

HECTORPUB00296
22/03/2023

HECTOR
pp 00296-00362

PUBLIC
HEARING

COPYRIGHT

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 WEDNESDAY 22 MARCH, 2023

AT 2.00PM

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: All right. Before we resume, just take a seat, I just should make clear once again to those people who are following the public inquiry on the live stream that there is a non-publication order under section 112 of the Independent Commission Against Corruption Act in relation to [REDACTED], so that name is not to be used. And there's also a direction in relation to personal identification information, includes
10 that being published. Now, Mr Nguyen, you're subject to the same oath you took at the commencement of your evidence to say the truth. Do you understand?---I understand.

We'll resume. Yes. Thank you.

MS DAVIDSON: We'd commenced dealing before lunch with the Wollstonecraft TAP project and I'd taken you to the email that you received that had been passed on from Mr Cox in July 2020. Do you recall receiving further information in relation to Wollstonecraft project in August 2020?
20 ---From?

Well, from - - -?---Anyone or - - -

From anyone associated with the project?---So I recall receiving a budget.

Receiving a budget?---Yeah, this is the one I mentioned before with, with the Excel file with, for TAP station budget.

If we can go to volume 18.12, page 306? Who did you receive that budget
30 from?---So that would have been Nima.

From Nima?---Yes.

And did you understand that to be a - - -?---Downer's - - -

- - - Downer budget document?---That, that, that's correct.

And if we can scroll down, again, you can see the 802 number, in this case, it's being sent to you using a 196 number. Is that another number that you
40 used?---I'm not familiar with that number 196.

Can we scroll down looking at the messages? These are BOQ documents for Banksia, Wollstonecraft, Roseville and, if we scroll down, they continue. Do you recall what a BOQ document is?---So it's the bill of quantity, yes.

Right. Is that a budget document?---The budget, yes.

Well, are these documents you recall receiving?---Yes. They look familiar, yes.

10 So would you accept that these are the documents, the budget documents you were referring to?---Yes.

And you received them by WhatsApp?---WhatsApp or, I can't, I can't remember in what form I received it. It could be email or it could be WhatsApp.

Right. This is a WhatsApp message.---Yes.

20 Did you understand, and it was coming from Mr Abdi?---That's correct.

So you would accept that this may be the form in which you received the documents.---Most likely, yes.

Did you understand his purpose in sending them to you?---Yes, just to try and win a project, yeah.

To assist you in relation to all of those four - - -?---Four, yeah, just - - -

30 - - - stations?---Four stations. That's correct, yes.

So were they collected together in a package of TAP projects effectively?---I guess you would say so, they're collected together, yes.

Right. But you were engaged in considering them individually. Is that right?---Oh, focus on one.

Right.---Obviously we don't, there's no, we don't have the capacity to do all four.

40 Okay. So you decided to focus on Wollstonecraft?---Yes.

And do you know why that was?---Oh, well, originally it, it was supposed to be Banksia.

Right.---Because I think Nima was involved there and he got Sairam so he wanted to do the same I guess set up - - -

Mr Pilli?---Mr Pilli, yeah. The same set-up as Kingswood.

10 Right. And when you say the same set-up as Kingswood what do you mean?---As in, so you have Mr Pilli as a Downer project engineer who goes out to tender so you can I guess nominate who the tenderers are.

So Mr Abdi you understood wanted to engage in the same process with Mr Pilli as he had in relation to Kingswood?---Kingswood, exactly.

And was that effectively fully controlling the process?---Yes.

20 Okay. So originally it was meant to be Banksia and at some stage the focus shifted to Wollstonecraft.---To Wollstonecraft. That's correct, yes.

And why was that?---I'm not too sure. I think we did price a few tenders for Banksia.

Right.---And then, and then we got knocked back, as in I think we were negotiating or we were wanting to - so this was more of a conversation that Aidan was involved in.

30 That is conversations in relation to Banksia - - -?---Yeah, Banksia, the works.

- - - he was more involved in?---Yeah, so the tender package for Banksia. I think it was the piling component or something like that or the early works.

Right.---So, and then Aidan wanted to - well, he, we put a price together for that works and then it got knocked back.

Okay.---Yeah.

40 So it wasn't approved.---It wasn't, as in I think they went with another contractor.

Right.---Yes.

Okay. And was it at that point that you think the focus shifted to Wollstonecraft?---No. Yeah, I think so, yes, yes.

Was it the case that once you had the Downer budget in relation to Wollstonecraft that that provided you with assistance in relation to preparing pricing - - -?---For Wollstonecraft?

10 - - - for any quote that you submitted?---That's correct, yes.

And did that budget that you received relate to the whole of the Wollstonecraft project, do you remember?---It would, it would have been, yes, yes.

Because ultimately the project was broken down into different packages. ---To different sections. Exactly, yes.

20 But you understood that you had budget information in relation to all of those different sections.---Yes.

Were you aware of, or did Mr Cox tell you about receiving any further budget information in relation to Wollstonecraft?---So I would have received one, the Downer's budget from Nima.

Yes.---And then from what I recall Aidan would have received I'm pretty sure the exact same budget from Ben.

30 Right. Can we go to volume 1.9, page 89. So this is 20 August 2020, an email from Mr Vardanega to Mr Cox and it says, "All three pricing schedules attached on the one sheet." And there are some notes there in relation to how the categories were - - -?---Broken down in two.

- - - broken down and what the project manager's budget was. Is that the document you're referring to or you referred to in your previous answer, understanding that Aidan had received from Ben?---That's correct.

40 Right. So although the previous documents were referred to as bills of quantity, it was effectively giving you the same information as this document, was it?---That's correct.

And they both enabled you to ascertain what the Downer budget was for the project?---That's correct.

Did you also receive information in the course of - well, after Aidan received this from Ben, do you recall at that point yourself starting to prepare a tender or prepare pricing?---Yes. And then we started putting, I guess, the costs together.

10 And did you know that you'd be approached in relation to providing information or is this simply an open tender?---Oh, no, we would have been approached, so it would have been, I guess you could call it a select tender.

Right. That had already occurred by the time you received these documents?---Or going to occur, I think, yeah.

Right. Were you aware of, at some stage, being provided with competitors' pricing information in relation to Wollstonecraft?---I can recall there was one price I seen, I think, that was sent from Ben to Aidan, Aidan to myself.

20 Can we go to volume 1.9, page 171. 171. Is that - I'll check that reference. You said you recalled receiving a competitor's price. Was that - do you recall who that competitor was?---Brefni.

Brefni?---Yes.

And that was passed from Mr Vardanega to Mr Cox and from Mr Cox to you?---That's correct.

30 And what, how did having Brefni's pricing information assist you?---It didn't. I don't think it did 'cause it was over the budget.

So - - -?---As in - - -

Provided you with information in relation to what, then?---It was just a, the, the competitor, well, the competition's price, so the competitor's price.

Right. But it enabled you to come up with a price that was lower than theirs, presumably?---Presumably, yes.

And you wouldn't normally have expected to have access to a competitor's price?---Oh, no, no, exactly. If we didn't have that, then it would, it will be within the budget we will work with.

I'm sorry, if you didn't have that, it would be within the budget?---Yeah, we'll still have to keep the same, I guess, process of keeping it under the budget.

10 Right. So you would have still used the budget information that you were given, am I understanding correctly?---That's, that's correct, yes.

But you would also, you had the additional guidance of the competitor's price as well?---As well but didn't add, add any value.

I see. And do you recall saying to Mr Cox at the time that it didn't add any value?---I probably, well, we probably agreed it didn't add any 'cause it was over the budget, like - - -

20 You say you probably agreed. Do you remember having that conversation? ---Probably did.

You don't remember one way or the other?---One, yeah, most likely we did but I don't recall the conversation. It's very hard to recall.

Do you recall having access to any other competitor's price?---For Wollstonecraft?

Yes.---The only thing I recall is the Brefni one.

30 The Brefni one.---Yeah.

And just for completeness, if we could have page 142 of volume 1.9. Is this the document - - -?---Yes, that's the one, yes.

- - - that included the Brefni prices?---Yes.

40 And that was passed on, it seems down the bottom of the email chain, from someone at Brefni, and then to Mr Gayed. Can you see that there?---Yes, I can see the chain email, yes.

And Mr Gayed appears to have sent it to himself and then on to Mr Vardanega.---Yes.

Did you have any discussions while you were in the process of preparing your price with Mr Gayed about pricing for Wollstonecraft?---Can you, can you elaborate on the question?

10 Did you have any discussions with Mr Gayed in relation to pricing for Wollstonecraft or was it only indirect receipt of this information?---Oh, this was only indirect, yeah, just indirect this information.

Right.---So - - -

And did you understand Mr Cox to be continuing to have discussions with Mr Vardanega about the pricing for Wollstonecraft?---Yes.

And what was the nature of those, to your knowledge?---I think it was just, just keeping it below the budget.

20 That is he was suggesting to Mr Cox that it needed to be below the budget? ---The, yes.

Do you recall him, that is, Mr Vardanega, or did you know about Mr Vardanega discussing with Mr Cox any other steps that he was taking to try to assist RJS in winning the quote?---Not that I'm, not that I can recall, just that I know Aidan and Ben were talking and then I knew there was a relationship between Ben and Andrew.

30 There was a relationship between Ben and Andrew Gayed?---Yeah, through, well, Aidan, I think Aidan mentioned it before.

All right. And - - -?---So that's - - -

Do you know what the nature of that relationship was?---As in that - - -

As in Ben and Andrew Gayed?---Yeah, so based on the information that was given to Ben, then it was forwarded to Aidan and obviously to myself and said, "Oh, there's a link there."

40 Right. So you just assumed on the basis that information that was otherwise - - -?---There's a connection.

- - - competitors' information was being passed to Mr Vardanega.---Exactly, there's a relationship between Ben and Andrew.

Right. What did you understand Mr Vardanega's interest in this project to be at the time?---I think he wanted a finder's fee just like Macdonaldtown.

Right.---Yeah.

10 Did you understand what he was working on at the time?---I knew he was employed as a, as a, as a consultant for Transport.

Did you know that he was also working, or had his own company, that is, ProjectHQ?---Yes, yes, I knew that. I identified once the, start seeing his email that ProjectHQ was his, yes.

Right, and did you know what ProjectHQ did?---I had no idea, yeah.

20 Right.---So I knew it was just a company that Ben owns and that he does his consultancy through that company.

Did you think that Mr Vardanega himself wanted to work on the Wollstonecraft project?---I have seen him at tender meetings.

You've seen him at tender meetings.---Yes, so - - -

Sorry, when you say tender meetings, are they meetings for prospective tenderers?---That's right. That's correct, yes.

30 Right. Did you understand he was someone who was planning to tender in relation to the Wollstonecraft project?---At that time I didn't know who he was. I just coincidentally saw him at the tender member - - -

Right.--- - - - when I was at another tender meeting, if that makes sense. So there was, I think he was tendering for the civil package but I was looking to the building package.

Right.---Yes.

40 And you recall him being at both tender meetings?---No. No, just the civil one so - - -

But you didn't think anything of that at the time.---No, I didn't think anything of that, exactly.

Okay. And in relation to the budget information that you'd received from Mr Abdi, that is, you said the same information that you also received from Mr Vardanega - - -?---Yes.

10 - - - where did you understand Mr Abdi to have got that from?---From Sairam.

Did you understand [REDACTED] to have had anything to do with it?---I think my, what I thought was [REDACTED] was involved in I guess getting RJS into Wollstonecraft, as in saying, giving us a good name, "Use RJS. They're good."

Right.---Like, influencing.

20 Influencing.---Yeah.

Because he was the project manager on the project.---Yes. Yes.

Did somebody tell you that he'd said that?---Yes. Nima said, "Don't worry. [REDACTED] got you covered."

Okay. So did you understand from that, he's got you covered, that he would speak in your favour in relation to - - -?---Yeah, it's influence. Yeah, just said speak in the favour but I think that's all he can do, yeah.

30 Right, but did you also understand that you had an advantage over other tenderers because you had the budget information?---The budget, yes.

But you didn't think that had come from [REDACTED].---Yes.

Sorry, you did think or you didn't think?---I didn't think it came from [REDACTED].

40 Right.---I assumed it came from Sairam because it originally it was supposed to be Banksia that we were supposed to go for.

Okay. And so you assumed it had come from Mr Pilli because Banksia was Mr Pilli's project.---That's correct, 'cause in the one, like I said, in that one file it had four different stations.

Okay.---So - - -

THE COMMISSIONER: Just one moment, please. Yeah. Thanks.

10 MS DAVIDSON: Did Mr Abdi ever say to you that Mr [REDACTED] or suggest to you that Mr [REDACTED] wanted some money in relation to encouraging you or promoting RPS in relation - - -?---RJS?

Sorry. RJS, not Rail Planning Services, RJS in relation to being successful on the Wollstonecraft project?---Yes. He, he requested a fee - - -

He requested a fee?---A fee, yes.

20 That is, Mr Abdi requested a fee?---Yeah, that [REDACTED] is, that [REDACTED] wanted a fee, just to help out.

Right. Do you recall when he told you that?---Yes. Nima told me that. Yes.

Right. But do you recall when?---I have, I think at the start when, I think at the beginning of, when we were just negotiating contracts.

Right. So was it after you'd been approved in relation to the tender or before?---I think before, 'cause when I mentioned to Aidan, Aidan told no, piss off, it's, what, what did he do?

30 Right.---Yes. So he wasn't happy with the - - -

So what did you think [REDACTED] wanted a fee for?---I don't know, as in I just followed what Nima said, yeah.

Right. And why did you understand Nima was saying [REDACTED] wanted a fee?---Because he had some, some sort of influence over it.

40 Right. So that - - -?---So I don't know if it's coincidence that RJS got the job or was influenced by, [REDACTED] which.

Okay. But you were able to submit a price that was below the budget?
---That, that's correct, yes.

And was, in fact, the lowest price of the tenderers because you had access to
- - -?---The budget.

- - - not only Brefni's quote but the budget?---That's correct. Yes. So that's
what I mean. I didn't know if it was, [REDACTED] influenced the, the process or
whether it was just naturally the process 'cause we came in low.

10

Okay. Did you communicate to Mr Abdi what Mr Cox had said to you
about paying [REDACTED]?---I can't recall. I just kept him, I guess, hanging.

You kept him hanging?---Yeah. So I didn't say yes or no.

Okay. Did you provide any payment to Mr [REDACTED] in connection to
Wollstonecraft?---No. No. No, nothing at all. Nothing at all.

At some stage, was there, so far as you were aware, some change in Mr
20 [REDACTED]'s views about RJS - - -?---Yes. Yes. I think once he realised, I, I
don't know if it's coincidence if he realised when he's not getting paid for
the fee, I think he started kind of bagging RJS out - - -

Started bagging you out?---Yes. Yeah.

Again, how did you come to know that?---Because I think Andrew pulled,
Andrew Gayed pulled us aside and said, I don't know what's happened, but
don't know, the PM from Transport is bagging, well, not, not the word,
bagging you out, yeah, or changed his tone of voice towards you.

30

THE COMMISSIONER: Sorry? Who told you this?---Mr Gayed, yeah.
So he, so Mr Gayed was confused, 'cause at the beginning, he said he
wanted RJS or recommended RJS and then all of a sudden when it's close
to, I think, contract signing, it's, so, RJS is no good or, or that, or was, yeah,
not, was bagging RJS out.

MS DAVIDSON: Okay. But that didn't affect your ability to actually get
the contract signed?---No, I don't think so. No. I think it was pretty much
set, 'cause - - -

40

And were you surprised by Mr [REDACTED]'s change of approach?---I, yeah, I was surprised, yes.

Did you connect it with having had a conversation with Mr Abdi or leaving Mr Abdi hanging about payment to Mr [REDACTED]?---Yeah, so that, so, so I thought it was that. I thought maybe 'cause he didn't get his fee, then that's the reason why he acted the way he acted.

10 Right. Had you had a discussion with Mr Abdi around the time he provided you with the budget about providing him, that is Mr Abdi, with a share of profits in relation to Wollstonecraft?---He, I know he, he wanted a share but that was never the case.

Okay. So he wanted a share and you knew that how?---'Cause we talked about it. He said, well, yes, he, 'cause he said, "I helped you out," yeah.

20 Right. Was that a conversation he had around the time of sending you the budget or was it later than that?---That was probably later than that, yes. So I think later than that but when he knew that we were going to secure Wollstonecraft.

Okay. So am I right in thinking you tendered in relation to more than one package at Wollstonecraft?---Yeah, so there was three packages we, we, we tendered for, yes.

Okay. And what were they?---I think originally we tendered two and then, and then when we had a meeting with Downer onsite, they said, "Well, can you, can you tender all three package and give us a discount?"

30 Okay.---Yes.

And did you do that?---Yes, we did.

And so was that the platform - - -?---So platform works.

- - - platform civil works?---Civil works, yes. Station platform works and piling works.

40 Sorry, the station civil works, the platform civil works and the piling works.---And piling works, that's correct.

And was there another package being tendered at the same time?---Oh, yeah, that was the building package, yes.

The building package, right. And you were initially interested in that? ---That was already, yeah, that was, that was, yeah, I was, we were initially interested in that, yes.

10 Right. So how did that differ from the - was it just a different aspect of the station that the working, that the work was being done on?---Oh, no, I think Aidan was more confident doing the civil side of things, so I just followed his lead because he has more technical knowledge.

Right, okay. But you were initially interested in the building side of things?---Yes.

20 And was there something that led you not to ultimately tender for the building side of things?---Oh, because then that means if we got the building package, then that's the whole Wollstonecraft Station towards one company, yeah.

Right. And did you think that that was unlikely?---Oh, hundred per cent, yes.

Was that simply because of the way that Downer usually broke up the packages?---That's correct, yes. So I think there was a conversation between I think myself, Aidan and Andrew saying that we can't give you the building package plus the civil packages, so it's either one or other.

30 Right.---Yes.

I see.---Yeah.

And did you think the civil packages were more valuable?---It's more, more valuable in terms of reward, as in, as in, as in reward, personal reward.

Right.---As in it's just, it's just satisfying to see how, the end product.

40 Okay.---Yeah, so it's just like a, like a, I guess, a challenge in itself that we can overcome to have that satisfaction.

Did Mr Gayed say anything to you about being able to give you any assurances in relation to the other packages if you didn't submit on the building package?---Yes, so he said it's either one or the other. So, yeah, the withdrawal from the building package.

Okay. Did he suggest that you'd be successful in the other packages if you withdrew from the building package?---I can't recall, yeah.

All right.---I can't recall that.

10

And do you recall which company was ultimately successful in relation to the building package?---Not at the time. Not, not at that time but - - -

As in you didn't know at that time?---Yeah, I didn't know at that time, yeah.

Right.---Who the builder was going to be.

Okay. But after that time you did know?---Yes. When I, when they started to establish the site and then I was like, okay, makes sense now.

20

And who was that?---Maize Group.

And when you say that makes sense now, what do you mean, what makes sense?---Oh, that I knew there was a relationship between Maize Group and Andrew Gayed.

Okay, and what was that?---I don't know because this is coming from Nima. Nima told me, Nima Abdi told me there's a relationship between Andrew Gayed and Maize Group.

30

Right. And did he tell you what that relationship was?---No, no, that's, that's what he said. He said that there's, Andrew has a part of Maize Group or something like that.

Okay.---Yeah.

So you understood Mr Gayed to have some interest in Maize Group?
---Yeah, so when I heard the name Maize, then it just, just threw up the red flag. Oh, Maize, I heard that before. And then it's okay, oh, two and two,
40 Andrew and Maize. That - - -

Okay. So that's what you mean by "it made sense"?---It made sense, yeah.

Okay. That Maize might have been favoured in relation to the building package?---That's correct.

Do you know whether Maize tendered for any of the packages that you tendered for?---As in the civil?

10 Yes.---Oh no, they're the builders, so they wouldn't, they wouldn't, it's not their specialty, yeah.

They wouldn't have?---They wouldn't have any idea how to build that stuff.

Okay. So Mr - well, do you recall how you were told that you were going to be successful in relation to Wollstonecraft, how you found out?---Yeah, so we had a meeting, so went through I guess the scope of works and the three packages, and then I think Andrew said, "Well, if you give us (not transcribable) we'll give you these three packages if you give us a discount."

20

Okay. That was before anything had actually been approved?---Been signed, exactly, yeah. So then Aidan and myself went back, had a look at it, then I think we, yeah, dropped the price a bit and then resubmitted the price.

Okay. And after you resubmitted the price, do you recall how you found out then that you'd been successful or that it'd been approved?---Yeah, so Andrew would, I'm pretty sure Andrew would have gave us the heads-up saying, yes, we recommended you. Because I think there was a possession, a big possession coming up four weeks out or six weeks out, and it needs

30

time to plan and they haven't got anyone on board, so - - -

So it needed to be done pretty quickly?---Pretty quickly, yes.

Okay. Do you recall Mr Cox hearing from Mr Watters in relation to your success at Wollstonecraft?---Oh, so that's, so I think that was a coincidence. So I think it doesn't matter, so the recommendation would have went to Mr Watters for a sign-off and other higher managers.

40 Yes.---So even if it wasn't us, he would have had to sign it, so I think he just took that opportunity to make it if he favoured us, if that makes sense.

THE COMMISSIONER: Make it what, sorry?---He favoured us just for a kickback.

MS DAVIDSON: Can we have the text message that's part of MFI 10 brought up for Mr Watters. You were here during the opening address, Mr Nguyen.---Yes.

10 When you say he made it seem like he was being favoured here, this is the message that was read out during the opening address, "Approved the first \$2.8 million for you guys this morning. I have the rest in my approval queue. Good result for RJS. Make sure we're looked after well." Now, this wasn't a text message that was shown, sorry, that was sent to you. It was sent to Mr Cox.---That's correct.

But do you recall seeing it at the time?---Yes, he showed me. So Aidan showed me and then we were like, "What the eff did he do?"

Right.---Yeah.

20 Okay.---"What is he up to?" So that's why we figured he's taken this opportunity, he's taken this I guess opportunity to make something of it.

I see.---Yeah.

But you didn't understand Mr Cox to have had any contact with Mr Watters - - -?---Oh, no. He, I would have known, yeah, but there was - - -

- - - prior to this?---Exactly. I would have known.

30 Okay. When you say you would have known, is that because Mr Cox would have told you?---Yeah, he would have told me. Said oh, say Kevin Watters said this or Kevin Watters gave, gave us this.

Right.---Yeah.

Did you understand Mr Cox to have kept up his relationship with Mr Watters after?---After. I would imagine so just as, yeah, I would imagine so.

40 Okay.---Just to keep the relationship I guess stable.

Okay. But you weren't aware of, were you aware of any role that Mr Watters had played in - - -?---No, he, I'm - - -

- - - successfully securing your packages at Wollstonecraft?---No. I don't think he had a, he had any influence and he made it seem, I think he made it seem like he had influence just to obviously get a kickback. That's the way I saw it when, that's the way I viewed it when I saw the message.

10 Right. So where he says, "Make sure that we are looked after well, wink emoji," did you understand that to be him looking for something for himself?---Just like North Strathfield, yes.

Right. Right. Did you have any subsequent discussions with Mr Watters in relation to any benefit emerging from, to him emerging from Wollstonecraft?---Not me personally.

20 Do you know of anybody else having that, Mr Cox for example having those discussions with Mr Watters?---No, I don't think so otherwise he would have told me then he would have come back to me and said I had a discussion with Kevin. He wanted this, or something like that.

Okay. So when you said not you personally - - -?---I think he - - -

- - - do you know whether anyone else did on behalf of RJS?---No. I would, I would have known about it. If it was Aidan, it's either Aidan or myself.

Right.---So that's it, yeah.

30 Right. And you didn't pay Mr Watters anything.---Oh, no. No, not a cent. Yeah, not a cent.

Okay. Did you have contact with him or further contact with him during the Wollstonecraft project, that is between you and Mr Watters?---Oh, no. It ceased when, after the investigation in December.

As in your contact with Mr Watters ceased in December?---Yes.

So this is, to be clear this is December 2020?---Yes.

40 And that was when search warrants were executed - - -?---Search warrants, exactly, yeah.

- - - by this Commission?---That's correct.

All right. But you continued working on Wollstonecraft after that.---Oh, yes, yes. We had to, we had the project to deliver.

Right.---Yes.

10 And in fact your work on Wollstonecraft continued through till around well, 2022.---Thereabouts, yes. The beginning of 2022, yes.

So you were still working on Wollstonecraft - - -?---Yes.

- - - at the time that you had a compulsory examination in the Commission? ---Oh, no, I think we finished up then.

But it was 2022 that you were still, well, you were still working on it - - -? ---Oh, just maybe working on a variation or something like, or working some, in some form, yes.

20

All right. And did you continue to be the person at RJS who was working on Wollstonecraft?---Yes.

Did Mr Cox's involvement in Wollstonecraft continue?---Yes, it did until we finished the, I guess the majority of the scope.

Right. And when was that?---I think he, so that's probably the end of '21.

Around the end of 2021.---Yeah, '21, yeah.

30

Okay. Wollstonecraft was the biggest of the TAP projects that RJS had worked on.---That's correct because of the multiple package.

Sorry, because it was a multiple packages?---Because of the multiple package, yes, yes.

And combined together the value of those packages was more than \$4 million.---That's correct.

40 Did you have any agreement with Mr Cox in relation to the profit split - - - ?---Yeah, would have been - - -

- - - at Wollstonecraft?---It would have been the 50/50.

Was there a mark-up in the price that you submitted as a result of, beyond what you ordinarily would have included as a result of knowing what the budget information was?---I can't recall.

Did you discuss with Mr Cox the idea of paying Mr Vardanega in relation to the finder's fee that you'd talked about?---Yeah, there was a few
10 conversation that took place between myself and Aidan about what are we going to do with Ben.

Right. What was the nature of those conversations?---It was like, ignore Ben or pay him or, you know, what did he do? What value did he add?

He provided budget documents to Mr Cox.---Yes.

And he had also provided Brefni's price.---Brefni's price, yes. Yes.

20 Those were two things he'd done, were they not?---Yes, that's correct.

And did you understand he expected to be paid in relation to that assistance?---Some form, yes. That's right. That's correct. That's my understanding, but I don't think it ever surfaced.

I'm sorry, he never?---I don't think it ever surfaced, again, that conversation.

When you say you don't think it ever surfaced, you mean a conversation
30 between him and you or what didn't surface?---About the finder's fee for Ben.

Okay.---Yeah.

So you discussed it with Mr Cox - - -?---Yeah.

- - - a few times.---Yes.

Do you remember when that was?---I don't recall. I think maybe it was
40 after, after the first possession.

Right.---Which is, was I think October.

Because Mr Vardanega in fact worked onsite for you at Wollstonecraft.

---Yes, he did. Yes, for a short period of time.

In what capacity did he do that?---Oh, well, he wanted to, I guess he wanted to be involved because he said he wanted the experience.

10 Right.---But I didn't know what was his mean, or what was his I guess motive behind that because it didn't make sense 'cause I knew he was working for Transport or Sydney Trains at that time.

Right. So you understood that he had ProjectHQ at the time.---Yes.

Was experience of that kind relevant to his possible future work at ProjectHQ?---Exactly, so we put it together that, or Aidan and I said, Aidan and I put it together, said maybe he wanted to get experience and start running ProjectHQ like RJS.

20 Right. And so did you engage him or invite him to work on the site at Wollstonecraft?---We didn't engage him. He just happens to work onsite.

Weren't you - - ?---Like, we didn't pay him. Like, he just, yeah, he said, "Can I help out."

He worked onsite for free.---Yes. Pretty much, yes.

30 Were you surprised by that?---I was confused. So I didn't know what was the motive behind. So I didn't know if it's, the day was going to come where he said, "Okay. Where is my cut?" or, "Where is my payment?"

And did he have that conversation with you after he worked for you for free?---No. That, yeah, no. That conversation never came up.

How much free work did he perform?---It wasn't, it wasn't, just say a couple of days a week for probably a couple of weeks, like - - -

A couple of days a week for a couple of weeks.---Weeks, yeah.

40 And what was he actually doing on the site?---So we made him like a site engineer, so just more, just, just to be the guy on the ground to - - -

So was he supervising other people?---I wouldn't say so much for supervising because I don't think he has the experience. Just, say, just be the eyes and ears on the ground. If anything he thinks that's wrong or anyone asks a question, just to contact myself or Aidan.

Okay. Is that a valuable service, from your perspective?---No.

10 Would you have had to have somebody - - -?---'Cause I was onsite all the time.

Because you were onsite all the time.---Yeah. Yeah, because we were onsite all the time, yes.

Okay. So by the time work started at Wollstonecraft were you still employed by Inner West Council?---No.

Right.---So I resigned by then.

20 Okay. So it was September 2020 - - -?---That I resigned.

So prior to that you were subject to a disciplinary process.---That's right.

Was it that that led you to resign?---No, I was going to resign anyways.

Right.---It just happened that unfortunately it ended that way.

30 Did the disciplinary process relate to your running of the procurement processes at Inner West Council?---That's correct, yes.

Right. So you resigned in late September 2020, that was before any work commenced at Wollstonecraft?---Before any physical work commenced at Wollstonecraft, yes.

Right. So you'd been awarded the contracts - - -?---Yes.

- - - or you understood that you would be?---Would be, yes, that's correct.

40 Okay. And was it your intention at that time that you would then be full-time onsite at Wollstonecraft?---Yep, that's correct.

Okay. And was that because of the size of the - - -?---The size of the work packages and the planning involved and the processes and all that, so - - -

Okay. So coming back to Mr Vardanega, he was working for you for free for a few weeks.---For free. Yes.

And after that did he approach you in some way in relation to payment for that work?---No. I think it never arises because the whole search warrant thing happened and then he went his own way.

10

Okay. So do you recall how soon before the search warrants were executed that he did the work for you, that is, how far before it, how far before the search warrants happened was he working for you?---I think he did work for us right until the search warrant.

Okay.---Yeah, and then the search warrants happened and then never heard from him again.

20 Okay. So that would have, the search warrants were executed on 2 December 2020, so would it have been in November 2020 approximately he was - - -?---Exactly would be the last time he was there onsite.

Working for you.---Or did something for us.

Okay.---Or for me, yes.

30 All right. And the conversations you had with Mr Cox, were they left open-ended in relation to whether you were going to pay Mr Vardanega or did you reach a conclusion that you wouldn't, do you remember?---So, so we just, I think we just ignored it.

That is you hadn't come to any conclusion - - -?---Yeah.

- - - or you had come to a conclusion and you weren't planning to tell him? ---Yeah, hadn't come to a conclusion. We just left it alone.

All right.---So - - -

40 Do you remember whether you had a view one way or the other as to whether he should be paid?---I can't recall, yeah, I can't recall.

All right. I think you suggested that you had some discussions with Mr Abdi in relation to him providing assistance at Wollstonecraft and being paid for that.---Yes.

How did those conversations develop after you were awarded, after you were successfully awarded the package?---He was fishing for something, I know that.

10 You were speaking to him about it?---Yeah, so we kept in contact up until the search warrant on pretty much I think a daily basis.

Right.---Yeah.

He was calling you on a daily basis?---Or some, somewhat of contact through either a app or, or call, so - - -

Right. Why was he contacting you on a daily basis?---I don't know, well, it's just, I think it was just the normal routine. We just talk every day.

20 Oh, okay.---Yeah. It's just doesn't necessarily have to be about work. It just could be about the farm or, you know, or how (not transcribable) is going or something like that, or - - -

You had a personal friendship with him by this point?---Yes. So developed into a personal friendship, yes.

30 And during that period of time or those contacts, did he raise with you a question of payment for Wollstonecraft?---Yeah, he keeps asking, "How much do you make? What's your mark-up?" I think he's trying to work out how much percentage he was going to get.

Right.---Yes.

And what did you say in response to that?---I kept, oh, I kept fluffing, I said, "Oh, I don't know, I'm just winging it." Just kept, keep it open-ended, just to, you know, just brush him away, brush him off.

40 Right. And do you recall having discussions with Mr Cox about payment to Mr Abdi?---I, I, I recall mentioning it and then he told me to eff off and then - - -

As in Mr Cox told you to eff off?---Cox told, yes.

Right.---And he said, "I don't want him involved at all."

Okay.---Yeah. And "He's getting not one cent," yeah.

Did you want there to be a payment to Mr Abdi?---Not really 'cause he had no value. As in all the hard work came from myself and Aidan.

10 He provided you with budget information, hadn't he?---That's correct, yes.

Right. Was that not valuable information from your perspective?---Not that at the time, but when you think about it, probably it was, yes.

Right. So where you say you and Aidan had done all the hard work, what do you mean by that?---Or going to do the hard work, as in planning, you know, putting a crew together, being onsite.

20 The execution of the project.---Yeah, exactly, execution of work, yes.

Okay. And Aidan, that is Mr Cox, didn't want Mr Abdi to have anything to do with it?---Yes.

Okay. What was their relationship like generally?---Oh, sour. Very sour.

Right. And why was that?---I don't think they liked each other from the beginning.

30 Okay.---Yeah.

Do you know why?---I think they just clashed, yeah.

Right. Did that make things difficult for you in terms of making arrangements for projects?---I don't think so, no. I don't think it made any difference.

You just kept - - -?---Just, I just kept them at arm's distance, that's all.

40 Right.---So - - -

Okay. What profit did you ultimately make from the Wollstonecraft project?---That I'm not too sure.

You're not too sure?---Not too sure, yeah.

You completed the project?---Yes.

And you were paid by Downer in relation to the project?---That's correct.

10 Did you keep records in relation to the payments that you received from Downer?---Yes.

And - - -?---So, I think - - -

- - - keep records in relation to the way that costs had been - - -?
---Allocated.

- - - allocated to the project?---Yes, so I think the easiest way to work it out is Aidan's invoices for Marble Arch. I think he broke down the profit split.
20

Right. Aidan's invoices from Marble Arch.---That's correct.

That is invoices that were sent to you in relation to the - - -?---Yes, for him to, for me to pay his profit share.

Okay.---So that would be the profit.

And do you recall when they were sent?---I cannot recall. As in - - -

30 Do you have copies of those invoices?---Yes, I do, otherwise it wouldn't have been paid.

Right. And you paid those invoices?---That's correct.

Commissioner, I seek an order pursuant to section 35(2) of the ICAC Act for production of those invoices.

THE COMMISSIONER: When?

40 MS DAVIDSON: I'm sorry?

THE COMMISSIONER: When?

MS DAVIDSON: If they could be produced - - -

WITNESS: I can find it tonight and send it over.

MS DAVIDSON: Perhaps by tomorrow, then, Chief Commissioner?

10 THE COMMISSIONER: These are all invoices in relation to the
Wollstonecraft - - -

MS DAVIDSON: Invoices in relation to Wollstonecraft.

THE COMMISSIONER: Submitted by?

MS DAVIDSON: Marble Arch to RJS and in the possession of Mr Nguyen.

20 THE COMMISSIONER: So are you able to produce these documents
tomorrow?---Yes.

So I direct, pursuant to section 35(2) of the Independent Commission
Against Corruption Act, the witness produce all invoices submitted by
Marble Arch Pty Ltd to RJS Infrastructure Group Pty Ltd in the possession
of the witness.

30 **DIRECTION TO PRODUCE: SO I DIRECT, PURSUANT TO
SECTION 35(2) OF THE INDEPENDENT COMMISSION AGAINST
CORRUPTION ACT, THE WITNESS PRODUCE ALL INVOICES
SUBMITTED BY MARBLE ARCH PTY LTD TO RJS
INFRASTRUCTURE GROUP PTY LTD IN THE POSSESSION OF
THE WITNESS.**

MS DAVIDSON: I'm grateful, Chief Commissioner.

THE COMMISSIONER: By 4pm tomorrow.---I understand.

40 MS DAVIDSON: Were those invoices, as with other projects, the means by
which Mr Cox's share of the profits was paid?---That's correct. Yes, that's
correct.

And what was the split in the profits for Wollstonecraft?---Would have been fifty-fifty.

And so should we understand that the remainder of the profits were allocated to you?---That's correct. Would, would be, yeah, in my account.

I'm sorry? Would be - - -?---Would be in the RJS account, yes.

10 Right. Did you extract them by means of invoices from one of your other companies from the RJS account?---No, I think, no, I, I left them in there because I think Aidan was ready to part ways after Wollstonecraft.

That is, part ways from RJS?---RJS, yes. That's correct, yes.

Right. So now you're the sole shareholder in RJS once again?---Yes.

As to payments for the work on Wollstonecraft, did you make payments to anybody else for their assistance in relation to securing that work?---No.

20

So the profit was only split between - - -?---Between - - -

- - - yourself - - -?---And Aidan, correct. That is correct.

And were there any finder's fees or other fees - - -?---There is no, there - - -

- - - or other fees ultimately paid?---There was no other finder's fees or fees or fees or, like for that.

30 Were there variations in relation to work on Wollstonecraft?---Of course, there was variations, yes. There was standard, the, the usual construction variation.

Did you receive any budget information or assistance in relation to those variations?---No. No assistance whatsoever. So it was just the normal costs plus the margin plus salaries.

So the margin would have been - - -?---A standard margin of 20% plus the risks.

40

Right. So there was no additional profit element derived - - -?---Yeah, there were no inflations or anything like that, or a, a threshold.

As there had been in other - - -?---Exactly, yes.

Did you keep a spreadsheet, as you had for other projects, in relation to Wollstonecraft?---A tracking spreadsheet?

10 For costs and profits, ultimately?---For this one, I think at the start but then it just died down.

When you say it “died down” what do you mean?---As in, I think I, I think again I would have kept costs of all the tracks, like, you know, concretes, reo, all the materials, deliveries and the labours and stuff like that, just to track it but then that didn’t last long, yeah.

20 So when you were ultimately working out with Mr Cox what was to be paid to him, how did you come up with the figure that you then split in half?---So we would pull, yeah, so we would pull the, the statement, the business account statement and then we would just - - -

Pull the business account statement?---Yeah, and then we would just go through every line item, so that’s, that’s Wollstonecraft, that’s Wollstonecraft, minus, minus, and then minus, so add the total of the, I guess, payment to subcontractors or suppliers and then get that total and minus it to the contract value and then split it down five by two.

30 Okay. Did you sit down with him and do that process or was that a process you conducted by yourself?---I think we did, I think we did it together. I think, I’m pretty sure we would have done together, just so it’s transparent between both of us.

Right. And was there some document that you produced as a result of that exercise?---I can’t recall. There might be a, an Excel sheet or something but I can’t recall.

Right. If there had been an Excel sheet that had been produced as a result of that exercise, that is, the splitting exercise - - -?---The splitting exercise, yes.

40 - - - would that be something that you would have possession of now?---I’m not too sure. I’m not too sure.

Is that something you could search for on your computer?---That's something I could search. That's the first thing I would do, is search for. If I have, yeah, then I'll send it over, but I don't want to promise anything that I'm not too such.

You don't know whether it exists.---It exists, yeah.

10 Chief Commissioner, could perhaps we add to the section 35, subsection (2) order, together with any spreadsheet reflecting calculations of RJS's profits for the Wollstonecraft Train Station project.

THE COMMISSIONER: Yes. Are you able to do that tomorrow, Mr Nguyen?---By tomorrow, yes. I'll, I'll try searching for it tonight, yes.

All right. So I'll add to the direction I made previously pursuant to section 35(2), a requirement to produce by 4pm tomorrow any spreadsheets in your possession relating to RJS Pty Ltd profits relating to the Wollstonecraft project.

20

DIRECTION TO PRODUCE: SO I'LL ADD TO THE DIRECTION I MADE PREVIOUSLY PURSUANT TO SECTION 35(2), A REQUIREMENT TO PRODUCE BY 4PM TOMORROW ANY SPREADSHEETS IN YOUR POSSESSION RELATING TO RJS PTY LTD PROFITS RELATING TO THE WOLLSTONECRAFT PROJECT.

30 THE COMMISSIONER: Do you understand?---I understand.

MS DAVIDSON: Thank you, Chief Commissioner. I want to return now briefly, Mr Nguyen, to your time with Inner West Council.

THE COMMISSIONER: Before we move on, who did you use to perform the work at Wollstonecraft?---So most, our big, our biggest subcontractor was probably Ballyhooly Civil, so I would use obviously the labour and plant from, from them. And then we would put a crew of, say, a work crew together by sourcing, outsourcing individuals to come and work for us.

40

Which individuals? Where did you get them from?---Through, I guess word of mouth. You know just say, “Hey, are you free? Do you want to come and work for us for X amount of weeks just to build this thing?”

And who organised all of that?---So between, it would be myself and Aidan so - - -

I see.

10 MS DAVIDSON: Returning briefly to your time at council, you had given some evidence about setting people up as new suppliers at the council.
---Yes. Yes.

And the form with the conflict box that you never checked, that is never ticked.---Ticked, yes.

Did you understand there to be any checks performed after you submitted that form, that is, any checks in relation to - - -?---Like a reference check or - - -

20

- - - who the supply, like, a reference check?---No. I’m pretty there was no checks done.

Right.---It was just entered in the system by the procurement officer.

Okay. So you could make anybody effectively a supplier to the council. Is that right?---Pretty much, I think, yes.

30 So the previous work that a supplier had done was not checked, for example?---Yes.

And the financial capacity of the company wasn’t checked.---Wasn’t checked. Yeah. Yes.

Were you aware of anything in the council’s procurement manual in relation to financial assessments being performed for suppliers?---No. I, I wasn’t, well, I wasn’t aware, no, I’m still not aware, yes, yeah.

40 Did you know that financial checks was a thing that could be done, that was a service that existed?---I think there’s a financial check - this is, I’m just trying to recall what I remember. I think there was a financial check for

open tenders. I think it's called (not transcribable) Services or something like that and you go through them or - - -

What did that involve to your understanding?---I think you just pay them and they would do a credit check. Yeah.

So you understood for open tenders that there was some process - - -?---That was a requirement, yes.

10 Was that something that the council Procurement Team would do?---Yes.

So nothing that you had anything to do with?---Yes.

And what did you understand it to involve?---I think they just did the credit checks or financial checks, background, yeah. So I think they engaged a, a, a body just to do a search, you pay a fee.

Did the council pay that fee?---Yes. So the, the project manager would raise a, a, yeah, a purchase order for that fee to be undertaken, yeah.

20

Do you remember signing off on any purchase orders for that kind of check?---For open tenders, yes.

For open tenders?---For open tenders, yes.

So that was over - - -?---150 or 250, depending on what time.

30 Did you in fact do that where you were conducting an open tender? Was that part of your regular practice?---Oh, yes. It was, it was requirement. It's a regular practice, yes. So I don't think I, it was the procurement officer that would do it and then it's, I need (not transcribable) to raise a purchase order for it.

And you suggested it was a credit check. Do you know whether it was any more extensive in relation to the capacity of the company, whether it had any employees or an office or - - -?---Oh, no, I don't think so. No. I wouldn't, I wouldn't notice. It was just a very simple check. Like, there wasn't, you didn't see the company employees or, yeah, stuff like that. It's just - - -

40

Because if it had been a more extensive check then some of the suppliers that you had used on open tenders which were brand-new companies might have been picked up, mightn't they?---In, in fact that, that's possible, yes.

Do you recall giving any assurances or reassurances to people that you were associated with about the lack of due diligence checking when somebody became a new supplier to the council?---No. I don't think anyone asked.

10 Do you know whether there was every any check done in relation to insurances held by these companies, for example?---No. It was just that, it was just a normal practice of saying when they send the appraise claim, then they should send the insurance through.

Do you recall whether at the beginning of establishing Marble Arch Mr Cox had insurance?---Oh, no. I, that, that I would have done for him.

You would have done for him. What do you mean?---As in, as in I would have, I would have, I would have, I guess, fake an insurance for him.

20 You faked an insurance for him?---Yes.

How did you fake an insurance for him?---Oh, I just copy and paste from a different insurance, yeah.

So in order to avoid him having to pay for it, is that - - ?---Yes. I guess so, yes, or he didn't have it in time and I said, "Oh, crap, you need it" and then - -

30 THE COMMISSIONER: Sorry, say that again?---Just, because he didn't have it at the time, he didn't have insurance at the time. That, that's the reason why I did that, just to get him past.

What did you actually do?---Made, made, made up an insurance, I guess, certificate.

But it wasn't an actual policy, it was just an appearance of having an insurance policy, is that what you're saying? You manufactured a document?---Yes. I manufactured documents, yes.

40 That made it look as though he had insurance?---That, that's correct, yes.

But he in fact didn't have any.---He in fact didn't, yes.

So this work was being carried out without any insurance, is that what you're saying?---Yes.

MS DAVIDSON: Do you recall which project that related to?---I can't recall. If you want to mention something, yes.

10 I can provide you again with a copy of MFI - I'll check the numbering, Chief Commissioner, but it's the Marble Arch table that was table 4 that was provided to the witness yesterday. MFI 7. Thank you very much. ---Thank you.

This is again the list of projects that Marble Arch performed for the council. I think this list is in chronological order.---Yes. I, I don't think he had any insurance. I think it was forgotten after, as in I would, I would accept that manufactured insurance and then that was it.

20 That is you don't think he ever had any insurance?---Yes. I don't think he ever - - -

THE COMMISSIONER: For any project?---For any project, yes. From my knowledge.

Did RJS have any insurance?---Oh, yes, we had, I had insurance, yes.

30 MS DAVIDSON: So do you recall whether - well, what you did in relation to providing the insurance was creating a document. What was the process that you went through for faking his insurance?---Oh, it was just I would get, I guess, someone else's insurances put in, and put the Marble Arch on it.

I'm sorry, someone else's insurance and you would?---Just put the company name on it.

Right. So you took a document and edited it in some way?---That's correct, yes.

40 Do you remember doing that?---I, I remember doing it, yes. I recall doing it, yes.

And what did you do with that document once you'd created it?---I just sent it through to council, as in I'd send it through, so from the alias email I sent it through to my, my Inner West Council's email.

Right. And at what point in time in the supplier, in the new supplier process would it have been a requirement to provide the insurance document?---Not for the supplier set-up but more for the, I guess the progress claim.

10 Right.---Yeah. 'Cause on, there's a checklist on the progress claim, have you checked insurance, have you checked the stat dec for that month or for that period.

Okay. So the first time and then subsequent times when Marble Arch submitted a progress claim to the council - - -?---Yes.

- - - there had to be an insurance document checked?---Yes, in a stat dec, yes.

20 Right. And were you responsible for checking the insurance?---Yes.

So - - -?---As in not to do a call-up check but just to, just to view it.

Right. And there was a, you had to provide a document along with that to show - - -?---That's correct.

- - - that you'd viewed the document.---That's correct.

30 And did you then store that in some council system or submit it to someone?---I must have stored it somewhere in the council system.

Right. And - - -?---Along with the progress claim.

Okay.---Yeah, so it would have been saved in the same progress claim.

And where you said to the Chief Commissioner that you did that repeatedly, did that mean you printed the document multiple times, did you change the date on it?---Oh, no, just one, just, just a one-off document that I just reused again.

Was it required to have a date on the policy or on the document, do you remember?---Yes, I think the date lasts for about a year, so the policy lasts for a year, so - - -

Okay. Do you remember ever updating the date on that document?---I don't remember, recalling updating the dates or anything like that. I remember just doing it once.

10 Because Marble Arch continued to work for council over more than a calendar year period. If we look at the dates on this - - -?---Yes, I think so.

Do you think that therefore you were perhaps using an out-of-date fake document?---Yeah, perhaps. Yeah, without checking it, yes, that's correct, yes.

Do you remember turning your mind to the date on it?---No.

Okay.---No.

20 Do you remember accessing the document you'd created, that is the fake insurance document, on more than one occasion?---I don't recall. I just recall just doing it once and then just keep using the same one. So I think what I used, maybe after the year I just kept using it and no one checks it.

Okay. So where you say you kept using it, again does that mean you kept printing it out or you kept attaching it to a form?---I kept attaching it to the form.

30 Okay. At some time in 2020 I think you suggested on Monday you got a new manager, that is in your capacity at the council.---Yes.

The previous manager left.---Oh, yes, yes.

Do you remember that happening?---Yes. So, yeah, so the previous manager was, was Patrick.

Yep.---And then the one that, then Vicki took over.

40 Vicki took over. Was there ever, were you at any point managed by a person called Mauna?---Oh, Mauna, yes. So that was later on and then I

think there was a, a shuffle with management and then, then at the end was Mauna, I was reporting to Mauna.

At the end it was Mauna.---Yes.

So that was in 2020.---2020, yes, that's correct.

10 Right. And do you recall Mauna having any different practices in relation to recommendations that you made as compared to Patrick?---Oh, yes, completely different style, yes.

Right. So what did that involve from your perspective?---Oh, so she was really more detailed. She would actually read through it and correct your, I guess your grammar and spelling and stuff like that and the wording.

Okay.---Yeah. Or if it doesn't make sense or if she needs to, or if you need to elaborate the scope of works or details, yeah.

20 And in terms of the processes that, the procurement processes that you were running, that is involving dummy bids and the submission of tenders that you were yourself creating, did her practices, different practices lead to you having to do anything differently to keep that system going?---I don't think so. I just, just would just acknowledge her comments and change it.

Okay.---Yeah.

30 So do you think, did you understand her to be looking more closely at the various competing tenders or looking more closely at your recommendations?---I would say so, yes.

And did that involve you having change anything about the way that you provided dummy bids for example?---Oh, no. It would still, it would still be the same process. It's just I guess the wording on the memo would be more detailed or more refined.

Okay. So you had - - -?---There was, there was no reference check or anything like that, no.

40 So you had to provide more explanation for favouring one company or another.---That's correct, yes.

Did you have any difficulty with her asking questions as to who the other bidders were or why?---Not that I can recall, no.

Okay. So it didn't actually cause you to have to amend the scheme in some way.---No. It just, it still stayed the same, yeah.

Okay. You gave some answers in relation to the thresholds and the way in which they worked, that is, having to go to an open tender as opposed to just being able to go, just being able to approach one company.---Yes.

10

And I think you said yesterday there were some jobs where you kept things small, is that right, to be able to - - -?---To keep it under the, the one quote system, yes.

Right. And did you also break projects up until stages to enable that to happen?---I would have, yes. Yes.

That is, to keep them under the threshold, so you could just go to one tenderer?---Where possible. Where possible.

20

Sorry, just go to one, just go to one company.---Where possible, yes.

Right.---Yeah.

Did the change in management from Patrick through Vicki to Mauna present any difficulties to you in terms of keeping projects small, keeping them under the thresholds?---To tell you the truth, no. I don't think so. I just kept doing what I did until the day I resigned.

30 Okay.---Yeah.

Chief Commissioner, I provide you with multiple copies and I give a copy to the witness of exhibit 11, which is already in evidence. Before I come to that, you've just given some evidence about faking an insurance document for Marble Arch. Did you ever do the same thing in relation to any other IWC contractor?---I don't, I can't recall.

That is fake an insurance document.---Oh, no, it was just for Marble Arch 'cause he didn't, all the others had insurance.

40

The others had insurance.---Insurance, yes.

And you recall asking them that question?---Yes. So they would send it without saying, “Oh, crap, I don’t have insurance.”

Okay.---Yeah, like, “Here’s the insurance.”

Whereas you recall Mr Cox saying something along those lines, do you?
---Yes, that’s correct.

10 Right. Did you fake any other documents on behalf of Marble Arch?---No, it was just the insurance. That’s what was missing. The rest, and the alias, but I can’t recall anything else.

And the alias.---Yeah.

Okay. And what about on behalf of any other contractor? Do you recall creating any other document apart from the tender documents you created on their behalf?---I, I can’t recall. I, say, maybe CVs, not even CV. I don’t know, CVs? I’m not too such.

20

CVs as part of the tender process?---Yeah, tender process. Yeah.

Okay. Coming back to exhibit 11, this is a document you provided during your compulsory examination, Mr Nguyen. That is, you provided it to the Commission.---Yes.

Do you recall creating this document?---Yes.

30 So on the front of it there’s a list of names and then there’s some groups of individuals. Can you explain what the purpose of the front list of names was?---So the, the purpose of the, so the, the front page is just outlining who I knew or had suspicion of, well, of them having an association with another company or have influence on the procurement process.

On the procurement process, okay. And on the second page there’s people divided into seven groups. Can you explain what those groups were?---So this is my, yeah, so these groups were under my suspicion of who, it’s like a syndicate, so - - -

40 Okay. So these were people who had an association with each other.
---Association, exactly, yes.

Okay. So the first group, can you explain what you understood that group or syndicate related to?---So that would have been the early stage, so from, so the first group would have been the, I guess, involved at TAP project at Vic Street TAP at Kingswood, the whole ASN, so that, 'cause that's all, everyone, I guess, and then everyone was part of it, or some (not transcribable) part of it.

10 All right. Did you understand Mr Pilli to have any involvement at that early stage?---Oh, no. Just the Kingswood, so - - -

Okay.---Yeah.

So because he became involved in the TAP project at Kingswood you noted him there.---Yes. Yes.

Okay. And where you refer there to "[REDACTED]", is that a typo?
---That's a typo, yeah. So that's the [REDACTED] that you mentioned - - -

20 That was intended as a reference to Mr [REDACTED]?---Yes, that's right.

There's then a second group described. What did that relate to?---So just, just the association with the company.

An association with the company, that is, between people at Transport for NSW - - -?---Yes. Downer - - -

- - - people at Downer and other - - -?--- - - - and the government, that's right, yes.

30

And the third group?---That's the same thing.

Mr Stanculescu and Dalski?---Yeah, so association.

All right. And what did you understand about that association?---He had some sort of association with Dalski.

That is - - -?---Vlad.

40 - - - in order to, well, how did you come to have that understanding?---Just my suspicion and what Nima's told me, 'cause he's worked with, he knows

who Vlad is, he worked with Vlad, so I heard stories of what's been done and what's, what cover-ups been done.

And what did he tell you about Vlad and Dalski?---I think Vlad was on, one of the projects, I don't know which one, that Dalski was on and Vlad was on, that Dalski hit a powerline, something like that - - -

Hit a powerline?---Yeah. Underground services and then tried covering it up rather than - - -

10

When you say "they" - - -?---As in Vlad tried to downplay it.

Right. And that was because why?---Just to assist Dalski, like, just, yeah, so Dalski - - -

Did you understand him to have any interest in Dalski?---At the time, I didn't know he had an interest in Dalski but now I do.

You do know that?---Yes.

20

How do you know that now?---Because one of the, 'cause when I was out in Banksia Station, assisting Downer on a few defects, of their defects, one of the, I guess one of the suppliers came to me and say, "Did you know that Vlad is working for Dalski up at the Snowy Mountains?"

One of their suppliers said to you - - -?---Yeah.

- - - that Vlad was working for Dalski?---Yeah.

30 That was a Downer supplier?---That, that was a Downer supplier, yeah.

Said to you, asked you about, well, asked you did you know that?---Vlad, yeah, 'cause Vlad, yeah, 'cause we were on the Banksia project and then Vlad was managing, originally managed Banksia project. So he said, yeah, was just a, a, a passing comment and - - -

Okay. Do you remember who told you that?---I don't want to name him, but, yeah.

Is there a reason for that?---No, yeah, it's, it's from, what's the company called? It's, can I look up on my phone the company name and then it will refresh my memory?

You don't remember the company's name?---Yeah. I, I do. It's the tip of my tongue, I just, it's, it, I, I, I just need a little, a little refresher, I just, I, I, I can't, it's on the tip of my tongue.

10 All right. Well, perhaps keep thinking about while we continue through this, and you can see if it comes to you.---Comes back, yeah. Sorry, yes. Bellingham.

I'm sorry?---So he worked for Bellingham.

Worked for Bellingham?---Yeah.

Do you remember who the person was?---I think Matt.

20 Matt, who worked for Bellingham. All right. And you said this was in the context of you doing some work for Downer or helping out Downer or helping out Downer with some defects on Banksia?---Yes.

When was that?---Recently, so just I think in October, September, October last year.

Okay. So you'd been doing some contracting, well, have you been contracted to Downer - - -?---Downer, yes. Just to carry out defect works left by Dalski - - -

30 To carry out defect work left - - -?---Defect work - - -

- - - by Dalski?---That's correct.

Right. In relation to the Banksia Station - - -?---That's correct.

- - - project? Okay. The fourth group that you've mentioned here is Mr Gayed and the Maize Group?---Yes.

40 You've already - - -?---Established a link when - - -

- - - explained what you understood about that. Was there any other information that you had about Mr Gayed's association with the Maize Group?---No, it was just that, yeah, just I, I heard it from Nima and then when I saw onsite just, I linked the two things, two, two people together.

Right. You've got there group 5, who's, in fact, Mr Watters on his own? ---Which is related to us, just the North Strathfield.

10 As in the payment that you made to him - - -?---The payment, that's correct, yes.

- - - in relation to North Strathfield? All right. Then you've got group 6, which is Mr Sanber - - -?---With the RPS.

With RPS?---Is the statement line item, the, the one that I mentioned previously.

Well, that's what you mentioned yesterday - - -?---Yes. The - - -

20 - - - in relation to the payment - - -?---That's right. From - - -

And you understood that - - -?---It was a, I guess a kickback.

That was a kickback?---Yes.

Being paid to Mr Sanber?---Yes.

And then you have Mr Aziz with a Downer project superintendent?---Yes.

30 What did you understand that to be, group 7?---So, so the, so they were doing, both of them were doing some sort of dealings together, so - - -

What did you understand about those?---So, oh, no, Abdal mentioned previously that, that he would look after Nick or Nick would look after him. I didn't take, I didn't, you know, I didn't look too much into it because I, it didn't concern me.

40 Did you know any more about it than that?---That he was looking after Nick De Palma, as in like he wasn't, yeah, like, he, he was at home when he was supposed to be at work and stuff like that and then there was some

subcontract works to be done that Nick was looking after it that I think they both was getting a cut from.

Turning over to the next page of this document you can see there's some text messages, or I don't know whether in fact text or WhatsApp messages, but they appear to be - -?---WhatsApp messages, yes.

Are these from your phone?---Yes. They're from my phone.

10 And they're from Mr Abdi?---That's correct.

In May '21, 2 June 2021, and then 9 January 2022. There's some references to some properties.---That's correct.

And messages along the lines of "Hey, mate, this is my property." I'm reading now from the January 2022 one. "Have a think about it and talk soon." Was he actually sending you properties that he was suggesting you have a look at?---No, no. It was just a code word.

20 It was a code word?---To, I guess, meet up.

So these messages are at a time after the Commission's search warrants had been executed?---That's correct.

Did you continue to have contact with Mr Abdi?---I tried not to. When, when he first came over I, and then, well, I think the first appearance he made was at my doorstep and I told him "You shouldn't be here. Go away." And then he got a bit arc-y, a bit, and then because I have kids at home I said, "All right. Let's go for a walk."

30

Right. And what happened then?---And we just went on a walk around the block.

And what did he want to discuss with you?---Oh, just what happened, the whole search warrant thing. Yeah.

And what did you understand his purpose to be in discussing the search warrants with you?---So, bottom line is we stick together sort of thing. Yeah.

40

You stick together. And what did you understand him to mean by that?
---To say, you know, we, our, our story needs to line up.

Your story needs to line up?---That's correct.

And when you say story, story that you give to who?---To ICAC.

Story to ICAC.---Yes.

10 And what was your response to him saying that to you?---Oh, well, my, my response was "Yeah, yeah, yeah", just to, you know, keep him happy.

And did he make that suggestion to you on more than one occasion?---Yes.

So these messages are all on different dates.---Yes. So they're all different meet-up, or trigger to meet up somewhere.

You've provided these ones to the Commission. Were those the only occasions, that is in January 2022, that, sorry June '21 and January - sorry.
20 These are from June 2021. You printed them I think, or indicated that you last had contact with him, according to this, in January 2022. Were there more occasions than this that - - -?---Oh, no, I think that was it. That, that was when the last message and I think I just, we just, yeah, it died off or, yeah.

So there was a couple of occasions that you met with Mr Abdi, is that correct?---That's correct, yes.

So on each occasion when he sent you one of these messages you said it was
30 a code word - - -?---Yeah. So just to meet up at a, to meet at a, at a, at a meeting, meeting point, yes.

And where did you meet him?---Oh, at, it's at, usually at a park.

Sorry, at a park?---Yeah, the park, yes.

And which parks were they?---I can't remember, I can't recall. If I could - -
-

40 Near your house or near his house?---So he would come over, it would be near my house. It would be out at Bankstown Park or something like that

and there's an occasion where we would drive somewhere in between, there's some park in Parramatta or something like that, or yeah.

Were the conversations along the same lines on each occasion?---Pretty much, yes.

So when he was telling you or suggesting to you your stories needed to line up - - -?---Yes.

10 - - - did he suggest particular aspects in relation to which he wanted your stories to line up?---Oh, yeah, it was more like he was, was more than just a silent partner for RJS. Like he had a share in RJS, he did work for RJS, stuff like that.

That is he was suggesting to you those things?---Yes, yes.

And you knew that they weren't true?---Of course, yes.

20 And what did you say to him?---Oh, I said, "Yeah, yeah." Just to fluff him off, just I said, "Of course, yeah, yeah."

So where you said, "Of course, yeah, yeah", did you mean to be suggesting to him that that was in fact the case or that's that would tell the Commission?---Oh, no, that means that I just told him what he wanted to hear.

30 Right.---Just so he's off my back. Look, I was very uncomfortable when he was there or me being with him. So the less time I spend with him, you know, the better it is, like - - -

Right. Well, you say you were very uncomfortable. Why was that? ---'Cause I knew we shouldn't be talking.

Right. So when he was suggesting to you things about RJS, and you said, "Yeah, yeah" - - -?---Just to, just to give him what he wanted to hear, yes.

40 Right. And was that the end of the conversation? Did he continue to suggest in those meetings particular things that, well, ways in which he wanted your story to line up?---Oh, there was a few details I can recall about Sairam and the time sheet.

Right.---Yeah, so - - -

What did he tell you about that?---“You need to say that he worked for you.”

And that’s the time sheet that you were referring to that - - -?---That, with the invoice, yes.

10 - - - you suggested you signed off on for work that Mr Pilli didn’t in fact perform?---That’s correct.

Right. And he wanted you to say that he had a share of RJS?---He was involved in, I guess, the, the works. Like, he helped assist, like he had technical knowledge, so he was like another Aidan Cox.

Right.---Sort of thing.

20 But he in fact didn’t provide any assistance of that kind, did he?---No assistance whatsoever, yes.

Right. Was there anything else in relation to his assistance to RJS that he suggested to you?---I think that was all, that was about it. Yeah. It was just a handful of meetings that we met face-to-face.

Okay. And do you know why the meetings stopped?---’Cause I moved houses. So he didn’t know where I was.

30 THE COMMISSIONER: Sorry, why?---Oh, I moved houses. Yeah, I moved, yeah.

MS DAVIDSON: And - - -?---’Cause he would just randomly come knock on my door, and then - - -

And he’s stopped doing that now?---Yes.

Okay. And have you had further telephone or message contact with him? ---I had a few random calls from WhatsApp.

40 Right.---But I flagged that up and I sent it over to my legal.

Okay. And did you speak to him in those calls?---Oh, no, no, I didn't pick up. I just watch it ring out. So it's just unusual for someone to call me on WhatsApp multiple times at the same number. So I said, no, it might be him, it might not be him.

And do you recall when that was?---I can't remember but I sent the email to my solicitor.

Every time it happened?---Yes.

10

Okay.---It could be him, it couldn't be him. I just didn't pick up the call.

Chief Commissioner, I don't have any further questions for this witness.

THE COMMISSIONER: Yes, all right. There's been no indication on behalf of any party that they wish to cross-examine or seek leave.

MS DAVIDSON: I understand that that's correct, Chief Commissioner.

20 THE COMMISSIONER: Yes, all right. Thank you. Do you want this witness to be stood down pending - - -

MS DAVIDSON: Yes, if he might be stood down rather than released from his summons.

THE COMMISSIONER: Yes, all right.

MS DAVIDSON: It may be necessary, subject to what else occurs in the remainder of the public inquiry, to seek to have him recalled at some stage.

30

THE COMMISSIONER: Yes.

MS DAVIDSON: But it's not possible at this point to make that determination.

40

THE COMMISSIONER: Mr Nguyen, we're just going to have you stood down at this point in time. It's not clear at this point as to whether you're required to give any further evidence, but if you are, you'll be notified and you'll have the opportunity to come back on another occasion when that can be done. So I'm not formally releasing you. You still have the obligation to

bring those documents in that I mentioned to you earlier. But other than that, your attendance won't be required.---Okay, I understand.

Thank you. Yes, thank you. Yes, you can step down.---Thank you. Step down now?

Yes, you can step down. Take all your belongings with you. That document you can give back to the associate.

10

THE WITNESS STOOD DOWN

[3.34pm]

THE COMMISSIONER: Is the next witness present or - - -

MR ENGLISH: Pardon, Chief Commissioner?

THE COMMISSIONER: Is the next witness present?

20 MR ENGLISH: I believe he's outside. It's Mr Laphai. Might he be called, please.

THE COMMISSIONER: Yes, you're Seng Laphai?

MR LAPHAI: Correct.

THE COMMISSIONER: Mr Taylor.

MR TAYLOR: Chief Commissioner, Taylor, solicitor. I apply for leave.

30

THE COMMISSIONER: You appear for Mr Laphai.

MR TAYLOR: That's so.

THE COMMISSIONER: Yes. All right. Thank you.

MR TAYLOR: I can indicate he'll take an oath on the Bible, your Honour.

THE COMMISSIONER: Yes, thank you.

40

MR TAYLOR: We'll be asking for a section 38.

THE COMMISSIONER: The witness can be sworn.

THE COMMISSIONER: Mr Taylor, have you spoken to Mr Laphai about section 38?

MR TAYLOR: Yes, I have, Chief Commissioner, and I'm instructed to make an application.

10 THE COMMISSIONER: Does he wish to avail himself for that section?

MR TAYLOR: Yes, I seek a declaration.

THE COMMISSIONER: Thank you. So, Mr Laphai, I think this has been explained to you but I'll just reiterate it. You must as a witness answer all questions truthfully and you have to produce any item which may be described in your summons or required by me to be produced. Do you understand?---I understand.

20 You can object to answering a question or producing an item and the effect of that objection is that although you are to still to answer the question or produce the item, your item or the item produced cannot be used against you in civil proceedings or subject to two exceptions in any criminal or disciplinary proceedings. The first exception is the protection doesn't 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 penalty of imprisonment of up to five years may apply.

30 The second exception only applies to NSW public officials, but that is that evidence can 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. So Mr Taylor I understand has explained that to you and I can make a declaration that all your answers given and all the items you produced will be regarded as having been produced on an objection and that means you won't have to object to each answer or the production of each item. Now, Mr Taylor has indicated that you wish for me to make such a declaration.---Yes.

40 All right. 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: 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.

20 THE COMMISSIONER: All right. now, do you understand all that?---Yes.

All right. Thank you. Yes, Mr English.

MR ENGLISH: Thank you, Chief Commissioner. Could you just state your full name and your age for the record, please.---Seng Du Laphai. I'm 42 years old.

Okay. And just so you know, if you can just stay close to the microphone - - -?---Sure.

30

- - - that will be great, so everyone can hear you speak, please, Mr Laphai. You've got some tertiary qualifications from university, don't you?---Yes, I do.

What are they?---From UTS.

Yeah.---Bachelor of Engineering.

Okay. And when did you graduate from that degree?---2019.

40

2019?---2009, sorry.

2009.---Yeah.

Okay. And did you go to the workforce after that, after obtaining that degree?---Oh, I started workforce before then, 2006.

Okay. In 2006 what were you doing?---Structural Systems internship.

Structural - - ?---Structural Systems is a company.

10

Yeah.---Internship.

Okay.---Yeah, second years, yeah.

And what did Structural Systems do?---Remedial works and post-tension.

Okay. And were you still working at that firm when you obtained your degree?---Yes.

20 Did you change roles once you obtained your degree?---Yes.

What did you become after you'd obtained your degree?---Project manager.

Okay. And how long did you stay at Structural System for?---I can't recall but probably a couple of years after I graduated.

Okay. And whereas have you worked since then?---Oh, I work at (not transcribable) Victoria and - - -

30 What was that in Victoria, sorry?---Desalination plant.

Desalination plant, yeah.---And I moved to North Queensland.

Yeah.---Doing mining, and I moved to North Parkes in Parkes and pretty much came back around 2016 or '15 to Sydney.

And you said you came back in 2015 or '16 to whereabouts?---I live in Auburn.

40 Yeah, that's all right. Sorry. You came back to Sydney, did you? Sorry. ---Yeah. Yes, I did. Yeah.

And what did you do then, did you start up your own company?---2014 is when I started SDL Projects.

THE COMMISSIONER: Sorry, when?---Sorry?

What did you say again?---2014.

10 MR ENGLISH: I'll just come back to that in a moment, Mr Laphai, SDL Projects, but is it right since you obtained your degree that you've been a practising engineer ever since?---Yes. Yes, site engineer, yeah.

Might Exhibit 45, volume 5.1, page 37 be brought on the screen, please? This is the company search for SDL Project Solutions Pty Ltd. Do you see that?---Yep.

Is this the company you just referred to?---Yes.

20 If we go down, you said it was commenced in 2014. You can see the registration date there on page 1 of that extract. Yeah, do you see that registration date?---Yep, yep.

And then if we go down onto the second page, you can see you're listed as the director at the top off that page, or you should be if it goes up a bit more. Perhaps we can go up another page. Yeah, there we go. That's you who's a director?---Correct.

30 And there's a reference to someone else who was a director or one day. Is that your wife?---Yes. That's correct.

Is that an error that she's on there?---Yeah. That was, that was an error, yeah.

So you've been the director of the company since inception really, is that right?---Correct.

And if we can just go down the page, please. You can see the shareholding.---Yep.

40 It's another company there, do you see that, SL Invest Co Pty Ltd?---Yep.

Is that a company controlled by you?---Correct.

Thank you. Do you know Tony Nguyen?---Not, not back then, no.

But you know him now?---Yes.

You know the Tony Nguyen I'm referring to, don't you?---Yes, I do.

10 And how did you meet him?---I met him through Monty, one of the person that worked for me.

When you say Monty, do you mean, is it Monty Nguy?---Yeah.

Am I pronouncing that right?---Nguy. I think that's how he, he referring it, yeah.

Nguy.---I'm pretty sure.

20 All right. Thanks. I apologise to Mr Nguy for mispronouncing his name earlier.---Oh, I'm not sure that's how he wants it. We just call him Monty.

Sure. How did you meet Monty?---A mutual friend, Nelson, who is my brother's friend. So, I think I met him at one of the coffee shops that he was just finished sort of working on.

You didn't go to university with him, did you?---I, I think I did. So when I met him I sort of recall that I saw him in a couple of classes, yep.

30 But you weren't hanging out together as friends at uni at that time?---No.

And so through Mr Nguy you then were introduced to Tony Nguyen?
---Correct.

And when was that, when did you first meet Tony Nguyen?---I think it's early 2017, yeah.

40 And what was that context?---I can't really recall but I think it's something to do with Transport jobs. So there was a job that, that Tony can introduce us in the Transport.

Where was that, do you recall?---Victoria Street, Maitland.

Oh, okay.---Yeah.

So you met him first in relation to the Transport job?---Yep.

Now, at that stage was Monty working for you at SDL?---I'm pretty sure he was. I think he started working - when I met him he was sort of between company. So he sort of left Innocon, Innocen?

10 This is Monty?---Yes.

Yeah.---He sort of left that company and he started sort of his own company, Constructicon, and I said, "Why don't you come and join SDL?" and he was happy to do that.

So how did it work? If he has his own company, Constructicon, and he's working for SDL as well, how did that work, what was the arrangement?
---Oh, SDL, we had, I had, I had a few employees whereas I think Monty pretty much was by himself.

20

Yep.---So, and then obviously we were building residential properties and we had a bit more jobs on, whereas he sort of didn't have much work on, so
- - -

All right. So - - -?---And he had, I mean, expertise in sort of commercial side of it, which I needed a hand on.

So is it fair to say - and this might be wrong - that if SDL got the job, he'd work as an employee for you on that job, is that right?---Correct, yep.

30

And what if he sourced a job? Would it be through Constructicon and you might help out with some of your labour? Would that happen from time to time?---Not at this stage, no. Not, not when we sort of started off, no.

Okay. So how was it that - you said you were introduced to Mr Nguyen in relation to the job at Maitland, Victoria Street. What was that introduction for?---Oh, I think just they were struggling to find a contractor to go and work there, Maitland. I believe there was, you know, it was a rough site, you know, there was a lot of break-in in there, the Downer compound.

40 That, I mean, this is the initial conversation where they were struggling to

find a contractor to go out there, and I figured it might be a job for me to sort of get into Transport.

Yeah.---Mmm.

10 And what did you understand Mr Nguyen's role was in being able to suggest to you that that job opportunity was available?---Oh, I guess the conversation sort of started with Tony having the background. Monty told me that he had background in rail projects and he had, he knows people that still work in the rail industry, so he can get us a job in Transport.

Okay. And I'll come back to that if I can, but when you discussed that with Tony, can I just ask, were you - - -?---No, I didn't discuss that with Tony. I - yeah.

I'm sorry.---Yeah. It was with Monty, yeah.

It was through Monty?---Yes, yep.

20 Okay. At some stage did you discuss it with Mr Nguyen?---I can't recall but we did meet up about this job.

Yeah.---Yeah.

You must have signed a contract at this stage. We'll come to that.---Yeah.

30 Yeah. And did you understand at some stage you'd be doing all the work on that rail job?---I mean, there's, I met up with the, the first sort of vivid recollection was I met with Tony and, and Raj at North Strathfield coffee shop and, to talk about this job.

Yep, and that's Raj, is it?---Yep.

Raja, was it - - -?---Raj.

You just called him Raj, did you?---Yeah, that's the, that's the only time I think I met him.

40 Okay.---Yep.

All right. Can I just back, can I - well, maybe jump forward, actually.
---Yep.

At some stage did Mr Nguyen say to you that you might be able to perform some work for Inner West Council?---I know he worked for council and potentially there's work in the Inner West. Like, if I was looking for jobs, there's plenty of jobs in Inner West Council as well. But obviously I was doing other works, fit-out and also residential work, at that time. So - - -

- 10 All right. Did you have any idea what Raj was doing when you met him?
---I know he had a company called RJS and they, he said he just won a contract from Downer and he's looking for subcontractor to perform the task.

Okay.---Yep, and he couldn't get anyone to go out there.

All right. And when you met up the coffee shop with Raj and Mr Nguyen, did you know Mr Nguyen worked for the council then?---Yes, I did.

- 20 And did you wonder how it was that if he's working for the council that he's also got this Transport job?---Yeah, 'cause Monty sort of explained to me that he has past rail experience and he worked for rail before he sort of joined the council.

Oh, okay.---Yeah.

All right. So can you tell me how it was, at some stage, it's right, isn't it, that SDL became a supplier to Inner West Council?---Correct.

- 30 Can you tell the Chief Commissioner, how did that happen?---I think we started doing some really small jobs. So, I mean, Tony said you've got to do smaller jobs, come in pretty cheap. So I think we just started doing, like, kitchens repair, some child care, Christmas shutdown sort of work that not many people wanted to do.

- Yep. And how was it that you were able to get that work at the council? Did Tony say he can do anything to you to make sure that you'll be the successful tenderer? Did he say it even had to go out to tender? Can you recall the specifics of the conversation?---I think we initially started with the
40 EOI, expression of interest, we send through a, a, a template, SDL sort of

brochure to Tony and then I think he sent us a request for quote and we quoted.

All right. Can I ask that exhibit 46 volume 5.2 page 210 be brought up, please? If you see here, this is an email on 5 July 2017?---Sure.

And it's from projects@sdlprojects.com.au to tony.nguyen@innerwest.nsw.gov.au. Do you see that?---Yeah. Yeah.

10 And that the subject heading is "New supplier form"?---Yeah.

And it's sent by someone called Joanne, the email, "Hi, Tony. Please find attached filled out supplier form." Do you see that?---Yeah.

Who's Joanne, to your understanding?---Joanne is, I think that's, that's Tony, yeah.

Okay. And how is it that it's come from the email projects@sdlprojects? ---Correct.

20

How is it that Tony using the name Joanne is sending an email to himself from projects@sdlprojects?---Yeah. So, I mean, Monty sort of told me that he'd done some work for Innocon and Tony's obviously help him out with those jobs. And he asked me to create a, a, a, an email address with a login
- - -

Who's "he"?---Monty.

Monty - - -?---Yeah.

30

- - - asked you to create - - -?---Yeah.

Yeah?---And then I, and, obviously, email and, and the, and the password. I created that. And, and this Joanne sort of name is a bit of a shock to me 'cause I, I didn't came up with it, but I thought actually Tony actually hire someone initially but Monty told me that that's actually Tony.

Okay. So just let me break that down with you.---Yeah.

40 Firstly, Monty asked you to set up projects@sdlprojects - - -?---Correct.

- - - and to - - -?---Email address is, doesn't, yeah.

An email?---Yeah.

Did he chose projects or did you or how did that name get chosen?---I think projects might, might be there, even before he ask me to set it up, 'cause I sort of set it up for a subcontractor to give me expression of interest and I think it's on my website as a, as an expression of interest for suppliers.

10 All right. So that was pre-existing?---I'm pretty sure it was pre-existing, yeah.

But you gave over the login and the password to get access to that email to Monty, did you?---Yes, I did. Yes. That's for, in, yeah. That was intended for Tony.

And that was for Tony?---Yeah.

20 For what purpose that you understood?---So, so, initially, it was to help, help us out with the, the rail induction 'cause I, I didn't have a clue. I never done rail jobs, so there was a lot of induction for my guys to go through, or my subcontractor. Initially, it was the purpose for that and later on, he sort of started to use it for Inner West Council, as well.

All right. And you said in an answer to one of the questions before that you thought Tony was going to hire someone or he'd hired someone called Joanne?---Yeah. No, no, I didn't, I, when I saw the name Joanne, that popped out, I don't know when the first email I sort of see with the Joanne Breen on it, I said, I'm pretty sure I recall saying, "Who's this using our email?" so, and, and Monty sort of jokingly said, "That's Tony."
30

Mr Nguyen couldn't have hired someone on behalf of SDL Projects, could he? He didn't have that authority?---No, he didn't have that authority, yeah.

If we can scroll down, please, two pages? This is the Inner West Council form that was attached to that email we just saw?---Yeah.

Do you see that?---Yeah.

40 That's your signature there?---Correct.

And it's got supplier contact person, do you see that, Joanne, it's Bree, B-r-e-e. Do you see that?---Yes.

Did you notice that when you signed it, that there was that name there?---I, I can't recall seeing that.

Did you draft this form yourself?---Sorry, I can't, I can't recall this.

10 What do you recall about it? You must have applied your signature and it looks like it was by hand. Do you agree?---Yeah.

Like, not an electronic signature?---No.

Within your business are you the one who would normally prepare a form like this and send it out?---Yes, yep.

20 Is it likely that you prepared this form and then signed it and - can you just assist the Commission in how the form was created?---I can't recall creating this form but I, I may have signed it when, sort of, Tony did come over a couple of times to our warehouse. So I might, I might have signed it when he was there, yeah.

THE COMMISSIONER: Where would he have got the information in there from?---From our expression of interest.

Your expression of interest?---Yeah.

30 So the bank account details that are recorded there, they're your bank account details?---Correct. Correct.

And you say you supplied them in an expression of interest form?---Yes. I think by that time we are already sort of working on the Victoria Street as well. We must have sent some invoices to Raj.

MR ENGLISH: So, this is the 4/7/2017. We might come back and check that and see if that's right.---Sure.

40 You had insurance, that's SDL has insurance at this time?---We, we, yeah, we're licensed and insured, yeah.

Did you have to - do you recall having to supply a certificate of currency or anything like that to Mr Nguyen at the council?---Not, I'm, I'm not sure I have send it but I guess we submitted some sort of public tender and we got a full check done on it, yeah.

So you submitted a public tender.---Yep.

Was that for a particular job at council?---Yes.

10 And there was a full check done on it?---Yeah.

What do you mean by that, there was a full check?---Oh, it's financials, accountant letter, insurances, licence.

You supplied all that information on behalf of SDL, did you?---Yes. Yeah, on the third party, yeah, to the third party.

All right. Can, please, Exhibit 48, volume 5.4, page 3 be brought up, please? This is a tender submission from SDL for Steel Park community
20 room upgrade. Do you see that?---Yes.

13 February 2019.---Yep.

That job didn't work too well for SDL Project Solutions, is that right?---No.

Pardon?---No.

I'll come back to that.---Sure.

30 But if we can please just scroll down. This is a letter on the next page that's signed by you, correct?---Correct.

And then the next page - oh, sorry - two pages down, if you can see there, form of tender and then you've got the tender price and then do you see the words "In submitting this tender the tenderer warrants it has not" and do you see what's said there at A, B, C and D? Do you want to read those to yourself?---Yep.

40 And do you see as well the words under, "Except as disclosed in the tender, the tenderer confirms it has no actual or potential conflict of interest in relation to this RFT or the contract"?---Yep.

“The tenderer confirms that it has reviewed council’s statement of business ethics and accepts to abide by the principles contained in it.” Do you see that?---Yes, I do.

And you made a declaration. If that just scrolls up a little bit and over to the next page. You’ve signed.---Yep.

You’ve made a declaration that that’s true and correct?---Correct.

10

You did have a conflict of interest with Mr Nguyen, didn’t you?---Yes.

And you knew that at the time you signed the form, isn’t that right?---Um - - -

If you want to see it, it’s got your date, it says 13/02/2018.---Yep.

That should be 2019, I think, shouldn’t it? Because your tender submission, if we go back to page 3 - - -?---Oh, yeah. I think there’s an error.

20

Your tender submission there says 2019. I’m on page 3. So by this stage you’ve done the job at Victoria Street with Tony, haven’t you?---Oh, it’s, it’s not for Tony. It’s, I mean, yeah, it’s for Raj, yeah, RJS?

Well, you knew Tony was involved, didn’t you?---He wasn’t, I, I don’t know what capacity but we, in terms of contractually it was between SDL and Sanber, yeah, RJS.

30 Sure. You have also, and I will come to this in a bit more detail, you know that Mr Nguyen had access to an email at SDL Projects, the projects email? ---Yes.

And you knew by this stage, February 2019, that he was using the name Joanne Breen to - - -?---Yeah.

- - - communicate effectively with himself at the council.---Yeah.

Pretending really that there was an extra employee of SDL Project Solutions.---Yeah.

40

You knew that. So why was it then when you came to lodge this tender that you, you said that there wasn't a conflict, or you confirmed that there was no actual or potential conflict of interest in relation to the RFT or the contract?---Yeah, this RFT, I don't think he gave us any assistance. We price it on the merit.

All right. And you see the next sentence on page 6.---Yeah.

10 Just have it brought on your screen. The tenderer, do you see, "The tenderer confirms," just a little bit down below, down below.---Yeah.

There, right there, "The tenderer confirms that it has reviewed council's statement of business ethics and accepts to abide by the principles contained in it." Do you see that?---Correct. Yeah.

Did you ever read the council's statement of business ethics?---No.

20 Okay. All right.---I sought of browsed through it, but, no, sort of read it in detail.

Right. I might just ask if another similar document can be brought on the screen just quickly. It's exhibit 45, volume 5.1. And if we can start at page 50, please. This is another tender for SDL Project Solutions this time for the renewal of the Brown Street toilet. Do you see that, 17 July 2019? ---Yeah.

30 Now, and you can see on the next page if we scroll down it's again, it's a letter signed by you. And if we go to page 58, please. This is included with the submission there, you, there's a reference to collusive tendering. Do you see that? "Collusive tendering is prohibited under the Competition and Consumer Act." Do you see that?---Yes.

Did you know what collusive tendering was in July 2019?---Talking to your competitor.

In what context talking to your competitor?---About the prices.

40 Yeah. And do you see there's a reference again to statement of business ethics and conflicts of interest. Do you see that?---Yeah.

“Requires probity in all dealings including those conducted with prospective or successful suppliers or tenderers.” Do you see that?---Yeah.

And in your dealings with Mr Nguyen on behalf of SDL Project Solutions, there hadn't been probity in your dealings with Mr Nguyen, had there?
---For this Brown Street, I'm not even sure we were still dealing when I submitted this tender.

10 All right, but prior to this you had been involved in an arrangement with Mr Nguy, Monty - - -?---Yeah.

- - - and Tony Nguyen, whereby people were putting in, one company was putting in a dummy bid. Constructicon might put in a dummy bid and with the assistance of price information from Mr Nguyen, a particular job might be awarded to SDL. That would happen from time to time, wouldn't it?
---Yeah, for the smaller job.

Yeah.---But not, not for public tender.

20 Right, for the smaller jobs, and that's for under generally 150,000, correct?
---I believe so, yeah.

Yeah. And sometimes it will go the other way, so SDL would put in the dummy bid or Tony would put in the dummy bid on behalf of SDL and the job would be awarded to Constructicon. That would happen, wouldn't it?
---I believe so, yes.

30 Yeah. And just lastly, if we can go to page 83, please, this is the same document under 4.7 Key Personnel.---Yep.

Now, there's you listed and it says “ten years employed”. You hadn't been employed for ten years by SDL Project Solutions had you at that stage in 2019?---No, not for SDL Solutions. Sorry, I thought that was year of experience.

Okay.---Yeah.

And the next two, is that a real employee?---Yes.

40 The next, and what about Benson Chung, is he a real employee?---Yes.

And then it lists Joanne Breen.---Yeah.

And it says, “Joanne’s been employed for two years. Has a Bachelor in Business Administration.” Do you see that?---Yeah.

And under role and extent of involvement in contract, it says “project admin”, yeah?---Yeah.

10 That’s a complete lie, isn’t it, all that?---Correct. The Joanne Breen one, not the rest.

Yeah. Okay. And your signature is at the bottom of this page.---Yeah.

Why did you include the information about Joanne Breen?---I think this is a standard form that we just sort of copy from previous public tender or tender submissions.

20 THE COMMISSIONER: That’s not an answer to the question, is it? Listen to the question and answer the question.---Okay.

MR ENGLISH: Yeah. You’ve accepted that that’s a lie about what’s included about Joanne Breen. Why did you include that information in this tender submission that you signed on 17 July 2019?---I guess just to show that there’s experienced workers.

What, to mislead the council that SDL Project Solutions has more experience than it actually does?---I guess so, yeah.

30 And obviously that false statement about Joanne Breen is included, isn’t it, because you and the company share a motivation to win jobs from the council, correct?---Correct.

Thank you. If that’s convenient, Chief Commissioner.

THE COMMISSIONER: Yes. All right, thank you. We’ll continue your evidence tomorrow. Thank you.

40 THE WITNESS STOOD DOWN

[4.07pm]

AT 4.07PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.07pm]