reports of part of the documentation before you and the expert will examine one of those reports in a lot more detail because one cannot assume that even though R44 or R21 million was done, the work was properly done, the work was done with sufficient care and caution to guard the rights of the people in the communities who were living with asbestos roof over their head.

But what happens, Chair, is that after the payment of R230 million, R25 million outstanding, the subject of a
10 court case at the moment, the Public Protector began an investigation and produced a report, the current public report. And so once that report came out, the head of department, Mr Mokhesi suspended further payments to the joint venture and that was at the stage where R230 million of the R255 had been paid.

In summary, the Public Protector, having investigated the matter through the Free State office made the following findings. I will just deal briefly with the main findings of the Public Protector.

20 Firstly, a complaint regarding the violation of procurement processes in the awarding of the asbestos contract was substantiated. The Public Protector found that the participation element – you will recall that was the first device used to avoid the open tender process – was improper because, quite simply, there was no existing

contract that was participated in, a new contractual arrangement was entered into with different terms and conditions and what the Public Protector said was that the participation process requires the same service provider, absent in this case, the same services, not clear on this, and the same price, certainly not there, not existing.

Then, Chair, the Public Protector also found that insofar as it was sought by anyone to justify the procurement process followed by reference to the
10 unsolicited proposal rubric, that too was also flawed and unlawful, particularly because there was a failure to issue the request for quotation. In other words, to publicise this arrangement so that other parties could enter the fray if they wanted. It was simply described as an abuse of the procurement system.

Secondly, Public Protector found that the service level agreement was in contravention of the department's own supply chain management policy because it did not actually reflect what was said in the unsolicited proposal or
20 the appointment. So it was a poor document in all respects and also contravened the department's own supply chain management policy.

What happened in the Free State, similar to what happened in Gauteng, is that the Auditor-General of the Free State declared the procurement as irregular, released

that report on the 31 July 2015 and Chair, you have expressed concern about what happens to these reports, what is their effect, do they result in any concrete action that is required by their content?

Well, after the release of the report, declaring the procurement irregular, the department still made further payments of R139 million to the service provider. In other words, that report was simply ignored and severe findings, including findings of wilful misconduct and gross
10 negligence on the part of the accounting officer, Mr Mokhesi, were found to have existed by the Public Protector.

And then a further finding, the allegation that the services provided were not cost-effective and the department did not receive value for money, that was found to be substantiated. So much seems clear even from the brief survey we have given you of volumes and volumes of documents relating to that issue.

What the Public Protector found on her
20 investigation was that the evidence and documents prove that the project was one hundred percent completed and reports were generated by the ORI Group. That is the second subcontractor, the first subcontractor to MasterTrade. First subcontractor MasterTrade, second contractor ORI. The Public Protector found that the fee for

all that work was R21 million and all that work was done and what is interesting, is not only was the fieldwork done by the subcontractor, the second contractor, but also the production of reports was done largely with its participation.

We referred earlier, Chair, to a complaint about the advanced payment, the finding was that that was irregular as well but for the reason that the original contract was null and void as being contrary to all the procurement
10 prescripts. But I have already pointed out to you, Chair, that that prepayment of R51 million was more than enough to cover the costs of the whole contract. So before any work had started, the contract was paid.

And what the Public Protector has directed the Premier to do as a result of the report is to investigate the accounting officer in terms of Section 84 of the Public Finance Management Act and to report the conduct to the Hawks and the South African Police Services and those processes are underway. There was also a direction that
20 the Director of Supply Chain Management in the department, Mr Matlakana be investigated. We will hear more about him later, we have just received a letter from his legal representative which will, despite his own agreement to attend, undertaking to attend today, explains why he has not attended or purports to explain.

Then, Chair, two close the circle on the asbestos project, there is the evidence given by Mr Dukwana in relation to the costs of business figure. Now this schedule, Chair, has been investigated at great length, it has been put before Mr Sodi of the joint venture because it is a document related to the business of the joint venture and emanating from joint venture records. So it has been testified to directly.

It records several abnormal business expenses. It records
10 them in a way that is abnormal and it shows, on the face of
it at least – and I stress on the face of it because that is
where we are at present, payments to persons or entities
from the income received, the 255 or 230 as it turned out,
million rand. Where the schedule shows what may be
termed a legitimate business expense, in other words a
subcontractor expense, the payment to MasterTrade, it is
recorded to the last cent in that schedule to MasterTrade,
no initials MasterTrade is recorded there as the sub-
contractor receiving forty-four odd million Rand in a
20 precise amount on that schedule, but where it is arguable
that some concealment is necessary because it's an
abnormal business expense, one see's merely initial. Now,
the question is, is it just coincidental that those initials are
– happen to be initials of officials in the Free State
involved in facilitating that or are – is there some other

explanation, there doesn't seem to be another explanation?

CHAIRPERSON: I mean, what must be clear is that the author of the spreadsheet meant that – I mean those initials refer to somebody.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: And they refer to somebody who, according to the author was to be paid a certain number.

ADV PRETORIUS SC: Correct.

CHAIRPERSON: And Mr Sodi – because if he's still alive
10 and he was the 50% of the joint venture must be able to tell us who was that, that was to be paid that amount because you are part of the joint venture, you ought to know, I would imagine and of course it's quite interesting if the initials seem to be similar to initials of somebody who has a role to play in the whole project.

ADV PRETORIUS SC: One will recall, at the beginning of the narrative, Chair, Mr Mpambani undertook to unlock the opportunity to engage the necessary officials to facilitate the grant of the contract of R255million value to the joint
20 venture.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: The persons involved in that process, initials which are the same as their initials, let me put it that way for the moment rather than saying their initials here on that schedule as the recipient of money.

Mr Sodi says, this is a record of sub-contractors, I don't know what these mean. So, when a person with initials coinciding with the initials of an official in the Free State, who's participation and cooperation was necessary to unlock the opportunity appear on the schedule as being entitled to, on the face of it, R10million. R10million goes out of his business, he says, I don't know where R10million of my profits went but he says, Chair, and in a strange way this has its own logic to it, he says, Mr Mpambani prepared
10 this schedule, he did it in my office on my computer and I don't know where my profits went, I can't explain where tens of millions of rand of my profit go, I'm happy to accept that what he did was correct. The – but of course as far as the initials were concerned it is correct, it is correct, I stress, that they went to these officials, monies went to these officials, that was his job. Now was the payback time for having unlocked the opportunity and he had to organise it, but there is correspondence between the party that the investigators have produced, email
20 correspondence between Sodi and the deceased, Mr Mpambani which stipulates that Mr Sodi is to see to these payments and Mr Mpambani will see to other payments and that evidence will be before you.

CHAIRPERSON: And then it becomes difficult and we'll see, maybe Mr Sodi will explain, it becomes difficult to

accept that, between the two of them, Mr Sodi and Mr Mpambani, didn't know all, you know, who everybody on the list was.

ADV PRETORIUS SC: And the fact that those initials coincide with the initials of the officials who participated in the facilitation of the project.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: And Mr Soni, in time, but Chair, the payments have been – certain payments from the business
10 have been traced by the investigators and I'll come to those in a moment.

CHAIRPERSON: Ja, okay.

ADV PRETORIUS SC: But whatever – for any business valued – Mr Sodi's business, there will be evidence at around 2014/2015 turned over in excess of a billion rand it was a very, very successful business and he was custodian of billions of – at least more than a billion rand. For that business to record the expenses of a R255million contract in the manner in which it was done is to say, the least,
20 extraordinary. The only logical explanation for this, unusual recordal of business expenses by reference to initials, is the necessary the need to conceal, at least to a certain extent. The – we must deal with, particularly the allegations made by Mr Dukwana and the response to those allegations by Mr Zulu, Mr Zulu said that document is

simply a piece of paper to which no credibility at all can be attached. Now, whatever the value of that observation at the time Mr Dukwana gave evidence as you are aware Chair, the investigators have taken the matter much further and so in relation to deciding the authenticity of the document, apart from answers to questions given this week there are certain factors which, no doubt, you will take into account in assessing its authenticity and its reliability as a source of evidence and we will make our submissions to
10 you in this regard but firstly that document has been admitted to be a document relating to the business of the joint venture in the asbestos project as being prone to and testified to in consultation by Mr Sodi. He says that, that document was prepared on his computer in his office by his erstwhile JV partner, Mr Mpambani and what he said was that it reflected, largely costs payable to sub-contractors, in other words expenses of the business. I've pointed out that certain expenses, initials certain expenses which would, otherwise appear to be legitimate, full description of
20 the recipient of funds.

I've dealt with the issue of the initials which coincide with the initials of officials and it was Mpambani's work to secure the cooperation of those officials in facilitating the conclusion of the contract in the manner in which it was done and on the terms.

CHAIRPERSON: To the extent that Mr Sodi's version is that the document was prepared by Mr Mpambani, if the document was a business document, in the sense that it was internal Mr Sodi may have to explain how he – how it would come about that he doesn't know what certain initials – who certain initials refer to because Mr Mpambani, if he's the one who put those initials would have put those initials so that the two of them knew who the person was because that person was about to be paid
10 some money from the business, from the joint venture.

ADV PRETORIUS SC: I'm just looking for the document itself because the point you make is aptly illustrated on the document itself.

CHAIRPERSON: I mean if I write – if I prepare document meant to communicate something to you I would use – if I use initials it must be initials that I think you understand or you know and of course if you don't know you will ask me when you get the document, what does this mean?

ADV PRETORIUS SC: Yes, well the first question is, this
20 document obviously reflects the recordal of an intent. The next question is, was that intent carried out and that's the subject matter of certain evidence and investigations that I will deal with in a moment but just looking at the document, TZ cost to business R10million, TM cost to business R5million, AM cost to business R10million, OM cost to

business R1million, MEC cost to business R2.5million, then we have a name MasterTrade not cost and then names of others who were involved and...[intervenes].

CHAIRPERSON: So not MT?

ADV PRETORIUS SC: I'm sorry?

CHAIRPERSON: MasterTrade, not MT?

ADV PRETORIUS SC: Not MT at all nor the person SR in MasterTrade. Now, to say, as the person in the joint venture running the business, running this side of the
10 business, remember Mpambani's job is to unlock opportunities, that I don't know where twenty to thirty million rand of my profits is going, is extraordinary – an extraordinary proposition at the least, exactly your point that one would assume that those initials would be known unless there's some very convincing explanation why I, as 50% member of a joint venture would allow tens of millions rands, simply to be dispersed to destinations of which I have no knowledge. When, if that was so, that he didn't know, at least there was a duty to enquire why this
20 coincidence between the initials of officials and the business that I am responsible for and the legislation is replete with the red flags in that regard and I'll deal with just one aspect of the governing legislation on corruption later.

So, Chair, I dealt with the document containing the

initials which coincide with initials of officials involved in facilitating the programme. The document also contains an accurate record of amounts paid to sub-contractors, for example, MasterTrade which we know, from other original evidence to be the correct amounts paid to them. So, the content of the document is authenticated by reference by other original record. Fourthly Chair, many of the other payments to persons bearing initials or entities bearing initials have been investigated and they are dealt with

10 thoroughly in the investigator's report, I'll deal with some in a moment, just by way of an example but what is important is, those payments do not relate to work actually done, so for example, payments to Mr Tau or payments involving Mr Tau, Mr Tau's entity and the explanation simply is, from Mr Sodi who acknowledges that payment says that, well that's just something that I do from my monies I pay out but why these should be recorded as business expenses, of course, is another question as opposed to simply a gratuitous donation. The payments

20 and the relevant circumstances surrounding the payments are summarised in the investigator's report and if I may deal with one or two, simply to put the full picture of the whole project and its outcome before you by way of this opening address. Bear with me a moment – the evidence of Mr Dukwana was clear that according to his evidence

the amounts reflected on the cost of business schedule were paid as gratification in relation to the Free State asbestos contract. Now, as was correctly pointed out by you, at the time, Chair that, that was insufficient evidence to actually implicate a particular person and thereafter the investigators were tasked to do their work which they did and the results of their work, I will deal with in a moment.

The allegation, and I stress at this stage, an allegation because we have to go through the evidential
10 process is that TZ would have referred to Mr Thabani Zulu who was the former DG of the National Department of Government at that stage and what is reflected is a payment of R10million. Now, whether that is correct or not, it's merely an allegation at this stage made by Dukwana to which Mr Zulu will have full opportunity to respond but what we do know is that Mr Zulu will have full opportunity to respond but what we do know is that Mr Zulu was, at least, involved if not instrumental, firstly in the participation contract and secondly in the budgetary
20 process of unlocking funds there. The second initial TM, is alleged, and I stress again alleged, to be the initials of Mr Thimotsi Moeketsi also known as Tim, the Accounting Officer and Head of Department Free State Human Settlement. It is alleged that R5million was/would be payable to him. What we know is that the initials TM

appear on the spreadsheet and we know that he was involved in signing the contract, involved in the participation and the unsolicited part of the contract, the signing of the SLA payments and the like, he's the Accounting Officer and in terms of the Public Finance Management Act he cannot escape liability, he can delegate but it's very clear in the legislation that he retains accountability for that.

AM we know that the former Premier's initials were
10 AM, Mr Magashule and we know there has been evidence of certain payments made to his office for present purposes but the legislation is clear, whether you receive an amount of money for yourself or for others it still qualifies as an offence in terms of the legislation, we'll deal with that in more detail in due course. OM, whether coincidentally or otherwise is the former MEC in the Free State for Human Settlement. MEC, the MEC at the time was...[intervenes].

CHAIRPERSON: You said OM you didn't mention the
20 name.

ADV PRETORIUS SC: No, just MEC but the MEC at the time also received some benefits.

CHAIRPERSON: Hmm.

ADV PRETORIUS SC: And then MasterTrade is there by name, an accurate reflection of the true facts it's

established by facts external to the document. The identity of others has not been uncovered. Martin clearly refers to Martin Zwane who received monies, there's an invoice for him issued by him for R1.5million which is reflected in the cost of this in the schedule. Steve, there's a Steve Matau, an Engineer who was paid for engineering work done on behalf of the joint venture an amount of R1.2million and there are others including JT, Jimmy Tau who also received money as the investigators found out and the last name is

10 Diedericks which must, obviously refer to Margaret-Ann Diedericks the former acting Head of Department in the Gauteng Department of Human Settlement. She is the one who signed the participation letter from the Gauteng side thus facilitating the conclusion of the contract.

Mr Sodi has been interviewed and he's given much of the evidence necessary to, at the very least, determine the authenticity of the document, it's not a fabrication it's a real document with real information. The costs reflected there on his version deal, principally with sub-contracting

20 costs, there's no explanation for how all those persons with all those initials coinciding with officials' initials would have been involved in sub-contracting there's simply a profession of ignorance in that regard and here you made your observation about that. He says, that document was attached to emails he received from Mr Mpambani, he says

that he acknowledges the receipt of directions from Mr Mpambani to deal with the persons highlighted in yellow although he denies making any such payments. He acknowledges that it was prepared on his computer he says that Mr Mpambani worked in his office but he would not speculate about the initials, save the concession in relation to JT, Mr Jimmy Tau. He gives an explanation that he appointed Mr Jimmy Tau as his Business Development Manager after the – Mr Tau's retirement, but he does
10 acknowledge that Mr Tau received money generated from the profit in that particular content and then there was an upfront payment recorded on that schedule of R4.4million which was acknowledged as being correct.

CHAIRPERSON: Mr Jimmy Tau is represented by initials, as well, in the document?

ADV PRETORIUS SC: Yes.

CHAIRPERSON: So, he knows what those initials – who they refer to?

ADV PRETORIUS SC: Yes.

20 **CHAIRPERSON:** Hmm, yes okay.

ADV PRETORIUS SC: There was an outflow recorded there in the schedule of approximately – sorry Chair an analysis of the accounts of Blackhead, the bank accounts who show payments to various persons involved or represented by their initials or by initials, at least on that

list. There were several financial transactions investigated by the investigators of the Commission in relation to the first initial or person bearing those initials on the schedule that he is there. There's no evidence at present, available to the Commission of a single amount of R10million being paid. Some amounts were traced from the bank accounts of Blackhead, Mr Sodi, to a motor dealer in Pietermaritzburg. Two transactions are relevant, the first was a payment reflected in the accounts of Blackhead through a TZ, initials were used, the initials TZ will identify that payment and that payment was recorded on the receiving end of the motor dealer in Pietermaritzburg as Mr Zulu, so the use of the initials on the side of the payer being Blackhead Consulting, Mr Sodi and the fact that they related to Mr Thabani Zulu on the receiving end via the motor dealer correct. In one transaction the money was used to buy a Maserati for a Mr Nthuli quite aware that set of transactions has its origins and why it should be so has not, finally been established by the investigators but what is clear is that TZ, Thabani Zulu, TZ payer, Thabani Zulu recipient paid for a luxury vehicle out of money and we know why and where that money should have gone, I won't emphasise the point, it's obvious.

There was a second transaction of R600 000 which, it is apparent now that it was made by Mr Sodi to the motor

dealer at the time of these – at the project for an amount of R600 000. It, again, is reflected on the recipient's side as reflecting the initials TZ, now I may be corrected in relation to all these initials and where they are reflected but certainly that will be corrected in due course in detail if it is subject to correction but here the recipient is reflected as TZ and Mr Zulu uses it as a deposit for a vehicle and so much is common cause. Mr Sodi pays R600 000 to a motor dealer it's used as a deposit for a Range Rover bought by
10 Mr Zulu. The explanation for that which you will hear evidence about in due course is that Mr Zulu has an involvement or owns a lounge called TZ Lounge coincidentally, in Pietermaritzburg which appears to be a, I don't know what our investigators have been looking at, it appears to be an entertainment establishment of sorts, where, on version or on one explanation R600 000 reflected the amount of the tab run up by Mr Sodi at the lounge on Mr Zulu's version a more – well, I'm not sure whether it's more understandable explanation is that, it
20 was monies owed by Mr Sodi for goods and services related to the business of the lounge in Pietermaritzburg, well let's hear about that in due course in all its details but on the face of it R600 000 is quite a large bill to run up at an entertainment venue.

Then PM, there's evidence of monies emanating

from Mr Sodi or Blackhead being paid in the interests of Mr Makezi for the purchase of a property.

So an amount of R650 000.00 is paid via a trust to attorneys which is used to buy a property in which according to the investigators it is apparent that Mr Mokhesi lives but the explanation of Mr Mokhesi is no this was a joint business venture. He and Mr Sodi became friends and they decided to invest in a property and there is an agreement which shows how the income from rent was to be divided and what
10 is to happen on the property in due course. Now whether this is all genuine or not can be investigated and dealt with in at best, but what is significant here is that a person involved in the grant of a tender of R255 million the accounting officer could not be in business with the recipient because it allows for all sorts of benefits like this to be granted. And certainly this is a benefit. The fact that you have now gained a partner to help you buy a house in which you live for however long whatever its nature as a joint venture is does not allow you to escape the provisions of the
20 law in this regard. But quite apart from that Chair and as a matter of any recommendations that you may have in procurement should be absolutely forbidden that there should be any private contractual arrangements between those on either side of a procurement arrangement. Be that as it may that is the – and there are others too Chair that

involve the payment of fees at the – from this money at the request of the Premier of the time Mr Magashule. Now the legislation is again quite clear that whether you receive a benefit or a gratification for yourself or on behalf of others student studying it falls foul of the legislation and no doubt the Law Enforcement Agencies will pay close attention to that in due course.

That evidence has been traversed already but its implications in terms of the legislation may need further
10 clarification before you.

Chair I am not going to go further in the examples there are others they are the subject matter of detailed research they are all contained fully under and all their detail with supporting documentation and explanation and an analysis of the relevant evidence in relation thereto.

Suffice to say that the document appears not only on the face of it but in relation to all the accompanying evidence to be a genuine document deflecting actual transactions or partial transactions.

20 The evidence shows that people on that or initials on that coincide with the initials of officials who received gratification or income or benefits from the monies arising from the contract. And importantly those persons to a large extent were persons involved in the procurement process in facilitating their bid entirely overpriced – massively

overpriced – extortionately overpriced in fact without any compliance as found only the Public Protector with the procurement prescript and the evidence in that regard is clear.

So the whole story goes full circle Chair and it is illustrative not because it is unique or unprecedented but it shows a pattern. It shows a pattern the ability to identify a money making opportunity, using funds of the fiscus to that purpose, an abuse of procurement processes, engagement
10 with officials to facilitate the abuse of the procurement processes, the production of work which the expert will tell you simply not warranted even by the lesser amounts that were charged, the pocketing of huge amounts of fiscus meant Chair for the livelihood of poorer members of the community but end up buying Maserati's. It is a sorry – a very sorry tale to say the least but the full circle is there from the manipulation of procurement right through to the production of benefits and in between an entirely cost being affected and quite frankly criminal project.

20 That Is by way of opening Chair.

CHAIRPERSON: Thank you.

ADV PRETORIUS SC: Chair the witness who has been set down – two witnesses were called for today. A Mr Matlakala who agreed to come today but we have learnt recently through his appointed lawyers that the – he claims he has

reason not to appear this week. He was not summonsed but he was – he was here or to be here by his own agreement. We will deal with that after the long adjournment. I just need to update myself on the correspondence received this morning.

And then the expert who will take up some time now and this afternoon. I do not know whether Chair you wish to take an early adjournment or whether we should use the half hour and adjourn as normal between one and two?

10 **CHAIRPERSON:** What is your estimate of how long the expert might take?

ADV PRETORIUS SC: At least an hour – an hour and a half.

CHAIRPERSON: Yes. Well maybe – maybe we should start with him. We have about twenty five minutes – thirty minutes and then we take lunch and then after that – ja.

ADV PRETORIUS SC: If we may Chair.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Thank you.

20 **CHAIRPERSON:** What happened to the lamp that was supposed to be next to the witness? I see it is not there. You would not know anything about it Mr Pretorius but it is those who – who know – who know what I am talking about. It is supposed to be next to the witness so that if they have to read anything they can do that. So if it is going to be disruptive to take it now then during the lunch adjournment it

should be placed next to the witness. If this is the one so that if the witness has to read anything they do not struggle with seeing the writing.

ADV PRETORIUS SC: Chair in the under Free State 1 is Exhibit TT1.

CHAIRPERSON: Would it be convenient – I know if we say Free State 1 we will know which bundle we are talking about but do you have any objection if we called it Bundle FS1?

ADV PRETORIUS SC: I think I could accept that.

10 **CHAIRPERSON:** [Laughing] let us make all of them Bundle FS1, 2 and so on.

ADV PRETORIUS SC: Yes we will do that – we will replace this.

CHAIRPERSON: Yes no that is fine ja. Just so that – you know if it is Free State 1 without bundle one does not know whether Free State 1 means something else different from bundle.

ADV PRETORIUS SC: Sure.

CHAIRPERSON: Ja. So Bundle FS1.

20 **ADV PRETORIUS SC:** So in Bundle FS1 for the record Exhibit TT1 is the statement of Mr Jacobus Roets.

CHAIRPERSON: Yes. And you asked that to that statement that affidavit be admitted as and marked Exhibit TT1.

ADV PRETORIUS SC: TT1. Chair at the moment and I think this has something to do with the lockdown measures.

CHAIRPERSON: Oh yes I see it is not commissioned.

ADV PRETORIUS SC: It is signed but not commissioned.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: I must just check that.

CHAIRPERSON: Yes okay.

ADV PRETORIUS SC: If you will bear with me. Yes Chair the intention is that it will be attested to but of course the witness can confirm that on oath now.

CHAIRPERSON: Yes.

10 **ADV PRETORIUS SC:** The document.

CHAIRPERSON: Okay. Well I must just then say the document which appears or starts at page 1 of Bundle FS1 which purports to be an affidavit by Mr Jacobus Roets is admitted and is to be marked as an exhibit and is to be marked as Exhibit TT1.

ADV PRETORIUS SC: Thank you Chair. The expert has examined a report around which there will be no dispute. It is a report dated February 2015 emanating from the Asbestos Project and will comment on that. That is not
20 attached here to this it should have been but it is not and it will be referred to in one of the bundles. It is in Bundle 8 – FS8 at page 270. The witness will be asked to identify it however.

CHAIRPERSON: Okay. Alright.

ADV PRETORIUS SC: And it is in front of you.

CHAIRPERSON: Okay the – is that the one that should have been an annexure to his affidavit/ statement?

ADV PRETORIUS SC: Yes Chair. Yes.

CHAIRPERSON: But it does – it appears somewhere else?

ADV PRETORIUS SC: Yes Chair.

CHAIRPERSON: In – okay in one of the bundles.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: And there is no quarrel about its
10 authenticity.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Or its identification and the witness will confirm that.

CHAIRPERSON: Okay so I think to the extent that in his statement/affidavit he refers to that document maybe then one must make a note as to where it is to be found.

ADV PRETORIUS SC: Yes Chair.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: And for the record it is to be found at
20 page 270 of Bundle FS8 but it may be that it should be attached to the final affidavit.

CHAIRPERSON: Ja maybe...

ADV PRETORIUS SC: When it is attested and numbering arranged accordingly.

CHAIRPERSON: Ja it may be attached maybe the last page

of the statement is 23 maybe it could 23a, b, c, d.

ADV PRETORIUS SC: Yes Chair.

CHAIRPERSON: Up to the end. Ja and then it is more convenient.

ADV PRETORIUS SC: Thank you. So before we start Chair may the witness be sworn?

CHAIRPERSON: Ja Okay alright. Please administer the oath or affirmation.

ADV PRETORIUS SC: Oath.

10 **REGISTRAR:** Please state your full names for the record?

MR ROETS: Jacobus Carel Roets.

REGISTRAR: Do you have any objection taking the prescribed oath?

MR ROETS: No – not.

REGISTRAR: Do you consider the oath to be binding on your conscience?

MR ROETS: Yes.

REGISTRAR: Do you swear that the evidence you will give will be the truth; the whole truth and nothing else but the
20 truth; if so please raise your right hand and say, so help me God.

MR ROETS: So help me God.

CHAIRPERSON: I do not know – you may be seated. I do not know whether the transcribers would have heard the responses from the witness. He did – ja they did not they

indicate they did not hear the responses. I am going to ask that you repeat the oath. Please take off your mask so that they can hear when you – and Mr Registrar keep the two – two and a half meters distance. Maybe he thought you were too close that is why he put on his mask.

REGISTRAR: Please state your full names for the record?

MR ROETS: Jacobus Carel Roets.

REGISTRAR: Do you have any objection taking the prescribed oath?

10 **MR ROETS:** I do not.

REGISTRAR: Do you consider the oath to be binding on your conscience?

MR ROETS: Yes.

REGISTRAR: Do you swear that the evidence you will give will be the truth; the whole truth and nothing else but the truth; if so please raise your right hand and say, so help me God.

MR ROETS: So help me God.

CHAIRPERSON: Thank you.

20 **ADV PRETORIUS SC:** Before addressing Mr Roets Chair if I may just emphasise one aspect which emerges from the narrative as a whole and particularly from the evidence of Mr Roets is that not only are we here dealing with the duty to deal fairly transparently and cost effectively with state funds in procurement processes and in the execution of contracts

under the auspices of provincial or national government but we are also dealing with another issue here Chair. The state and through the state the executive has a constitutional duty to provide adequate housing and to safeguard the lives of the inhabitants of the various communities in the country. The question arises and you will hear from the evidences is whether these duties have been carried out. We know that just from the small survey that we have done in this investigation of hundreds of millions of Rand being spent in
10 the manner in which has been alluded to in this case but the roofs are still there and the roofs with all their dangers are still there. So whether the constitutional duty of the executive has been carried out is a question that will need to be addressed and we will address it in submission. Mr Roets your occupation?

MR ROETS: Occupational Hygienist.

ADV PRETORIUS SC: Right and do you belong or are you a member of an entity which ...

MR ROETS: Ja.

20 **ADV PRETORIUS SC**: And in terms of which you carry out your work?

MR ROETS: Yes so we are accredited by SANAS in terms ISO 17020 and we approved inspection authority by the Department of Employment and Labour.

ADV PRETORIUS SC: Right we will come to that in a little

more detail later. But you have been asked to give an opinion in relation to an asbestos audit conducted in the Free State by the Free State Department of Human Settlements in 2014/2015, is that correct?

MR ROETS: Yes. That is correct.

ADV PRETORIUS SC: What are your qualifications?

CHAIRPERSON: I am sorry do not speak too far from the microphone Mr Roets so that I can hear. Ja.

ADV PRETORIUS SC: Would you tell the Chair please of
10 your qualifications and experience?

MR ROETS: I am an Occupation Hygienist. I have done Analytical Chemistry Diploma in Analytical Chemistry with the TUT and then also completed a professional diploma in Occupational Hygiene from a British Institute of Occupational Hygiene.

ADV PRETORIUS SC: And do you have any experience in relation to asbestos in particular?

MR ROETS: Yes for the past thirty years more or less I have been practicing Occupational Hygiene and since the start of
20 my business or career I have worked for Transnet Chemical Services where I have started dealing with asbestos because they transported asbestos throughout South Africa. So I started monitoring and assessing and assisting in the eradication and removal of – of spilt asbestos and cleanup of asbestos throughout South Africa.

ADV PRETORIUS SC: Alright. If you could...

CHAIRPERSON: I am sorry Mr Roets Mr Pretorius asks you the questions but you are telling me the stories. So make sure I can see – see you as you tell the story because sometimes that is important to understand what you mean.

MR ROETS: Ja thanks Chair.

ADV PRETORIUS SC: You may address the Chair as the Chair. Right just be a little more specific there. We will come back to it in a moment in more detail but when you say
10 you were involved in work relating to asbestos there are various stages of that work. What are those stages?

MR ROETS: Yes Mr Chair. When we do asbestos work the first thing is to actually identify if there is a problem, the risk associated with the asbestos and the work that needs to be done. So we will most probably start off with doing an inventory or assessment of asbestos in terms of the regulations that was promulgated. Once that you know where the asbestos is, how much of asbestos there is and what is the risk – the potential risk of exposure then can –
20 you can go and set up a plan on how to mitigate or put in the necessary controls for this asbestos and if you need to remove asbestos because it is in a poor state or the risk of exposure is higher than you need to draft a plan of work and submit it to Department of Employment and Labour for their notice. This plan is normally approved by an approved

inspection authority before any work is done. And once this plan has been submitted to the Department of Employment and Labour they will – or the work will commence after about thirteen to thirty days because of the notice periods that you need to provide. And the work then that follows is done by a registered asbestos contractor that is appointed by the Department of Employment and this appointment or registration used to be done annually but nowadays the term or the time is actually set on three years – every three years
10 we must reapply for their approval. These are the guys that will come in and under their training they will remove the asbestos in accordance with the approved plan of work in a safe and responsible manner and the waste will then be transported to a registered hazardous waste site. So it cannot be disposed of in a normal waste or landfill area and once that it is deposited in that hazardous waste site they will receive a safe disposal certificate that the waste is properly disposed of and will be managed in time to come.

ADV PRETORIUS SC: If I understand you correctly in order
20 to remove...

MR ROETS: And the illness is called asbestosis in the later stage of your illness. The fine, fine asbestos, blue asbestos that you get or crocidolite can penetrate right through your lung and sit on the chest lining where it can cause mesothelioma and that is a cancer of your chest lining which

is a fatal illness most probably you will die within one year after contracting mesothelioma. There is also other illnesses like lung cancer that can be caused and there are some papers currently that the people seem to think or the people that investigate these things and analyse it seems to think that it can also cause colon cancer if people ingest the asbestos by accident. So these are the illnesses that can be caused.

ADV PRETORIUS SC: I understand from your paper that
10 asbestos fibres may be released from asbestos material into the air and then as you say they are ingested into the lungs. Once that happens is it curable?

MR ROETS: Well as we know and nowadays you can actually transplant lungs into a person so it is possible if asbestosis is identified in a person that with the medical knowledge that we have got nowadays that you can actually cure a person but you will definitely give him a very hard life because the symptoms of asbestosis is that the hard calcified areas in the lungs will actually tear away from the
20 soft tissue of your lungs when you breathe and your lungs can start bleeding. So it is a very bad illness to have and what you actually die of most of the time is a lack of oxygen. Because what happens you decrease the effective gas exchange area in your lungs so where you need to pick up oxygen or uptake oxygen in your lungs and give off carbon

dioxide from your lungs that area is getting smaller and smaller because of the calcification of the portions of your lung and so yes people are still dying today of asbestosis and mesothelioma.

ADV PRETORIUS SC: If one is exposed to asbestos fibre in the manner you have described is it life threatening?

MR ROETS: It is life threatening definitely.

ADV PRETORIUS SC: The prevalence of asbestos as you have stated has given rise to concerns on the part of the
10 legislature and legislation has been passed controlling or presaging the eradication of asbestos, is that correct?

MR ROETS: Chair yes that is true.

ADV PRETORIUS SC: You just tell the Chair about that because one of the matters that the Chair will look at is whether there has in this case been compliance with that
legislation?

MR ROETS: Chair yes we have had asbestos regulations since 1983, 1987, 1989 and then it was changed again in 2001 and 2002. There was a little bit of errata on the
20 regulation that it changed. So the current regulation that we have got is called the Asbestos Regulation 155 of 2002 and this piece of regulation different to the old of 1987/1989 regulation that we used to have also includes asbestos containing materials. The difference between raw asbestos or friable asbestos and asbestos containing material is that

the friable asbestos is asbestos as mined as it comes out of a mine where it actually carries a very high risk. So it is not bonded in anything. So the previous regulation specifically talked about the raw asbestos and handling and controlling workers exposure to the friable or the raw or the high risk materials. In 2002 the new asbestos regulation also includes asbestos containing materials which is now the roof sheeting and the fascia boards and ceiling panels and floor tiles. All these materials that contain a percentage of
10 asbestos which may be anything from 14% up to 54% of asbestos depending on the manufacturer and so the regulation calls for certain control measures the employer and self-employed person that he needs to control any exposure. If he employs any people to work on asbestos that there needs to be some controls in place to ensure that he does not inhale asbestos or he is not exposing anybody in the public to airborne asbestos fibres.

ADV PRETORIUS SC: Let us just take a step back. We omitted to deal with blue asbestos. What is that and how
20 prevalent was that in South Africa and in South African buildings?

MR ROETS: Blue asbestos or also called crocidolite asbestos is the most hazardous form of asbestos that you do get. Basically because of the aero dynamic properties of the material and the – the extent of the chemical inertness of

this asbestos material. It breaks off in very small needle like fibres. It is very small – less than 0.2 micro metres in size. So once that it becomes airborne it stays in the air for extended periods of time because of the aero dynamic properties in its weight so it does not settle out. So once that you have started with asbestos work and you emitted this asbestos through your activities it is possible that this fibres can even blown from that specific work environment with a very far distance from your work environment. So the
10 blue asbestos is the fibre that is actually a straight needle like very small fibre that can penetrate right through your lung into the chest lining and mostly this is the type of asbestos that will cause mesothelioma.

ADV PRETORIUS SC: Now we dealing in this – sorry.

CHAIRPERSON: I think it is time for the lunch adjournment.

ADV PRETORIUS SC: Oh yes thanks.

CHAIRPERSON: We will take the lunch adjournment and we will resume as two o'clock. We adjourn.

REGISTRAR: All rise.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES:

CHAIRPERSON: Okay, let us continue.

ADV PRETORIUS SC: Thank you, Chair. Mr Roets, we were dealing with the legislation governing asbestos at the time. As I understand the position, and to summarise, prior to

1994, there was legislation but that legislation did not govern building materials which contained asbestos.

MR ROETS: Chair, yes, that is true. The '89 Regulation did not cater for asbestos containing materials. So this was overseen during the assessment of asbestos and used all over South Africa to manufacture building material.

ADV PRETORIUS SC: Right. So before 1994, there was nothing governing the use of asbestos in a house?

MR ROETS: No, not asbestos containing materials but the
10 friable asbestos. If it was insulation material that they used around the geysers, for example. So that would be legislated.

ADV PRETORIUS SC: Alright. And we are dealing here mainly in this case with low-cost housing. The houses that we are dealing with, when would they have been constructed in the manner?

MR ROETS: Well, we have been mining asbestos in South Africa for many years. So manufactured all over these periods. So no specific time of manufacture but ever since
20 they actually started mining the asbestos and using it in building materials, various houses have been made.

ADV PRETORIUS SC: Perhaps, mainly pre-1994. Would that be fair?

MR ROETS: Even after 1994 to some extent because there was not legislation preventing the building with asbestos

containing materials up until 2001.

ADV PRETORIUS SC: And when were the regulations promulgated that dealt with asbestos containing materials, including materials used in houses?

MR ROETS: The regulation, the Asbestos Regulation 155 of 2002, was promulgated in February 2002.

ADV PRETORIUS SC: Right. And then the steps taken against asbestos got more stringent, and what happened in 2004?

10 **MR ROETS:** In 2004, roundabout 2004, the Environmental Minister at that time banned the use of any new asbestos, this asbestos containing materials. So, yes, it was more stringent.

You are not allowed to use anymore asbestos in new products and then the transport of asbestos and then the use in any building materials was banned at that stage.

ADV PRETORIUS SC: And importantly for the present case, what happened in 2008?

20 **MR ROETS:** In 2008, was the physical letter that was written by the then Minister Marthinus van Schalkwyk who banned the asbestos or the use of asbestos and also suggested that we should start implementing a phase-out plan for asbestos and try to eradicate asbestos if it is maintained and if you can actually remove it, it should be removed.

ADV PRETORIUS SC: But was this a suggestion, a requirement?

MR ROETS: A written ...[indistinct] ...[intervenes]

ADV PRETORIUS SC: [Indistinct] requisite?

MR ROETS: Ja, a written up in regulation on the environmental side. So if we understand it, we are dealing with two departments.

We are dealing with the Department of Employment and Labour on the one side and we are dealing with the
10 Department of Environmental Affairs on the other side. So it is two different pieces of legislation all together.

ADV PRETORIUS SC: Alright. We may have to obtain that for the benefit of the Chair but it seems to me that there was a level of requirement from 2008 that asbestos be eradicated from buildings.

MR ROETS: Ja. Or either maintained in a well-maintained condition. Kept in a well-maintained condition Chair. Or like I said, it should be removed, if at all possible, that it be removed but in terms of the Labour Regulations, it was not...
20 it is not banned at this stage even now.

ADV PRETORIUS SC: Was any period suggested or required in this phase-out plan?

MR ROETS: There was some suggestions in the communication that this phase-out plan should be over a period of ten years as a potential timeframe. Yes, Chair.

ADV PRETORIUS SC: Right. So the requirement to remove insofar as it existed in regulations or directives, required the removal to take place or the securing of the asbestos material to take place by 2018?

MR ROETS: That is correct. That will be correct.

ADV PRETORIUS SC: Now to become more particular or more detailed in relation to the facts of these case. You deal in paragraph 22 with the process and the requirements for the identification of the asbestos. Please tell the Chair
10 about that.

MR ROETS: In terms of the Asbestos Regulation, as the Regulation 155 of 2003, it requires in Section 7 or Regulation 7 that an inventory should be drafted.

Also speaking about it in Regulation 14 that this inventory should be drafted by six-months after the promulgation of this regulation which is August 2002.

Every employer or self-employed person is supposed to draft an inventory or do an assessment of all the asbestos on his property, the condition of the asbestos, the location of
20 the asbestos, how much or quantity of the asbestos, what is the condition of such asbestos, and what is the potential exposure hazard to people in the environment, to the residents, to the employees.

ADV PRETORIUS SC: Right.

MR ROETS: And this is a record.

ADV PRETORIUS SC: My questions, perhaps, was not too clear Mr Roets. How difficult is it to identify asbestos in a building with any degree of accuracy?

MR ROETS: Okay. To actually identify asbestos, it is a destructive test. So there is no instrumentation that you can use to identify asbestos, press it up against a panel and it will say that this is asbestos.

So it is a physical destructive test. You need to break off a piece of this material and send it for analyses. For a
10 trained eye you can with some certainty say that it is asbestos because of the condition.

We will look an amount of fibres where it is in the asbestos containing material.

You can say that this material is suspected of being asbestos containing material but to totally positively identify any such material, there is an analytical way, a technical way that we need to analyse the samples to positively identify.

ADV PRETORIUS SC: Can one do it by reference to a digital map?

20 **MR ROETS:** No, then the ...[intervenes]

ADV PRETORIUS SC: Google Maps for example?

MR ROETS: No definitely not. The reason why I am saying this is, because even at a later stage Chair, asbestos was in the same plant manufactured or as the new tech material that is nowadays used, it has got the same profile as the old

asbestos panels.

So it is possible that if there was any renovations done in one of these houses, you will definitely not pick it up. So you cannot say with certainty from a picture that this is asbestos.

You can certainly say that there is a profile. We call it the Big Six Profile on the big roof sheets. So you can recognise a profile but you cannot positively identify asbestos in that way.

10 **ADV PRETORIUS SC:** If I ...[intervenes]

CHAIRPERSON: I am sorry. What are the probabilities that you would be right if you look at, for example, the roof of a house? What are the probabilities that you will get it right if you say that has got asbestos?

MR ROETS: Chair, in this situation if it is low-cost housing and you have done some homework in terms of maintenance and repairs to any of these materials, there is a big possibility that you can actually identify with some certainty that it is asbestos material or suspected materials.

20 **CHAIRPERSON:** So are you saying that if you have not done any work in relation to a particular house or a particular set of houses, it would not be appropriate to just walk and look at the roof and say, "Okay, that one is asbestos. That one is not asbestos".

MR ROETS: Chair, if it clearly says it in the document that

that is asbestos, I would not go as far because, like I said, there is a possibility of maintenance and replacement with other materials, as well as, the possibility of other asbestos containing materials within the same property, like ceiling panels and botched walls and window sills, which will definitely not be identified by just looking at it from the outside.

CHAIRPERSON: So are you... would you say that professionally it could not be a reliable way of identifying
10 houses that have got asbestos or this asbestos on the roof to just look at the roof with a naked eye? Or are you saying, it can be reliable but not all the time. What do you say about that way of doing things?

MR ROETS: Chair, thanks. Yes, there is a possibility that you can make a good estimation of quantity of asbestos or asbestos containing sheets or something that looks like asbestos by doing that way, but the whole purpose of the assessment in terms of the legislation, is to look at the risk, the potential risk because of previous damage to these
20 panels.

It has been weathered and there is a bigger risk now because the fibres have actually loosened and available to become airborne.

So one needs to have a close inspection of this material to do a proper inventory and assessment.

CHAIRPERSON: And probably your professional view is that the way to do that would be to send it for testing or something?

MR ROETS: Chair, yes. What we normally do from an assessment point of view, is to go and look at this material, assess it.

And look at the condition and if it is ceiling panels, for example, we would break off a piece and send it for analyses to make sure that it is asbestos or not.

10 So, yes, it is very helpful if you can quantify and write up all the asbestos material on a proper bill of quantities because that will assist you in later removal plans and costing of such a project.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Well, several points arise out of that and your evidence after the long adjournment. First point is, what is the effectiveness of an aerial photographic view, such as one would get on a computer, of a suburb? Can that be relied on to identify asbestos roofs?

20 **MR ROETS:** Like I said Chair, the only thing that you will achieve by that is to get an assessment perspective of asbestos containing materials. You can see the profile but apart from that, it does not help you any... in actually assessing the condition of the asbestos.

ADV PRETORIUS SC: Right. The second point is. If I

stand outside the house and I take a photograph on an iPad, what would the position then be?

MR ROETS: It is still the same issue Chair, that you cannot actually talk to the quantity, as well as, the quality of the asbestos or the condition and it will not assist in any way of eradicating asbestos or setting up a bill of quantities.

The purpose of doing a proper assessment is to actually prioritise asbestos containing materials that is in a poor condition so that they can be removed or that can be removed at an early stage so that the cost can be spread
10 over a period of time that is reasonable.

Maybe a five or a ten year phase-out plan and I think that is the reasoning behind the legislation.

ADV PRETORIUS SC: Oh, I understand you to be saying Mr Roets that, it is one thing to say that house has an asbestos roof. It is quite another thing to assess for the purposes of eradication, a program of eradication, the condition of the house for the purposes of planning eradication?

MR ROETS: Yes, Chair. I think the main purpose of the
20 legislation is to ensure that the people, the residents of that property are safe, remain safe and there is no risk of exposure.

So if you just go around to identify for potential asbestos materials, it will not assist in the final purpose of such an assessment. It is to see what is the risk.

ADV PRETORIUS SC: I understand your evidence to say too that it is not only the roof but it is the contents of the house that need to be identified and assessed?

MR ROETS: Yes, Chair. That is the purpose. From experience we can see that, for example... if I can use another example. If there is a hailstorm that comes through some areas, you will see that most of the damages are in the valley of these big six panels.

And it is due to the fact that the weathering over a
10 period of time has caused these panels to wear out, a little bit thinner and thinner, and then hail will damage these asbestos panels.

And so when you do the assessment, you would want to see if there are any cracks in the panels, what is the condition, is there still one centimetre thick material, and that will all give you an indication what is the potential risk in that house.

ADV PRETORIUS SC: And I understand that any rational
20 programme with asbestos eradication involves prioritisation exercise where you take the high-risk asbestos containing materials as a priority and the lower-risk as... further down the line. Am I correct?

MR ROETS: Yes, Chair. You are definitely correct. The whole purpose of the regulation in terms of The Occupation, Health and Safety Act, not only the Asbestos Regulation but

any regulation connected to it, is to control the risk to people, residents, employees that work in that environment and...

So in this case, the purpose would be to remove the material that is now as this has got a big risk to cause exposure and then over a period of time to phase out all the asbestos in an eradication programme.

ADV PRETORIUS SC: Right. Now this issue will come up later when you deal with the report but when one comes to
10 the stage of removal and disposal, in other words, eradication of asbestos, let us say in a house, who is empowered or authorised to do that work?

MR ROETS: In terms of the legislation, asbestos work is done by a registered asbestos contractor Chair. And these contractors are registered with the Department of Employment and Labour.

And they go through a screening process, submitting the necessary documentation to ensure that the people that are doing this asbestos work is well educated.

20 They train. They go for a medical... working on a heights training and these are the contractors that are approved to work with asbestos and remove asbestos and disposal with safety.

ADV PRETORIUS SC: I think you have already told the Chair that when you remove, you release or it generate

fibres and that it creates a danger for the public and the workers themselves.

MR ROETS: [No audible reply] [Microphone not switched on.]

ADV PRETORIUS SC: How would you then conduct an assessment? We are going back now a stage from the removal?

I think you have said quite clearly that the assessment enables a proper eradication process and certain... the
10 assessment must have certain features or qualifications that will enable the removal to take place and you will comment on the report that was generated in this matter against that background.

But how would you properly in terms of the relevant regulations conduct an assessment? Then if you could just briefly outline the steps.

MR ROETS: What the normal assessment would be... would involve is to do a desktop study firstly, to identify when this asbestos or material covering roof would have been placed
20 on it, more or less.

So that one can get an idea of the timeframe that the material was placed on the roof. The second option would be... well, the standard is actually go to the site and investigate. Get access to the sites.

Sometimes it is difficult if it is houses because you need

to get access to the house to actually go inside and view the house from the inside to assess the condition of this material.

And like I have said previously, the building material or the roof sheets used to be manufactured up to 54% of asbestos in cement materials.

So if there is a high concentration of asbestos in this building material, obviously, the risk, potential risk of exposure will be higher.

10 And if this material is then in a poor state of maintenance, it will mean that the panels can break easily and you need to assess this in terms of your procedures that you will follow to remove the asbestos.

So the contents of my assessment would be a close visual inspection, taking of a sample to assess what is the amount of asbestos and the potential risk within this material.

20 And then also look at the condition and prioritise which materials are the worst and then put up a plan to start taking out the higher-risk materials.

ADV PRETORIUS SC: The report that you would draft after your inspection identification and assessment, what qualities would that report have to have for it to be a use in any eradication programme?

MR ROETS: Chair, through the legislation, there is a

guidance document out that outlines the format of such a report, certain requirements that needs to be on the report like that plus an example of what information is required out of this report.

Like I have said previously, the location of any such asbestos, more or less, an estimation of the quantity of the asbestos, what is the condition of the asbestos, what type of asbestos it is, what controls have you got in place already to mitigate the potential exposure, and what lack or
10 recommendations are there to maintain the asbestos in a good condition.

So all this information will be captured on an official record that needs to be obtained and kept for 40-years.

ADV PRETORIUS SC: You say in paragraph 29.11 that your company does work at a flat rate per day in relation to asbestos identification assessment and report. Is that correct?

MR ROETS: That is correct.

ADV PRETORIUS SC: What is that rate per day?

20 **MR ROETS:** Currently, we are charging R 3000,00 a day, flat rate.

ADV PRETORIUS SC: And how many houses can you do in a day on your requirements that you have set out in your statement?

MR ROETS: Chairman, in terms of this project, it was done

on the low-cost housing, the estimation of anything between 20 m² and roughly about 40 m². I would suggest that we can do per person about ten houses a proper assessment per day.

ADV PRETORIUS SC: So that would be, if my arithmetic is correct, approximately R 300,00 per unit?

MR ROETS: Roughly. Yes, Chair. That is correct.

ADV PRETORIUS SC: And you say, you would have to add to that administration, travel and accommodation costs?

10 **MR ROETS:** Yes, Chair. We have got a basic cost of administration fee of also R 3000,00 per day, for example, an inventory report. So that can be split amongst ten houses. So another R 300,00. So roughly about R 600,00 for the assessment, as well as, the admin costs towards that.

ADV PRETORIUS SC: Right. In relation Chair, the asbestos from the Free State, you were approached by the investigators and asked to look at and comment on certain documentation.

MR ROETS: That is correct Chair.

20 **ADV PRETORIUS SC:** The principle document is your report of 2nd February 2015 which is in Bundle FS8 at page 270 but that document is before you. Is that the document you have looked at?

MR ROETS: Yes, Chair. That is the document.

ADV PRETORIUS SC: You say you have worked in this

industry for some time, decades, in fact. Have you come across Blackhead Consulting (Pty) Limited in the course of your work?

MR ROETS: Never Chairperson.

ADV PRETORIUS SC: And have you come across Diamond Hill Trading 71 (Pty) Limited?

MR ROETS: Never Chairperson.

ADV PRETORIUS SC: Right.

CHAIRPERSON: What are the chances that those entities, 10 maybe particularly Blackhead, could be quite active in the industry without you knowing?

MR ROETS: Chairperson, currently I think there is around... the last figures I have seen, there are around 290 odd registered asbestos contractors in the country.

CHAIRPERSON: Yes.

MR ROETS: I do not know and do not work for all of them.

CHAIRPERSON: Yes.

MR ROETS: So I cannot say that they are not active in the industry.

20 **CHAIRPERSON**: Yes.

MR ROETS: I am not aware of it. I have been involved in the industry with various role-players in the legislation and certainly in my dealings, I have never run across any of their names.

CHAIRPERSON: Are you able to say in the light of how

much time, how many years you have spent in the industry and in the light of what I conceded to be high-profile status that you seem to have in the industry because you told me about your involvement in the drafting of regulations and so on?

Are you able to say whether out of those... I think you have said three hundred and something entities involved in the whole country, are you able to say you are familiar with a certain percentage of those that are quite active? Or is
10 something difficult to say?

MR ROETS: Chairperson, I think it is quite difficult to say.

CHAIRPERSON: It is difficult, yes. Okay.

MR ROETS: There are so many... I, certainly, have dealt in different industries with a lot of asbestos contractors, as well as, people involved in drafting such inventories.

CHAIRPERSON: Yes.

MR ROETS: One need to have a look at the legislation. It does not call for a specific person or entity or body to this inventory. It calls for a competent person to do such.

20 **CHAIRPERSON**: Ja.

MR ROETS: So it is also possible that if this entity is competent, they know enough about asbestos, that they do not need to be registered as an asbestos contractor.

CHAIRPERSON: Yes. Okay.

MR ROETS: But as soon as they are removing or handling

asbestos, they definitely must be registered.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: You were asked to comment on the unit price of R 850,00 for assessment and also the proposed cost for the assessment of R 1 350,00. That Chair was the original price proposed in the proposal to the Gauteng Department of Human Settlements.

But I understand you are unable to comment on that because you have not seen the work clearly defined.

10 **MR ROETS:** Yes, Chairperson. When I actually had a look through the documentation provided to me, I was provided with one report, final report, as well as, five examples of assessments that the company had done and also the original proposal that was provided by the municipality.

And in these documents, I do not think I have had enough information to make a clear statement about the costs, this thousand odd three hundred rands.

It certainly looked a little bit high in terms of the amount of houses that needed to be assessed but... ja, I do not think
20 I had enough information.

ADV PRETORIUS SC: The state of the work that was required, did you look through the documentation to learn what that scope was in any detail?

MR ROETS: Yes, Chairperson. At the time when I assessed and went through the documentation, it was clear that there

was very little in terms of defining the words “audit and assess” and for me that was problematic and to look in this final document if they actually achieved or done that was required in the original quote, so that was one of the problems, that the terms were not defined properly in the document.

ADV PRETORIUS SC: In your opinion were they defined sufficiently to allow, if they were complied with, a proper programme of eradication?

10 **MR ROETS:** Even the proper eradication purpose or proposal, one needs to have a proper bill of quantities to quote on the said project of abatement or removal of or eradication of asbestos in the area. So if you can assess and properly define the amount of asbestos you can actually give a price, a costing to that. If you have not done that, you have not assessed the risk of potential exposure, I think it is very difficult to put up a proposal on the eradication if you do not have that information.

CHAIRPERSON: Actually, if you have not done that,
20 would the position not be that you have not assessed?

MR ROETS: Yes, Chair, that is my whole argument is that the documentation that was placed in front of me and given as examples, I can find – I find that that is not enough information to – call it a proper assessment in terms of the current regulations, what must be in an assessment, a

proper assessment, and it will also hinder the phase where asbestos needs to be abated at a later stage or removed at a later stage because there is definitely no bill of quantities that will hinder the process further on.

ADV PRETORIUS SC: Before you go on and for the benefit of those of us who are not building experts, what is a bill of quantities?

MR ROETS: Bill of quantities, Chair, is the amount of asbestos, amount of houses, amount of asbestos in each
10 house and that you need to define in terms of square meterage, in terms of the weight of asbestos because it comes into play when you have to calculate the amount of travelling that you need to do in terms of transporting this waste to hazardous waste site, the time spent on the site, the amount of labour that you need to employ to remove the asbestos and the amount of personal protective equipment that needs to be provided, accommodation maybe in that area, bins that you need to organise to place this asbestos waste in for the transportation as well as the
20 cost for the final and safe disposal of the asbestos, so all these things are published in what we use as an inventory, we just call that a bill of quantities, we can actually send and circulate that to potential registered asbestos contractors so that they can actually put up a price to remove or eradicate the asbestos.

ADV PRETORIUS SC: And that information, was that contained in the report?

MR ROETS: Chair, through the five examples that I had from the different assessments that they have done, no, definitely not.

ADV PRETORIUS SC: And in order to obtain that information would one need to do another assessment?

MR ROETS: Chair, yes, this assessment will definitely have to be redone to get a proper bill of quantities to
10 enable a tender process to remove asbestos.

ADV PRETORIUS SC: You say in paragraph 34.2 that the output from the project that we are talking about today is a report. What does that report tell you?

MR ROETS: Chair, the report that I had in front of me dated the 2 February 2015, in terms of my view of this, it is a scoping report of the potential problem of asbestos in a region or a district and that is as far as it goes. It does not give any clear indication of how much asbestos there is and what is the potential risk to the residents or people in
20 the public and does not give any indication about that. So ja, in terms of proper assessment, I would say that this is not a proper document that can be used. Maybe on a high level for parliament it might be a good document for them to use to see what is the potential risk but in terms of eradication, definitely not.

CHAIRPERSON: Now what is the significance of establishing the level of harmfulness or danger to the occupants of the house to not assess how serious the damage is or the risk to the residents? What is the importance of not doing that for purposes of the safety of the people who live in the house?

In other words, if you are supposed to assess the houses for asbestos and you do not do that, you just stand in the street and have a look at the roof and not actually
10 go and break it, I think you said, or some pieces and take them to where they are supposed to be tested.

MR ROETS: Yes, there is certainly some pros and cons doing the assessment. When we physically go out and do an assessment we try to remove a piece in areas where it cannot harm to the residents and the procedure would call for new ceiling, the portion where you actually removed and broken out a piece to seal it so that you do not cause additional risk to the residents.

But in terms of your question, it is also a matter of
20 education of the people that stay in a residence like that. So if the community did not properly educate the residents of a property like that on the potential risk and exposure risk and sources of asbestos fibres while staying in a house you will find some of the residents might be busy with alterations themselves removing some asbestos

because of damage and they did not maintain it properly in the past.

So in this proposal document you will see words like asbestos containing rubble, meaning stuff that people already removed from their houses and put on sidewalks and so on, so this asbestos is lying, there is a potential of vehicles travelling and pulverizing this material lying in the road or on the sidewalks or dead spaces and then pulverising and causing additional exposure.

10 So if you leave the asbestos as is, you do not educate the residents on potential risk and tell them not to drill into the asbestos and put up fixture and put in any alterations or make alterations to these materials, there is a risk that the fibres may be released during these processes and people will be exposed, they will inhale the fibres. And especially in certain areas like the Northern Cape where the crocidolite or the blue asbestos have been mined, there is this additive effect, so in the environment there is potentially already some fibres and if you then
20 also go break panels in the sand and the break panels you will add to that risk of exposure.

CHAIRPERSON: And there was a reference I think in the documents to the scope of the work being audit and assess, I think or assessed and audit, I think audit and assess. The audit part I take it means identify the houses

and tell us how many or which ones, is that right?

MR ROETS: Ja. Yes, Chair ...[intervenes]

CHAIRPERSON: And assess is then what you have...[intervenes]

MR ROETS: Yes, Chair, I would say that the first portion on the stuff they have done might be the first portion, the audit portion.

CHAIRPERSON: The auditing portion but not the assessment.

10 **MR ROETS**: But the assessment portion is lacking.

CHAIRPERSON: Was not done.

MR ROETS: Yes.

CHAIRPERSON: Properly or at all.

MR ROETS: Yes, I would say so.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: In paragraph 35 you summarise what might be your evidence in relation to assessment you say the condition of the roof needs to be looked at, you need to establish how many residences are at high risk of
20 potential exposure, what houses should be prioritised for eradication and in addition to that the specific information that a bill of quantities would provide, how much asbestos, where, in what condition and how embedded in the residence it might be.

MR ROETS: Yes, that is true, Chair. It will definitely

assist in spreading the cost over a period of time. We can prioritise high risk areas in terms of asbestos that was maybe put up first or residence when he is busy renovating, doing some repairs to their roofs or already removing asbestos panels and breaking it.

So this assessment would be used to identify these houses or residence or so that they can be completed first or handled first and then the rest, panels that is in a good condition, maybe there was a plan by the residents to paint
10 and seal the panels properly and nicely. This will be a low risk and they can be dealt with at a later stage. So you can spread the costs of eradication over a period of time.

ADV PRETORIUS SC: You are asked a question by the investigators and you record that in the report:

“Does counting houses with asbestos roofs justify the cost of R850 per unit?”

And you then answer that by saying:

“Well, there is a lot more involved in a proper assessment.”

20 Is that correct?

MR ROETS: That is correct, Chair. As previously said that we need to assess the condition of this asbestos to do a proper assessment, to look at any cracks, any renovations, any previous removal. in terms of the current regulation it talks about well-maintained condition and

sealed. So if you want to keep in a well-maintained condition you need to remove all mould and try to prevent mould growth which will weaken the asbestos. So this, all these things will be looked during an assessment of such asbestos problems.

ADV PRETORIUS SC: Then you were asked by the investigators and you put it in your report, the price of R32 760, which was the price in the proposal for the removal of asbestos in this case.

10 **MR ROETS:** Yes.

ADV PRETORIUS SC: And you were asked to comment on that. The calculations that you do, do they assume a proper assessment?

MR ROETS: Yes, Chair, the calculation that I did is taking into consideration that there is a proper bill of quantities set out to the amount of asbestos in each area. What is the distances that one need to travel between these areas that will all help and assist you to do a proper costing of a project like that for the removal and tender process.

20 **ADV PRETORIUS SC:** And your estimate cost?

MR ROETS: Estimated cost for the removal, that is, from experience with current contractors, registered asbestos contractors that I work with, on this – and if I can remember correctly is about R6, R7 000 per house, I must just make sure from this, actually done a little calculation,

R4 329 and that is working on a house that is roughly about 20 squares, low cost housing, very small. Obviously if the house is bigger it might be higher than that, but ja, that is cost to the company that will remove that so obviously they still need to add a profit to this cost but my estimation on a small house like that would be plus minus R5 000.

ADV PRETORIUS SC: You were then shown and had regard to the report before you of 2015, of 2 February
10 2015.

MR ROETS: Yes.

ADV PRETORIUS SC: And you were also given a report by the investigators of houses that they looked at, is that correct?

MR ROETS: That is correct, yes, Chair.

ADV PRETORIUS SC: If you would just comment on the contents of the report as you do on page 19 of your statement and following.

MR ROETS: The five examples, Chair, that I received
20 gave a Google Maps picture of the property which I actually by accident opened up on my computer and looked, it is exactly the same, and then also a street photo.

Somebody that took a picture from the street to show that this is asbestos or a big six panel on the roof

with a comment that it is asbestos.

Apart from that, there was comments on the walls that was cracked in some areas but there was no comments on the condition of the asbestos with potential risk of exposure and even size. The only size that I got was a document that was pulled off by I think the investigators at a later stage, 2018 or something, that gives a municipal size of the property itself but not the dwelling, the house, so there is no indication of how much
10 asbestos we are talking about on any of the examples that I examined.

ADV PRETORIUS SC: I do not want to confuse you or the Chair and I might have done so, I apologise, let us deal with the quality of the work as appeared in the report rather than anything that the investigators may have done. Just put that aside for one moment. The comments you have just made about the audit and assessment in the report, do they apply?

MR ROETS: Ja, Chair, the five examples when I
20 examined, it definitely does not show an assessment of asbestos and even audit, it will give an indication of there is asbestos on this house because of the picture that they have taken and with the assumption that it might be asbestos. But apart from that, this whole report is structured around the structure, the integrity of the house

itself, the building, the bricks and so on but very, very, very little information other than a potential number of houses in a certain district, that is all that is outlined in this report.

CHAIRPERSON: So, in other words, are you saying that as the product of an assessment which it is supposed to be this report that they, Blackhead and its joint venture partner, was lacking in quite a significant way?

MR ROETS: Yes, Chairperson, it was definitely lacking.

10 If you look at the original proposal it called for the audit and assessment of asbestos and it also called for assessment of asbestos contained in rubble and I did not find any information in the reports about any rubble lying around. So even if you have to quote or tender on such a project you did not have – or you do not have all the information available and as you previously say, audit would be a good description of what was done and the latter portion was left out in the report as well.

CHAIRPERSON: Okay.

20 **ADV PRETORIUS SC:** It appears from the documentation that we have and the investigators have obtained that the whole purpose of the audit and assessment was to enable a second phase of removal and eradication.

We have touched on this before but in your report at page 20 you answer the question whether in your

opinion the report that was produced, the final audit and assessment report ...[intervenes]

CHAIRPERSON: You mean in his statement, you said in his report.

ADV PRETORIUS SC: In his statement, I am sorry, at page 20, paragraph 38.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: In your statement you answer the question as to whether the report in its final form there
10 could be used as a basis for an effective eradication programme, removal and eradication programme.

MR ROETS: Yes.

ADV PRETORIUS SC: What is your answer to that question?

MR ROETS: Yes, Chair, my answer to that was that this document is not useful at all and it will not assist any of the contractors to effectively plan and cost such a big project. So, ja, ineffective ...[intervenes]

ADV PRETORIUS SC: What would they have to do in
20 order to quote?

MR ROETS: In terms of setting up a proper bill of quantities for people to quote on, they definitely need to redo this job.

CHAIRPERSON: So what you are saying is very important and I just want to make sure that you are quite definite

about it. If you are not so sure you need to say so.

MR ROETS: Okay.

CHAIRPERSON: Because Mr Sodi is going to come and give evidence here.

MR ROETS: Yes.

CHAIRPERSON: Are you quite satisfied and are you quite definite that this report really is of not much use for purposes of any effective eradication of asbestos and therefore whatever Blackhead and its joint venture charged
10 for it when its mandate was to – or included to assess asbestos, this report is of either limited use or no use at all? Is that something you are quite definite about?

MR ROETS: Ja.

CHAIRPERSON: Or you want to put it a little lower than that?

MR ROETS: Chairperson, what I want to say and I think that I am comfortable in saying about this is that the proposal, the costing that they originally have done per house, if I use my calculation and experience will definitely
20 cover the cost, it will be a very high cost but it will cover the cost, that this report that they have submitted will not give you the necessary information to accurately cost for a project like that and to remove a project because you cannot assess the risk, you do not what equipment to use, how much asbestos to transport, to what is the transport

requirements, how long this project is going to take to remove. So that information is definitely lacking in this report. It will not give the ordinary person on the street or registered asbestos contractor enough ammunition to do this job properly.

CHAIRPERSON: And you say that the assessment would have to be redone.

MR ROETS: According to me, I think the assessment needs to be redone.

10 **CHAIRPERSON:** Yes.

MR ROETS: And a proper bill of quantities set up.

CHAIRPERSON: Yes, okay.

ADV PRETORIUS SC: Alright, the point that you are making would be more graphically made by reference to the actual documentation and the report itself or attached to the report. Can I ask you to go to FS9, Chair?

CHAIRPERSON: Yes, so FS9?

ADV PRETORIUS SC: FS9, this is the investigator's report.

20 **CHAIRPERSON:** Okay.

ADV PRETORIUS SC: Do you have page 416? If you would go to page 416, please? And that is – well, perhaps, no, do not go there yet. At the top of the page you will see numbering in red and at the top left you will see numbering in black. The numbering in black top left is the numbering

as advised by the Chair, the number in top right I am told, Chair, is the insistence notwithstanding instructions for later record purposes of the bundles, but we can ignore the red numbers for your purposes. Chair, let us look at FS9, page 3.

CHAIRPERSON: Yes, for what it is worth, if there has to be a renumbering such as the one they have done here with the black numbers, I think they should try, if possible, to put it also – to put those numbers also on the right side
10 of the page because when you are paging through you cannot see where it is, it is difficult to see so you go according to the red number pages, page numbers, but then those are not the ones in regard to this particular one bundle that one is following.

ADV PRETORIUS SC: Yes, I took great care this last weekend to ensure this was done in accordance with your instructions.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: And I remember reading
20 somewhere that the black numbering should go on the top left, that was clearly an error on our part.

CHAIRPERSON: Yes, yes.

ADV PRETORIUS SC: And in future it will go in top right.

CHAIRPERSON: No, that is fine, it is just that when you page through, if it is on the right hand side, it is easy to

see.

ADV PRETORIUS SC: No, it makes sense, it makes sense.

CHAIRPERSON: Ja. Okay, you said page 3?

ADV PRETORIUS SC: Page 3.

CHAIRPERSON: Okay. Now is this the type of information that was contained in the report in relation to a particular house?

MR ROETS: Yes, Chair, these are some of the examples
10 that I was provided to look at and if you look at the information it is very lacking in terms of identifying the potential risk of fibre release.

ADV PRETORIUS SC: Well, what does it give you?

MR ROETS: It actually just say that the roof material is asbestos. On this particular example, it gives you a partial picture of the house and it is also saying that it is a pitched roof where in this case it looks more like a flat roof. Talking about a pitched roof and a flat roof, it will assist in quantifying the amount of asbestos because you
20 multiple if you have got a square meterage of a dwelling or a house and you know it is a pitched roof, you can put in some calculation to get a closer estimation of a quantity, so it is important to have a correct information but apart from that, this report that they have got per house does not give you any information about the asbestos.

I have seen this - maybe stepping off - in terms of a training that was provided to the guys that was doing the assessment, the example of training that was provided, it did not give the necessary information to the people that is doing the assessment to say this is what asbestos looks like. So only an example of the form, the shape of the material but nothing about any other types of asbestos that we need to have a look at. So that information should filter through to an assessment like this so that you can do
10 a proper and comprehensive assessment.

ADV PRETORIUS SC: Let us go back to this page of information in relation to a particular house. Is all the information that would be provided in the report in relation to a particular unit or dwelling?

MR ROETS: That is correct, that is all the information that was provided even in the final report, they only give amounts of houses that contained asbestos, not quantities or nothing else, only so much percentage of this district's houses contains asbestos. That is all the information.

20 **ADV PRETORIUS SC:** So if one looks at page 3 of bundle FS9, right, and one sees there in relation to a particular house certain information. You have got the erf number, you have got the GPS coordinates and then under the structural assessment report you have a photograph taken from a distance, the picture of the house is partly obscured

by bushes.

You then see that the information contained there is roof material, asbestos; roof type, pitched; house type, single; finishes on wall, plastered; visible wall cracks, no; house extended, yes; solar geyser, no. That is the full assessment of that particular drawing, is that correct?

MR ROETS: That is correct, yes.

ADV PRETORIUS SC: Now that information then is collated with other information to tell them the municipality
10 that houses of this type or qualifying under these conditions or items of this nature wit items of this nature, there are say a thousand in this district, a thousand in that district, but this is the sum total of what occurred.

MR ROETS: That is for information that is provided in the final report is they numbered the amount of houses that was inspected and then they used this information to say such a big percentage of the houses in that specific district contains asbestos.

ADV PRETORIUS SC: So if I took this page 3 that we're
20 talking about and I gave it to you and I said to you, Mr Roets, please tell me how much it would cost and what you would have to do to remove asbestos from this house, what would you tell me?

MR ROETS: Well Chair, I would definitely say, I will submit a cost as soon as I went back to the site and

assess the condition and the size so that I can give a proper cost of that.

CHAIRPERSON: Now, if you look at information that Mr Pretorius was reading to you on page 3, in respect of this house, how much of the information given there is really relevant for purposes of assessment for asbestos.

MR ROETS: Chair the only information relevant ...[intervenes].

CHAIRPERSON: Is the roof type of any relevance?

10 **MR ROETS:** The type assist – if you have got a size of the ground, square meterage of the house, the pitch or the type of house will assist, in this case it will not assist even the picture on that, you can't clearly see that it is Big 6 type of panel it looks like a galvanised sheet rather, so if the person that did the assessment is not taught properly, educated properly, how to identify asbestos then this might be misinformation ...[intervenes].

CHAIRPERSON: And finishes on the wall?

20 **MR ROETS:** Finishes on the wall, it's got no bearing ...[intervenes].

CHAIRPERSON: No relevance?

MR ROETS: No Chair no relevance.

CHAIRPERSON: Visible wall cracks?

MR ROETS: No relevance.

CHAIRPERSON: No value whether the house is extended

or not?

MR ROETS: No relevance.

CHAIRPERSON: Solar geyser?

MR ROETS: Potential relevance if it's a solar geyser versus, maybe an old geyser that they've got insulation around, it can be problematic but the solar no, no relevance.

CHAIRPERSON: But to just say solar geyser, yes or no.

MR ROETS: No relevance.

10 **CHAIRPERSON**: It doesn't mean much.

MR ROETS: No.

CHAIRPERSON: Yes, so roof material, asbestos, that's fine but the rest is either irrelevant or marginally irrelevant?

MR ROETS: Yes Chairperson, if you look at the original proposal the only thing that comes out of it for this specific example, it's the asbestos roof.

CHAIRPERSON: Ja.

MR ROETS: And that's the only information.

20 **CHAIRPERSON**: Okay.

ADV PRETORIUS SC: So basically, what the Department of – the Department in the Free State is told here is simply that, here is a picture of a house with a roof that looks like asbestos?

MR ROETS: Yes, Chairperson when I eventually were

asked to look at this, my original thought about the proposal versus the report is, it was a good document for Government to find out if there's a problem in a specific district and that's all. No information that is relevant for anybody to go remove or eradicate it to control asbestos at all.

CHAIRPERSON: Now, this might be difficult to say but you must tell me, if for purposes of an asbestos eradication programme, because that's how it's read, it
10 seems, if for that purpose you are given the task or contract to do an audit and assessment, what percentage of the job would you say is represented by the auditing part of the job, in terms of importance? Is that something you are able to say is it 50/50 percent is it 20/80 or is it difficult to say?

MR ROETS: I would say that the audit, Chair, would give you a good idea of how big is the problem and if you have got a problem, so in terms of, let's call it, high-level management of asbestos or high-level knowledge about
20 asbestos in your province or in certain districts it's a very good tool. In terms of eradication, and I think that is what the original purpose was, it doesn't give any information on the assessment of the asbestos. So, in the context of the original enquiry or purpose of this, I would say that the audit is about maybe 10% and the assessment would be

90%.

CHAIRPERSON: But if this job, the way it was done, would require, as you have said, if you are asked to do the next phase which was meant to be eradication as I understand the position. If it would require that you re-do the assessment would that not mean that in fact, you would not need their auditing because you'd have to, necessarily audit as well?

MR ROETS: Yes Chair, I totally agree with that statement,
10 I think we have found out that there is asbestos in that district now, so I think the audit portion is gone you don't need that information for the eradication anymore and the biggest portion of work would now require the proper assessment and setting out the bill of quantities and prioritising worse or better cases to start your work with.

CHAIRPERSON: So, would it be correct therefore, to say, for the purposes of an asbestos eradication programme doing auditing without doing an assessment doesn't help anyway because an assessment can't be done without
20 auditing? Therefore, if an assessment has to be done whatever auditing may have been done before becomes redundant because you are going to go to every house anyway, would that be correct?

MR ROETS: Yes, Chair, that would be correct if one maybe looks ...[intervenes].

CHAIRPERSON: So, it's not like you can build up on the work that they did in terms of auditing.

MR ROETS: Ja.

CHAIRPERSON: You can't do that because you will have to go to every house and therefore you will get to know how many houses are there.

MR ROETS: Yes, Chair, I think in terms of looking at future, maybe the audit will give you a good idea that I don't need to visit that specific district anymore because
10 there's no asbestos or there was no asbestos identified so I will not focus on that area or there's a very low amount of houses, I might have a look at it at a later stage.

CHAIRPERSON: Yes.

MR ROETS: Or use it as a training operation maybe, a training project but the focus for moving from hereon forward would be the assessment 100% on the assessment, I would not spend that much time on the audit.

CHAIRPERSON: Hmm, okay.

ADV PRETORIUS SC: You did a calculation just to
20 illustrate some of the issues raised by the Chair on page 21 of the – not of the report but of the FS1 Bundle Exhibit PT1 go to page 21 of Exhibit PT1 if you would in the final paragraph, you did a calculation ...[intervenes].

CHAIRPERSON: I'm sorry we're moving back to...[intervenes].

ADV PRETORIUS SC: To page 21 of PT1.

MR ROETS: Of FS1?

ADV PRETORIUS SC: We're in FS1, I'm sorry yes in FS1.

CHAIRPERSON: And then we go to 21 – page 21.

ADV PRETORIUS SC: 2-1.

CHAIRPERSON: Okay, alright and the 21 even on this Bundle FS1 is the black 21?

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Okay, alright.

10 **ADV PRETORIUS SC:** Look please at the second paragraph on that page.

MR ROETS: Yes.

ADV PRETORIUS SC: You did a calculation based on certain assumptions, you said if there were 300 000 houses assessed, which is the number that was in the documentation in this case, correct?

MR ROETS: Sorry Chair, I think the pages is messed up in this copy.

20 **ADV PRETORIUS SC:** Alright go back to – do you see the top left-hand column...[intervenes].

CHAIRPERSON: Just check that he has got the right Bundle first, because – so when there's a reference of a page number it's the black numbers is the right ones.

MR ROETS: Okay.

ADV PRETORIUS SC: Look at paragraph 2 if you would

please, you did a calculation.

MR ROETS: That's correct.

ADV PRETORIUS SC: On certain assumptions, now we know that the number of houses that had to be assessed here was not more than 300 000.

MR ROETS: That's correct.

ADV PRETORIUS SC: Correct and we know in the final report that 155 workers were trained over a few days and were set to photograph houses.

10 **MR ROETS**: That's correct Chair.

ADV PRETORIUS SC: And we know that, according to the report 31 days was spent doing this work, all this work was done in 31 days.

MR ROETS: That's correct with a statement, Chair, in the final report that they had trouble with people being absent coming to work and some labourer issues so it might even be less than 31 days but the time stated in the report is 31 days.

ADV PRETORIUS SC: So, you say it might even be less?

20 **MR ROETS**: It might even be less.

ADV PRETORIUS SC: Let's assume 31 days and you work out that if that number of workers worked for 31 days in an attempt to cover 300 000 houses, you would have about two to five minutes per house?

MR ROETS: That's correct Chair.

ADV PRETORIUS SC: That's to take into account too walking between houses, getting access, taking the photographs, logging the data and the like.

MR ROETS: Yes, Chair, I just for interest sake, started with a calculation on the amount of houses, I think that they even mentioned that they had to do 6 000 houses extra, additional that they went to and they trained 155 people of which, some of them left and didn't return and some of them were absent on several occasions and I did a
10 calculation on the amount of houses, time spent in these houses at the end of the day came out to about three to five minutes that they have to spend to assess a house, take a picture, log the data into the hand-held device that they were provided and then submit the information to a central data base and then travel still to the next dwelling or the next house and do the next assessment.

ADV PRETORIUS SC: Alright in paragraph 41.2 on page 24 of your statement TT1, you say what you would do in a project of a similar nature if you were briefed to do so.

20 **MR ROETS:** That's correct.

ADV PRETORIUS SC: Tell the Chair about that please?

MR ROETS: So, the assessment for 300 000 houses in my capacity, in my business, I've got 7 personnel that is trained to do this so I will probably plan, because I need to take all my people to the site and assess the asbestos,

spend proper time, allocation of each house to properly assess that house, photograph, capture all the information so that I can set up a proper report for this. I worked, roughly take about two to three years to do an assessment a proper assessment of this nature.

ADV PRETORIUS SC: And cost?

MR ROETS: Cost calculation, anything between R20million an R30million for the entire project.

ADV PRETORIUS SC: For a project taking almost 3
10 years?

MR ROETS: Yes.

CHAIRPERSON: Now, when you say, in paragraph 41 of your statement how long it would take to do this kind of job, to what extent is that based on your own experience of being involved in this kind of job there in the past years?

MR ROETS: Chair, yes I've been involved in several projects like this for the mining industry and we spend, roughly about 30 minutes per house – 30 minutes to 45 minutes, a lot of the time is spent actually gaining access
20 to a house because people tend to go to work sometimes and so you will battle to get into a house and sometimes you have to set up a specific time after work to go assess houses like this so definitely hinders your assessment and time that you have to spend but I would say anything between 30 and 40 minutes spent per house to properly

assess and log all the information plus time spent on the final report to get all this information into a proper bill of quantities. So, in total I would say round about 30 to 40 minutes per house, estimation.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Is there anything you wish to add in relation to any of the questions you've been asked or in relation to your report?

MR ROETS: No Chair I'm finished.

10 **ADV PRETORIUS SC:** Thank you.

CHAIRPERSON: On a few occasions, in your report and in your oral evidence you have indicated that your opinion is based on the information you were given and I got the impression that there may be instances where you would have liked to have more information, is that correct are there areas where you would have like to have more information in order to give an opinion or to give a more definite opinion?

20 **MR ROETS:** Yes Chair, certainly when I had a first look at the information there was definitely lack of definition in terms of the requirement from the requested side to our side, what is needed, so guidance for the contractor maybe on, what is meant by the words audit and assess and what is the outcome that I would like form such an assessment. So, information like that there's definitely – if there was

any, would assist in making proper comments. In all this information I had five examples of houses that was assessed, I would have liked, maybe one or two of examples of bigger dwellings, bigger houses, houses that might also contain fascia boards and ceiling panels and see what is the information that was actually recorded on those houses so that one can make a fair comment about asbestos other than roof sheeting because what I've seen from information that I've got is that, firstly, these 155
10 people that was used there might be a problem in terms of how they were actually told to assess, what's the level of training that were provided. The little information that was provided in the final report, certainly did not tell them what does asbestos look like and I think that should have been the first thing that came out to, let's call it, declare somebody competent to do an assessment, to do asbestos assessments so that information will definitely assist more to make comments about it but information provided and the final product that was provided in terms of the final
20 report certainly show that there was no clear indication in the beginning of what is required, what do I want.

CHAIRPERSON: Okay but what I would like is that if there's any information that you didn't get which the investigators may have access to that they make an attempt to get you that information and if necessary you

can do a supplementary statement or affidavit to supplement your evidence to say, when I prepared my affidavit/statement of 30 July 2020, in respect of this aspect this is what I had but I since had access to the following and I stand by what I said or in the light of this further information, I have a different view and this is what I wish to say, that's what I'd like you to do, is that alright?

MR ROETS: That's right, thanks Chair.

CHAIRPERSON: Okay.

10 **ADV PRETORIUS SC**: On that, Chair, two things on your answer to the Chair, you mentioned firstly information given to the contractors by the department as to what was required of them, you say that was information that was inadequate?

MR ROETS: Yes, Chair, I was just looking at the amount of money that we're talking about and the original – the proposal, I think, 36 or 37 pages long of information that will be done of which one or two pages was about the asbestos and the rest was about the structure and the
20 engineering of the project and then the appointment from the other side was two pages for R255million to assess and eradicate or the first phase as they call it is the assessment – audit and assessment of the asbestos but ja, in terms of my view of the documentation that was bracing this whole project, it was very, very limited.

ADV PRETORIUS SC: Yes, you make the point that in a couple of pages an instruction was given to perform work and that work was described in a relation to a project, extensively and I stress extensively, worth R255million.

MR ROETS: That's correct.

ADV PRETORIUS SC: But you then went on to talk about the second category of information that you were given.

MR ROETS: That's correct Chair.

ADV PRETORIUS SC: And you commented on the fact
10 that, that information was false, that we should note that, that is precisely the information that the contractors gave to the Department.

MR ROETS: That's correct, that's the information that was provided to the Department as a final product, you'll find examples that I did receive that was their final product in terms of their assessment, it's got very, very little information.

CHAIRPERSON: Tell me, if the Department had consulted
20 somebody or somebody who has knowledge and experience of the type of job that Blackhead and Diamond Hill were given to you do you think, based on your experience that they could have agreed to pay so much money for the auditing and assessment of asbestos in this project?

MR ROETS: I think, Chair, that if they were provided some assistance from people in the field that has got

knowledge of such projects, they might have thought that this money is a little bit too much for such little work.

CHAIRPERSON: But what I'm talking about is, you see, I'm a Judge if I'm going to give somebody a job to, electrical work in my house I need to have an idea what electricians normally charge because otherwise if I don't have an idea about that, I could be charged an arm and a leg and I wouldn't know and then I pay and then I find out later that I paid far more than I should have been charged.

10 Now in the context of the department I would have thought that, unless the people who made the decisions have the knowledge and the experience of what is required in this type of job and what should be charged, unless they themselves had that knowledge I would have expected that they would seek a professional who could advise them, to say one, is this price that is being proposed here a reasonable price in the industry for this kind of job and if this advice was no, this is too much then they would go back to Blackhead then Diamond Hill can say, no, no we
20 can't agree to that but if they were told no, no, no, this is a reasonable price and they are able to rely on that advice then they will go along. So, my question is, whether you think, if they had consulted somebody who might have the same kind of experience as yourself in this sector, whether that person would have advised that the price they agreed

to pay was reasonable for this kind of job.

MR ROETS: Yes, Chair, definitely they benchmark with the assistance of approved inspection authority or one of these asbestos contractors that handle such a big contract, they will definitely make a better decision on the amount that they have to pay for this type of work and also to define, in terms of the documentation provided that this is what I need. The product, at the end of the day, need to be in line with the asbestos regulation.

10 **CHAIRPERSON:** Yes, yes and you say that based on your experience in the industry, a reasonable price for this kind of job would have been between R20million and R30million, is that right?

MR ROETS: That is correct, Chair, I've actually estimated a lower cost, my costs in terms of time spent and resources spent, I think came out to about R8million to R9million and then I even went to town and called it R20million so that we can just compare it, but ja the cost is definitely less than R255million.

20 **CHAIRPERSON:** Ja okay.

ADV PRETORIUS SC: Thank you Mr Roets, thank you very much.

MR ROETS: Thanks.

CHAIRPERSON: Thank you very much Mr Roets for coming to assist the Commission, thank you for coming to

give evidence, if necessary we'll ask you to come back but if – possibly try and spare you with the trouble but if there is any further information that can be given to you, which you had not been given to you, which you think is important in order for me to have a proper and correct picture of your evidence about his project, please talk to the investigators and the legal team so that, that can be done, so that one will have a correct picture.

MR ROETS: Thank you Chair.

10 **CHAIRPERSON**: Thank you very much, you are excused.

MR ROETS: Thank you.

CHAIRPERSON: Mr Pretorius?

ADV PRETORIUS SC: Chair, the witness that was to follow is Mr John Matlakala he is the procurement person in the Department in the Free State, Human Settlements Department in the Free State. Much of the arrangement for this week happened before you asked me to deal with the evidence and lead the evidence Chair, so what I say I have only, in a broad detail, I've taken instructions over the long
20 adjournment. Mr Matlakala was informed on the 14th of July that he would be required to attend at the Commission during the week of the 3rd to the 7th of August. He was then informed on the 27th of July that he was required to come on the 5th of August, that date, he was informed, was changed when we arranged the detail to the 4th of August

and at all stages, he agreed that he would come on the 4th of August. Then on the 3rd of August, yesterday, we received an email from Mr Matlakala saying that he was no longer represented and he would tell us when he was represented and when he could then appear. In response to that a letter was drafted and sent who – to Matlakala advising him that he had confirmed his availability a date had been reserved and he must attend and if he has anything to say about his appearance and representation, 10 he must apply to you Chair, it's not in our province as evidence leaders and as investigators to grant or refuse postponements and the like, when dates have been arranged and this was told to him in a letter dated 3rd of August 2020 confirming that he was required to appear today. We received a reply today from Mutlaw attorneys representing Mr Matlakala, who said or who say in the email that they act on behalf of Mr Matlakala that they acknowledge that he was required to provide oral evidence before the commission today but they say:

20 “Kindly take note that our offices received instructions during the course of the midnight hours on 3 August 2020.”

So that is midnight hours last night I presume that means.

“And had been unable to adequately prepare a substantive application for postponement in terms of

Rule 11 and accordingly request a postponement of the proceedings today to allow our client adequate legal representation. We trust that you find that in order.”

I think we have tried to respond verbally to that but there has been no response to that and Mr Matlakala did not arrive and that is the position we are in now with regard to Mr Matlakala.

CHAIRPERSON: So if he is not here, I beginning to wonder
10 whether the commission should not just issue summonses against – you know against everybody because it looks like the stage at which we are more and more people come up with some or other reason for not appearing. And whereas in the past just notification to people seemed to be enough at least for most for them to come and appear. But now we issue notifications and people either do not come or send emails to put up one or other reason for saying they will not be able to come. So it seems that we must really seriously consider compelling everybody.

20 **ADV PRETORIUS SC:** Yes Chair.

CHAIRPERSON: Otherwise we will keep on having these problems.

ADV PRETORIUS SC: Yes. One of the significant differences between the witnesses or many of the witnesses – not all – many of the witnesses that are now presenting

evidence before you Chair is that they are in one way or another implicated.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: And are being called to account.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: So it seems there the reluctance is creeping in.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Well not creeping in – rushing in.

10 **CHAIRPERSON:** Yes. Yes. So I think that probably each work stream must have a look in the weeks ahead and see people who have been notified to appear and apply their minds to the question of a summons even if a notice to appear has already gone to consider whether a summons should not be issued to make sure that people will be – will be here. And if their – because then failure to appear when there is a summons that has been served will be a criminal offence.

ADV PRETORIUS SC: Yes indeed Chair.

20 **CHAIRPERSON:** Ja.

ADV PRETORIUS SC: Well the problems do not end there though because Mr Mokhesi who is the accounting officer for the Free State Department has also raised certain issues. He agreed to come during the week. We notified on the 15 July. He was then informed of a particular date and it

appears he confirmed that he would appear on the 5 August 2020. However last week we received an email saying that they had only received six clear court days' notice – that is incorrect they received over two weeks' notice and agreed to attend on that basis and then requesting an alternative convenient date. The attorney said he is not available on six days' notice well that is a matter between attorney and client. The client had been given many more days than that and his counsel apparently has tested positive for Covid-19

10 so that is the situation there. We have sent a similar letter – the secretary sent a similar letter to Mr Mokhesi on the 3 August – yesterday saying – acknowledging the correspondence and the communications and saying that the “Please be advised that it is not within the power or discretion of the investigators or the legal team to excuse you from appearing on the commission on 5 August you are therefore required to appear as agreed and explain any reasons you might have for a postponement of your evidence.”

20 And that is the situation with Mr Mokhesi. My instructions are that we are told that he has not responded to that. We will make further enquiries both with the attorneys and the – Mr Mokhesi himself and revert to you Chair. Thursday and Friday are full though – more than full.

CHAIRPERSON: Ja. Mr Mokhesi was supposed to appear

tomorrow?

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Yes. I guess that – well I would be handing down my decision in relation to Mr Fuzile's application for Leave to Cross-examine Mr Van Rooyen tomorrow at ten. So I guess that if Mr Mokhesi has not made a substantive application – what was his reason for – oh is it the lawyer who says I am not available within six days?

ADV PRETORIUS SC: Yes the – Mr Mokhesi acknowledged
10 receipt of notice.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Agreed to attend.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Agreed to attend during the week and then on the particular day – tomorrow.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: It seems he only gave his attorneys six days or short notice.

CHAIRPERSON: Yes.

20 **ADV PRETORIUS SC:** For the attorney to prepare and brief counsel.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Counsel that they want to appear has Covid and the attorney says he has not had enough time to prepare.

CHAIRPERSON: Yes. Well I think in that position we must be here at ten o'clock when I finish with my decision, we will be expecting him to be here and if he is not here – I mean if he is here to make an application for a postponement, we will deal with that. If he is here and he is able to give evidence we continue. And if we are here and he is not here to either make an application for a postponement or give evidence then we will have to deal with that default on his part.

10 **ADV PRETORIUS SC:** Yes.

CHAIRPERSON: Ja. We will have to – because it would mean he – he was asked to be here, he agreed to be here and then decided not to be here.

ADV PRETORIUS SC: Yes Chair.

CHAIRPERSON: On his own.

ADV PRETORIUS SC: And that against the background have – of having to appear and having been given every opportunity to appear and answer the case.

CHAIRPERSON: Yes.

20 **ADV PRETORIUS SC:** That was made.

CHAIRPERSON: And it is serious for anybody to – not to appear in those circumstances but I think it is even more serious when we are talking about either a HOD or a former HOD of any department who is an accounting officer who was an accounting officer.

ADV PRETORIUS SC: Correct.

CHAIRPERSON: So we will be here. If he is not here then we will – we will look at the situation and necessary decisions will be taken.

ADV PRETORIUS SC: Thank you Chair. In the meanwhile, I will communicate your directive to the evidence leaders.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: In regard to summons.

CHAIRPERSON: Ja no that is fine. Okay we will then
10 adjourn for the day.

ADV PRETORIUS SC: Thank you Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS TO 5 AUGUST 2020

