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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JOHN HATZISTERGOS AM  
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION HECTOR

Reference: Operation E19/1595

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 20 MARCH, 2023

AT 10.00AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 112(2) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Yes. Thank you. The scope and purpose of this public inquiry is to gather evidence relevant to allegations being investigated by the Commission for the purposes of determining the matters referred to in section 13(2) of the Independent Commission Against Corruption Act 1988. Specifically, it is intended that the Commission look at the following.

10 (1) That between 21 July 2015 and 3 October 2020, former Leichhardt Council and Inner West Council employee Tony Nguyen has partially and/or dishonestly exercised his official functions by awarding and/or recommending Inner West Council contracts and tenders to companies with which he was associated.

20 (2) That since 1 January 2017 Transport for NSW officer Benjamin Vardanega has dishonestly and partially exercised his public official functions by using information gathered in the course of his official functions to assist certain contractors to tender for Transport for NSW work or to tender for subcontracts from entities that had been awarded Transport for NSW work to benefit himself and others.

(3) That since 1 January 2014, Transport for NSW officer Nima Abdi has dishonestly and partially exercised his public official functions by using information gained in the course of his official functions to assist contractors with which he had an undeclared association to tender for Transport for NSW work or to tender for subcontracts from entities that had been awarded Transport for NSW work to benefit himself and others.

30 (4) That since 1 January 2017 certain employees of Downer EDI Works Pty Ltd (Downer) have dishonestly obtained a benefit for themselves by favouring certain subcontractors when awarding work arising from contracts that Transport for NSW has awarded to Downer.

(5) That since 1 January 2014 Transport for NSW employee Raja Sanber has obtained a financial benefit for himself and others by undertaking contractor or subcontractor work for various entities on Transport for NSW projects in circumstances where he failed to disclose his role in those entities to Transport for NSW.

40 (6) Between 1 July 2019 and 31 March 2020, Transport for NSW employees and a Downer EDI Works Pty Ltd employee dishonestly benefited from payment or application of public funds for their own private advantage by

submitting and approving timesheets and invoices for payment in circumstances where no work was carried out.

And (7) between 1 January 2017 to 31 March 2021, Transport for NSW employee misused material or information acquired in the course of his public official functions for his own benefit or the benefit of Nima Abdi or persons associated with him.

10 The Commission has appointed as Counsel Assisting Mr Phillip English of counsel and Ms Joanna Davidson of counsel. During the public inquiry there will be several documents tendered and they will become exhibits and form part of the evidence in the public inquiry. The Commission in accordance with its conventional procedure protects from publication personal and other identifying information that it considers should be suppressed. To that end, being satisfied that it's in the public interest to do so, I hereby make a direction pursuant to the provisions of section 112 of the Independent Commission Against Corruption Act protecting against publication to any person outside the Commission any private email addresses, private residential addresses, private phone numbers, bank account numbers and tax file numbers contained in any exhibit to be  
20 tendered in the inquiry and/or other documents shown during the inquiry to witnesses or other otherwise deployed in the course of the public inquiry, with the exception of Commission officers for statutory purposes and between witnesses in the inquiry and their legal representatives, subject to further order of the Commission. This direction applies from the commencement until the finish of this public inquiry unless varied.

30 **SUPPRESSION ORDER: BEING SATISFIED THAT IT'S IN THE PUBLIC INTEREST TO DO SO, I HEREBY MAKE A DIRECTION PURSUANT TO THE PROVISIONS OF SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT PROTECTING AGAINST PUBLICATION TO ANY PERSON OUTSIDE THE COMMISSION ANY PRIVATE EMAIL ADDRESSES, PRIVATE RESIDENTIAL ADDRESSES, PRIVATE PHONE NUMBERS, BANK ACCOUNT NUMBERS AND TAX FILE NUMBERS CONTAINED IN ANY EXHIBIT TO BE TENDERED IN THE INQUIRY AND/OR OTHER DOCUMENTS SHOWN DURING THE INQUIRY TO WITNESSES OR OTHER OTHERWISE  
40 DEPLOYED IN THE COURSE OF THE PUBLIC INQUIRY, WITH THE EXCEPTION OF COMMISSION OFFICERS FOR**

**STATUTORY PURPOSES AND BETWEEN WITNESSES IN THE INQUIRY AND THEIR LEGAL REPRESENTATIVES, SUBJECT TO FURTHER ORDER OF THE COMMISSION. THIS DIRECTION APPLIES FROM THE COMMENCEMENT UNTIL THE FINISH OF THIS PUBLIC INQUIRY UNLESS VARIED.**

THE COMMISSIONER: Following receipt of correspondence on behalf of a summons witness to the inquiry and being satisfied that it's in the public  
10 interest to do so, I have directed pursuant to section 112 of the Independent Commission Against Corruption Act that all references to [REDACTED] in relation to Operation Hector shall not be published or otherwise communicated to anyone until further order of the Commission, except by Commission officers for statutory purposes and between witnesses, their legal representatives and other parties who have sufficient interest in the subject matter of the investigation for the purposes of receiving or providing legal advice, and representation in relation to their appearance, or reasonably anticipated appearance of the witness at the public inquiry in Operation Hector or pursuant to further order of the Commission. This  
20 direction is subject to the following exceptions: (1) the making of a complaint to the Inspector of the Commission or disclosure of information documents or other things to the Inspector, or (2) the publication of any evidence, contents of a document or information to a registered medical practitioner or registered psychologist for the purposes of that health practitioner providing medical or psychiatric care treatment or counselling, including but not limited to psychological counselling, to a person who has given or about to give evidence at the public inquiry.

30 **SUPPRESSION ORDER: BEING SATISFIED THAT IT'S IN THE PUBLIC INTEREST TO DO SO, I HAVE DIRECTED PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT THAT ALL REFERENCES TO [REDACTED] IN RELATION TO OPERATION HECTOR SHALL NOT BE PUBLISHED OR OTHERWISE COMMUNICATED TO ANYONE UNTIL FURTHER ORDER OF THE COMMISSION, EXCEPT BY COMMISSION OFFICERS FOR STATUTORY PURPOSES AND BETWEEN WITNESSES, THEIR LEGAL REPRESENTATIVES AND OTHER PARTIES WHO HAVE**  
40 **SUFFICIENT INTEREST IN THE SUBJECT MATTER OF THE INVESTIGATION FOR THE PURPOSES OF RECEIVING OR**

**PROVIDING LEGAL ADVICE, AND REPRESENTATION IN  
RELATION TO THEIR APPEARANCE, OR REASONABLY  
ANTICIPATED APPEARANCE OF THE WITNESS AT THE  
PUBLIC INQUIRY IN OPERATION HECTOR OR PURSUANT TO  
FURTHER ORDER OF THE COMMISSION. THIS DIRECTION IS  
SUBJECT TO THE FOLLOWING EXCEPTIONS: (1) THE MAKING  
OF A COMPLAINT TO THE INSPECTOR OF THE COMMISSION  
OR DISCLOSURE OF INFORMATION DOCUMENTS OR OTHER  
THINGS TO THE INSPECTOR, OR (2) THE PUBLICATION OF  
10 ANY EVIDENCE, CONTENTS OF A DOCUMENT OR  
INFORMATION TO A REGISTERED MEDICAL PRACTITIONER  
OR REGISTERED PSYCHOLOGIST FOR THE PURPOSES OF  
THAT HEALTH PRACTITIONER PROVIDING MEDICAL OR  
PSYCHIATRIC CARE TREATMENT OR COUNSELLING,  
INCLUDING BUT NOT LIMITED TO PSYCHOLOGICAL  
COUNSELLING, TO A PERSON WHO HAS GIVEN OR ABOUT TO  
GIVE EVIDENCE AT THE PUBLIC INQUIRY.**

20 THE COMMISSIONER: Following receipt of correspondence on behalf of  
a summons witness to the inquiry, I have declined to make a direction  
pursuant to section 112 of the Independent Commission Against Corruption  
Act as to references to Tresca Pty Ltd in relation to Operation Hector, being  
not satisfied that such a direction is necessary or desirable in the public  
interest.

30 Leave or authorisation has been granted to several persons to appear and be  
legally represented in this public inquiry. Such authorisations have been  
granted by email correspondence. If any other person seeks authorisation to  
appear and be legally represented in this public inquiry, such applications  
for such authorisation can be made following the completion of the opening  
address by Counsel Assisting. This public inquiry will be conducted in  
accordance with the Commission's Public Inquiry Procedural Guidelines  
made pursuant to section 31B of the Independent Commission Against  
Corruption Act 1988 and the Public Inquiry COVID Protocol March 2023.  
Both these documents are publicly available on the Commission's website.

40 I've separately signed an authorisation as to those that may participate in the  
public inquiry in the hearing room, remotely in the Commission's premises  
and remotely away from the Commission's premises. Needless to say, there  
is a level of flexibility incorporated in the authorisation to accommodate the

circumstances as they develop during the course of the public inquiry. I remind that the number of people in the hearing room is not to exceed 18 at any one time. As to the witness timetable and the order of witnesses, Counsel Assisting in due course will provide information as to the witnesses to be called and the order in which they are to be called. As far as possible, Counsel Assisting will keep members of the legal profession and parties advised and updated as the public inquiry progresses.

10 I anticipate that there will be a significant volume of documents tendered throughout the public inquiry, and to avoid confusion, I note that the first exhibit will become exhibit 30. The explanation for that being that the public inquiry is but part of what has been an ongoing investigation. As to the length of this public inquiry, subject to the usual vagaries and uncertainties in making estimates, the preliminary estimate is that this public inquiry will be around six weeks. Whether or not the Commission will make any findings of corrupt conduct will of course depend upon the evidence and a full and detailed examination of the evidence, but there are, as I suspect Counsel Assisting will advise, issues that arise beyond section 20 13(2) of the Independent Commission Against Corruption Act 1988 that will fall within the scope and purpose of this public inquiry, that is, the practices and procedures of government authorities. The community is entitled to expect that a significant government department or agency is properly and consistently competently managed and public monies are secured and that they are properly expended. In relation to those issues, several points obviously fall for consideration, including under the heading of due diligence, what if any procedures there were by way of integrity checks and the principles, integrity issues, concerning the history of 30 corporate entities, whether there is any reviewing and auditing of pricing of contractors and subcontractors, whether there are any protocols for responding to red flags and the like. These are all matters that fall under the subheading of corruption prevention. They are of great significance. I will now call on Counsel Assisting.

MR ENGLISH: Thank you, Chief Commissioner. At its core, this investigation concerns allegations of collusive tendering across two government organisations, involving dissembling conduct, including the use of aliases, the provision of false references and CVs for fictitious persons, known conflicts of interest and secondary employment being kept secret, and the provision of undisclosed commissions and rewards.

40

There are two principal aspects to the investigation, which are interrelated and involve a commonality of persons of interest and modus operandi with respect to alleged corrupt conduct.

The first aspect involves the procurement of building, civil and construction contracts during the period from June 2015 to September 2020, at what was formerly Leichardt Council, and is presently Inner West Council.

10 Tony Nguyen, who is an affected person in this inquiry, was the Senior Project Engineer, and later Property project manager, at these two organisations. Mr Nguyen was responsible for arranging quotes and making recommendations as to the successful tenderer for works of this nature at both councils.

20 Without declaring a conflict of interest, Mr Nguyen awarded much of this work to persons he was associated with, including the affected persons Monty Nguy and Aidan Cox, and in respect of the subcontracting company named SDL Project Solutions Pty Ltd, of which Seng Laphai was the director, Mr Nguyen received cash kickbacks in the order of \$22,000 to \$70,000.

30 The second aspect of the investigation concerns the procurement processes involved in two multimillion dollar contractual projects by Transport for NSW using as principal contractor Downer EDI Works Pty Ltd, which I will refer to simply as Downer. The first of these projects was the Transport Access Program, or TAP, which involved accessibility upgrades at rail stations, including the provision of ramps, lifts, improved lighting and car parking. Transport for NSW's TAP projects have been allocated funds in excess of \$2.2 billion since 2011.

The second of these transport projects involves rail corridor and platform modifications in preparation for Transport for NSW's New Intercity Fleet of trains, or NIF.

40 Through three separate companies, ASN Contractors Pty Ltd, Sanber Group Pty Ltd and RJS Infrastructure Group Pty Ltd, Mr Nguyen partnered with certain other affected persons in tendering for and, where successful, delivering civil, building and landscaping works at various train stations in connection with these two transport projects. In excess of \$10.28 million of public monies was paid to these three companies in the years 2014 to 2020

in connection with these transport projects. Much of this activity took place during the time when Mr Nguyen was employed by the council.

None of these three companies had any employees. In most instances, they would subcontract the work to other engineering and construction firms and collect a profit on top. To assist with the competitiveness of their tenders, each of these companies benefited from improper assistance from officers of Transport for NSW and/or Downer at various times during the procurement and project delivery stages. This included Transport for NSW employees  
10 Nima Abdi and Raja Sanber, and on the Downer side, Abd Abdal Aziz and Sairam Pilli, each of whom are affected persons for the purposes of this public inquiry.

Beyond these individuals, the Commission's investigation has uncovered that a number of other Downer employees appear to have influenced the awarding of subcontracts for Transport for NSW projects to companies with whom they had an association, and in some cases in exchange for a benefit, without declaring a conflict of interest.

20 This includes:

1. Former Downer officer and Sydney Trains project manager Benjamin Vardanega, and the company Project HQ Pty Ltd;
2. Downer project manager Andrew Gayed, and the companies AVCO Construction Consulting and Management Services Pty Ltd and Mansion Building Pty Ltd;
3. Downer project manager Vlad Stanculescu, and the company Dalski Pty  
30 Ltd; and
4. Downer Construction Manager Kevin Watters, and the company RJS Infrastructure Group Pty Ltd.

The types of misconduct under investigation insofar as concerns the affected persons principally concern:

1. Collusive tendering;
- 40 2. The giving and receiving of corrupt commissions or rewards;



3. Misconduct in public office;
4. Fraud and larceny offences; and
5. The dishonest application of public funds for private advantage.

10 The potential commission by some of the affected persons of offences in contravention of the Independent Commission Against Corruption Act 1986, including wilfully making false statements to Commission officers to mislead or attempt to mislead them in the exercise of their functions, procuring false testimony, and wilfully destroying or damaging documents or things relevant to the Commission's investigation, will also be explored during the public inquiry.

I will now address the principal aspects of the Commission's investigation and the types of suspected misconduct in more detail. I will also touch on corruption prevention measures insofar as they relate to matters the subject of the public inquiry.

20 Commencing with the council allegations, Mr Nguyen was first employed by Leichardt Council in June 2015 as a Senior Project Engineer. Upon his acceptance of the position, Mr Nguyen acknowledged that he had read and understood council's policies with respect to avoiding and disclosing real or perceived conflicts of interest, obtaining approval for secondary employment, maintaining confidential information, and the need to obtain market competitive tenders and quotes.

30 These council policies were acknowledged again by Mr Nguyen when he obtained the role of Property project manager at the recently established Inner West Council in July 2017. Inner West Council is the amalgamation of the former Leichardt, Ashfield and Marrickville Councils.

In September 2020, Mr Nguyen was subject to disciplinary action by Inner West Council for his role in relation to the irregular procurement of construction works, and he later resigned on 28 September 2020. During his time at both councils, without ever declaring a conflict of interest, Mr Nguyen awarded contracts to the value of \$4,299,577 to the following companies of which he was associated - and I should say, Commissioner, all dollar figures referenced in this opening statement are  
40 exclusive of GST:

- Mr Nguyen awarded \$682,535 worth of work to Marble Arch Pty Ltd, the director of which was Aidan Cox who Mr Nguyen had met at the Glenfield Junction Alliance TAP project, and who he subsequently partnered with in RJS Infrastructure Group when tendering for and performing Transport for NSW and Sydney Trains project works. In December 2018, Mr Cox purchased a mobile phone valued at \$1,960 for Mr Nguyen.
- 10 • Mr Nguyen awarded \$174,343 worth of work to Innocon Pty Ltd, a director of which was Monty Nguy who Mr Nguyen went to university with. In 2019, Mr Nguyen and Mr Nguy, along with others, partnered together in a café business in Liverpool.
- Mr Nguyen awarded \$973,789 worth of work to Constructicon Pty Ltd, the sole director and shareholder of which was Mr Nguy. While Mr Nguyen had reached an agreement with Mr Nguy to be paid 10 to 20% of Constructicon's profit on council projects, the evidence appears to suggest that no such money ever changed hands between these two gentlemen. Constructicon also subcontracted with RJS  
20 Infrastructure Group Pty Ltd in connection with the Transport for NSW TAP project at Kingswood.
- Mr Nguyen awarded \$1,460,422 worth of work to SDL Project Solutions Pty Ltd, the director of which was Mr Laphai. SDL Project Solutions subcontracted with Sanber Group Pty Ltd trading as RJS Civil in connection with the Transport for NSW TAP project at Victoria Street Station in Maitland. As mentioned previously, Mr Nguyen received between 22,000 and \$70,000 by way of cash  
30 kickbacks from Mr Laphai in connection with council construction and engineering projects he awarded to SDL Project Solutions. That was pursuant to an agreement whereby Mr Nguyen would be paid an amount equivalent to 20% of SDL Project Solutions' net profit and/or 10% of the contract sum. Mr Laphai also gave Mr Nguyen a mobile phone to be used in connection with the council work he awarded to SDL Project Solutions.
- Mr Nguyen awarded \$963,387 worth of work to Ballyhooly Civil Pty Ltd or BH Civil Pty Ltd, which company subcontracted to RJS  
40 Infrastructure Group Pty Ltd in connection with Transport for NSW TAP and NIF projects at Central, Lithgow, Kingswood and Wollstonecraft, and the Sydney Trains project at Macdonaldtown. Mr Nguyen met the director of Ballyhooly Civil while working

alongside Mr Cox at the Glenfield Junction Alliance TAP project in 2014.

- Mr Nguyen awarded \$22,720 worth of work to Sanber Group Pty Ltd, the director of which was Raja Sanber. Mr Nguyen secretly partnered with Mr Sanber when tendering for and performing Transport for NSW TAP works at Glenfield Junction in 2014 and Victoria Street Station in Maitland in 2017. It was Nima Abdi, the other silent partner in the company, who had requested Mr Nguyen to provide council work to Sanber Group.
- Lastly, Mr Nguyen awarded \$22,381 worth of work to JTG Services Pty Ltd, the director of which was Mr Abdi's wife, Jessica Tosh. Mr Nguyen secretly partnered with Mr Abdi in ASN Contractors Pty Ltd, Sanber Group Pty Ltd and RJS Infrastructure Group Pty Ltd in connection with Transport for NSW TAP and NIF projects at Glenfield Junction, Victoria Street, Central, Lithgow, Kingswood and Wollstonecraft stations.

20 To ensure these companies were successful in winning project work from council, Mr Nguyen engaged in collusive tendering practices, including by passing on budgetary figures, and confidential methodologies and pricing information from competing bidders to those companies whose quote he intended to have approved. Alternatively, Mr Nguyen would use confidential information of this nature to draft quotes on behalf of both the contractor he intended to have approved, as well as other contractors with prices above those of his chosen supplier, in other words, to ensure his preferred supplier was awarded the work, Mr Nguyen would draft both the winning and the unsuccessful quotes, the latter of which are also known colloquially as dummy bids.

30 On many occasions when Mr Nguyen drafted a dummy bid, he did so without the knowledge of the directors of the company on whose behalf the quote was purportedly submitted. Mr Nguyen achieved this by obtaining quote templates and email login details for these companies, and then emailing the dummy bid to himself on behalf of the tenderer using an alias.

40 On occasions, Mr Nguyen would break up particular jobs so that the quoted value fell below the threshold of \$10,000, thereby justifying procurement on a single source basis. On other occasions, council's procurement rules in relation to the need to obtain three competing quotes for works valued

between ten and \$150,000, or from June 2019, \$250,000, were neither followed nor enforced.

The construction and engineering projects which Mr Nguyen awarded to these companies included facility upgrades at:

- Pioneers Memorial Park in Leichardt;
- The War Memorial Park in Leichardt;
- 10      • Leichardt Oval;
- Lambert Park in Leichardt;
- Bridgewater Park in Rozelle;
- The Enmore Childrens Centre;
- Steel Park community rooms in Marrickville;
- 20      • Ashfield Council administrative building;
- Leichardt Council administrative building;
- The Seaview Centre in Leichardt;
- The Air Raid Shelter and Waterfront Drive Sports Complex in Rozelle;
- 30      • Camperdown Memorial Rest Park;
- Petersham Park;
- The Mervyn Fletcher Centre in Haberfield; and
- The May Murray Child Care Centre in Marrickville.

40      Given the number of projects that Mr Nguyen was influential in awarding to these entities, summaries will be used as a means of presenting this evidence to relevant witnesses. These summaries have been made available to the legal representatives of affected persons. If any affected person considers there to be any inaccuracy with respect to these summaries, or any other

summaries that are to be used throughout the course of the public inquiry, their legal representatives can raise this with myself or Ms Davidson.

We expect the evidence relating to Inner West Council will also disclose that on one occasion Mr Nguyen made a false report that some 3,000 to \$4,000 worth of tools which had been hired by council had been stolen. Mr Nguyen did this so that he or Mr Cox could later use these tools in connection with Transport for NSW work which had been awarded to RJS Infrastructure Group Pty Ltd.

10

From a corruption prevention perspective, we anticipate findings will be proposed concerning the inappropriateness of the effective end-to-end control that Mr Nguyen had over the procurement and payment processes at Inner West Council. There were no mandated preferred supplier panels or centralised bidding systems, leaving it open to Mr Nguyen to source, assist and select tendering companies with whom he was associated. Inadequate supplier due diligence, poor project scoping and management, and a control framework that was weakened by organisational change, was also causative of the alleged corrupt conduct within Inner West Council.

20

I will now turn to the issues relating to Transport for NSW and Sydney Trains. On 6 July 2016, Downer entered into a Framework Agreement with Transport for NSW to undertake the development and design of the TAP projects throughout NSW.

30

On completion of the design and development phase for each project, Transport for NSW awarded separate Managing Contractor, or MC, contracts to Downer for engineering and construction works at nominated train stations. Under the MC contracts, Downer could call for tenders and recommend companies for inclusion in subcontractor tender lists, but final approval of subcontractors rested with Transport for NSW. Under the MC contracts, it was open to Transport for NSW to direct Downer to accept a quote from another tenderer which had not been recommended by Downer.

40

Transport for NSW was liable to pay Downer its “reimbursement costs” under the MC contracts, which included payments made by Downer to subcontractors. Through this mechanism, any price inflation by subcontractors would ultimately be borne by Transport for NSW. However, this was subject to a pain/gain sharing clause which provided that all over-expenditure and savings from pre-agreed budgets would be allocated at a ratio of 75% to Transport for NSW and 25% to Downer.

The Transport for NSW and Sydney Trains projects which the Commission is primarily investigating, in chronological order, are as follows:

- First, the Glenfield Junction Station car park defect rectification works which involved contracts to the value of \$246,000 being awarded to ASN Contractors Pty Ltd;
- 10 • Secondly, the Victoria Street Station TAP upgrade works which involved contracts to the value of \$1,748,137 being awarded to Sanber Group Pty Ltd trading as RJS Civil;
- Thirdly, the Central Station NIF upgrade works which involved contracts to the value of \$510,497 being awarded to RJS Infrastructure Group Pty Ltd trading as RJS Projects, which for convenience I will now refer to simply as RJS Infrastructure;
- 20 • Fourthly, the Lithgow Station NIF upgrade works which involved contracts to the value of \$1,681,848 being awarded to RJS Infrastructure;
- Fifthly, the Kingswood TAP station upgrade and landscaping works which involved contracts to the value of \$868,338 being awarded to RJS Infrastructure;
- Sixthly, the Sydney Trains Macdonaldtown stabling yard upgrade works which involved contracts to the value of \$452,462 being awarded to RJS Infrastructure;
- 30 • Seventhly, the North Strathfield Station TAP upgrade works which involved contracts to the value of \$95,299 being awarded to RJS Infrastructure; and
- Eighthly, the Wollstonecraft Station TAP upgrade works which involved contracts to the value of \$4,686,728 being awarded to RJS Infrastructure.

I will now outline the nature of these projects, and the related alleged misconduct, individually.

40

Prior to joining Leichardt Council, Mr Nguyen worked for John Holland Group Pty Ltd on the Transport for NSW Glenfield Junction Alliance TAP upgrade project. It was within this professional environment that Mr Nguyen met Transport for NSW officers Raja Sanber and Nima Abdi. Mr Abdi was the Transport for NSW project manager for the Glenfield Junction Alliance program and Mr Sanber was the Transport for NSW project engineer. While together on site, these three gentlemen formed a plan to create a company to tender for Transport for NSW engineering and construction work.

10

The first tender they were successful in obtaining involved rectifying defects at the Glenfield Junction Station car park, which structure had been completed as part of the TAP project in 2014.

The company which Messrs Nguyen, Abdi and Sanber incorporated to tender for this work was originally named TRN Contractors Pty Ltd, being a reference to Tony, Raja and Nima. Mr Nguyen's wife, Susan To, was listed as the director and shareholder of this company. There is no suggestion that Ms To has engaged in corrupt conduct.

20

The company's name was changed in August 2014 following receipt of a cease and desist letter in relation to alleged trademark infringement. The renamed company was called ASN Contractors Pty Ltd, being a reference to Abdi, Sanber and Nguyen.

30

Despite the connection between the name of the company and its principals, Messrs Nguyen, Abdi and Sanber went to considerable lengths to distance themselves from the appearance of any association with ASN Contractors. To achieve this, the three gentlemen communicated about company business using phones registered in other persons' names, and they gave themselves aliases and would answer phone calls in the names of their fictitious identities. They also had their false names printed on business cards. Mr Abdi adopted the alias Nick Sandrussi. Mr Sanber used the aliases Roger Smith and Raj Sandy, and Mr Nguyen used the alias Anthony Lee.

40

While Transport for NSW employees are required to abide by the Transport for NSW code of conduct and were required to sign disclosures of interest documents from time to time, it is perhaps unsurprising that Mr Abdi and Mr Sanber each made nil disclosures notwithstanding their involvement with ASN Contractors.

ASN Contractors obtained the defect rectification work at the Glenfield Junction car park because Mr Abdi both invited the company to tender for the project and passed on confidential price information that he had obtained in his role to ensure ASN Contractors was able to submit the lowest priced tender.

10 On 27 August 2014, using the false name Raj Sandy, Mr Sanber on behalf of ASN Contractors submitted a quote for \$218,000 for the Glenfield Junction car park defect rectification works. Mr Abdi recommended ASN Contractors as the preferred tenderer, and subsequently endorsed the report of the tender review panel by falsely stating that he had followed the evaluation methodology and was not aware of any breach of confidentiality, conflict of interest, or any unresolved probity issues.

20 The other tenderers for the Glenfield Junction car park defect rectification works were Ballyhooly Civil Pty Ltd and Dabcorp Pty Ltd. The principal of Dabcorp, John Dabit, was an associate of Mr Sanber's. Mr Nguyen and Mr Sanber each played a role in the provision of quotes from these companies, and it appears with the sole intention that their tenders would never be successful. In fact, Daval Group Pty Ltd, a director of which is Mr Dabit, carried out the entirety of the rectification works at Glenfield through a subcontracting arrangement with ASN Contractors.

This is the first example of the collusive bidding methodology which Mr Nguyen would continue to employ in relation to both council and Transport for NSW tenders.

30 In terms of financials, the contract sum for the Glenfield Junction car park defect rectification works was \$218,000. With additional variations to the value of \$28,000 having been approved, the total amount paid to ASN Contractors in connection with the work at Glenfield was \$246,000.

To carry out these works, Daval Group charged \$121,000 leaving ASN Contractors with a profit in the order of \$125,000, which was split evenly between Messrs Sanber, Abdi and Nguyen.

40 I will now turn to the Victoria Street Station upgrade works at Maitland. On 26 April 2017, Downer issued an invitation to tender in relation to the building package for the TAP upgrade works at Victoria Street Station in Maitland. The scheduled tender closing date was identified as 15 May



2017. On the same day the tender was released by Downer, Mr Dabit forwarded the tender invitation to Mr Sanber.

On 11 May 2017, Abd Abdal Aziz, who was Downer's project manager for the Victoria Street Station project, requested for the tender closing date to be extended to 19 May 2017. This was Mr Aziz's first project for Downer, having only recently been employed on the basis of a false reference provided by Mr Abdi.

- 10 Mr Aziz's intervention to extend the submission closing date permitted Sanber Group trading as RJS Civil to be added, on or around 12 May 2017, as a new tenderer for the Victoria Street Station building package.

Following the deregistration of ASN Contractors in 2014, Sanber Group trading as RJS Civil was the new corporate vehicle through which Messrs Nguyen, Abdi and Sanber had partnered to win Transport for NSW engineering and construction work.

- 20 Sanber Group was incorporated on 20 October 2015, with Mr Sanber listed as the sole director and shareholder of the company. It is reasonably uncontroversial that Mr Nguyen and Mr Abdi each had a silent interest in this company.

Between 2016 and 2020, Mr Sanber submitted four senior service declarations to Transport for NSW. On each occasion, he falsely stated that he held no private interests that may conflict with his position at Transport for NSW.

- 30 In around June 2017, Mr Abdi was appointed as Transport for NSW's project manager in relation to the Victoria Street station upgrade works. With the assistance of confidential price information supplied by Mr Aziz, Messrs Abdi and Sanber, together with Mr Dabit on behalf of Dabcorp, engaged in collusive tendering practices designed to ensure Sanber Group would be the successful tenderer for the Victoria Street Station building package. Mr Aziz provided specific guidance as to the price Sanber Group should submit in its tender, the slightly higher quote which Dabcorp was to submit, and the timings by which Sanber Group's tender information should be lodged to maximise its appeal to Downer.
- 40 During the tender process, to create the impression that Sanber Group was a real construction company with its own employees, Mr Sanber sent false

information to Amit Patel from Downer regarding Sanber Group's experience and purported staff numbers. To assist with this façade, Mr Abdi drafted fake CVs which were also supplied to Mr Patel by Mr Sanber. There is no suggestion that Mr Patel has engaged in corrupt conduct.

On 29 June 2017, Mr Aziz lied about undertaking reference checks for Sanber Group and then provided fictitious feedback about the company's experience to his colleagues at Downer.

- 10 Mr Aziz was influential in ensuring that the Victoria Street building package was awarded to Sanber Group, notwithstanding that its quote was significantly more expensive than the next placed tenderer. Mr Aziz approved the recommendation to award the building package to Sanber Group for the contract price of \$847,803 with a comment that, "Looking to the availability, experience and pricing ... [Sanber Group] ... is deemed to be the best value."

- 20 Mr Aziz maintained his positive recommendation notwithstanding significant concerns being raised internally within Downer about Sanber Group's financial capacity to complete the project. In one email to Mr Aziz and Mr Patel, another Downer project manager queried whether Sanber Group actually existed as no records for the company were available on Google.

Mr Patel responded to these concerns by noting that engaging Sanber Group was low risk due to Mr Aziz's confidence after speaking with the parties.

Sanber Group's tender recommendation was officially approved and signed by Downer on 13 July 2017.

- 30 On 11 July 2017, Mr Laphai on behalf of SDL Project Solutions provided a quote of \$544,566 to Sanber Group to complete the Victoria Street Station building works. This quote was accepted, and it is understood that Sanber Group paid SDL Project Solutions slightly in excess of \$600,000 for the completion of these works.

- 40 Between August 2017 and March 2018, Sanber Group received a total of \$1,748,137 from Downer in connection with the Victoria Street Station building works. The extra monies, in excess of \$900,000, paid in addition to the agreed contract sum, arose as a result of 30 approved contract variations, most of which were initiated by Mr Aziz, and none of which

were awarded by way of competitive tender. In some cases, Mr Aziz reviewed Sanber Group's draft variation claims and provided guidance as to the amount of money that could be charged before the formal claim was submitted to Downer.

Some of these variation claims appear to have been inflated.

10 For example, in relation to one such claim, on 16 August 2017, Mr Aziz texted Mr Sanber stating, "Call me once you have Farshad's spreadsheet so we fill it out together. Claim should include all possession work as well. We'll smash it. It'll be a good claim."

In relation to other claims, on 18 December 2017, Mr Aziz texted Mr Sanber stating, "I am at my limit now and cannot push any more varies through. You need to make it all happen ASAP so people don't start sniffing around and asking questions..."

20 Despite the apparent success of the Victoria Street station building works for Sanber Group, there was a falling out between Mr Sanber and Messrs Nguyen, Aziz and Abdi, with the latter three becoming suspicious that Mr Sanber, who had complete control of the Sanber Group bank accounts, was not being transparent insofar as concerned project costs, cash flows and profitability.

30 Mr Sanber's manipulation of Sanber Group's accounts for the Victoria Street Station has made it difficult to assess the profit derived on completion of the project. Despite this, in a spreadsheet sent by Mr Aziz to Mr Sanber, using the anonymous, self-deleting email system called Guerrilla Mail, a figure of \$873,000 is identified as the profit amount for the Victoria Street project, which was notionally split 50% to Mr Aziz, with the remaining 50% split evenly between each of Messrs Abdi, Nguyen and Sanber.

Evidence the Commission has obtained indicates that a portion of Mr Abdi's profit from this project was expended on a fig farming venture which he, Mr Nguyen and Mr Sanber had sought to develop at one of Mr Abdi's properties.

40 The Sanber Group partnership breakdown led to Mr Nguyen forming RJS Infrastructure Pty Ltd trading as RJS Projects in June 2018, which name was consciously chosen to match Sanber Group's trading name, RJS Civil, and

to thereby benefit from the reputation associated with the successful completion of the Victoria Street building works.

The director of RJS Infrastructure was Mr Nguyen who at the time of incorporation was the company's sole shareholder.

10 The first project that was awarded to RJS Infrastructure was the Part A conservation works at Central Station, for which Mr Aziz was allocated the role of assistant project manager on behalf of Downer. This job commenced in the latter part of 2018.

To enable it to tender for the Central Station NIF works, Mr Aziz passed on RJS Infrastructure's details to the tendering team at Downer. Mr Aziz did the same in respect of Mr Nguy's company Constructicon knowing that Mr Nguyen would supply a dummy bid purportedly on behalf of that company for the purposes of the tender. The third company invited to tender for these works ended up not quoting.

20 RJS Instructure was awarded the Part A conservation works at Central Station. The original subcontract price was \$92,200, however, in addition to this amount, 26 variations totalling \$418,297, essentially in the nature of a fresh package of works, were awarded to RJS Infrastructure in the absence of competitive tender. The total amount paid to RJS Infrastructure in connection with the Central Station NIF works was \$510,497.

30 The subcontractors used by RJS Infrastructure to complete the works at Central Station were Constructicon, and Ballyhooly Civil. Mr Laphai also provided some supervision assistance to RJS Infrastructure pursuant to a labour hire agreement.

A spreadsheet prepared by Mr Nguyen identifies the operating cost of the Central Station project to RJS Infrastructure as being \$222,564, leaving a profit of \$198,622 to be split evenly between Messrs Nguyen, Abdi and Aziz.

The second Transport for NSW project which was awarded to RJS Infrastructure was in relation to the NIF upgrade works at Lithgow Station. The closing date for this tender was 15 March 2019.

40 Mr Nguyen engaged Aidan Cox of Marble Arch to deliver the work at Lithgow on behalf of RJS Infrastructure, pursuant to a profit sharing

arrangement. As part of his role, Mr Cox prepared the Lithgow tender submission on behalf of RJS Infrastructure.

The Downer project manager for Lithgow was Mr Aziz, who, at times using Guerrilla Mail, assisted RJS Infrastructure by providing information in relation to pricing, including by disclosing the quotes of competing tenderers.

10 On 26 March 2019, Mr Nguyen submitted RJS Infrastructure's tender for the Lithgow project to Downer. The total quote was for \$1,297,756. After further requests and clarifications were sought, a revised quote of \$1,591,756 was submitted by RJS Infrastructure to Downer.

In May 2019, a subcontract agreement for the Lithgow NIF works between Downer and RJS Infrastructure was formally entered into. \$246,191 worth of variations were subsequently approved for RJS Infrastructure to carry out as part of the Lithgow project.

20 One subcontractor used by RJS Infrastructure to perform the NIF works at Lithgow was Ballyhooly Civil.

The total amount paid to RJS Infrastructure by Downer in connection with the Lithgow NIF project was \$1,681,848. After paying expenses, including \$350,000 to Mr Cox of Marble Arch, Mr Nguyen's spreadsheet reports a profit for the Lithgow project of \$663,997 to be split evenly between himself, Mr Abdi and Mr Aziz.

30 As a result of his work on, and the success of, the Lithgow project, Mr Nguyen offered Mr Cox a 50% shareholding in RJS Infrastructure. ASIC records show that Mr Cox's shareholding in the company was registered on 27 June 2019.

The third Transport for NSW project which was awarded to RJS Infrastructure involved TAP upgrade works at Kingswood Station, including lift installations, platform widening and lighting improvements.

40 On 4 June 2019, on instruction from Mr Abdi, the Downer project engineer for Kingswood, Sairam Pilli, sent an internal email asking for tender requests to be issued to subcontractors including RJS Infrastructure, SDL Project Solutions and Constructicon, as well as two other companies. Of this group of potential subcontractors, Mr Nguyen, using aliases, drafted and

submitted dummy bids purportedly on behalf of SDL Project Solutions and Constructicon.

To assist RJS Infrastructure with its tender submission, Mr Abdi supplied Mr Nguyen with information in relation to Transport for NSW's budget for the Kingswood Station building project. Having been informed of RJS Infrastructure's proposed quote for these works, Mr Abdi instructed Mr Nguyen to increase its tender price by \$100,000.

- 10 Additional packages for asphaltting and fencing, which ordinarily would have gone out to tender, were awarded to RJS Infrastructure on a sole source basis as part of the Kingswood Station project. Mr Pilli had obtained the Downer budgets for these two packages and disclosed them to Mr Abdi, who then relayed this information onto Mr Nguyen before RJS Infrastructure submitted its quotes for these works.

- 20 RJS Infrastructure's original subcontract value for the building works at Kingswood was \$388,756. With 34 variations to the value of \$414,611 subsequently approved, the total amount paid to RJS Infrastructure in connection with the Kingswood building package was \$803,368.

The subcontractor engaged by RJS Infrastructure for the Kingswood building package was Constructicon.

- 30 The landscaping package for the Kingswood Station TAP works was also awarded by Downer to RJS Infrastructure. The tender process for this package was similarly subverted by dummy bidding prepared or arranged by Mr Nguyen, purportedly on behalf of Marble Arch and Ballyhooly Civil. The subcontracting company which RJS Infrastructure engaged to carry out the Kingswood Station landscaping package was called WHC Landscaping Pty Ltd, the director of which, William Clark, is a relative of Mr Abdi's.

On 21 November 2019, Mr Clark sent a quotation to Mr Nguyen of \$36,436 in respect of the landscaping package at Kingswood. On 26 November 2019, RJS Infrastructure submitted its quote to Downer of \$59,790 in respect of these works.

- 40 On 9 December 2019, Mr Clark provided Mr Nguyen with a revised reduced quote for the Kingswood landscaping works of \$29,462. There is no suggestion that Mr Clark has engaged in corrupt conduct.

On 16 December 2019, Mr Pilli and Downer project manager, Vlad Stanculescu, recommended that the landscaping tender be awarded to RJS Infrastructure due to its competitive pricing and capability. The evaluation also noted that this would amount to a \$9,790 loss to Downer as its tender break-even point was \$50,000 for landscaping.

10 In addition to the contract sum of \$59,790, it appears that a variation to the value \$5,180 was approved in respect of the Kingswood landscaping package, bringing the total amount paid to RJS infrastructure in connection with this package to \$64,970.

In return for his assistance to RJS Infrastructure with the Kingswood Station packages and apparently some additional contracting works, Mr Pilli received \$63,500 which was paid on receipt of an invoice by a company Mr Pilli controlled named PSR360 Pty Ltd. For his specific assistance in relation to Kingswood, Mr Pilli received a further \$38,000 in cash from Mr Abdi.

20 The spreadsheet prepared by Mr Cox identifies the combined profit to RJS Infrastructure from the Kingswood Station building and landscaping packages as being in the order of \$529,000, which appears to have been split roughly 22% to Mr Abdi, with 78% going to Mr Nguyen, who from his cut supplied to Mr Cox an amount equivalent to around 24% of the overall profit.

The fourth project which was awarded to RJS Infrastructure was the Sydney Trains stabling upgrade works at Macdonaldtown Station.

30 On 20 September 2019, Benjamin Vardanega, who was then working as a part time project manager at Sydney Trains, received methodology information in relation to the Macdonaldtown stabling works from the site's senior project manager. Mr Vardanega forwarded this information to his personal Gmail address and then subsequently sent the information onto Mr Cox. Evidence which the Commission has obtained suggests that further confidential information in relation to the Macdonaldtown tender was supplied by Mr Vardanega to Mr Cox via the secure messaging platform Wickr.

40 The head contractor for the stabling upgrade works at Macdonaldtown Station was Brodyn Pty Ltd trading as TCQ Construction. On or around 25

September 2019, Mr Cox prepared a quote for \$448,209 in relation to these works, which it is understood he supplied to the head contracting company.

On 25 October 2019, Brodyn Pty Ltd awarded the sub-tender for the Macdonaldtown containment works to RJS Infrastructure, which package was further subcontracted to, and completed by, Ballyhooly Civil for \$217,545.

10 At the end of the project, a finder's fee of between \$25,000 and \$40,000 was paid in cash by Mr Cox on behalf of RJS Infrastructure to Mr Vardanega. RJS Infrastructure was paid \$452,462 by Brodyn Pty Ltd for the Macdonaldtown Station containment works. Once Ballyhooly Civil's charges and other expenses are deducted from this amount, Mr Cox's spreadsheet identifies that RJS Infrastructure's profit for the project was around \$192,363, which was split evenly between himself and Mr Nguyen.

The fifth project which was awarded to RJS Infrastructure involved the TAP station upgrade works at North Strathfield Station. Kevin Watters was the Downer project manager for this site.

20

On 10 September 2019, Mr Watters sent an email to Mr Nguyen stating:

“...now that RJS are coming to an end of works at Kingswood, I have a small package of heritage style building works at North Strathfield that I need looked at ... can you get out to site this week for a walk around ... keen to get you guys pricing ASAP.”

30 On 30 September 2019, Mr Cox, on behalf of RJS Infrastructure, emailed Mr Watters a quotation for \$34,209 for platform building adjustment works at North Strathfield Station. On 17 October 2019, a revised quote of \$45,107 was sent on behalf of RJS Infrastructure by Mr Cox to Mr Watters.

Following a site visit which took place on 18 October 2019, in the absence of any tender process, Mr Watters accepted RJS Infrastructure's revised quote.

40 Also, on 18 October 2019, Mr Watters emailed Mr Patel advising him that Downer would engage RJS Infrastructure to complete the waiting room floor lowering works at North Strathfield Station. In his email, Mr Watters noted that he was “expecting 0 variations as all considerations have been made”.



Despite his assurance, in addition to the further revised subcontract amount of \$51,007, an additional \$44,292 worth of variations was issued by RJS Infrastructure in relation to the works at North Strathfield Station, all of which were approved by Mr Watters. Some of these variations are understood to have been inflated, and the legitimacy of some of these costs was queried by certain Downer employees.

10 The total amount paid to RJS Infrastructure in connection with the works at North Strathfield Station was \$95,299.

It is understood that in response to a direct request for money by Mr Watters, at the end of the project, Mr Nguyen provided between five to \$8,000 cash to Mr Cox who then supplied this money to Mr Watters in the car park at North Strathfield Station. Lawfully intercepted telephone calls confirm that Mr Watters received a cash payment of \$8,000 on this occasion.

20 Mr Cox's spreadsheet identifies that the profit to RJS Infrastructure in connection with the North Strathfield Station works was around \$48,783, which was split roughly 35% to himself and 65% to Mr Nguyen.

The final project awarded to RJS Infrastructure concerned the Wollstonecraft Station TAP upgrade works. This significant project involved the installation of two lifts, two bridges, platform raising, platform strengthening, drainage and conduit installation works in and around the station.

30 On 8 July 2020, at a time when he was contracting with Transport for NSW through his company Project HQ, Mr Vardanega sent an email to Mr Cox containing a Dropbox link with materials and a spreadsheet including information in relation to subcontractors, and budgets and prices for the Wollstonecraft TAP station upgrade, which he had received from Downer project manager, Andrew Gayed. Mr Cox subsequently forwarded this email to Mr Nguyen. Mr Vardanega and Mr Cox were later seen on this day at the Burwood Club reviewing the contents of a laptop screen.

40 On 6 August 2020, Mr Abdi forwarded to Mr Nguyen a copy of Transport for NSW's confidential bill of quantities in relation to the Wollstonecraft project. Mr Abdi had obtained the bills of quantity for Wollstonecraft, Birrong, Roseville and Banksia stations from a Transport for NSW project

manager working on the Wollstonecraft site. Whether that particular Transport for NSW employee received a benefit from Mr Abdi for assisting him in this way will be explored during the public inquiry.

On 20 August 2020, Mr Vardanega sent a further email to Mr Cox with an attachment containing confidential Downer information in relation to pricing and budgets for the Wollstonecraft Station project. This information had been sent to Mr Vardanega on 27 May 2020 from Mr Gayed's Downer email address.

10

In the email account of Mr Nguyen, Commission investigators located an email sent by Mr Cox on 2 September 2020 containing the tender submission of a competitor for the Wollstonecraft project. These documents contained information relating to that competitor's confidential pricings and methodologies for the works. The email chain confirms that these materials had originated from Mr Gayed, who had emailed them to his private email address and then onto Mr Vardanega's Project HQ email address. Mr Vardanega then forwarded the materials to Mr Cox who in turn sent them to Mr Nguyen.

20

RJS Infrastructure provided the lowest quote and was accordingly selected as the preferred tenderer for the platform civil and FRP works at Wollstonecraft Station.

RJS Infrastructure was also recommended for another two packages at Wollstonecraft, being the station civil and FRP package, and the piling package. For both these packages, RJS Infrastructure was the cheapest tenderer.

30 On 11 September 2020, a text conversation took place between Mr Cox and Mr Watters in which Mr Watters told Mr Cox, "Approved the first \$2.8M," for million, "for you guys this morning, have the rest in my approval queue. Good result for RJS, make sure we're looked after well!" - smiley face with a wink emoji.

40 While it was successful in obtaining three packages for the Wollstonecraft TAP project, RJS Infrastructure missed out on the building package despite again being the cheapest tenderer. Mr Nguyen was told by Mr Gayed that RJS Infrastructure would be awarded three separate packages by Downer for Wollstonecraft if it refrained from pursuing the building package.

The building package for Wollstonecraft was awarded by Mr Gayed to Maize Group Pty Ltd, which is a company with which he appears to have an association. In this respect, the Commission has evidence that Mr Gayed assisted Maize Group in preparing its tender submission for the Glenbrook Station TAP upgrade works, including by providing Maize Group with Downer budgetary information in relation to this project.

The total amount paid to RJS Infrastructure across the three Wollstonecraft packages was \$4,686,728, including variations to the total of \$92,836.

10

On 2 December 2020, search warrants were executed by Commission officers at the residences of Mr Nguyen and Mr Cox. As this occurred at a time when the Wollstonecraft TAP project was still ongoing, it has not been possible to ascertain the profit figures and splits in relation to this project. This will be a matter for further exploration during the public inquiry.

The manner by which the packages for the Wollstonecraft TAP station upgrade works were awarded to RJS Infrastructure did not go entirely unnoticed at Transport for NSW.

20

In accepting Downer's recommendation to approve RJS infrastructure in relation to the three Wollstonecraft packages, on 20 October 2020, the Transport for NSW representative and senior project manager, Brenden Wakim, stated that:

“Transport for NSW does note that with this recommendation coming through literally hours before the contractor is to commence on site that it does not leave time to review the suitability of the contractor for this type of work.”

30

Later that same day, in an email to others from Transport for NSW, Mr Wakim stated:

“Downer have awarded a number of large contracts for Wollstonecraft Station to RJS Projects, prior to seeking Transport for NSW endorsement to do so.

I can't find much about this company, it does not have a website and the company address is a residential house.

40

I asked Andrew Bedwani about the company, what the past experience is and what connection they have to Downer and he seemed very defensive about it.

Please be aware of this on the weekend, please check if this company is just subcontracting the work out to other firms. It may be an example of pyramid contracting.

10 The contracts awarded are for over \$4.5 million in value, and are for piling, platform, civil and FRP works.

The subcontractor recommendation for this company came through at 5pm on Friday night, literally hours before they were due to start on site.

I might be feeling paranoid, but something seems very odd about all this.

20 I have requested formally that Downer supply further information about this company and previous work they have undertaken.”

Mr Wakim says that when he spoke up about concerns of this nature, Downer representatives would complain, and Mr Wakim was told by his Transport for NSW manager that he had trust issues and should work on developing that trust with Downer. There is no suggestion that Mr Wakim has engaged in corrupt conduct.

Mr Wakim’s sense of paranoia appears to have been justified.

30 As an example of the duplicity occurring within Transport for NSW at the time, a screenshot of Mr Wakim’s email from 20 October 2020 was leaked by a particular Transport for NSW employee to Mr Abdi, who subsequently provided it to Mr Nguyen.

40 In a matter unrelated to RJS Infrastructure, in September 2019, Mr Aziz was appointed Downer project manager for the NIF project at Hexham. While purportedly performing tasks in this role, Mr Aziz requested that an employment agency named Chandler Macleod hire a particular Transport for NSW project manager and Mr Abdi’s wife, Jessica Tosh, on the NIF project at Hexham.

No work was undertaken by Ms Tosh on this project, and nor so apparently by the Transport for NSW employee. Despite this, timesheets were submitted to Downer in their names which led to gross wage payments of \$25,571 to the Transport for NSW officer and \$22,263 to Ms Tosh, all of which was approved by Mr Aziz.

For his role in the scheme, Mr Aziz received 50% of Ms Tosh's net wages and Mr Abdi and Mr Aziz each apparently received 25% of the Transport for NSW employee's net wages.

10

Mr Aziz also engaged the company linked to Mr Abdi, JTG Services Pty Ltd, to purportedly carry out work on behalf of Downer on Transport for NSW's NIF project. Between January 2020 and June 2020, without, however, performing any actual work, JTG Services submitted three invoices to Downer totalling \$207,553, and it seems Mr Abdi received the benefit of this money. The Commission hopes to learn during the public inquiry how much of this money Mr Aziz may have received in return for awarding this work to JTG Services.

20 I mentioned earlier, Chief Commissioner, that additional Downer employees had engaged subcontractors with whom they were associated to perform services and carry out work for Transport for NSW and Sydney Trains.

This includes Downer project manager, Mr Gayed, who through a company purportedly controlled by his father, AVCO Construction Consulting and Management Services Pty Ltd, charged Downer \$12,000 for the hire of lighting towers to be used in connection with the Wollstonecraft TAP project. These towers were not owned by AVCO, but appear to have been hired by that company from a supplier named Access Hire Australia for as little as \$4,678 .

30

Mr Gayed, again through AVCO, provided storage services for shipping containers and materials used by Downer in connection with TAP and rail corridor works at Glenbrook and Wollstonecraft. These materials were stored at Mr Gayed's residential property in Rossmore. The total value of the invoices submitted by AVCO to Downer in connection with these storage services, which were initially approved for payment by Mr Gayed, was \$27,900.

40 On both of these occasions Mr Gayed used aliases when engaging in communications with Downer on behalf of AVCO, and the high prices

charged by AVCO for these two services were queried internally by Downer representatives.

Between May and June 2019, another company associated with Mr Gayed named Mansion Building Pty Ltd was awarded contracts with Sydney Trains for works to be undertaken at Penrith, Wollongong and Liverpool Train Stations. These projects were awarded by Mr Vardanega via a sole source procurement process whereby individual contracts under \$30,000 were not subject to tender evaluation. Mansion Building invoiced Sydney  
10 Trains a combined amount of \$64,133 in connection with these three projects.

Mr Gayed had formed a prior relationship with Mr Vardanega while Mr Vardanega had been previously working for Downer. Despite this, no conflict of interest declaration or application for secondary employment was made by either of these two gentlemen.

Evidence obtained by the Commission appears to suggest that Mr Vardanega asked Mr Gayed if he could use Mansion Building to perform  
20 these works as he knew there would be a conflict of interest if the work was carried out by his company, Project HQ.

Local trades were used by way of subcontracting arrangement to carry out the works at Wollongong Train Station.

The Liverpool and Penrith Train Station projects were completed by way of subcontracting arrangement between Mansion Building and Camlin Constructions Pty Ltd, the latter being a company controlled by another Downer subcontractor, Ross Dean. The amount invoiced by Camlin  
30 Constructions to Mansion Building in connection with the two jobs at Liverpool and Penrith Train Stations was \$15,000. There is no suggestion that the principal of Camlin Constructions, Mr Dean, has engaged in corrupt conduct.

Mr Gayed further assisted with these projects by allowing the AVCO bank account to be used for transactions associated with purchasing materials and paying subcontractors.

On their completion, it is understood that Mr Vardanega received a cash  
40 payment in the order five to \$10,000 from Mr Gayed on account of the profitability of these three projects to Mansion Building. It is understood

that Mr Vardanega, who at the time he received this money was contracting with Sydney Trains, may assert that such payment was in return for him assisting Mr Dean with the completion of these projects.

It would seem as a quid pro quo for the Sydney Trains work awarded to Mansion Building that Mr Gayed recommended to Downer that Mr Vardanega's company, ProjectHQ, be engaged for rail corridor possession work at Glenbrook between May and October 2019.

- 10 On 8 April 2019, while employed full time at Sydney Trains, Mr Vardanega provided a quote to Mr Gayed on behalf of ProjectHQ for possession supervision work at Glenbrook Station. Mr Vardanega quoted himself at \$180 per hour as a senior project engineer, with a total quoted price of \$4,320.

- 20 ProjectHQ ultimately received \$113,110 from Downer in connection with these possession works in and around Glenbrook station. This fee was paid largely for engineering services provided by undergraduate employees of ProjectHQ in connection with rail corridor possession work. These works were physically carried out at a time when Mr Vardanega had dropped down to part time employment with Sydney Trains.

Then there is Downer project manager, Vlad Stanculescu. An investigation by Downer into Mr Stanculescu's conduct found evidence that he was working for and performing services for the company Dalski Pty Ltd in relation to non-Downer engagements. The investigation also found that Mr Stanculescu had inappropriately used his position at Downer, and delegated authority, to benefit Dalski in tendering for Downer subcontracts.

- 30 Insofar as it was alleged that Mr Stanculescu assisted Dalski in obtaining Transport for NSW TAP work at Banksia Station, for which he was Downer's project manager, the investigation found that Mr Stanculescu:
1. First, created a number of documents submitted by Dalski in its tender responses and during the clarification process;
  2. Secondly, submitted Dalski's initial tender responses using the Downer ARCUS login details of a Dalski employee;

3. Thirdly, using his own Downer ARCUS system privileges, accessed a competitor's pricing information and provided it to Dalski to give it an unfair competitive advantage in the tender; and

4. Fourthly, scored Dalski's tender submission the highest, including in key criteria which he knew to be false or misleading.

Each of these steps was performed for Dalski's benefit by Mr Stanculescu without him ever declaring a conflict of interest or applying for secondary  
10 employment approval.

Dalski was awarded the building package for the Banksia Station TAP upgrade works valued at \$1.978 million, the due completion of which, according to Mr Wakim, required the rectification of some 600 defects.

Following another internal Downer investigation, while not a decision-maker, Mr Stanculescu was found to have again acted inappropriately in favour of Dalski in connection with the Birrong Station TAP upgrade building package. Mr Stanculescu was specifically found to have authored  
20 several Dalski tender documents and used his access to internal Downer project budget information to inform Dalski's price submission. Dalski was the successful tenderer for the Birrong building package, and was awarded a contract valued at \$251,760.

As a result of these investigations, it is understood that Dalski, who Mr Stanculescu commenced employment with upon his resignation from Downer, has been blacklisted as a supplier to Downer.

In addition to his role in relation to the North Strathfield and Wollstonecraft  
30 projects to which I have already referred, the public inquiry will also explore whether Downer construction manager, Mr Watters, with the expectation that he would receive a benefit in return, provided confidential pricing information to Mr Cox in relation to two additional packages for Transport for NSW projects which RJS Infrastructure had tendered for but was not awarded. This was in relation to the Canley Vale and Birrong Stations TAP upgrade projects.

As you mentioned, Chief Commissioner, corruption prevention is a very  
40 important aspect of this investigation, and particularly insofar as it relates to Transport for NSW.



The investigation to date has revealed that Transport for NSW may not have adequately responded to relevant corruption risks in partnering with Downer. In particular, Transport for NSW appears to have not understood the importance of appropriately monitoring Downer's activities in the context of enforcing the terms of the MC contracts. This lack of oversight resulted in Downer not being made accountable for compliance with the NSW Government's Code of Practice for Procurement, which in turn created opportunities for alleged corrupt conduct to prosper.

- 10 This may be due to the fact that the risk lens, insofar as concerned Transport for NSW's MC contracts with Downer, was focused on construction, safety and delivery, rather than corruption.

On an occasion in September 2021 when the Paxon Group, on behalf of Transport for NSW, sought timesheets or alternative supporting information to audit the personnel usage at Wollstonecraft, Banksia, Birrong, Roseville and Canley Vale Stations, as was its right under the MC contracts, the evidence suggests that Downer did not comply with this request.

- 20 The effect of this combination of such apparent poor corruption risk awareness, inadequate monitoring and enforcement of contractual terms, was that potential red flags of corrupt conduct were not properly addressed when they arose as part of the day-to-day management of the MC contracts by Transport for NSW.

This was despite an awareness within Transport for NSW of the potential corruption risks associated with public private partnerships, such as the TAP projects. In an email sent to Transport for NSW staff on 13 April 2016, the Acting Deputy Secretary, Infrastructure and Services at Transport for NSW  
30 acknowledged that that the agency was:

“...undergoing a period of accelerated growth and expansion of which Infrastructure and Services is at the forefront, delivering a program of work in the region of \$27 billion.”

The email continued:

- 40 “Building on the earlier Transport for NSW Corruption Control Survey performed in January 2016, [Infrastructure and Services] has identified a need to undertake a more detailed Fraud and Corruption

Control Survey having regard to the heightened risk in our Division, given the significant program of work at hand.

Failure to manage potential fraud and corruption risks would seriously damage Infrastructure and Services' brand and reputation ... and may impede the delivery of our program of works.

Therefore, we need to be constantly vigilant in our business practices and regularly evaluate the effectiveness of our control environment.”

- 10 Under the MC contracts, Downer staff were required to comply with various policies and procedures of Transport for NSW and the NSW Government Code of Business Ethics.

This included the NSW Government's Code of Practice for Procurement which encompassed requirements relating to standards of behaviour, confidentiality and evaluation. This required Downer staff to:

- 20
- a. Behave at all times in accordance with honesty and fairness; accountability and transparency, and the rule of law;
  - b. Demonstrate commitment to continuous improvement and best practice performance in the management of procurement risk;
  - c. Not disclose tender information that is intellectual property, proprietary, commercial in confidence or otherwise confidential; and
  - d. Ensure tender evaluations are conducted by people free of any conflict of interest that might undermine process fairness.

- 30 Downer was also required to ensure that its contracts with subcontractors imposed equivalent obligations on the subcontractor when working on Transport for NSW projects.

Thus, all of the obligations just described applied equally to other subcontractors engaged by Downer.

- 40 Whether Downer sought to comply with and enforce these requirements, or whether it simply passed them on to employees and subcontractors without caring for their compliance, is a matter that will be explored over the course of the public inquiry.

Findings and recommendations may be proposed that are intended to remedy systemic issues, relating to management, governance and capability, which facilitated the failure to prevent or detect the alleged corrupt conduct the subject of this investigation within Transport for NSW and Downer.

10 It is anticipated that this aspect of corruption prevention evidence will significantly reduce corruption risks, not only at the level of government procurement, but generally for the improvement of supplier engagements, and the delivery of programs and services, in all forms of large-scale contracts entered into by or on behalf of the NSW Government.

Thank you, Chief Commissioner.

THE COMMISSIONER: Yes, thank you. We'll just take an adjournment.

#### **SHORT ADJOURNMENT**

**[11.29am]**

20 THE COMMISSIONER: Yes. Is anyone seeking leave to appear who hasn't already received an authorisation? All right.

MR GLOVER: Commissioner, might I announce my appearance? My name is Glover. I have received authorisation to appear on behalf of Transport for NSW. It's also apparent that Sydney Trains, which is a separate legal entity from Transport for NSW, has interests that may be affected by the public hearing and I would just seek formally to obtain your approval to represent Sydney Trains in addition to Transport for NSW.

30 THE COMMISSIONER: Yes. Thank you, Mr Glover. Authorisation is granted. Anyone further?

MR CHHABRA: Perhaps I may confirm that leave has been granted. My name is Chhabra, C-h-h-a-b-r-a. I appear as counsel, or seek leave to appear as counsel for Mr Nguyen, instructed by Mr Vo, solicitor.

THE COMMISSIONER: Yes. Thank you, Mr Chhabra.

40 MR CHHABRA: Thank you.

THE COMMISSIONER: Authorisation has been granted.

MR CHHABRA: May it please.

THE COMMISSIONER: Yes, Ms Davidson.

MS DAVIDSON: Chief Commissioner, I propose to commence by tendering a number of the brief volumes. This will not be a complete tender but as further deletions and redactions of personal - redactions I should say - of personal information are made from successive volumes of the brief they will be tendered progressively throughout the inquiry. As you has indicated, Chief Commissioner, the first of the exhibits I understand it, for the purposes of this stage of the public inquiry, will be exhibit 30. So the first volume that I tender is volume 1.1 of the brief entitled Nguyen Brief.

THE COMMISSIONER: That's Exhibit 30.

**#EXH-030 – PUBLIC INQUIRY BRIEF VOLUME 1.1 – NGUYEN BRIEF**

20

MS DAVIDSON: I now tender - excuse me for a moment, Chief Commissioner. The next volume that I tender is volume 1.2, the Central Station Nguyen Brief.

THE COMMISSIONER: Exhibit 31.

**#EXH-031 – PUBLIC INQUIRY BRIEF VOLUME 1.2 CENTRAL STATION NGUYEN BRIEF**

30

MS DAVIDSON: The next volume that I tender is volume 1.3, the Lithgow Station Nguyen Brief.

THE COMMISSIONER: Exhibit 32.

**#EXH-032 – PUBLIC INQUIRY BRIEF VOLUME 1.3 LITHGOW STATION NGUYEN BRIEF**

40

MS DAVIDSON: I next tender volume 1.3A, also entitled Lithgow Station Nguyen Brief.

THE COMMISSIONER: 34.

MS DAVIDSON: I think that should be 33.

THE COMMISSIONER: Oh, sorry. 33, righto. Yes.

10

**#EXH-033 – PUBLIC INQUIRY BRIEF VOLUME 1.3A LITHGOW STATION NGUYEN BRIEF**

MS DAVIDSON: I next tender volume 1.4, the Kingswood Station Nguyen Brief.

THE COMMISSIONER: 34.

20

**#EXH-034 – PUBLIC INQUIRY BRIEF VOLUME 1.4 KINGSWOOD STATION NGUYEN BRIEF**

MS DAVIDSON: I tender volume 1.5, also entitled Kingswood Station Nguyen Brief.

THE COMMISSIONER: Exhibit 35.

30

**#EXH-035 – PUBLIC INQUIRY BRIEF VOLUME 1.5 KINGSWOOD STATION NGUYEN BRIEF**

MS DAVIDSON: I tender volume 1.6, the North Strathfield Station Nguyen Brief.

THE COMMISSIONER: Exhibit 36.

40

**#EXH-036 – PUBLIC INQUIRY BRIEF VOLUME 1.6 NORTH  
STRATHFIELD STATION NGUYEN BRIEF**

MS DAVIDSON: I tender volume 1.7, the Wollstonecraft Station Nguyen Brief.

THE COMMISSIONER: Exhibit 37.

10

**#EXH-037 – PUBLIC INQUIRY BRIEF VOLUME 1.7  
WOLLSTONECRAFT STATION NGUYEN BRIEF**

MS DAVIDSON: I tender volume 1.8, also entitled Wollstonecraft Station Nguyen Brief.

THE COMMISSIONER: Exhibit 38.

20

**#EXH-038 – PUBLIC INQUIRY BRIEF VOLUME 1.8  
WOLLSTONECRAFT STATION NGUYEN BRIEF**

MS DAVIDSON: I tender volume 1.9, also entitled Wollstonecraft Station Nguyen Brief.

THE COMMISSIONER: Exhibit 39.

30

**#EXH-039 – PUBLIC INQUIRY BRIEF VOLUME 1.9  
WOLLSTONECRAFT STATION NGUYEN BRIEF**

MS DAVIDSON: I tender volume 1.10, also entitled Wollstonecraft Station Nguyen Brief.

THE COMMISSIONER: Exhibit 40.

40

**#EXH-040 – PUBLIC INQUIRY BRIEF VOLUME 1.10  
WOLLSTONECRAFT STATION NGUYEN BRIEF**

MS DAVIDSON: I tender volume 1.11, the Financial Brief RJS Infrastructure DM.

THE COMMISSIONER: Exhibit 41.

10

**#EXH-041 – PUBLIC INQUIRY BRIEF VOLUME 1.11 FINANCIAL  
BRIEF RJS INFRASTRUCTURE**

MS DAVIDSON: I tender 1.12, Financial Brief Tony Nguyen.

THE COMMISSIONER: Exhibit 42.

20 **#EXH-042 – PUBLIC INQUIRY BRIEF VOLUME 1.12 TONY  
NGUYEN FINANCIAL BRIEF**

MS DAVIDSON: I tender volume 1.13, Financial Brief Susan Toh DM.

THE COMMISSIONER: Exhibit 43.

30 **#EXH-043 – PUBLIC INQUIRY BRIEF VOLUME 1.13 FINANCIAL  
BRIEF SUZAN TO DM**

MS DAVIDSON: I tender volume 1.14, Financial Brief RJS Infrastructure Broden Pty Ltd TCQ.

THE COMMISSIONER: Exhibit 44.

40 **#EXH-044 – PUBLIC INQUIRY BRIEF VOLUME 1.14 FINANCIAL  
BRIEF- RJS INFRASTRUCTURE - BRODYN PTY LTD TCQ**

MS DAVIDSON: I tender next volume 5.1 Laphai SDL brief.

COMMISSIONER: Exhibit 45.

**#EXH-045 – PUBLIC INQUIRY BRIEF VOLUME 5.1 LAPHAI SDL BRIEF**

10

MS DAVIDSON: I tender volume 5.2 Laphai SDL brief.

COMMISSIONER: Exhibit 46.

**#EXH-046 – PUBLIC INQUIRY BRIEF VOLUME 5.2 LAPHAI SDL BRIEF**

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MS DAVIDSON: I tender volume 5.3, the Laphai SDL brief.

COMMISSIONER: Exhibit 47.

**#EXH-047 – PUBLIC INQUIRY BRIEF VOLUME 5.3 LAPHAI SDL BRIEF**

30

MS DAVIDSON: I tender volume 5.4, Laphai SDL brief.

COMMISSIONER: Exhibit 48.

**#EXH-048 – PUBLIC INQUIRY BRIEF VOLUME 5.4 LAPHAI SDL BRIEF**

MS DAVIDSON: I tender volume 5.5 financial brief SDL.

40 COMMISSIONER: Exhibit 49



**#EXH-049 – PUBLIC INQUIRY BRIEF VOLUME 5.5 FINANCIAL BRIEF SDL**

MS DAVIDSON: Next, turn to volume 6 and tender volume 6.1 the Nguy brief.

COMMISSIONER: Exhibit 50.

10

**#EXH-050 – PUBLIC INQUIRY BRIEF VOLUME 6.1 NGUY BRIEF**

MS DAVIDSON: Volume 6.2 the Nguy brief.

COMMISSIONER: Exhibit 51.

20 **#EXH-051 – PUBLIC INQUIRY BRIEF VOLUME 6.2 NGUY BRIEF**

MS DAVIDSON: I tender volume 6.3, the Nguy brief.

COMMISSIONER: Exhibit 52.

**#EXH-052 – PUBLIC INQUIRY BRIEF VOLUME 6.3 NGUY BRIEF**

30

MS DAVIDSON: I tender volume 6.4, the financial brief Nguy.

COMMISSIONER: Exhibit 53.

**#EXH-053 – PUBLIC INQUIRY BRIEF VOLUME 6.4 FINANCIAL BRIEF NGUY**

40 MS DAVIDSON: Thank you, Chief Commissioner, that concludes the tender for present purposes. The commission calls Tony Nguyen.

COMMISSIONER: I understand the witness is to be affirmed?

MS DAVIDSON: He took an oath on a former occasion but I understand - -  
-

MR CHHABRA: I can indicate, Chief Commissioner, that the witness wishes to swear an oath.

10 COMMISSIONER: I'm sorry. Yes. All right. Thank you.

COMMISSIONER: Please take a seat. Mr Chhabra, do I take it that you have given this witness advice in relation to a section 38 declaration?

MR CHHABRA: Yes, that is so and that is sought.

COMMISSIONER: And he wishes to have the benefit of section 38?

10

MR CHHABRA: He does.

COMMISSIONER: All right. So, Mr Nguyen, as a witness, you have to answer all questions truthfully and produce any item described in the summons or required by me to be produced. You may object to answering a question or producing an item. The effect of any objection is that although you must still answer the question or produce the item, your answer or the item produced cannot be used against you in any civil proceedings or, subject to two exceptions, in any criminal or disciplinary proceedings. The first exception is that this protection does not prevent your evidence from being used against you in a prosecution for an offence under the ICAC Act, including an offence of giving false or misleading evidence, for which the penalty can be imprisonment of up to five years. The second exception only applies to New South Wales public officers. Evidence given by a public official may be used in disciplinary proceedings against the public official if the Commission makes a finding that the public official engaged in or attempted to engage in corrupt conduct. I understand Mr Chhabra has spoken to you and you wish for me to make a declaration under section 38, so that all answers given by you and all items produced by you will be regarded as having been given or produced on objection. This means that you will not have to object with respect to each answer or the production of each item.

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40

So, pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the witness to make objection in respect of any particular answer given or document or thing produced.

**DIRECTION AS TO OBJECTIONS BY WITNESS: SO, PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY THIS WITNESS DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR THE WITNESS TO**  
10 **MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: You understand?---I understand.

Thank you. Yes. Thank you.

MS DAVIDSON: Mr Nguyen, you have a Bachelor of Engineering degree.  
Is that right?---That's, that's correct.

20

And also a Diploma in Engineering Practice?---That's correct.

And what's your current occupation?---I guess self-employed, 'cause in, no, well, RJS Projects, running RJS Projects, the company.

Right. Is that RJS Infrastructure trading as RJS Projects?---Yes, that's correct.

What does RJS Projects currently do?---So we, well, anywhere from project  
30 manage works or physically carry out works (not transcribable).

Are you a director of RJS Infrastructure presently?---Yes, I am director.

That's RJS Group Pty Ltd?---That's correct.

And are you the only director of that company?---I am the only director.

And you've at all times been the sole director of that company?---I, yes,  
that's correct.

40

Is there another shareholder in that company?---Not anymore.

Was Mr Aidan Cox formerly a shareholder in that company?---Yeah, that's, that's correct.

And when did he cease being a shareholder?---I guess after this whole investigation happened. He wanted to part ways.

Are there other companies of which you're currently a director?---Yes, the NGTO Group.

10

Is that the NGTO Group Pty Ltd?---That's correct.

And are you the sole director of that company?---I am the sole director.

Have you at all times been the sole director of that company?---I have always been the sole director, yes.

20 And what is the activity of the NGTO Group Pty Ltd?---So the idea was it was going to be a consultant. So I, ever since, if, if RJS didn't work out in terms of the infrastructure side, then I would become a consultant and I would use that as a consultant engagement.

Was that the only purpose? Was consulting activity the only purpose of establishing that company?---That's correct.

Was there also an accounting purpose in relation to the creation of that company?---What do you mean by accounting purpose?

30 For the purposes of payment or profits into NGTO Group?---Oh, yes, that's, that's correct. So, so, so, 'cause Aidan was a part of RJS as a shareholder, so the way we split the profit is he had his own company, which is Marble Arch, and I created this group. Sorry, I stand corrected. So I created this group just to show the profit of RJS.

So that was profit of RJS - - -?---Yeah, being split evenly between myself and Aidan, just - - -

40 And being paid into NGTO Group?---Exactly, yes, that's correct, yes. So that's, it started like that but it didn't finish like that.

When you say it didn't finish like that, what do you mean by that?---Oh, when Aidan part ways, then the idea was to use it as a consultancy and phase out RJS.

So is it your evidence that subsequently it became used for consulting purposes?---As in it's leading up to that, it hasn't happened yet, 'cause RJS hasn't ceased yet.

10 I see. So it's your intention that NGTO Group will be used for your consulting services?---That's correct.

And when you say that RJS hasn't ceased yet, is it your intention that RJS will cease?---I have no idea. I can't, I'm just playing by ear. It tends, I guess, yeah, I'm just playing by ear.

Have you engaged in plans or preparations in relation to forming a company known as the TNS or TSN Group Pty Ltd?---Recently or - - -

20 In approximately 2020.---Not TSN, no, not - - -

So at the moment the companies that you're a director of are RJS Infrastructure Pty Ltd and NGO Group?---That's correct.

NGTO Group I should say.---Yep.

Are you also a shareholder in MTTM Group & Co Pty Ltd?---I was a shareholder.

30 You were a shareholder?---Yes.

What was the purpose of that company?---Oh, so that was a café.

So was that the company that traded as Out of Office Espresso?---Yes, that's correct.

And were you an equal shareholder in that company with Monty Nguy? ---Yes, that's correct.

40 And when did you cease being a shareholder?---I can't remember. I think somewhere in 2020 just before I left council. I think June or July. I can't remember. Yeah, it's - - -

And how did you come to be involved in a café business?---Well, so, so Monty and myself, we, obviously we're, we're friends, so we're always looking for, I guess, business adventures together.

Business adventures together?---Yeah, like this café, like, you know, some, something to be like a side hustle sort of thing.

10 And did you and Mr Nguy operate the café?---No, no, just shareholders, so we just put money in to set up and then, and then, yeah, then we have, I guess, a manager that runs it.

And do you know who the director was of MTTM & Co?---Yeah, it's Michael, Michael Tran.

And what's Michael Tran's connection to you?---Through Monty.

Right. And what's his relationship to Monty?---They're friends, so - - -

20 And that's Mr Nguy, I should say.---Yeah, Mr Nguy, yeah, they're friends, yeah.

Was it your idea to become involved in the café?---I don't know who, I don't know if it was my idea or his idea. It just happened. I think it's always, I guess we're always doing stuff together. You know, just, and then you just, you know, it just happened in this case so there was, like, an opportunity, like, yeah, why not?

30 Has RJS Projects, at any stage, had employees?---I had a, a casual worker.

A casual worker?---Under, yeah, an undergrad who, who did casual, he was a casual undergrad engineer, yes.

Is that somebody who's still employed by RJS Projects?---Oh, no. No. Not anymore. Yes.

Are you able to say when that person - - -?---So that was pretty much for Wollstonecraft. So, so his name was Nathan Fam, Nathan.

40 And he worked as an engineer?---As an, as an undergrad, yes. Work experience.

Right. But apart from that there's been no employees of RJS Projects?  
---Just besides - as a direct employee, no. Just, just myself, yeah.

You graduated from university in 2009, is that correct?---Yes.

And after that you worked for McMahon Construction?---That's correct.

And what was your role there?---So I was a site engineer.

10

And over what period did you work for them?---A couple of, oh so, yeah, so it was McMahon and then they were bought out by John Holland. So that's how I transitioned to John Holland Group. So I think I was with them for, I can't remember, about nine years or something. I can't remember. I would have to - - -

So would it be right to say you worked for McMahon over the period from June 2009 to February 2013?---That's when John Holland took over and then I think that, that would be correct, yes.

20

And during the time that you worked for them, was that when you worked on the Glenfield Junction Alliance as part of the Southwest Rail Link?  
---That, that's correct.

And did you meet - what was your role in relation to the Glenfield Junction Alliance project?---So the, the, so I was an undergrad there. So I was doing work experience as a, a tendering assistant. So getting quotes and stuff like that.

30

And what did that involve?---So I was just getting quotes. So they give me a drawing, I put a package together, I sent it out to subcontractors (not transcribable), quote this, bring it back. Yeah.

All right. So when you say you would send it out to subcontractors would they be people that you would be - how would you know which subcontractors to send out to?---Oh, so they would have a list that the tender, the, the tender manager would have gave me and said, "Go with these guys" because obviously they have history. So obviously I was new to the game, working, like, an undergrad. I didn't know anyone or - - -

40



And during your time on the Glenfield Junction Alliance project, did you meet anybody on that project that you worked with subsequently?---Aidan Cox.

Aidan Cox?---Yes.

10 And what was the capacity in which you came to meet Mr Cox?---So he was a project engineer. So he was, I guess - oh well, so I would, I think there was a time where I would report to him as I, as he was my project engineer, I was the site engineer.

You were the site engineer?---Yes.

And was that different to the role you were explaining?---Oh, yeah. It's completely different. So when I was an undergrad I was doing the tendering assistant and then when I graduated then, then I was, I became a site engineer, which was physically onsite, yeah, running, running onsite, yeah.

20 And what did the role as a site engineer involve?---So it would be, I guess, a bit of procurement, a bit of site inspection, a bit of subcontract management. So the, I guess, it's a touch of everything in terms of exposing yourself as a project manager but just low key, yeah.

And you were supervised by Mr Cox in that capacity?---To some extent, yes.

30 And when you say he was the project engineer, did that mean that he had responsibilities that were broader than yours as site engineer?---That, that's correct, yes.

Was there anybody else who you subsequently worked with who you met on the Glenfield Junction Alliance project?---Yeah. So then towards the back-end when the project completed, that's where I met Nima Abdi and Raja Sanber.

I'll take you to both of those. I've been asked to ask you to sit a bit closer to the microphone, please. It's causing the transcription staff some difficulty. ---Oh, sorry.

40 Thank you.---Is that better?

I'll try to continue to remind you of that.---Yeah, I can hear myself, yes.  
Yes.

Thank you. So you met Mr Abdi towards the back-end of the project?  
---Yes.

10 And what was the capacity, or how did you come to meet Mr Abdi?---To  
tell you the truth, I don't honestly remember. It just happened. I think he  
just came towards me because I was - actually I was the last one there trying  
to close out the project. So then yeah, yeah, obviously we had all our of  
dealing of handovers and stuff like that and I think we got, I guess,  
comfortable with each other.

And what did you understand Mr Abdi's role in the project to be?---So at  
the time he was a project engineer.

20 He was also a project engineer?---Yeah, he was a project engineer. Yeah.  
So he wasn't, I think you said he was a project manager. At the time, he  
wasn't a project, I'm pretty sure he was a project manager at the time, he  
was project engineer.

Do you recall who he was working for at that time?---Yeah. So, our project  
manager was Rob Miesegeas. So he was the project manager at the time.  
Yeah.

And was he working for Transport at that time?---Yes. He was with  
Transport.

30 And Mr Raja Sanber?---So I met Raja through Nima, Nima Abdi. I think  
Raja was working for Sydney Trains or RailCorp back then.

But he was also involved with the Glenfield Junction Alliance project?  
---That's correct, yes, yes.

And at that time what did you understand the relationship to be between Mr  
Abdi and Mr Sanber?---Well, I knew they were close, they were chummy,  
'cause it is, you, you can see that they're, they always muck around and  
stuff. Like, you can see that they have, I guess, a relationship.

40 You understood them to have a relationship that wasn't - - ?---Wasn't  
professional, on a professional - - -

Was beyond the professional, would that be accurate?---That's correct, yeah, yes.

In terms of your relationship with Mr Cox at that time, would you describe it as purely a professional relationship?---Yes, at the time, yes.

10 After I think you said John Holland Group bought out McMahon Construction in 2013, did you work for the John Holland Group?---Yes, I worked, I was employed by, yes, so we had to re-sign our contract for John Holland Group.

And were you still working as a site engineer?---Yes, I was still a site engineer, yes. So just pretty much same roles and responsibilities, just transfer over to another company 'cause obviously they've been bought out.

20 And did you continue to work on the Glenfield Junction Alliance or after 2013 were you working on other projects?---So I don't know, I don't remember the time line, so it was Glenfield Junction Alliance, then I went to North Strathfield Underpass, NSRU, and then they needed someone to finish Glenfield Junction Alliance and then they brought me back because I was the last one there that pretty much knew where everything was.

So you were, during your time at John Holland, also working on North Strathfield?---Rail Underpass, that's correct, yes.

Rail Underpass.---NSRU.

30 And was that also a Transport project?---That was for Transport, yes, yes.

And then in June 2015 you started at Leichhardt Council, is that right? ---That's correct.

And your role there was initially as a senior engineer?---Senior project engineer.

40 And what did that involve?---So that would be, I guess, it's like a project manager but, so it was just procuring contracts, I guess executing contracts, preparing tenders, so - - -

And Leichhardt Council then merged to become the Inner West Council, and your role was then described as Property Project Manager Capital Projects from 23 June 2017.---Yep.

If we can pull up volume 1.1, page 163. Can you see that document there, Mr Nguyen?---Yes, I can. Yes, I can.

Is this your letter of offer - - -?---That's correct.

10 - - - in respect of your position as a property project manager?---Yes, it looks familiar, yes.

Did that shift into the role as a property project manager change the substance of what you were doing at the time or what you had been doing for Leichhardt Council and then proceeded to do in terms of your responsibilities for Inner West Council?---Yeah, so the difference was that I was doing more building, rather than civil. So with Leichhardt Council I was doing more civil and building on the side, just to help out with the building. But, yeah, merging into Inner West Council was more building  
20 than civil.

And when you say “civil”, for those of us who are not engineers, can you explain what you mean?---Oh, like, so like roadworks, footpaths, stormwater.

And so is there a project management component to both of those roles? ---Oh, yeah, so the principle's the same. It's just different, I guess, infrastructure, yeah.

30 If we can go to page 166 in volume 1.1. This is part of the same document that had your terms and conditions of employment. Do you note there, or can you have a look at the top of that document? In fact, can we go back to page 165? You see there the list of responsibilities down the bottom?---Yes, I do.

And those included complying with relevant council policies. Did you understand that to be part of your responsibilities?---I did but I didn't take notice, if that makes sense.

40 Turning over to page 166. At H you see there “not to engage in other remunerated work that may conflict with the services of the council” or the

duties that you'd been employed, unless you had prior written consent of the General Manager. Did you engage in other remunerated work at the time that you were employed by the council?---When I start - not, not, not initially. I, I assume with Inner West Council, you mean, just - - -

Over the period you were employed with Inner West Council.---Oh, yes, yes. I, I, I guess I opened RJS Infrastructure Group.

10 And did you ever receive any written consent of the General Manager in relation to that remunerated work?---No, I didn't. No, I didn't do any of that.

Have a look at I there on page 166, there was a requirement in relation to declaring pecuniary interests or economic interests for the consideration of the General Manager, that had to be updated. Was that a requirement that you - did you declare pecuniary interests for the purpose of consideration of the General Manager?---No, I didn't. It was overlooked. I, like, I didn't think too much of it.

20 Did you do that at any time - - -?---No, not at all. I didn't - - -

- - - that you were employed with Inner West Council?---Yeah. To tell you the truth the thought didn't come to my head. So, if that makes sense.

You see K there at the top of the page, ensuring that you must declare anything that may create a conflict of interest between your obligations to the council as an employee and the interests of yourself or a third party. That's effectively a requirement in relation to declaring conflicts of interest. Did you ever declare any conflict of interest at the time you were initially  
30 employed by Inner West Council or at any subsequent time?---No, I didn't. No, I didn't.

So in respect of all of those terms and conditions of employment, you would agree that you at no time complied with them during the time that you were employed with Inner West?---That's correct.

Can we turn to page 179 of volume 1.1? Do you see this is your position description as Property Project Manager at Inner West Council?---That's  
40 correct, yes.

And if we turn to the following page, do you see the position purpose is described as “Effectively delivering well-managed and coordinated projects” and down the bottom under the heading Key Duties, Accountabilities and Responsibilities, I’ll let you read those bullet points down the bottom.---Yes, I - - -

Would you agree that your responsibilities involved managing projects from beginning to end?---That’s correct.

10 And that included management of the procurement process?---That’s correct.

What did that involve from your perspective?---So, so that - - -

Can you give us an overview?---So we were given a, say, a project, normally a project by the manager, given the budget for the project and then we would decide - then, then we would determine the scope for the project and then, then we would start engaging, I guess, the architects and the consultants to do the design and planning before we go into the  
20 construction.

And then when you went into construction, what did the management of the project then entail?---So they would say, we would go out to - depends on the value of the, the budget. It could be open tender, which is over 250 or if it’s under, or within that 10,000 to 250, which you need three quotes, then we would just, I guess, execute that procedure.

We’ll come to the particular requirements of the procurement policy. Did you have, at the time that you were employed by, well, that Leichhardt Council became Inner West Council, did you have a supervisor?---Yes, I  
30 did.

And who was that?---So from - oh so, it’s always been Patrick Ceran. Even, he was my, he wasn’t my direct manager for Leichhardt Council, it was, I would report to him when I’m doing building works but when I was on civil works I would report to Tom Haramis and then when we jumped over to Inner West Council, you know, then I was reporting to Patrick Ceran directly and when he left it was Vicki who took over, which I can’t remember her last name.  
40

And do you remember when that occurred that he left?---No, to tell you the truth, no, I don't.

So what was his title, Patrick Ceran?---Project coordinator. Project coordinator or - - -

Project coordinator?---I think so, yeah.

10 And was it your evidence that during the majority of the time that you were employed by Inner West Council Mr Ceran was your supervisor?---Yes.

And what was his role in the procurement process?---So he would just, so I would write the, or I would write the - so if we'd get to the recommendation sort of parts, we would write the recommendation recommending the nominated subcontractor and then he would just sign off on it and either he gets, I guess, his manager to sign off on it. So he would chase the signature. So that's - - -

20 All right, so he signed off on recommendations of subcontractors from you?---Yes.

Did he always follow your recommendations?---Yes, he did.

Did you engage in discussions with him about your recommendations?---At first we did and then I guess we built a trust, so then it got to, towards where he just trusted me with what I, I guess, did. And then he just, I guess, signed off on it, yeah.

30 He signed off on what you sent through?---Exactly, yeah.

And would you say typically in the course of the time that you spent working for Inner West Council his role was simply to sign off on what you did?---That is correct, yes. There's sign off, and if I had any issues with the project, which I, which I hardly did, then I would go to him and then he'll sort out.

And you said that his manager also signed off?---Depending on the value of the works.

40 Right, so that was only for works above a certain value, was it?---That's correct, yes.

And do you remember what that value was?---I think 150 at the time and then they changed it to 250.

So the - - -?---Oh, actually, no, sorry, my mistake. I think it was, I think any value. Yeah, from memory, any value, even under 10,000, where you - - -

And do you recall who Mr Ceran's supervisor was? The person who provided that second sign-off?---Oh, at the, I can't remember, so it was,  
10 Inner West Council was I think Brooke Martin, but for Leichhardt Council I can't remember if it's Peter Gainsford director or there was someone else.

THE COMMISSIONER: Sorry, who? Say that again.---For, for Leichhardt Council, I think it was Peter Gainsford, director. I'm not too sure. I don't remember who's in between Patrick Ceran and Peter Gainsford, which he was the director, the Infrastructure Director, at the time of Leichhardt Council. But for Inner West Council, yeah, it was I think Brooke Martin. So Patrick would report to Brooke Martin.

20 MS DAVIDSON: And those people who are more senior than Mr Ceran, did they become involved in discussions that you were aware of or that you were part of in relation to the procurement process?---No, it was just, I just get the paper back saying "signed off, go do your thing", yeah.

Did you ever engage in a discussion with them in relation to selection of contractors?---Not that I can recall, yeah.

Were you aware of the Inner West Council having a procurement policy?  
---I was aware of it, yes.

30 And were you aware of the Inner West Council having a procurement procedures manual?---No, I don't. So, see, see, the funny thing is with Inner West Council there were, I guess, after the amalgamation they were pretty much all over the place and nothing was clear. So, 'cause the previous council - the Ashfield, Marrickville and Leichhardt - all had different, I guess, procedures on how they procure things.

So where you say everything was all over the place, you mean in relation to procurement? Can you explain what you mean by "all over the place"?  
40 ---Yeah, to mean, mean that we don't know what procurement to use, is it



the Leichhardt Council way, the Marrickville way or the Ashfield, Ashfield, Ashfield Council way.

Right.---Yep.

So you'd procured things under the Leichhardt Council - - -?---That's correct, the things I already done before - - -

- - - procedures?---Exactly, yeah.

10

Right, and are you able to say how they differed from what Inner West Council subsequently did, the Leichhardt Council way?---It's similar. I, I don't know. I didn't veer away from the Leichhardt Council, I just kept doing what I did in Leichhardt Council, to tell you the truth.

Right.---Yeah.

So - - -?---The only difference is that when they changed the value, then - - -

20 And when you say they changed the value, is that - - -?---From 150 to 250.

The alteration in terms of the threshold?---That's right, yes.

And that was the threshold beyond which you actually had to go to tender rather than simply having three quotations?---That's correct. That's correct.

So in relation to there being differences between the ways that the three different councils did things, how did you know about those differences? ---'Cause we would talk about it, we always have discussion, so obviously  
30 when I get people from, you know, different councils talking about, "Oh, we did it this way, we did it that way, you write this memo, you do this extra," and we were like, "No, you don't," and there was always a discussions but there was never an agreed solution.

All right. When you say "we would discuss", who are you referring to there?---So it would be the team.

The team.---The team, yeah, so the, the Property Team.

40 The Property Team.---Property Team.

Right. So were you aware of Inner West Council - I think you said you knew that there was a policy, a procurement policy?---Yes.

Do you recall when you became aware of that?---I think I became aware of it since I've started. It was just always in the back of my mind.

All right, so you were aware - when you say when you started, you started with Leichhardt Council?---Yeah, yes.

10 You're aware of Leichhardt Council having a procurement policy?---That's correct, yes.

And what do you recall being aware of in terms of that policy?---Just like I think the standard, you know, anything under 10,000, so just the threshold, the figures, the value. So anything under 10,000 I guess it's a one quote. Anything between 10,000 to 150 is three quote, and anything above that's open tender.

20 So where you say you're aware of the policy, was your understanding of the policy limited to the thresholds that were applicable?---That's, that's correct. Yes.

Do you recall ever being aware of anything else being contained in the policy?---No.

30 All right. If we can go to volume 23.1, page 74? If you see down the bottom of the page there in the little box, this is Leichhardt - withdraw that, the Inner West Council procurement policy. Can you see down the bottom adopted date and minute November 2017? Can you see that there?---Yes, I can see that. Yes.

Yeah. When you said you were aware of a policy, do you recall ever reading an Inner West Council procurement policy document that looked like this?---Personally, no, I don't, well, I don't recall reading some, it's probably there to offer, I think they, they, it's just, I think they just, they just send it to you and say there's a policy but it's up to you if you want to read it or not.

40 Do you recall ever attending training in relation to this policy?---I can't recall about them, I can't, I can't recall.

If you have a look at that page, page 74, at the top there, “The procurement process must be able to withstand public scrutiny.” I’m just reading the top paragraph. “All persons invited to quote or tender for council business shall be given equal information, and the information they provide to council shall be treated as confidential and restricted to persons specifically involved in the purchase.” Would you agree that the procurement processes that you conducted once Inner West or in your time at Inner West Council and your role as project engineer did not comply with that requirement, with the requirements set out in those paragraphs?---Yes, I did not comply. I, I agree.

And that’s true in respect of equal information being given to tenderers?  
---Yes.

And it’s also true in respect of information, tenderers or people who are providing quotations? So I’m not restricting this only to people - - -?---To - - -  
- - - who are tendering about 150,000 or 250,000 - - -?---Exactly, is, overall, yes, the whole thing. Yes, I understand.

So it’s true in respect of information provided to council being treated as confidential, that is, you didn’t comply with that requirement, either?  
---That’s correct.

Nor did you restrict it to persons specifically involved in the purchase?  
---That’s correct.

The next paragraph indicates that, “Council staff should behave with strong moral principles, demonstrating honesty and decency in all dealings.”

Would you agree that in respect of the tendering processes that you conducted during your time at Inner West Council that you didn’t comply with that requirement, either?---That’s correct. I, I, I agree. I didn’t comply with that.

The third paragraph there relates to conflicts of interest and specifically says that there’s a requirement to disclose actual or potential conflicts and then they have to be reviewed by a group manager and - - -?---Yes.

- - - staff can be removed from the procurement process. I think you’ve already given evidence you didn’t declare any conflict of interest in respect of your employment conditions. Did you declare any conflict of interest in

respect of procurement or under this procurement policy?---No, I didn't declare anything.

You never declared a conflict of interest in managing a procurement policy -  
- -?---Program, no, no - - -

- - - procurement process?---Process, yeah. Not, not once did I declare since my time at Inner West Council.

- 10 Could we turn to page 75? There's a reference if you see in the second paragraph there, staff needing to "understand, apply and support the ethical framework in which council operates" and the council having a statement of business ethics. Were you aware of the council having a statement of business ethics?---I was aware but I don't know what's inside the statement.

There's a reference underneath that reference to business ethics to the code of conduct requirements and officers performing their duty at the highest standard. And, again, under that code, there not being "any conflict between private interests and council's responsibilities to the community".

- 20 Do you agree that there was a conflict between your private interests and Inner West Council's responsibilities to the community in relation to the procurement processes you conducted at Inner West Council?---Can you, can you rephrase that, sorry? You just went too fast.

Certainly. It was a long question.---Yeah, yeah.

You see there the heading Code of Conduct?---Yes.

- 30 And the first sentence refers to the community expecting the way that council will conduct its business?---Okay.

The second sentence I guess seeks to apply that to say that officers must perform their duty at the highest standard and there must not be or seem to be any conflict between private interests and council's responsibilities to the community. Do you agree there was a conflict between your private interests and the council's responsibilities to the community in relation to the tendering processes and requests for quotation processes?---Yes. There was a conflict. Yes. But it didn't, but I did not perform - well, I, I, I did put a hundred per cent effort in the performance.

40

THE COMMISSIONER: Sorry, say that again?---I did put a hundred per cent in to performing the works. Although it's a conflict of interest, I did undertake the work to, to a, to, to a professional level, I think is a professional level, to do all of the works.

MS DAVIDSON: Were you aware of being subject to a code of conduct as a council employee?---Can, I don't, I don't quite understand.

10 Were you aware of Inner West Council having a code of conduct? There's a reference to the code of conduct in this document?---Yeah, yes. I was aware there was a code of conduct, yes, but did I read the code of conduct, no, I didn't.

20 Can we turn to volume 23.1, page 106? This is an Inner West Council document and you will see from the first page there, this one is dated March 2019. I think you said you were aware there was a code of conduct. Do you recall being aware of the existence of such a document earlier than March 2019?---Yeah. I think there was one from Leichhardt Council that we would attach to the open tender when you'd give the package out. That's the, that's from my memory. I don't know if it's, like, that - - -

Do you recall giving a Leichhardt Council Code of Conduct - - -?---That, that's correct, yeah, yes.

Did you understand that that was a code of conduct that also applied to you?---Yes.

30 Right. Can we go to page 118 of this document? Or 118, I should say, in volume 23.1. Do you see section 4.14 there?---Yes.

This is another requirement in respect of disclosing pecuniary interests in matters that council staff are dealing with as soon as practicable after become aware of the interest, you agree that you did never make a disclosure for the purposes of this code of conduct policy either during your time at Inner West Council?---That's correct.

Can we go to page 129 of the same volume? Can you see there under the heading Improper and Undue Influence?---Yes.

40 Section 6.15, "You must not take advantage or seek to take advantage of your status or position with council in order to obtain a private benefit for

yourself or for any other person or body.” Would you agree that you in fact took advantage of your status or position as council to obtain a private benefit for yourself?---That’s correct.

And also for other persons?---That’s correct.

That is private benefits for other persons.---That’s right. That’s, yes.

10 Can we return to volume 23.1, page 92? Now, this is a page, if you look at the little box down the bottom, Mr Nguyen, you will see this is the procurement procedures manual dated 2 November 2017. I think your answer earlier was that you weren’t aware of there being a procurement procedures manual, is that right?---I know there was a manual but I don’t know which one. As in, because you know how there’s three different councils?

Yes.---So I just followed, I didn’t know, yeah, I wasn’t aware they, I guess, put it all together, as in made one common file.

20 Were you aware that Inner West Council did have a document entitled Procurement Procedures Manual?---Yes, I did.

Which is this document?---This, yes.

Now, this page is a summary of the procedure or, or steps in a procedure, for an estimated purchase value between 10,000 and, well, up to the threshold of 150,000 - - -?---Yes.

30 - - - which was I think you’ve said the threshold until it was increased to 250,000.---250, yeah, that’s correct.

Having a look at these steps, well, firstly I’ll give you a chance to have a look at this page. You see step 5 there, second sentence requires staff to use council’s contract suppliers wherever practical and considering the best value for money. And there were category lists of suppliers available via council’s VendorPanel portal.---Yes.

40 Was that something you considered doing, that is using council’s contracted suppliers?---Personally I didn’t use it.

You didn't. Did you ever think about using them?---No, the thought didn't come across my mind, no.

All right. Did anybody ever suggest to you that you might give consideration to using council's approved suppliers?---Oh, what I can recall is that there's been bad feedback on that portal 'cause anyone can go on that portal and you can pick anyone, pick any contractors, and then they could be, you know, worst-performing contractors and you might be, you might be stuck with them.

10

So that was the VendorPanel portal?---It's the Vendor, yeah. So then we would, I guess personnel would view to say stick with people I worked with before who can perform the job.

And that's advice that you recall being given?---No, no, as in it's what happened to be, as in it just happened to be that way. It wasn't any advice from anyone, it's just I kept using the same, I guess, same subcontractors because they kept performing.

20 Turning over to page 93 in the same document, so the following page. This is a continuation of the process. Can you just have a look at those steps listed there.---Yes, I, I do recall seeing this, yes.

You do recall seeing this document?---I do, yeah, yes, I do, yeah.

Do you recall the context in which you saw it?---Yeah, 'cause I remember that we had to get a number, like a procurement number before you can (not transcribable). That's what I recall. Okay, so I must have seen this.

30 All right. So that's a number that you needed for a request for quotation - - -?---That's right.

- - - above \$10,000, the RFQ number?---RFQ, that's right, that's correct, yes.

Right. And that was something that you had to request using the intranet? ---Yes, from the Procurement Team, that's correct.

40 All right. Having a look at step 8, "To ensure transparency and consistency of the process, we encourage staff to use council's VendorPanel portal to obtain quotations." Do you understand how it was that VendorPanel portal

could have helped ensure transparency and consistency of the process?  
---Yes, I understand.

And how was that?---It's just that everything is, so it's, I guess there's a different body managing the works, so there's no conflict of interest so it doesn't overlap.

Right. So when you say there's a different body managing the works, do you mean - - -?---The Procurement Team.

10

- - - when the quotations were coming in that the VendorPanel portal would manage those?---That's correct, yes.

And did you understand how it did that?---No, 'cause I never used it 'cause I don't think it was enforced at that time I was there. That's the reason why I kept doing what I was doing.

All right. So when you say you don't think it was enforced, this is a procurement manual dated 2 November 2017.---That's correct.

20

You were there at that time, weren't you?---That's correct, yes.

And indeed for several years after that until 2020?---No one, yeah, well, no one mentioned to go to quotation, otherwise I wouldn't have been doing any work, you know, after 2017.

So just to be clear, we're talking about using the VendorPanel.---But then, yeah, the, the VendorPanel, the quotation at Inner West Council, those, yeah.

30

All right, so this was an encouragement rather than a requirement.  
---Exactly, yeah.

Did you receive any encouragement that you were aware of from your supervisor to use the VendorPanel portal?---Not that I'm aware of. Like, does that make sense? Like, if it was enforced, then I wouldn't be doing, if, I wouldn't be - - -

40

You couldn't have done what you did - - -?---Exactly.



- - - if you had been required to use the VendorPanel portal, is that right?  
---That's correct, yes.

And what is it about the VendorPanel portal that would have prevented your conduct? Do you understand what it was about that mechanism?---Yeah, so it would be, I guess, picking, recommending subcontractors. Favoured, so being favourable to a subcontractor.

10 And in terms of the timing of quotations coming in, did you understand that the VendorPanel portal would manage that?---That's correct, yeah. So there would be a deadline rather than you say, "Okay, yeah, I'll give you an extension," so - - -

Right.---Everyone will be on, everyone will be on the same page.

20 And did you understand whether, if the VendorPanel portal was being used, whether or not you, as the person managing the process, would be able to see the quotations before the closing time?---No. So it will be when the, so, well, my understanding is that they use that, then at the end of the, I guess, close the due date, then the person who's managing it will just send you the whole file at once, so you have visibly, all at once.

Right. So having a look at the next part of step 8, it says, "Where this is not possible, RFQ responses can be sent to a centralised council return point. Please advise Procurement," et cetera. And then you see the following, and the last line, "After the closing time, Procurement will forward the RFQ responses to the designated staff member"?---Yes.

30 Was that a process that is using a centralised council return point, that email address? Was that a process you ever engaged in?---No, 'cause, yeah. I didn't use that process.

And would that process also, to your understanding, have prevented what you did?---Most likely, yes.

And is that because it was only after the closing time, that Procurement would forward the RFQ responses to the designated staff member?---I, I, I think so, yes.

40 So if that process was used, you wouldn't have access to individual bidders' quotes before the closing time?---So, so the way, I think there's a bit of

confusion. So the way it always worked, the way I guess steered the procurement policy is there's, say, three subcontractors who, I guess, I have a conflict of interest, so I would, I would tell one to, say, it's, I guess, it's your turn to do the work. Do you understand?

Yes.---And then the other two will just put in a dummy bid, dummy bid, yes.

10 Yes. We'll come to that - - -?---Yes, so I guess it probably would have worked through if I was to use this portal - - -

So the dummy bidding would still have worked?---Yes.

Did you understand, using a centralised email return point - - -?---What was the purpose of it?

20 - - - as being something that would have prevented or part of the purpose of that being to prevent information about one bidder's quotation being given to another bidder before the closing time?---Yes.

And that's something that you also engaged in, wasn't it, that - - -?---That's right. That's right, yes.

- - - passing on that information?---That's correct.

30 Step 9, I do see the time, Chief Commissioner, this is my last question in respect of this document, you'll see the RFQ evaluation process must be conducted by at least two council officers. Was that a requirement that you were aware of?---Yes.

And in what way did the RFQ evaluation processes that you conducted involve at least council officers?---Yeah, so I think I, from memory, I would, yeah, I would involve another council member, just to co-sign what I've recommended.

40 All right. And when you say involve them, did they have discussions with you in relation to what you'd recommended?---No, to, to tell the truth, no. They'd just be, like, with, I guess, your co-worker, I'll just sign off so you can get your work started or completed and then I would do the, I would do the same. They'd say, "Can you sign this off?" and then I would sign off.

And was that typically a single council officer?---I would show it amongst the team, so.

Might that be a convenient time, Chief Commissioner?

THE COMMISSIONER: Yes. Thank you. We'll just take a break, Mr Nguyen, for lunch and we'll resume at 2 o'clock.---Okay.

10 **LUNCHEON ADJOURNMENT**

**[1.03pm]**