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20

PROCEEDINGS COMMENCE ON 17 OCTOBER 2019

CHAIRPERSON: Good morning Ms Gcabashe, good morning everybody. I am sorry we are starting 6 minutes late.

ADV GCABASHE: Good morning Chairman.

CHAIRPERSON: Because of some urgent stuff I had to attend to. Are you ready?

ADV GCABASHE: Yes, yes I am Chairman.

CHAIRPERSON: Okay. Good morning Ms Rockman.

MS ROCKMAN: Good morning Chair.

10 **CHAIRPERSON:** Thank you. Okay. Let us continue.

ADV GCABASHE: Thank – thank you. Ms Rockman yesterday when we adjourned we were discussing what provision had been made for the payment of the 114 million to Estina as an implementing agent over the three year period that this 114 per annum had to be paid. You were going to have a look at your documentation and just assist us in locating the form in which this allocation had been made for Estina.

I just for convenience sake I actually did the exercise last night and I would point you to ER43 which is in HH13B at page 563. We have dealt with this letter before. So it is ER43. It is part of your
20 original submission. And I just actually thought that quite a few of the numbers are – are very well summarised in ER43. In any event for purposes of the record as well.

CHAIRPERSON: What page did you say it is?

ADV GCABASHE: It is page 563 Chairman.

CHAIRPERSON: Thank you.

ADV GCABASHE: Of the original bundle. But it is bundle B because it is annexure it is in bundle B.

CHAIRPERSON: Yes I have got it.

ADV GCABASHE: And...

CHAIRPERSON: Have you found it Ms Rockman? Not yet?

MS ROCKMAN: Not yet.

CHAIRPERSON: I think it is Exhibit HH13B on the spine.

ADV GCABASHE: Apparently the three files that are on the table – yes.

10 **CHAIRPERSON**: I think you may have confused her by saying part of her original submission. I thought when you said that you meant the bundle which has got her main affidavit which is A not B. So – so maybe she got confused because of that.

ADV GCABASHE: Chairman. If those are the other [intervenes].

CHAIRPERSON: Have you found it?

MS ROCKMAN: I think so – 563?

ADV GCABASHE: Yes.

MS ROCKMAN: Yes.

ADV GCABASHE: It is Annexure ER43 at page 563.

20 **MS ROCKMAN**: Yes. I am there.

ADV GCABASHE: If those are the other bundles you might want to bring them a little closer. I am not sure if those – that is A and C that you left.

MS ROCKMAN: Yes.

ADV GCABASHE: I think just bring them a little closer to the extent

that we might need them. Not too close but at least they should be somewhere where you can reach them without having to get up.

CHAIRPERSON: Ja maybe her chair is too far away from...

ADV GCABASHE: From those. You might...

CHAIRPERSON: She might wish to bring it closer.

ADV GCABASHE: Thank you Chair.

CHAIRPERSON: But do whatever makes you comfortable.

MS ROCKMAN: Yes the other Chair.

CHAIRPERSON: Oh

10 **MS ROCKMAN**: The person is used as storage or [indistinct] we will manage it is fine thanks.

CHAIRPERSON: Okay alright.

ADV GCABASHE: Thank you. And really at paragraph 6 and 7 is what I just wanted to bring to your attention. That is ER 43 page 563 paragraph 6 and 7.

MS ROCKMAN: Yes.

ADV GCABASHE: As you speak to the issues maybe you can just say that is a correct summary of what you are going to be dealing with. Then I also would like to just before you start point you to in very
20 specific terms to paragraph 7 and confirm that the R12 million that is recorded in paragraph 7 was going to be drawn from the Mohuma Mobung allocation, do you confirm that?

MS ROCKMAN: Yes Chairperson that is correct.

ADV GCABASHE: Excellent. Then what is – what actually happened in practice is recorded in that paragraph 7 of ER43. The next point –

really these are just points I am making in just summarising what I understood of your evidence yesterday.

Smaller projects which were to be funded under the Mohuma Mobung allocation were sacrificed in order to fund the Vrede Dairy Farm Project. Is that correct?

MS ROCKMAN: That is correct Chairperson.

ADV GCABASHE: Thank you.

MS ROCKMAN: Yes.

ADV GCABASHE: So the 30 million that was paid to Estina on the 9
10 July was drawn from the 35 million that had been allocated to Mohuma Mobung from the MTF allocation of 2012/2013.

MS ROCKMAN: Yes that is correct.

ADV GCABASHE: And this is – this is actually just a link I would like to make. When Ms Anna Fourie was here she told us that when the CFO of DARD approached her for the payment of the 30 million she informed her that all that was left in the Provincial Revenue Fund was 5 million. And I am really just trying to find out if the 5 million that Anna Fourie spoke of is the balance of this 30 or is it a totally different amount? That is the only – I am just trying to understand the evidence.

20 **MS ROCKMAN:** No I think Ms Fourie would have made reference to the cash available in the Provincial Revenue Fund.

ADV GCABASHE: I see.

MS ROCKMAN: Not necessarily available for this project or Agriculture.

ADV GCABASHE: Thanks. That clears it up for me because then there

is no link between the two.

MS ROCKMAN: Yes.

ADV GCABASHE: If there had been I would have asked a couple of other questions.

MS ROCKMAN: There was clearly no cash available to accommodate a request from any department over and above 5 million.

ADV GCABASHE: Yes. Absolutely, thank you. Then if you look at page 565 there you have a breakdown of the budgets. I think I am going to allow you now to – and I am simply using ER43 as a reference
10 document.

MS ROCKMAN: Yes.

ADV GCABASHE: So where you think the recording is not correct there for instance there is that table that tells us what was allocated. Please assist and tell us to correct that document as well as you give us the correct figures.

MS ROCKMAN: Okay.

ADV GCABASHE: Simply because I think ER43 is a very useful summary. Thank you.

MS ROCKMAN: Thank you Chair. I think you indicated yesterday the
20 information is almost split between – there is a part in the main affidavit and another part in the supplementary affidavit. But essentially for 2013/2014 the funding was 53.950 from the Comprehensive Agricultural Support Grant, the CASP grant.

ADV GCABASHE: So under CASP?

MS ROCKMAN: There was 53.950.

ADV GCABASHE: [Indistinct] 53 – just over 53, correct?

MS ROCKMAN: Ja. And then from infrastructure enhancement allocation that is the provincial fund it is 60 million. Then at the time Agriculture Fishery and Forestry withheld the funding.

ADV GCABASHE: Yes.

MS ROCKMAN: 24 million of that 53.9 was already spent. So they effectively withheld 29.950 million then. In the adjustment budget that year we reduced Agriculture's overall allocation with 10.962 million. Then there was a separate submission made by Agriculture in
10 December 2013.

ADV GCABASHE: Yes.

MS ROCKMAN: Which was then authorised for payment by HOD Treasury and that funding was then appropriated in the special Adjustment Appropriation Act we provided for 25 million which came from all other uncommitted funds at the time and there was an internal reprioritisation within the Department of Agriculture that made up that balance of 4.9.

ADV GCABASHE: So just – I beg your pardon. If you just repeat the last sentence then I will ask my question?

20 **MS ROCKMAN:** The 30 million that was authorised for payment in December 2013 by the HOD it was then appropriated in the special Adjustment Appropriation Act. The 4.950 million came from internal reprioritisation in Agriculture and 25 million was additional funding that we took from all other uncommitted funds and made available in that special Adjustment Appropriation Act.

ADV GCABASHE: Now can I just understand this clearly. So the 25 million you looked of it within the monies available to the Department of Agriculture and Rural Development.

MS ROCKMAN: No, no. All departments in the province. Everyone who had unspent funds. That is our standard procedure come January. Because in the first adjustment – sorry – I think the first Adjustment Appropriation departments are defensive saying no we have committed the funds, you cannot take our fund. So you give them the benefit of the doubt. Come January we do not listen to anyone. If it is not
10 committed on the system your money goes. It is all Treasury's unfortunately work like that.

ADV GCABASHE: That is fine. But at least we know that in December representations were made, they were considered and you were able to find an additional 29.9.

MS ROCKMAN: Yes.

ADV GCABASHE: Really 30 million.

MS ROCKMAN: Ja.

ADV GCABASHE: Okay.

MS ROCKMAN: 20 – ja.

20 **ADV GCABASHE:** And this is in 2013/2014?

MS ROCKMAN: Yes.

ADV GCABASHE: So what were your totals that were available? Were you able to meet the 114 million for the financial year 2013/2014?

MS ROCKMAN: I think more or less we did yes.

ADV GCABASHE: The question I have is really related to the planning

function of the department. They obviously did not have this money. They had not – they had not asked for it originally in the 2013/2014 allocation. And I just want to understand the regularity of waiting for people to scramble around in December of 2013 looking for money. How responsible is that of an accounting officer or is the standard I am setting too high? Does it happen in the normal course that people will be scrambling around to try and find money for somebody?

MS ROCKMAN: No. At the start of 2013/2014 if you go back to the Annual Performance Plan and the Budget Vote Statement. They did
10 provide for it. The CASP funding of that 53.950 and the 60 million that would give you almost the 113 million that was require for their commitment.

ADV GCABASHE: I see.

MS ROCKMAN: The crisis came when DOVE stopped the funding and there was that shortfall of the 29.5 so they had no option but in adjustment to come back to us to ask. Guys we need to make up this shortfall because the CASP funding was withheld.

ADV GCABASHE: No I am satisfied I think I now understand clearly what did happen. Can we then look at the next financial year
20 2014/2015?

MS ROCKMAN: Yes the [intervenes].

ADV GCABASHE: What provision was made?

MS ROCKMAN: From Infrastructure Enhancement Allocation we made provision for 35 million. That was in the Budget Vote Statement. Then going towards the Adjustment Appropriation there was 10 million in

reprioritised funds and provincial own revenue that was made available. Infrastructure Enhancement Allocation we increased with that 10 million for farmer support and veterinary services was decreased with 4 million. But further in the Special Adjustment Appropriation Act we reduced the Infrastructure Enhancement Allocation with a further 3.803 million.

ADV GCABASHE: So your short answer is provision was made and with the usual standard way of finding money that was applied even in 2014/2015?

10 **MS ROCKMAN:** Yes. Although it was short of the - whatever commitment they had. What they had foreseen in the original agreement as structured.

ADV GCABASHE: No say that again? I am sorry I did not – I did not quite understand that.

MS ROCKMAN: In – for example if you use 113 million was the commitment for 2013/2014.

ADV GCABASHE: Yes.

MS ROCKMAN: We could only make 35 million available in the next financial year.

20 **ADV GCABASHE:** Yes.

MS ROCKMAN: For 2014//2015.

ADV GCABASHE: Yes.

MS ROCKMAN: So it was far short of – if it was supposed to be 113 million it was far short of that.

ADV GCABASHE: Please stop there. This is – this is precisely what I

am trying to understand because I just have Section 38.2 in my mind and Section 38.2 of the PFMA says:

“Do not commit a department to a liability that you have not provided for.”

And I think what we are teasing out now is what does provided for mean in real terms. So if you know you are only going to have 35 million from a particular source of funding does what the HOD signed up to on the 5 June and then again on the 5 July constitute providing for as set out in Section 38.2?

10 **MS ROCKMAN**: Not at the point of the first signature of the contract that was then redone. But when Treasury signed off ultimately when they asked for that first 30 million and part of the conditions was the contract must be reviewed and so forth I think the MEC signing off at that point fulfilled the requirements of the PFMA the Revenue Fund was then committed.

ADV GCABASHE: Okay. That helps. That does help. I – I did not really want to go all the way to 2018 because I was more interested in what might have happened up to the time that the agreement with Estina was cancelled. Unless there is something particularly important
20 you want to bring to the Chairman’s attention in relation to the next few years so 2015/2016, 2016/2017, 2017/2018 you may – you may wish to do so if you really think it is important for the Chairman to understand what – what was going on.

MS ROCKMAN: I think the details are set out in the – in the affidavits and the annexures except to say that from – at the time FDC was then

appointed to take over the project there is a portion that went to the settlement of Estina but another portion then went to FDC for the ongoing project management of Vrede Dairy. But I think those details are set out.

ADV GCABASHE: One the sections that I would like to cover this morning however briefly is the FDC appointment and monies that were paid to the FDC particularly because it is an issue that has come up at the hearings. So when we get to that you may find a space somewhere in that.

10 **MS ROCKMAN:** Okay.

ADV GCABASHE: In those questions to elaborate on this particular point.

MS ROCKMAN: That is fine.

ADV GCABASHE: Can I then go back to general questions? I have – I have always wondered whether EXCO at any point and especially if you attended those meetings considered the fact that there were other projects that required funding – other dairy projects. So we know about the Qwa-Qwa Project. We know about the Setsoto Dairy Project because those were mentioned in that submission to the Premier. The
20 submission of the 28 February. Did EXCO express a view at all on how those would be funded if all the Mohuma Mobung money was essentially being channelled to the Vrede Dairy Project?

MS ROCKMAN: I think it was included in all of the departments' presentations when we were doing the budget process. So it would have been flagged. But as much as we made provision for Mohuma

Mobung then from initially it was set out that we would be supplementing from provincial funding and Vrede Dairy would be brought into the Conditional Grant Funding. When DOVE stopped I think the reversed that most of the other project – other agricultural projects was funded through CASP and Ilima Letsema and our own funding focussed on accommodating Vrede Dairy. So the other projects continued with the Conditional Grant Funding.

ADV GCABASHE: Yes I will accept that and interrogate that with Mr Thabethe because I am not sure about the voracity of what you are
10 saying but that is fine. That is your information on the issue. I have often wondered as well why the Glen Agricultural College was not requested quite early on to assist at the Vrede Dairy Farm Project. Because it would have been a cost saving and what they do at the Glen Agricultural College I know in part deals with what was happening at the Vrede Dairy Farm. Do you know – do you have a view on this?

MS ROCKMAN: No I have no – I have no view.

ADV GCABASHE: Okay. That is fine. Then you know – the – a question the Chairman has asked a couple of witnesses is – can anybody explain the urgency in getting this particular project off the
20 ground in the 2012/2013 financial year when monies had obviously not been properly set out or provided for – for this particular project. You deal with these matters at your paragraph 224, 2.2.4 to 2.2.13. So we are at Volume A of your affidavit page 17 to 22. And I would like you to just speak to those points but at the same time if you could find – have you found those pages?

MS ROCKMAN: Yes. Yes Chairman.

ADV GCABASHE: Now if you could also find Reference Bundle D – Reference Bundle D? It must be – it may just be one that is up at the top because it is a reference bundle.

MS ROCKMAN: Oh okay.

ADV GCABASHE: Not an affidavit bundle. So it is Reference Bundle – so it is Exhibit HH Reference Bundle D. And the pages that correlate to what you are about to deal with are pages 1364, 136 – let me go slowly.

MS ROCKMAN: Yes I am there.

10 **ADV GCABASHE:** Are you there?

MS ROCKMAN: Yes.

ADV GCABASHE: So it is 1364 which is a letter by Mr Moses expressing certain concerns. The next one is 1366 – page 1366 which is the letter from Advocate Ditira also expressing concerns and the last one is the more important one of the three. It is a – it is an email from you to Mr Bertus Venter that will be found at 1367. And I – I simply want without going into the detail of these want to say if you look at the very last line on your email you seem to believe there – you too seem to believe there is some urgency in getting this project off the ground.

20 Can you just speak to these issues for us?

MS ROCKMAN: I think we need to go back to the state of the province address of that year February 2012. The project is announced. Then it is taken up in the Provincial Budget Speech there is reference to it. Then the budget speech of the department there is reference to it. Now that process concludes by March. So in the new financial year you

expect departments are beginning to implement. Now we come to June. Nothing has happened. So the first urgency is created in the EXCO decision to say that was the meeting of 13 June 2012 the one that we – the resolution is ER7 where it says we know now the budget provision that was made. We know what comes to EXCO was a request for 84 million. The resolution clearly says the matter must go to Treasury Committee as a matter of urgency. I am then informed by Mr Venter on 18 June that is after the EXCO meeting that he has received this request from Advocate Ditira he was at the time on leave. They then
10 see that but there is already an agreement concluded. There has to be – they have to look at it and advice. I then inform him I have also been informed there is a Treasury Committee on the 19 June on – also on a Vrede Dairy matter. Now when I joined that Treasury Committee meeting the - had my own meeting as DG so I was not there from the start. So I joined them later. So I – I am not able to say what was the extent of the discussions. But at the time I joined it became very clear to me that Treasury was not in possession of the documents that even the state law advisors had. They – they did not have enough information to make any kind of informed decision and we then had to
20 go through that process to say let as Agriculture make available information to all of us so that we can see what is it that you are talking about. Because you are taking us by surprise but equally you are pressuring this thing must – must start being implemented. Our communication then with Mr Venter is not the urgency to get the project implemented. It is the urgency to get finality on can we get the

framework documents in place so that we are able to report to the next EXCO? Can we resolve the matter or not? That was the urgency I was referring to him to. You would – you would see that from the last email that you make reference to the one on 1367. You could see I had to get clarity from the HOD Agriculture. I also did not understand all the complexities to enable the state law advisors to say, as we start to try to figure out can we redraft and advise Treasury? Are we able to get to some kind of clarity where we are? And in terms of urgency let us try to finalise enable us to say yes we can proceed, no we are going to go
 10 back to EXCO to say we are not able to proceed. But in terms of the urgency of starting to implement if it has agricultural dynamics whether it was seasonal, whether it was agriculture will be better placed to give that opinion.

ADV GCABASHE: Yes because I think what is important as well about this email that you wrote is it is written on the 2 July before the second agreement was signed. And after listening to your testimony yesterday I really wondered why you simply and when I say you, you as government would not have said to the Department of Agriculture and Rural Development scale back it is one of the options you gave
 20 yesterday as you describing what would happen or just postpone this. And not sign the second agreement of the 5th and 7th July. And hence my question relating to why you simply did not say as Moses had indicated in his email you have not provided, you cannot do this, stop it.

MS ROCKMAN: I think we are – we were all functioning the same

environment at the time. Now we have been through the budget process. We have been through Lekgotalas. We know exactly what is in the budget. Now days before knowing what the budget is there is a submission to EXCO to say, we want to upscale this project. EXCO pronounces itself. Now would it be realistic then to expect we would go back to say no scale down this thing you did not make budget provision for it. Mr Moses shared his concerns but this does not rise to the level of issuing a written advice for a directive from executive authority having financial implications as provided for in the PFMA. His
10 concerns I think everyone was in agreement with him. Everyone had these concerns. That the affordability of this we did not foresee at the time of compiling the budget for 2012/2013 nor the financial implications going forward given the broader fiscal framework within which we were operating.

ADV GCABASHE: No thank you. Thanks for clarifying that. I would like to move on I am trying to concertina matters this morning.

MS ROCKMAN: Yes.

ADV GCABASHE: To move onto the next aspect and that relates to the cancellation of the Estina contract. Did you verify the amount that was
20 claimed by Estina on cancellation of that contract?

MS ROCKMAN: Provincial Treasury was not involved at all in the consultation process of reaching those funding – those provisions.

ADV GCABASHE: Again you say it is not an area of oversight that you would have been expected to discharge?

MS ROCKMAN: No. We were just not involved. We were not

consulted to say this is where we are, this is going to be the financial implications arising from a cancellation. We subsequently asked the state law advisors how did – when you arrived at these conclusions on the amounts owed what was the process? And they – they confirmed that Agriculture confirmed to them that there were outstanding goods and services invoices and that they had verified it. So we were not involved in the process of quantifying or verifying. It was between Agriculture and the state law advisors.

ADV GCABASHE: Okay because from what we have seen of the – of
10 the evidence and certainly what Mr Jankielsohn said as well this money was not due. This amount is not the amount that was due. But if you say you had no oversight role in relation to the 280 million that was paid to Estina we will deal with it with Mr Thabethe because that is really where we are right now in the leading of his evidence. I now would like to move onto the FDC.

MS ROCKMAN: Yes.

ADV GCABASHE: And the appointment of the FDC. The FDC being the Free State Development Corporation. I note that you state that just
20 over R311 million was noted as possible irregular expenditure regarding Vrede Dairy in the financial year 2017/2018. In the same year there was irregular expenditure regarding implementing agents.

MS ROCKMAN: Yes.

ADV GCABASHE: That came to 815 million. So if you go to your supplementary bundle page 4-1. That is where you - you set out a table showing this irregular expenditure. I - I give you these facts just

for the sake of context. We will come back to them; because those ...

CHAIRPERSON: What is the page on the supplementary?

ADV GCABASHE: It is page 41 in the supplementary ...

CHAIRPERSON: Thank you.

ADV GCABASHE: Document Chairman. Now first the resolution of 13 June 2012 makes reference to the FDC ...

MS ROCKMAN: That is correct.

ADV GCABASHE: And the FDC participating somehow in this Vrede Dairy Project. Then on cancellation there is a specific resolution
10 passed by Exco. That is in 2014 that says the FDC should take over. You would have been part of the second decision. I take it.

MS ROCKMAN: That is correct Chair.

ADV GCABASHE: Please explain why the FDC would have been required to assist because as I understand matters their core competency is not agriculture.

MS ROCKMAN: That is correct Chair. That is how the ex - the memorandum came to Exco with - with that recommendation. I have no information about what specific capacity FDC would have had at that time to be able to take over that project on behalf of the Department of
20 Agriculture but that is how the matter was concluded.

ADV GCABASHE: You know I have actually looked at the Free State Development Corporation Act 6 of 1995 and I do not want to bother you about going to look at that and I have looked at the powers of Boards of Directors. It is Chairman in the Legislative Bundle but there is no particular reason to - to pull it out right now and I have looked ...

CHAIRPERSON: But just to remember that some of its sessions are phrased very funnily.

ADV GCABASHE: Yes Chairman but at the end of the day it says nothing about running an agricultural project.

CHAIRPERSON: *Ja*, okay.

ADV GCABASHE: It says a lot about ...

CHAIRPERSON: Hm.

ADV GCABASHE: Assisting projects source funding.

CHAIRPERSON: Yes, yes.

10 **ADV GCABASHE:** That is I think one of their core competencies.

CHAIRPERSON: *Ja*.

ADV GCABASHE: There may just be in the interpretation of these powers under Section 4A be powers to assist in managing a project but I would have liked to think that that management must be tied up with the core skill of the - of the FDC but you say you cannot assist us ...

MS ROCKMAN: No. I cannot.

ADV GCABASHE: In explaining?

MS ROCKMAN: In broader background many years before - I cannot even - I - I would be guessing if I have to put a date to it. There used
20 to be a - an entity called AgriEco in the Free State and that was an agricultural development entity. It focalised - it focused on specialising in agricultural projects.

Through the years I think it got - it was - initially it was disbanded and broadly people were thinking one day it will - it will evolved possibly from FDC as a - one of their streams or business units

but it was not - at the time FDC was appointed I am not aware that there was any specific agricultural expertise or development financing expertise in FDC that would make them suitable to take over this project.

ADV GCABASHE: This is - this really is the conclusion I have come to having looked at the documentation both in your doc - in your submissions and having looked at the Act. I would like you to please just pick up ER13 which is in Volume A of what I have been calling your - your original submission. It is page 4-1-4.

10 **MS ROCKMAN:** Is it page?

ADV GCABASHE: 4-1-4. Have you found it?

MS ROCKMAN: I am at 4-1-4. I hope it is the same 4-1-4.

ADV GCABASHE: I am sure it is. Now that - if you look down at probably the fifth or sixth paragraph. They speak here to the restructuring of the FDC.

CHAIRPERSON: Does your 4-1-4 start with the word "Merger Projects"?

ADV GCABASHE: That is the correct page Chairman.

CHAIRPERSON: Okay.

20 **ADV GCABASHE:** So at paragraph - if I start with major and call that paragraph the first ...

MS ROCKMAN: Yes.

ADV GCABASHE: Paragraph. It is one, two, three, four, five, six and I really would like you to speak to again the reason that Exco would have thought it prudent for the FDC which obviously had had its own

difficulties and quite recent difficulties to become involved in the Vrede Dairy Project.

MS ROCKMAN: Thank you Chair. As - as you indicated earlier I am not aware of the extent of consultations that there may have been between - been between Agriculture and FDC at the onset of the project. Mr Ramaema at the time was the CEO of - of FDC. By then he had left as HOD (indistinct). He found himself in FDC.

So I am not sure what the extent of the scope of discussions was. Whether there were any discussions around FDC's possible
10 involvement but also the - the conclusion of Agriculture to make the recommendation that FDC would be appropriate now to take over the project. I do not know if there was specific consultations. I am - I am not really able to give you more details than that.

ADV GCABASHE: That is fine. What I thought I should also just - at least even if it is just for purposes of putting it on the record - is point to you ER1-0-7 at page 1-0-3. I beg your pardon. At page 1-3-0-5 to 1-3-0-6. So that would be Volume C - Volume C. At page 1-3-0-5 to 1-3-0-6.

MS ROCKMAN: 1-3-0-5?

20 **ADV GCABASHE**: Yes. The question is - I am looking at the very last paragraph on page 1-3-0-5 and I wonder if you have information on whether the FDC was appointed as an implementing agent or as a managing agent or as both and I really would like you to have regard to the last paragraph of 1-3-0-5 as you respond going across to 1-3-0-6.

MS ROCKMAN: Chair I am not able to assist you ...

ADV GCABASHE: Assist?

MS ROCKMAN: With - deal with clarity on that. I am ...

ADV GCABASHE: That is fine.

MS ROCKMAN: I just do not have enough information on ...

CHAIRPERSON: Hm.

MS ROCKMAN: How this arrangement was structured between ...

CHAIRPERSON: Yes.

MS ROCKMAN: Agriculture and FDC.

CHAIRPERSON: Okay.

10 **MS ROCKMAN:** Certainly I know FDC then subsequently appointed an implementing or a Project Manager.

ADV GCABASHE: Yes.

MS ROCKMAN: *Ja.* Let me not confuse it. A Project Manager ...

ADV GCABASHE: Hm.

MS ROCKMAN: To manage the dairy farm on its behalf. That is as far as I can go.

ADV GCABASHE: You can go but can I ask you this generic question? Would the FDC be entitled to a management fee? You know I am always trying to trace the monies that have been paid to institutions.

20 That is part of what we have to do as the Commission and - and I want to find justification for the payment of monies to a particular institution.

MS ROCKMAN: I think if they do manage a project on behalf of any other department. Obviously they would have operational expenditure whether it is administration costs etcetera. So I - I would think that yes they - they may be entitled to - to raise a management fee. If it is

intergovernmental like in this case it should obviously be a convenient fee to at least cover expenses they would not make money from it but at least to cover whatever operational expenditure - expenses they - they may incur.

ADV GCABASHE: So you really suggesting that I should take this particular matter up with Mr Thabethe?

MS ROCKMAN: Yes.

ADV GCABASHE: He is the better person to answer?

MS ROCKMAN: Yes. I think the HOD and maybe the - the CEO of FDC
10 will be able to ...

ADV GCABASHE: Respond?

MS ROCKMAN: To respond in more detail on the arrangement between them.

ADV GCABASHE: That is fair enough, but can I then take you back to that very first proposition I put to you about the irregular expenditure of 311 million which you - you mention in your paragraph ...?

MS ROCKMAN: Can you just repeat the reference to that paragraph?

ADV GCABASHE: It was your supplementary affidavit.

MS ROCKMAN: Oh, yes.

20 **ADV GCABASHE:** On page 41 you have a table and I thought that was rather concerning looking at those amounts because it is - essentially reflects for the financial year 2017/2018 irregular expenditure of over a billion Rand.

MS ROCKMAN: Yes Chairperson. This extract comes from the annual financial statements for that particular financial year. Now the possible

irregular expenditure regarding implementing agents the 815.966 million. This has nothing to do with either Vrede Dairy or with FDC. These are implementing agents used by the Department of Agriculture to implement agricultural projects on behalf of beneficiaries.

Mostly utilising the CONDITIONAL GRANT FUNDING of CASP and Ilima/Letsema. So there is - there is no direct link there. These implementing agents they were introduced in the 2011/2012 financial year after the department had realised and it was in the audit reports of the prior financial years that there were problems as the department
10 was procuring on behalf of beneficiaries.

There were three financial years that the Auditor-General mentions that was under investigation. The - the actual services or goods rendered, the beneficiaries did they exist? Did they not exist? So the department brought in implementing agents as a mechanism or to improve efficiency. They were appointed through a tender process and I know of - of three that were appointed for - there were three main implementing agents.

There seemed to also have been then one or two other implementing agents in the years between 2011/2012 to 2017/2018 -
20 2018/2019 and after the first tender period the contract period a second tender was advertised and awarded but they have nothing - they - they deal with all other agricultural projects.

Now these implementing agents the funding allocated for CASP and Ilima/Letsema Projects were already - 2011/2012 they were budgeted as transfer payments. So when it came to Estina it was

exactly the same arrangement. That precedent has - had already been created that say implementing agent A is responsible for this 10 projects.

If it is 10 million we transfer the 10 million to them. The agreements were structured in a way that the implementing agent was acting on behalf of the beneficiary. So equally the moment the - the funds were transferred it became unrequited funds. Ceased to be public money. So no one followed in audit also - that audit trail.

ADV GCABASHE: Can I ask you to pause there because that is
10 precisely where the problem sits for - for us as a Commission because Provincial Treasury has an oversight role. Provincial Treasury is responsible for ensuring that funds that have been allocated are used in a particular manner.

I am really just giving - putting it as a general statement. You then come to a project such as the Vrede Dairy Project which is not on the same level. You cannot draw parallels between that project and other projects where implementing agents were appointed. Your general statement on implementing agents I really have no difficulty with because there the beneficiary does play a part in appointing the
20 implementing agent. This is really your evidence. Am I correct?

MS ROCKMAN: (No audible reply).

ADV GCABASHE: The beneficiary or the farmer as Mr Thabethe calls them would be assisting in appointing the implementing agent.

MS ROCKMAN: To my knowledge that no - no role in the appointment of the implementing agent.

ADV GCABASHE: Well I know that Mr Thabethe's view was certainly that the farmer or the beneficiary assists in the appointment but it was different with - with Estina. With Estina there was no beneficiary. So the implementing agent was appointed by the department. So if the department has some supervisory role in making sure that monies transferred to the implementing agent I used for the purposes that those monies were transferred for.

I would have thought that the watchdog Provincial Treasury would be checking to make sure that indeed this is what has happened.

10 That is where you fit in for my purposes into this equation.

MS ROCKMAN: Yes. In the sense did the department make provision for the budget? Is the transfers that they have made within the projected - projected schedules that they would have provided to us and was the money transferred to the entity appointed but further than that what the implementing agent did with the money?

How they handled the money, how they procured and so forth that is not Treasury's role.

ADV GCABASHE: But do you not interrogate the annual financial plans, the annual performance plans, the annual financial statements
20 that a particular department prepares?

MS ROCKMAN: No. Annual performance plans are drafted by the department.

ADV GCABASHE: Yes.

MS ROCKMAN: You go through normally a strategic planning session or some kind of strategy session. You have your quarterly reviews. It

builds up. Then you formulate your annual performance plan. It gets tabled in the Legislature. It never gets tabled in the Executive Council for example. It - it gets tabled in the Legislature before the budget vote speech of a department.

From there it gets referred to the relevant Portfolio Committee of the Legislature that considers it. It reports and makes recommendations back to the Legislature. Treasury does not play a role in that process. The role we will play is to ensure that what is taken up in the annexures to the APP where you bring in and set out
10 the details of your infrastructure projects that those projects then talk to your table.

Be five projects that is in the adjust - in the Appropriation Act or the Adjustment Appropriation Act.

ADV GCABASHE: You see the difficulty I have with your explanation is you also wear the hat of being a member of the Legislature. So not only are you Head of Treasury - Provincial Treasury. You also head - you also a member of the Legislature and when people come and place their budgets - I will call them that just in a general term - asking for monies or particular items that they have set out.

20 You a member of the Legislature. The impression I am left with which you - you must please correct if it is wrong - is that the Legislature simply rubber stamps. Does not make inquiry as to why monies that were set out in the previous year have got - how those were used and why people are coming back to ask for certain amounts.

Why it is that implementing agents are performing the way

they are performing? Why it is that the Auditor-General is forever complaining about the manner in which monies are accounted for. What - what is the role of the Legislature in those circumstances?

MS ROCKMAN: Members of the Executive Council do not participate in Portfolio Committees. They can attend and when they are invited to come and report. For example Treasury would go and report to the Finance Committee or to Public Accounts Committee on expenditure trends, revenue, audit outcomes and so forth but in terms of separation of powers the members of the Legislature serving in a specific Portfolio
10 Committee - from all parties obviously.

They do that detailed interrogation of the annual performance plan. There would be reports that went back to the Legislature in - in a sitting of the Legislature that would have gotten adopted. Those recommendations would have been communicated to the - to the Premier. Then it gets disbursed to relevant departments.

Each one deals with his or her - her own section. We must again respond. When it comes to the audit reports that belongs to the Public Accounts Committee. So as you table your annual report with the audited financial statements it gets referred for consideration to the
20 Public Accounts Committee.

All departments every year gets called in. Auditor-General are part of those sessions. Treasury is part of those sessions and they interrogate those reports. Equally they formulate responses or the recommendations to the Legislature. If the Legislature approves for example unauthorised expenditure.

They may recommend it with funding or without funding. If unauthorised expenditure is recommended with funding it means we have to find the money in the budget to fund. It is authorised without funding the department must accommodate that funding from within its own budget.

We then formalise that into a finance bill in any particular financial year but as we sit there I am not able to say the Portfolio Committee responsible for Agriculture said X, Y, Z about these APPs, about the execution of the project, about whether they conducted site
10 visits and so forth.

There - there are people relevant in the Legislature the Chairperson of the Portfolio Committee and the Chairperson of the Public Accounts Committee. They may be able to shed light on the Legislature's handling or processing of matters related to agriculture including Vrede Dairy and implementing agents during the period.

ADV GCABASHE: So you are saying in your term as MEC at no stage did any of the relevant Portfolio Committees ask you to come in and address them on the issues they were picking up?

MS ROCKMAN: No. I think I - I highlight in - it is either the main
20 affidavit or the supplementary affidavit that I think is it towards 2018 I was in - it was the first time we were invited to a committee meeting to come and explain and the date of that meeting coincided with a by-election in my constituency and we sent a report and we said officials will be able if they continue to go and present but I had responsibilities in the constituency for the by-election.

I was later informed that that meeting was postponed. So I do not - that was the only meeting - I am not talking about the normal Public Accounts Committee Meetings and Finance Committee Meetings where we - we would be reporting on Provincial Income and Expenditure - those things we would have reported but on Vrede Dairy specifically. That is the only Portfolio Committee specifically that I was invited to.

ADV GCABASHE: And on that occasion you could not attend?

10 **MS ROCKMAN:** Yes; and it was towards I think 20 - somewhere in 2018.

ADV GCABASHE: Maybe this is a - a good time because we are talking about the Auditor-General and the Public Accounts Committee. Maybe this is a good time just to - to help the Commission and the Chairman understand how transfer funds were intended to be reported and - and in particular in relation to implementing agents which is why I am just putting the two issues together.

We have implementing agents who are given a lump sum. How do they account for that? I know there has been a long debate. Just take us through that debate.

20 **MS ROCKMAN:** Thanks Chair. That is the two year debate that we - that we had on the accounting treatment of transfer payments. As it appears now in all the - all the annual reports. It is in the report of the Accounting Officer. It gets disclosed as transfer payment to entities other than public entities.

So anyone else that that you transferred money to whether it

is universities, private business, sports clubs anyone else. You declare it as such. So in this case I - I have extracted the relevant sections from all those annual reports to say it was disclosed. It is a transfer to Vrede Dairy.

I think the first year it was to Estina and subsequently it was Vrede Dairy and the amount that was disclosed and the purpose and - the purpose would be project implementation and the amount would be reflected and it ends there. There were no further details than that and that was what the AG was raising to say it is fine.

10 You tell us say for example you have transferred 10 million. He wanted to know what happened to the 10 million and because it was classified as a transfer payment there was no requirement to further set out the details of the 10 million. It was not broken down further into goods and services ...

ADV GCABASHE: Hm, hm.

MS ROCKMAN: Or any other category of - of your standard chart of accounts.

CHAIRPERSON: Please just refresh my memory on how a transfer payment comes about. Now let us go back to the basis. What - what is
20 a transfer payment? How does it come about?

MS ROCKMAN: We - we - essentially it is when you do not intend to procure goods and services yourself - on - for - by yourself as a department. You do not go through your own tender process or a quote - process of quotations. You take the 10 million and you have an agreement. You transfer the money as is there. So ...

CHAIRPERSON: An agreement with whom? With the person to whom you want to ...

MS ROCKMAN: Yes.

CHAIRPERSON: Transfer the money?

MS ROCKMAN: Yes. Whether it is a private business you will say I am giving you 10 million.

CHAIRPERSON: Hm.

MS ROCKMAN: There - these should be an SLA or a - some kind of con - contractual arrangement.

10 **CHAIRPERSON:** Yes.

MS ROCKMAN: The transfer payments usually gets reflected as if it relates to infrastructure for example. It would be infrastructure. Capital expenditure would be new infrastructure. Capital expenditure current would be main - maintenance. So there is a - I have set out in details ...

CHAIRPERSON: In - in - *ja*, I know you ...

MS ROCKMAN: Yes.

CHAIRPERSON: Dealt with - with the issue quite at length.

MS ROCKMAN: Yes.

20 **CHAIRPERSON:** And I did read - read that but I just - that was about two days ago if not three, but what - what instrument makes provision for transfer payments in Government departments or in Treasury?

MS ROCKMAN: I think broadly provision is made in the PFMA, the Treasury Regulations, your standard chart of accounts. It is provided for but obviously with certain conditions that has to be met when you

make such transfer payments. It is for example - yesterday I made reference to the transfer payments we make to non-profit organisations through social development.

CHAIRPERSON: That would be say for example you are Department of Social Development.

MS ROCKMAN: Yes.

CHAIRPERSON: You need the post office or you need cash pay master services or you need some entity to play a role that will facilitate the execution of functions that you have to do as a department. Is that a
10 good example?

MS ROCKMAN: Yes Chair I will rather use an example in our provincial context.

CHAIRPERSON: Yes.

MS ROCKMAN: We have early childhood development centres that renders services, basically on behalf of government.

CHAIRPERSON: Yes what did you say, what centre?

MS ROCKMAN: Early childhood development centres [indistinct] for example or orphanages or children in distress. So those are all transfer payments we – there's a formula that's set out in whatever
20 relevant to say X amount per day per child you get to an amount so that amount gets simply transferred to that non-profit organisation. Obviously they must be registered, they must comply with certain regulations and conditions but no one follows that money.

CHAIRPERSON: But don't they have to account to you annually as to how they used the money you gave them before you give them another

amount next year?

MS ROCKMAN: There would be a reporting mechanism to say they must submit reports to Social Development not to Treasury and in terms of NPO Act they would probably submit financial statements to the National Department of Social Development, so it's regulated but it becomes impossible for us or the Auditor General to go – imagine how many of these small entities he would have to audit because now we're talking hundreds of millions of rands. So transfer payments as such is not a problem, it's the utilisation thereof. It became a problem that I
10 don't think anyone foresaw that it is going to reach the stage where questions would be asked on the utilisation and the procurement of implementing agents on behalf of beneficiaries and I think Advocate mentioned yesterday, it took us a significant period of time, two years basically to get to finality around classification and ultimately it affected the whole country it was not a Free State issue. It affected everyone equally on how we've been dealing with classification of transfer payments.

CHAIRPERSON: Well the example you make of early childhood centres would those entities be regarded as implementing agents or
20 not, in other words do you associate transfer payments necessarily with implementing agents or not necessarily?

MS ROCKMAN: Not necessarily only an implementing agent in the sense that we are dealing with it in agriculture but when they render a service on behalf of government.

CHAIRPERSON: That is an implementing agent, it's acting on behalf

of Government?

MS ROCKMAN: Yes I think that would be broadly my understanding
Chair.

CHAIRPERSON: Yes but in the example that you have given of early
childhood centre you would not view the centre in that way would you?

MS ROCKMAN: They essentially render a service on behalf of
government they are not necessarily implementing something on behalf
of government.

CHAIRPERSON: Yes so – because I'm trying to see whether, when
10 you make that transfer to an entity such as an early childhood centre
whether you are making a donation because they perform the kind of
functions that you recognise are important in society and therefore,
because you have made a donation maybe there might not be a need
for certain things or are they implementing agents or is it none of the
above?

MS ROCKMAN: The accounting treatment, Chair of donations and
gifts is separate again. Any donation/gift above R100 000 you need
authorisation of the legislature it's disclosed separately so we're not
giving them ...[intervenes].

20 **CHAIRPERSON:** It's not a donation?

MS ROCKMAN: It's not a donation no but ultimately at the conclusion
of this process the transfer payments to – do we call them NPO's or in
that sector was exempted from the classification.

CHAIRPERSON: Just repeat what you have just said.

MS ROCKMAN: At the end of that process of this classification issue

between transfer payments and goods and services for implementing agents, although we said we were of the opinion that the principle applied they were exempted from the classification that meant that they had to – all the departments had to re-classify from transfer payments to goods and services. The social development sector was exempted from that, so there was a recognition it's not exactly the same as an implementing agent.

CHAIRPERSON: Early childhood centres?

MS ROCKMAN: Yes.

10 **CHAIRPERSON:** Yes, so they were exempted from that.

MS ROCKMAN: They were, at the end of the process exempted.

CHAIRPERSON: Or did that make a particular instrument to be...[intervenes].

MS ROCKMAN: I think that was in the final guidance issued by National Treasury it would have been included that the exemption applies to this, this and this categories.

CHAIRPERSON: Yes, so the concept of transfer payments, you say is provided for in the PFMA in other instruments?

MS ROCKMAN: Yes Treasury regulations, yes Chair.

20 **CHAIRPERSON:** As such within government it's accepted what did cause some problem or debates was how it was utilised in certain circumstances which then gave rise to the two year debate or discussion that you talked about, is that right?

MS ROCKMAN: That's correct Chair.

CHAIRPERSON: Yes, now with regard to implementing agents in –

where you are dealing with an implementing agent you have to use transfer payments or is there another way of transferring money to them other than through the transfer payment mechanism?

MS ROCKMAN: In this context that we are dealing with, of agriculture that is how it was structured, the funding was transferred to them, they procured on behalf of beneficiaries and the argument then was that they did not need to follow...[intervenes].

CHAIRPERSON: Procurement procedures.

MS ROCKMAN: Procurement procedures or procurement policies.

10 **CHAIRPERSON:** Yes, yes but that was wrong was it not?

MS ROCKMAN: I think the Auditor General consistently raised the issue for a number of years until the clarification was finalised to say, no they should use procurement processes.

CHAIRPERSON: You must tell me what your own observations of – you were the MEC for finance or I'm not keeping up with when you were DG when you were MEC for finance but the impression I get from what I have been told about the implementing agents in the Vrede Dairy context gives me the impression that this was just a way of circumventing procurement procedures. That's the impression I have,
20 it's not the final impression, I'll hear more evidence, maybe I'll change the way I'm thinking about it now but what can you say to me about that, if you are able to say anything?

MS ROCKMAN: I think because we have known this arrangement of implementing agents from before Estina at the time it was introduced it wasn't new but we were very aware of the concerns raised by the

Auditor General in terms of follow the money that you could not follow the money, when the transfer was made it was made. There was no further trace and I think we did share his concerns about value for money with all implementing agents, not only the [indistinct] additional grants [indistinct] but also Estina. It is a consistent pattern that we should be ensuring that these value for money that get's transferred.

CHAIRPERSON: Because somehow, apart from the question of whether a department like the Department of Agriculture shouldn't – doesn't have or didn't have people with the relevant skills and
10 qualifications to do what was necessary, leaving that aside and assuming that they didn't have. If there's an obligation on the Department of Agriculture to ensure that you know tax payers money allocated to it is used properly and that - and they just appoint an implementing agent in the manner in which it seems to have been done here, it seems that, in effect you are taking tax payers money just giving it to somebody without being able to ensure that, that somebody will use that money properly and for what it is supposed to be used for, that's the impression I have, I don't know if you are able to comment on that?

20 **MS ROCKMAN:** Yes Chair, I think we had no other insight on how Estina, specifically was identified as an implementing agent because there wasn't a public process. What was illustrated or provided to us to say it is a similar type of arrangement, they were on a much bigger scale, agriculture said to us we have partnership agreements, for example with VKB whatever it is that VKB does but that is how it was

contextualised to say it is no different from other existing partnership agreements, though it might be at a bigger level but the concern was consistent that the way in which we deal with money for value issues relating to transfer payments has been a concern for the better part of at least seven/eight financial years.

CHAIRPERSON: Did you get to know, either at some stage during those years or after the Commission had started hearing evidence relating to Estina that Estina actually, as a company had nothing to do with farming and agriculture at the time it was appointed and that
10 actually at the time it was appointed its finances on what we have been told, I think it had 16 comma something rand in its account in circumstances where the agreement that was concluded with the Department of Agriculture required it to contribute millions into the project. Did you get to know about that at some stage during those years or only when the Commission was hearing evidence?

MS ROCKMAN: No, no such information was made available to either myself as DG at the time, this project started or to Treasury in that Treasury Committee meeting and the exchange of documents there was nothing that suggested that a due diligence exercise would have
20 provided us with this information. I think that was relatively new to us when such information was provided to the Commission, that was not known to us at the time.

CHAIRPERSON: Of course what it does raise is the issue of oversight on the part of the Provincial Treasury we talked about that yesterday, we talked about the limitations and so on but it must be concerning or it

must have concerned you quite a lot when you did hear that because you must have thought, well whatever limitations we must have, we may have had, there must be a way of picking up something like that in one way or another. That's my thinking now, what do you say to that?

MS ROCKMAN: Yes Chairperson I would agree that it raises concerns but at that time, this was before the introduction of the central supply data base system with National Treasury, so I think registering an entity on the data base was almost much easier than it is to register on CSD in terms of what was required. So I think the introduction of CSD by
10 National Treasury has brought in a lot of additional internal controls. It would have probably been wise to say if we undertake this kind of project, like in many other type of projects a tender would be advertised to say a service provider or a bidder must illustrate financial capacity with a bank account statement, he must have R10 in the bank. So I think the mechanisms existed it is in how we utilised them that exposed us to an unnecessary risk probably, in this case. I think there were various other things that the department could have done to mitigate against possible risks, to embark on this project but as the Audit Committee itself of agriculture reflects in a number of audit
20 reports, the risk component of the department was very new and very under capacitated, I think both in terms of numbers and in terms of ability to execute. There are obvious challenges with the public private partnership arrangements in government purely because they take – it's a general perception that they take forever to get off the ground and to get projects moving. So there's always a reluctance against the PPP

format when you want to start implementing a project but I would agree that there should have probably have been other ways to mitigate against the financial risks that the project brought with it.

CHAIRPERSON: Would it be correct to say, had this been put to tender this would have – Estina, if it's financial situation was the way it has been described to this Commission and if it had nothing to do with farming or agriculture it's unlikely that it would have been appointed?

MS ROCKMAN: On its own without having the background, track record or capacity it would have been challenging to be appointed on
10 its own though it could have gone into a special purpose kind of vehicle through a joint venture or something like that.

CHAIRPERSON: But do you say the tender – if this had been subjected to a tender process these issues would have come out in terms of where – in which sector does it operate, what experience does it have, what is its financial muscle particularly if the agreement was going to require that whichever service provider is appointed would have to make a contribution of millions into the project?

MS ROCKMAN: Yes your bid specifications would have gone into far more details to say the type of bidder that we are looking for or the
20 type of partner that we are looking for must have this certain level of expertise, they must have proven financial muscle to a certain quantum, your bid specification process would have narrowed down and mitigated in itself against the risk that you would expose the department to.

CHAIRPERSON: But you would agree, would you not that even if we

were dealing with circumstances which justified not putting this through a tender process any head of department ought to have done the necessary homework to make sure that they didn't appoint a company that had R16 in its bank account and required to pay millions of rands into the project.

MS ROCKMAN: Chairperson I would say that is reasonable.

CHAIRPERSON: Yes okay thank you.

ADV GCABASHE: Chairperson just to add one little piece to what you've been dealing with now, the relevant section in the PFMA is
10 section 381J that speaks to the things that you're raising.

CHAIRPERSON: Yes.

ADV GCABASHE: Before funds can be transferred certain things must be in place in the entity of the transfers...[intervenes].

CHAIRPERSON: To which transfer is being made yes.

ADV GCABASHE: Yes the other provision would be Treasury Regulation 8.4.1, so it's section 381J read with Treasury Regulation 8.4.1 which speaks to the checks and balances that you have been summarising.

CHAIRPERSON: Thank you.

20 **ADV GCABASHE:** And the question then still remains as what is the Provincial Treasury's role in ensuring that these particular provisions are complied with.

CHAIRPERSON: Yes.

ADV GCABASHE: Chairman I see that we have gone beyond quarter past, I don't know if you want to push until twelve because if we do, we

will be done or if you would rather take a short break now?

CHAIRPERSON: Okay, I think let's take the short break so we might end up going to quarter past or there about.

ADV GCABASHE: I've taken note of your request yesterday Chairman and edited...[intervenes].

CHAIRPERSON: Ja as long as you don't feel that there are issues that you are not able to do justice to, so important issues.

ADV GCABASHE: Not at all Chair.

CHAIRPERSON: Ja, okay alright we will take the tea adjournment now
10 it's twenty four minutes past we will come back at twenty to twelve, we adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Ms Rockman yesterday I was trying to have an idea about how much the Provincial Government was paying per day for the New Age must have seemed to have found that at the relevant time which would have been around or when it started around June 2010 it was a copy of the New Age was R3.50 which means – of course we – I
20 do not know whether anybody has established exactly how many copies were = the Provincial Government agreed to buy per day but if it was 4000 that would be 4000 x R3.50 and leaving out 50 cents that means per day it would 3 x 4000 that is I think R120 000.00 a day. Am I right? I think junior counsel is much more clued up on these things R120 000.00 a day in five days that would R600 000.00 Hm?

ADV GCABASHE: I am advised it would be R12 000.00 Chairman. Like you I did not do the maths on this one. The brains had it.

CHAIRPERSON: Okay I am not going to continue. Just shows it was a good decision to take law not – not anything else. So about R12 000.00. So in five days that would what about R60 000.00

ADV GCABASHE: 60.

CHAIRPERSON: Or thereabout and so over a month you could be looking at about just under R200 000.00 or R180 000.00 or thereabout. That is what you could be looking at.

10 **ADV GCABASHE:** Per month.

CHAIRPERSON: A month hm. Okay. You might be much better off with – with figures I am not sure.

MS ROCKMAN: The latter part Chairperson sounded more – more accurate but I think we did indicate yesterday we will extract that information.

CHAIRPERSON: You will extract – yes, yes.

MS ROCKMAN: Information and provide it to the commission.

20 **CHAIRPERSON:** Yes, yes, yes. And it may be – it may be that it does already exist within the records of the commission because of the evidence about GCIS and Mr Manye and it may be that it exists but it would be convenient if it could be extracted again. Ja so – but it is not as much as the first figure that I mentioned. Yes thank you.

ADV GCABASHE: Thank you Chairman. Ms Rockman just one or two questions still related to transfer payments that I just want to either clarify or confirm with you.

1. Not all transfer payments contain conditions, is that correct?

Some do other do not.

MS ROCKMAN: Chair I think in general there would be conditions whether it is a national conditional grant or whether it is like Infrastructure Enhancement Allocation that would also still come with conditions.

ADV GCABASHE: Okay so you say the general rule is that there would be conditions?

MS ROCKMAN: Yes.

10 **ADV GCABASHE**: Attached with it.

MS ROCKMAN: Whether it is a national or a provincial type of grant and then between the relevant department and the service provider the conditions around particular transfer payment for particular purposes would be set out in a Service Level Agreement at the very least.

ADV GCABASHE: Hm okay.

CHAIRPERSON: One second. I did not realise this was on.

ADV GCABASHE: Yes I was wondering if I should say so or not. I learnt at my peril that...

CHAIRPERSON: But it is nothing concerning security. Yes thank you.

20 **ADV GCABASHE**: Thank you. Thank you Chairman.

CHAIRPERSON: I just have an appointment to keep which I see we – I am not – I will not be able to keep until – I thought we would finish by twelve but let us continue.

ADV GCABASHE: Then the next issue really is just to point out more for record purposes that the Free State Province Appropriation Act of

2012/2013 that financial year defines transfers and subsidies as and I quote:

“Any payments made by Provincial Department to another organ of state or any other person in respect of which the relevant department does not receive anything of similar value directly in return and includes the payment of conditional grants.”

I just thought it is apposite to put that in for purposes of the record Chairman. You are happy enough with that?

10 **MS ROCKMAN**: Yes. Thanks Chair.

ADV GCABASHE: The question really would then be – I know this was the Appropriation Act of 2012/2013 but the definition would not change over the years?

MS ROCKMAN: That is correct Chair. It would – there might be minor amendments but the essence of it would remain.

ADV GCABASHE: Thank you. Next question. Is it correct that where transfer of funds are not used for the intended purpose or whether is a failure to account for their use they can be reclaimed?

MS ROCKMAN: I think that would be that general rule.

20 **ADV GCABASHE**: It is the general rule?

MS ROCKMAN: The general understanding ja.

ADV GCABASHE: But reclaimed by whom?

MS ROCKMAN: By the transferring department.

ADV GCABASHE: Again Provincial Treasury in this instance would not have a role – a direct role?

MS ROCKMAN: No.

ADV GCABASHE: In that reclaiming process.

MS ROCKMAN: No.

ADV GCABASHE: Then the last question really is really more of an observation. And that is that the 2018 decision or guidelines from National Treasury have resolved how transfer payments should be classified where good and services are being procured that would generally fall within the – the Supply Chain Management processes and if not there is still a category for straightforward transfer payments?

10 **MS ROCKMAN:** That would be correct Chair. And by implication it now means that with the reclassification exercise the depart – all departments affected have to go back in time and start reclassifying and start clearing out whatever the issues were. So if you had classified a transfer payment of 10 million you will have to reclassify now that 10 million and break it up into goods and services and you must provide your relevant documents – supporting documentation to justify the allocation of that 10 million accordingly.

ADV GCABASHE: Yes but it – the – the guide or the instruction was backdated to 2016 if I am not wrong. So it is as of 2016?

20 **MS ROCKMAN:** Yes.

ADV GCABASHE: They would have to go through that exercise.

MS ROCKMAN: Yes.

ADV GCABASHE: Okay. Can I then just bring you back to what started this discussion which was the schedule you had put on your supplementary affidavit page 41. We were talking about irregular

expenditure and the first one you then dealt with was possible irregular expenditure regarding implementing agents. That was the 815 million just or almost 816 million and you explained that it did not necessarily mean it is only in relation to Vrede but it could be from anywhere else.

MS ROCKMAN: Chairperson yes I explained this was excluding Vrede.

ADV GCABASHE: It excluded Vrede?

MS ROCKMAN: Yes.

ADV GCABASHE: Good. The one I am now interested in is the possible irregular expenditure regarding Vrede Dairy of 311 million.

10 Now 311 million represents just that one financial year 2017 to 2018 or does it go beyond that?

MS ROCKMAN: That is a level of detail I do not have access to at this stage. This is a calculation done by the department. It is audited by the AG so I would not here be able to say how that 311 million is broken down. Whether it is only Estina, whether it includes even the transfer payments to FDC as well. So that is a different level of details that I did not have at my disposal here.

ADV GCABASHE: I understand that and I would have assumed that it includes monies that were paid to FDC because they were appointed as
20 of 2014.

MS ROCKMAN: That is correct Chair.

ADV GCABASHE: But my question was that that figures represents irregular – possible irregular expenditure regarding Vrede Dairy in the financial year 2017/2018.

MS ROCKMAN: That is all irregular expenditure under investigation. It

might not be only for that particular financial year.

ADV GCABASHE: Ah so – are you sure about that because I mean when you look at this schedule top right hand corner it clearly says 2017/2018? Why would it include others years if the note here says 2017/2018? And if you look at your – your affidavit in fact you find that there are other irregularities that you have noted in the same affidavit. I just did not want to go into all that detail. So this is page 41.

MS ROCKMAN: I am just trying to find the supporting document itself. It is disclosed 17/18 in this instance means it is disclosed as at the
10 financial year ending 31 March 2018.

ADV GCABASHE: Yes. But it covers – all I want to establish is that it covers that 12 – preceding 12 month period or does it go beyond that? Is it a cumulative amount?

MS ROCKMAN: It might be a cumulative.

ADV GCABASHE: Over the years.

ADV GCABASHE: Amount ja.

ADV GCABASHE: It might be you say?

MS ROCKMAN: Ja.

ADV GCABASHE: Are you able to establish that for us and just send
20 us the relevant documentation that supports what you are saying? Because I will tell you why this is of interest certainly to us as evidence leaders is because if in one financial year there was irregular expenditure regarding Vrede Dairy only of R311 million that is a large sum of money.

MS ROCKMAN: That is why I am saying Chair that is – it is

accumulative. I know the irregular expenditure regarding implementing agents the disclosure of 815 is accumulative from the 2011/2012 financial year.

ADV GCABASHE: I – I think that the commission would really appreciate literally a one pager if you would with supporting documentation so that we are left with the correct impression as to whether all this was spent in one year paying for services rendered at Vrede Dairy or if it was a cumulative amount going back to say 2011/2012?

10 **MS ROCKMAN:** We will certainly be able to extract that Chair.

ADV GCABASHE: The other – other irregularities really I do not think I want to touch on Chairman they are in the affidavit and they really concern largely failure to comply with.

CHAIRPERSON: Ja.

ADV GCABASHE: Supply Chain Management Procedures and the like.

CHAIRPERSON: Ja well if they are you know you would have heard me say to Ms Rockman yesterday part of my concern was that in her affidavit she did not seem to deal with the question of non-compliances and who did not comply with what. So if there are – if they relate to
20 non-compliances maybe you can just deal briefly with them.

ADV GCABASHE: Certainly Sir.

CHAIRPERSON: Ja.

ADV GCABASHE: In fact if I could just take you back to page 41 I just found it quite curious that the second item on that incident list the 2017/2018 one second item reads:

“Deviations approved by the Accounting Officer not accepted.”

The impression I was left with and it probably is my fault not Mr Thabethe’s is that once an Accounting Officer has decided to deviate nobody can question it. But it is obvious that when one reads this line item R2 million worth of money spent on a deviation that was approved by the Accounting Officer but not accepted is something that would be noted.

MS ROCKMAN: Yes that is correct Chair. It – the decision is ultimately not absolute. It is still subject to review. It must be
10 reasonable, the nature of the decision must reasonable, justifiable. We had a very long part of the engagements with the AG over probably a two period was the implications of auditing the discretion of an Accounting Officer.

ADV GCABASHE: Yes

MS ROCKMAN: But that discretion is not absolute. I think we have – we reached common ground on that and I was informed by the state law advisors that a judgment of the constitutional court in Tasima also brought final clarity around what is an administrative act and how it remains in effect until it is set aside. So I think all provincial, national
20 government departments or the broader public sector has to internalise the implications of that act and how it gets permeated through standard operating procedures that if something is found irregular how do we deal with it. You cannot – it cannot be found irregular and it is just left that way.

CHAIRPERSON: Well I must confess that when I read your affidavit on

this issue I was surprised that you and whoever from the National Treasury and Provincial Treasury, the National Treasury and I think the Account and General or I do not know whether the Auditor General as well were all concerned about whether this was administrative action or not and – I did not understand that because you people are not a court. You know it is a court that has to decide whether an administrative action is reasonable or justifiable or not. You people are not courts. So your own role as I understand it would be different and I gain the impression and you must just feel free to make your observations are it

10 seemed to me I gained the impression that somebody was just trying to unjustifiably prevent people from scrutinising action that they are entitled to scrutinise.

MS ROCKMAN: I think Chairperson it was the basis for disclosing the expenditure as possible irregular or not. I think that was the...

CHAIRPERSON: Yes but...

MS ROCKMAN: Where the matter started from.

CHAIRPERSON: Yes but the question ...

MS ROCKMAN: And certainly if – if the expenditure was declared irregular you would expect that someone...

20 **CHAIRPERSON**: Something must be done.

MS ROCKMAN: Ja someone would have to go to court to set aside the agreement.

CHAIRPERSON: Well – well I do not know why you would necessarily think about going to court. Because I mean you – you agreed yesterday that Provincial Treasury plays an oversight role – performs

an oversight role. There might be limitations but you – that is part of its function. Now monitoring must mean you are checking whether things have been done properly or are being done properly. And obviously there must be something you are able to do if you pick up that something is not being done properly. And I would just be surprised if what it meant is that you must now go to court each time you pick up something in the exercise of your monitoring exercise. Each time you must go to court instead of sitting down with the Head of Department whoever and say, but this is not right. And getting it sorted
10 out. I mean how much money will end up being used for going to court if each time you pick up something that is – that is not being done properly you must go to court. I think lawyers will be very rich.

MS ROCKMAN: Yes I think Chairperson if you – if you read through the audit and accounting treatment section I think we detailed the response of the HOD to the Auditor General that sets out that basis and if you remember correctly – where this started June 2012 when the matter first was brought to the Provincial Account and General she had already advised at that point that this may be irregular. So it is not like it was not known. But the responsibility in this case was with the Accounting
20 Officer. Notwithstanding many years of advisors to say both Auditor Generals saying these are our audit findings. But he very firmly set out the grounds on which he disagrees with the Auditor Generals findings. Now there is no basis for Treasury to then say we are instructing you to declare this is irregular. Ultimately.

CHAIRPERSON: No, no.

MS ROCKMAN: It is his action but in the broader context it should be the Accounting Officer then that reverses his own decision. That would be the reasonable expectation. It – I agree with you it should not be necessary for Treasury or anyone else to have to approach court. It should be the Accounting Officer taking the corrective action. But in this case there was no agreement that he – that he did not follow the correct procedure.

CHAIRPERSON: But – but also I would have imagined that there would be mechanisms that can be – could be invoked if the right authority
10 whether you say the right authority is the Auditor General or Provincial Treasury says but this is not right. We are given the obligation to monitor. You are not given the obligation to monitor yourself. We are the ones who are given the obligation to monitor you. We look at this, we say this is irregular. If it is quite clear what should be done as far as Provincial Treasury is concerned and he disagrees there must be a mechanism. I do not know whether it would include approaching the MEC, approaching the Premier or whatever but there should be – there should be a way in which somebody's authority is accepted by that
20 functionary to say well once this authority has said this should be changed then I must decide. If I do not want to change it maybe I should go. If I feel so strongly about it but once the right authority says it is not right and they have heard my side they are not persuaded there should be finality. So I am just sharing with you the impression I had when I read your – that part of your affidavit. And Mr Thabethe is still coming back here and I will give him a chance to – to tell me what

he thinks. But that is the impression I got that somebody was just trying unjustifiably to protect his decision from scrutiny by authorities that are allowed to scrutinise that decision.

MS ROCKMAN: The way practically we also deal with it Chairperson is if these type of matters emerge whether it is during a financial year or during audit period we share with the Auditor General – ag ja we share with the Auditor General the advises issued. Whether it was in a CFO forum, whether it was on an individual basis. Often we – or let me say most of time we are in agreement with the Auditor General. There is
10 very seldom huge discrepancies.

CHAIRPERSON: Yes.

MS ROCKMAN: That need interpretation.

CHAIRPERSON: Yes, yes.

MS ROCKMAN: I think one of the positive developments is the Public Audit Amendment Act.

MS ROCKMAN: Hm.

MS ROCKMAN: That will enforce consequence management.

CHAIRPERSON: Yes, yes.

MS ROCKMAN: Because it does not help. We have reached that
20 stage.

CHAIRPERSON: Yes.

MS ROCKMAN: When year and after year the same or similar findings are made.

CHAIRPERSON: Yes.

MS ROCKMAN: And we go through the same processes.

CHAIRPERSON: H.

MS ROCKMAN: We issue the same advice and nothing changes.

CHAIRPERSON: It is ignored.

MS ROCKMAN: So I think the Public Audit Amendment Act and the Consequence Management that will come through as the ultimate last resort almost if all other mechanisms internally in government has failed. I think that is going to make a substantial difference to the environment in which we work. I mean there are basic other requirements if you sign off a deviation. You are supposed to register
10 it and send it to Treasury, send it to AG, send it here, send it there. That does not necessarily mean...

CHAIRPERSON: And that was not done.

MS ROCKMAN: Anything happens to it. We can say yes we have noted and we advise you that we are not in agreement with you. And then what? So I think the – in recent times there have been substantial developments like with the Public Audit Amendment Act that will significantly bring these things under control.

CHAIRPERSON: Hm.

MS ROCKMAN: Than just leaving it and ...

20 **CHAIRPERSON:** Well I hope they will but one continues to be concerned about the fact that a public service, government has got lots of laws, lots of policies, lots of mechanisms for dealing with situations but they do not get used. I mean I often say you know the way public service does not deal with issues of poor performance by staff and so on it is like people who work for government know that there will be no

consequences unless I am guilty of fraud but even then I case they catch me which is unlikely.

MS ROCKMAN: Exactly.

CHAIRPERSON: People just do not – many people just do not do their job that is why there are such problems about service delivery. People are supposed to supervise other people who are supposed to do their job they do not supervise them. And if they do not do their job there are no consequences. That is why a lot of people complain about service deliveries. Not like the mechanisms are not there, they are
10 there but they do not get implemented and those who are supposed to implement them and fail to implement them do not suffer any consequences year in, year out. I know I am just – you might not be able to say anything I am just – yes. Ms Gcabashe.

ADV GCABASHE: Thank you Chairman. Chairman just for the record it might be useful when we get to reading out transcripts just to make a note of that particular judgment that did I think change the attitude of the Free State government and that is the Department of Transport and others versus Tasmina spelt T-a-s-m-i-n-a PTY Limited 2017 Volume 2 SA 622CC Constitutional Court decision.

20 **CHAIRPERSON:** Yes. Thank you.

ADV GCABASHE: Chairman I will very quickly just run through some of the other irregularities that I actually noted in the supplementary affidavit of ...

CHAIRPERSON: Yes.

ADV GCABASHE: Ms Rockman. And if you do not mind me doing –

going from back to front.

CHAIRPERSON: Ja that is fine.

ADV GCABASHE: At page 37 for the 2014/2015 year you have non-compliance with SCM Policies the very issue you dealing with now at R17 708 000.00. At page 36 for the 2013/2014 financial year again non-compliance with Supply Chain Management Procedures there the amount was R21 386 you will find that on page 36 of the supplementary affidavit Chairman. And then for the 2013/2014 I think that is an – Ms Rockman I think that should be 2012/2013 I think that – because the
10 last one we did just now was 2013/2014. So I think this should actually be 2012/2013 Chairman non-compliance with SCM Procedures was in the amount of R23 309 000.00. So these are significant amounts especially if you look at them over the years and the comments you make about consequence manager – management and people taking responsibility for decisions that they take really feeds into these figures. And how to implement what people in authority tell us to do certainly fits again into this paradigm. Chairman I would like to just finish off with just a comment. I just want to briefly go back to the MM – FDC and three issues there again arising from your affidavit and this
20 time I looked at ER99.4 at page 1-1-4-1 that would be Bundle C, but really the - and also ER98 page 1-1-1-0. Again Volume C and those are really just comment, one from the Auditor-General. The other relating to - from the department relating to monies that were paid to the FDC, Ms Rockman and it would appear that in 2017/2018 20 million was paid to the FDC and in prior years 51.2 million accumulatively would have

been paid to the FDC.

These are significant amounts and the question really is - which we will discuss with Mr Thabethe - is the extent to which these types of sums were accommodated in his provisioning system for the Vrede Dairy Project but the other comment I would like to make is I looked at your supplementary bundle and at tag 23A.

So it is Annexure 23A - 23A in the supplementary - A in the supplementary bundle. There is actually an interesting letter from the service provider appointed by the FDC to render services at the Vrede Dairy Farm Project and it is a - a letter from the attorneys where they - they lament the fact that at paragraph 3 of that letter that they were not properly paid. So they say:

“Although there is no obligation to provide reasons for the cancellation ...”

Or cancelling their contract with FDC.

“...our instructions are to record that the main reasons for terminating the agreement is due to your lack of cooperation; failure to provide our client with instructions (including but not limited to your failure to provide instruction with respect to the turnaround strategy submitted to yourselves and despite several reminders over the past year) and above all failure to make payment of amounts due to our clients. As a result our client has been unable to make payment to employees and other

creditors. The agreement will therefore come to an end on the 13th day following the date of delivery of this letter.”

So this is E'tsho a service provider appointed by FDC writing to FDC and the reason I bring this to your attention and the Chairman's attention is again it speaks to the competencies of the FDC. Were they really the best entity to take over the running of the Vrede Dairy Farm? When one, we have already led evidence that they themselves were in trouble and were being restructured.

10 We have dealt with that and at the tail end in 2018 there are real difficulties that they seem not to be able to resolve. I do not know if you want to comment on this.

MS ROCKMAN: Thank you Chair. Just to say after the action taken to place the farm under a preservation order

ADV GCABASHE: (Indistinct).

MS ROCKMAN: *Ja.*

ADV GCABASHE: When the - when the curator was appointed?

MS ROCKMAN: Yes. The continuation of E'tsho was with the approval of the curator but we were consistently asked to intervene in the delay
20 of payments between FDC and Agriculture. So Agriculture would delay pay - payments to FDC saying they require information. FDC would say we have given you the information. We want payment. In the process no one paid E'tsho. So E'tsho ended up almost carrying the costs of the Vrede Dairy Farm on its own in the hope that Government will now one day sort out whatever bureaucracy problems stood in the way of

processing payments and I think at this stage they reached that point to say we will rather walk away and leave you to - to deal with the farm on your own. Whether it is FDC on its own or FDC handing it back then to Agriculture.

CHAIRPERSON: Hm.

ADV GCABASHE: I - I think it is actually convenient just too again just solicit your view on even E'tsho itself. Its competency to - to operate and run a dairy farm because as I understand their competencies. It is in the construction, project management area. Again there is no
10 particular dairy or agricultural competence that sits in E'tsho. I do not know if you have a response to that.

MS ROCKMAN: I - I know E'tsho as a project management ...

ADV GCABASHE: Hm.

MS ROCKMAN: In the - in other industries. Not - not related to agriculture but I cannot comment on what capacity they had at that point in time to take up the - the appointment.

ADV GCABASHE: *Ja.*

CHAIRPERSON: *Ja.*

ADV GCABASHE: Then ...

20 **CHAIRPERSON:** Are we almost there?

ADV GCABASHE: Yes. Yes Chairman.

CHAIRPERSON: Okay.

ADV GCABASHE: The last one really is Mr Dhlamini's comment. He suggested to the Chair that Vrede the Dairy Project should be shut down because it has brought nothing but angst and pain and discord to

their community. I do not know if you want to give the Chairman a view on that.

MS ROCKMAN: I - I have a lot of appreciation and empathy for the feelings and the sentiments of the intended beneficiaries who have gained nothing from this project. I do not think it is too late. I think the project to some extent is viable with the correct skills and knowledgeable people.

Maybe not at the level that it was envisaged but certainly there is benefit. There - there is inherent benefit to involve
10 beneficiaries in the - on a project of this nature. I do not think it should simply be closed down completely. I think three - there is still something that - that can be salvaged from the project and slowly built and to be expanded into a better - better income opportunities for knowledgeable people who have interest in agriculture.

Not random people that - that does not have agriculture - a love for agriculture at heart.

ADV GCABASHE: Thank you. The - the last area I want us to touch on is evidence given to this Commission by Mr Moremi who at - at the relevant time in 2012 was the Municipal Manager at Phumelela Local
20 Municipality. Do you know Mr Moremi?

MS ROCKMAN: Yes. I do.

ADV GCABASHE: I - I - Mr Moremi of course in his statement deals with a telephone call he says you made to him advising him that an Indian delegation would be coming to the farm. They were really negotiating around the lease of land by the Phumelela Local

Municipality. The issue here is he says he called you.

I know you deal with this in your statement. You dispute that. Please speak to that issue.

MS ROCKMAN: Thank you Chair. I have - I have tried to clarify myself. So I am not entirely sure if - if you are talking around the same incident but in - Mr Moremi's initial evidence he was saying that a particular meeting was organised through the Mayor. I think it was with Mr Narayan and a lawyer.

In a supplementary statement he then says I think I called
10 him. What I remember is receiving the call from him saying that he is under pressure to sign a certain agreement and he was relatively new in the Local Government environment and I said to him I would advise do not sign anything especially relating to municipal land because it - it is a - it is really a complex issue without getting legal advice.

Talk to the State Law Advisors. Phumelela is a very small municipality. It does not have its own legal - internal legal capacity. So instead of getting a private law firm who will charge costs who may also not have the necessary expertise to deal with matters relating to municipal land.

20 I thought it - it is - it would be the wiser thing to do to seek advice from the State Law Advisors. There was - there were conversations and that is subsequently what - what we did. I think he also sent me an email that I forwarded to the State Law Advisors and I also spoke to Mr Venter to say can we please assist Phumelela because they - they are in a difficult position without having internal

legal capacity.

ADV GCABASHE: As I recall his evidence these are two different incidences. I am - I am quite happy with your account of the assistance you tried to give him in relation to the lease and - and the advice you gave him to speak to the State Law Advisors.

That is consistent with what he said to the Commission but he also said to the Commission that the first time he heard about an Indian delegation coming down to Vrede to talk about the land and the farm was when he received a telephone call from you. He then rushed and
10 made sure he got to the meeting on time ...

MS ROCKMAN: I have ...

ADV GCABASHE: And I have understood your version to be that he is the one who called you. You did not tell him there is an Indian delegation that is coming to Vrede. Make sure you are there to talk to them.

MS ROCKMAN: Thanks Chair. I have no recollection of me calling him to say there is an Indian delegation coming. The MEC was from Phumelela. He is from Vrede. The MEC would have made arrangements with the Mayor. It would have been easier. It would - it
20 would not really make sense for them to come via me now back to Phumelela.

So he - he may have a different recollection but my recollection is definitely the phone call that I received from him that he was under pressure.

ADV GCABASHE: And when you speak of the Mayor you are talking

about Mr John Motaung?

MS ROCKMAN: Yes. That is correct.

ADV GCABASHE: Last question I think Chairman. Mr Thabethe ultimately entered into a 99 year lease agreement in respect of that Vrede land with Estina and it was a renewable 99 year lease. Did you know anything about this before that lease was signed?

MS ROCKMAN: (No audible reply).

ADV GCABASHE: Same question when did you hear about that 99 year lease that had been signed between the department under the
10 authority of the Mr Thabethe and Estina?

MS ROCKMAN: I - I got to know about that 99 year lease agreement or the issues around the land at the time Mr Moremi called me initially and the State Law Advisors had advised to say how this thing should be structured ...

ADV GCABASHE: Hm.

MS ROCKMAN: But we did not know prior to that process. We knew in principle there is land. Phumelela is going to make available land but the 99 year lease agreement was a separate matter and - and we did have concerns just in principle about the issue of 99 year lease
20 agreements.

At that stage I was aware but I was aware because of Phumelela's financial position that part of the little revenue that the municipality is able to get comes from existing lease agreements from municipal land that they were renting to farmers.

ADV GCABASHE: That is fine. We will take the rest of the matter with

Mr Thabethe. I really just wanted to establish the extent to which you would have known that this lease was entered into with Estina or whether you would have facilitated the entering of that particular 99 year lease with Estina. Your short answer is no?

MS ROCKMAN: No.

ADV GCABASHE: I do not know if there are any other matters that you would like to bring to the Chairman's

MS ROCKMAN: Not at this stage Chair.

ADV GCABASHE: Chairman those are the questions we have for this
10 witness.

CHAIRPERSON: Thank you. Thank you very much. Thank you very much Ms Rockman for having come to give evidence and to share what you know about the Estina Project with the Commission. If there is a need to ask you to come back the Commission will ask you to come back but thank you very much for having come to give evidence. For now you are excused.

MS ROCKMAN: Thank you very much Chairperson and we will continue to cooperate as we have been doing.

CHAIRPERSON: Thank you very much. We are going to adjourn for
20 the day. There will be no hearing tomorrow. Next week the former President was scheduled to appear before the Commission for the whole week. He is no longer going to appear next week. He is lawyers have indicated that arising out of the judgment affecting him in the Pietermaritzburg High Court he and the lawyers are supposed to deal with certain matters next week.

So the hearing of his evidence next week has been opposed but he is still going to appear before the Commission from 11 November to the 15th. He has agreed to appear before the Commission during that week. So that week stands. I will determine other dates when he will appear before the Commission other than the dates of the 11th to 15 November and at the right time those will be made known to the public as well.

As things stand there will be no hearing next week because of this change but should the Commission be able to make some
10 arrangements for some witnesses to be called towards the end of the week the public will be informed but at this stage there will be no hearing next week but there will be a hearing the week after. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS SINE DIE