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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JOHN HATZISTERGOS AM
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION HECTOR

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 24 MARCH, 2023

AT 2.00PM

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

THE COMMISSIONER: Yes, all right. Thank you. We'll resume. Mr Cox, you're subject to the same oath you took at the commencement of your evidence to say the truth. Do you understand?---Yep.

Thank you. Yes.

- 10 MR ENGLISH: Thank you, Chief Commissioner. Could Exhibit 64, volume 7.2, page 406 be brought on the screen, please. So you can see there, Mr Cox, this is, we were talking about that War Memorial Park toilet upgrade, the works there. Do you see that?---I do, yes.

And so this is 28 March 2018 this document and this is saying, it's the cover letter, "Inner West Council seeks quotations from suitably qualified contractors to carry out the refurbishment of the existing toilet block." Do you see that?---Yep.

- 20 And then I'll just take you through this, and in fairness to you this letter amongst other documents will say what council required from tenderers and a contractor's license wasn't one of those things, just so you're aware. Do you follow?---Yep.

Yep. Okay. So if we can go, you'll see there about halfway down the page, "The following enclosed information must be included as part of your tender proposal. Conditions of contract, quotation request, industrial relations, statutory declaration." And remember we saw the industrial relations document before, do you remember that?---Yeah.

30

One of those documents.---Yeah.

And it says, "The above documents must be returned to Mr Nguyen by no later than 3pm on 12 April, 2018." And then if we scroll down to page 408, please. You'll see the request for quotation here that accompanied that letter, and if we go down to page 409, please, to the bottom of that page. You can see conditions of quoting. Do you see that?---Yep.

- 40 And again "Code of Practice. All tenderers must comply with the NSW Government Code of Practice for Procurement and the Competition and

Consumer Act.” Did you ever bother having a read of those two documents?---I wouldn’t have.

Okay. It goes on to say, “In addition to the above council has adopted a code of conduct as required under the Local Government Act. The code binds staff and councils and delegates. A copy of the council’s code is attached.” Do you see that?---Yep.

10 Did you read that code that was attached?---I don’t recall but probably not.

Okay. I might take you to some of that. If you can see in the middle of the page under the heading Insurance, do you see that, “The tenderer must provide details of the insurance policies as specified.” Do you see that? ---Yep.

Did you read that at the time you were quoting for this job?---Probably not, no.

20 Okay. And above that it says, “The tenderer, including any person employed by the tenderer or acting on behalf of the tenderer with or without the knowledge of the tenderer,” it’s a bit of a mouthful, “has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for any action in relation to the tender or any other contract with council.” Do you see that?---Yeah.

Did you ever discuss with Mr Nguyen about giving him or offering him any gift, consideration or reward in return for him giving you council work? ---There was a, there was some sort of a discussion around him wanting some of the profit.

30

There was?---There would have been, yeah.

Well, there was or there would have been?---There was.

And was that right at the start?---I don’t think it, it wouldn’t have been right at the start. It was somewhere along the line. It wasn’t at the start.

40 Okay. Well, as best as you can, can you say, can you tell the Chief Commissioner when that occurred and what was said at the time.---I can’t, I honestly can’t remember exactly what was said but it was something in relation to a, a profit, basically me given part of the profit of the work. I

don't know if it was prior to getting the work or after getting it, but it was sometime around the work.

And is that something that Mr Nguyen raised with you?---I, he would have, yeah.

He did or he would have?---He did.

And what was your response?---I think I agreed to it.

10

And we'll go through it in a bit more detail but just take it from me that you started doing work in April of 2018 for the council and I think your last job might have been in September 2020. How far into that period of roughly, I think, two and a half years or so might that discussion have been?---So I think it was towards the start, I probably was on that project. I think it was after he'd given the work to me. I think, I, I honestly cannot remember the time line but there was a discussion, there was, so he, he, he, there was something in relation to the split of the profits. It was brought up and I think I had some sort of a spreadsheet to work out what that might be but I never actually gave him anything.

20

Okay. Just bear with me a moment. Chief Commissioner, I just want to ask this question and then I might seek a direction. That spreadsheet you just said you thought you might have created in relation to a profit split between yourself and Tony for council work, is that something that you think you've produced to this Commission?---I did or I have?

Is that something you think you have produced to this Commission?---I don't think so. I don't know. I have no idea.

30

Have you still got that on a device or at home or something?---I wouldn't, no, I wouldn't think so.

Well, when you say you wouldn't think so - - -?---I don't.

- - - why not?---Well, 'cause youse took all, the day the, you took all that stuff - - -

You mean the devices?---Yeah.

40

Couldn't be on the cloud somewhere, stored on the cloud and you might be able to gain access to it?---I don't, the, the, I don't even know if I still have a Dropbox account for Marble Arch. Basically, my whole thing was on a hard drive that youse, youse, youse took.

All right. But at one point in time, there was a Marble Arch Dropbox, was there?---I don't know, I don't know if there was, I, I'm not sure if I had a Marble Arch Dropbox or if I just had Dropbox account but I think I would have used my hard drive for, for things.

10

You understand the Commission would be interested in seeing a spreadsheet of that nature, don't you?---Yeah.

Is there anywhere you think you could look for it?---I'll try, I'll, I can look. I can't promise anything, but I can look.

Sure. I'm just trying to think how a direction might be fashioned after a promise to look, Chief Commissioner?

20 THE COMMISSIONER: I don't know if it can. You'll look and you'll tell us on Monday, will you?---Yeah. Okay.

MR ENGLISH: And if you find something of that nature, you'll bring it on Monday, will you, please, Mr Cox - - -?---Yeah

- - - and produce it to the Commission?---Yeah. Okay.

30 And if you find something, just so you're aware, if you find something, I can seek a direction from the Chief Commissioner and if he grants it, you'll have the same protection that you have giving evidence today. Do you understand?---Yeah. Okay. No problem. The hard drive, do you want me to look on it?

Well, do you have the hard drive?---No.

Has it been returned?---No.

That's the hard drive that was seized by Commission officers, was it?---Yeah.

40

Okay. All right. So just back, so this was fairly early on on a job site Tony said he wants a split of the profit?---Yeah.

And you agreed?---Yes.

And you tallied it up?---I think so.

Okay. And is your evidence that you never paid him any money?---I never paid him any money.

10

What's the point of tallying his split if you never pay it to him?---Initially he wanted it, then after a while he said, "Don't worry about it."

Well, he said don't, what was the nature of that conversation?---It was exactly that. It was just basically at some point he decided he didn't want it.

Well, that doesn't really make much sense that people decide they don't want money. Do you agree?---Yes.

20

So can you give some more context so it's easier to understand how that conversation might have evolved where you say that Mr Nguyen said don't worry about that money you've been accumulating for me, I don't need it or I don't want it?---I can't, I can't really be any more, that's what happened. I don't know why he changed his mind but he didn't want the money.

Okay. And when was the conversation that he said, "Don't bother about giving me the money anymore"?---I have no idea in terms of timeline.

30

Was it after you'd finished doing council work or - -?---No. No, it would have been during it.

Okay. All right. And at some stage you bought him a phone, didn't you? ---Yes.

For \$1,960, does that sound right? I can take you to the entry in your bank account in due course.---I'm sure if you said it's in my bank account.

40

That can stay on the screen, sorry. And just what were the circumstances by which you bought him that phone? What happened then?---We were out for lunch one day. I, we went for lunch and I think maybe, I don't know, it might have been the Westfield's or somewhere, and I think he said he forgot

his wallet. I said, "Look, don't worry. I'll get, I'll get it." And then he mentioned that it was his wife's birthday and he needed a phone so I, I said, "Here, I'll get it for you." My, my understanding at the time was that it would be paid back but I never pursued it and it never was so - - -

All right. Did you make a notification on your spreadsheet that you'd bought that for him?---No.

10 Okay. Just the document that's on the screen, we were just looking at page 410. If we can go to page 411, please. This is the same document. It says, "The tenderer must provide details of the following insurance policies including copies of certificates of currency." Do you see that?---Yes.

"The successful tenderer must insure the works if required to the value of the contract." Do you see that?---Yeah.

20 And then it says, "Public liability and workers compensation. Required, required." And is it your evidence that you never supplied those with this quote?---I never supplied those, no.

Okay. And this is what, you said Mr Nguyen said you don't need this. Is that your evidence?---That's, this, this is my recollection, yeah.

'Cause if we go to the next page, do you recall, I don't have this document with your signature on it unfortunately but do you recall signing this?---No.

Okay, but you were successful in obtaining this tender and did the works, didn't you?---Yeah.

30 Okay. If we go - - -

THE COMMISSIONER: They're all your details, aren't they? They're all accurate?---Those aren't my details.

MR ENGLISH: I think those are Mr Nguyen's and the contractors at - - -

THE COMMISSIONER: Sorry, Mr Nguyen's. Right.

40 MR ENGLISH: - - - point 2.

THE COMMISSIONER: Yes. I'm sorry. Yeah.

MR ENGLISH: Can we go to volume 7.3 which is exhibit 65, page 1, and you remember there were some documents that were attached to what we were just looking at. Do you remember that? And one of those was the code of conduct. Do you remember that?---Yeah.

And here's the code of conduct and it's got this section 2 on conflicts of interest. Do you see that?---Yep.

10 Did you read that at the time?---I'm sure I didn't.

Okay. And if we go to page 4, there's the conditions of contract and for the War Memorial Park toilet upgrade. Do you see that?---Yeah.

And it says, "Please read, sign at each page and return back to us with quotation." Do you see that?---Yes.

That's pretty standard for a building contract, isn't it, to sign at the bottom of each page before commencing the works?---Yeah.

20

And do you recall doing that in relation to this document?---I don't recall doing it, no.

Okay. It - - -?---I'm not saying that I didn't do it. I just can't remember.

Sure. Was it your practice in relation to Inner West Council work that you'd sign the contracts and hand them back to Tony, or whoever it was, before you commenced the work?---I don't remember there being a lot of contracts at Inner West.

30

Okay. I just want to just draw your attention to page 8 of this volume, please. There you can see clause 20.0, Insurances. So "A contractor before commencing works or services onsite must hold or effect policies of insurance covering workers compensation." Did you hold that? Did Marble Arch hold that?---I had workers comp, just not public liability.

So you had - what about "loss or damage to the works, any temporary works or to any materials, property, plant or equipment that are brought onto site by or on behalf of the contractor or are entrusted to the contractor by IWC"?

40 Did you have any insurance for that sort of loss and damage?---No.

Okay. And did you read these conditions of contract before you started on the job?---I wouldn't have.

Okay. Now, before we saw that there was the name Laura Donnelly, who was identified as a project coordinator, and you said both you and Tony might have used that name on behalf of Marble Arch. Do you remember giving that evidence?---Yes.

10 How was it that the name Laura Donnelly was chosen?---It was just an alias.

An alias, is it?---Yeah.

Do you know anyone called Laura Donnelly?---I have a sister in Ireland called Laura Donnelly but it's got no relevance to this.

Well, it's not just a coincidence, is it, that the name Laura Donnelly was chosen? That's not your evidence, is it?---It's just a name.

20 Yeah, I know, but it suggests that you came up with the name 'cause - - -?
---Oh, yeah, yeah, I came up with the name, yeah.

All right, so, so - - -?---I was just trying to make the company look bigger.

Yeah, I know, but it suggests that you're pretty actively involved in coming up with the name of this fictitious person who's apparently working on behalf of Marble Arch as a project coordinator, would you agree?---Yeah, I would have come up with the name, yeah. I, the intent was to make the company look bigger. I was - - -

30 What, so is the intent just to deceive people who are contracting with Marble Arch?---No.

Well, you understand it deceives people, don't you, by saying you've got false workers?---Yes.

40 Can volume 18.23, page 46 please be brought on the screen. And just while that's coming up, was that at about the same time that you - when you'd decided the name on Laura Donnelly, was that about the same time that you granted Tony access to the Laura Donnelly email account?---Probably.

Okay. Now this is a message between - not yourself, but messages between Seng Laphai. Have you ever heard of Seng Laphai?---I've heard of him, yes.

He's the principal of a building and construction firm called SDL Project Solutions. Are you aware of that?---Yes.

And there's someone else called Monty Nguy. Do you know Monty?---I know Monty.

10

From Constructicon.---Yep.

And the other person in this chat is Mr Nguyen, Tony. Now, if you see in the middle of the page it's Tony - just take it from me he's the person ending 479. "Hey guys, I've got another company to set up to use that I have control over," and he's saying this on 21 March 2018. Is that true that he had control over Marble Arch as at 21 March 2018?---I didn't think so.

20 Well, he certainly had control over an email address by that stage, didn't he?---The, when I set that email address up, I didn't realise what, you know, I thought I was setting an email address up to make the company look bigger. All right, maybe, like you say, that's some form of deceit but I didn't think I was giving control over a company to, to somebody else.

Well, if you're giving him the codes to the email address, he can effectively write emails pretending to be a person who's employed by your company. Correct?---That's correct, yeah.

30 And he can do that to whoever he wants. And the only way you can stop him is if you go and check the email system. Correct?---Correct.

And were you going and looking at the sent items to see what Tony was doing back then?---No.

So he effectively had the ability to speak on behalf of your company using the name Laura Donnelly who was a project coordinator. Correct?
---Correct.

40 Right. So if we go down the page - - -

THE COMMISSIONER: Sorry. And what did you think that he was to use that for? What was the purpose that you were - - -?---Initially, it was to make the company look bigger and then I think he told me that it was just so that he could, if there was ever anything that he - - -

No. Hold on a moment. It's not just to make the company look bigger. You're giving this to a person who's at Leichhardt Council to access and use. So what was the purpose?---So, but initially, it was, I was told that and then he said, "Give me access to it, so that I can put the quotes in for you
10 and if there's any little adjustments, I can do it myself in my own time."

I see?---So I, I was aware that it was, you know, so that he could put a quote in for me, but that, which is - - -

So he was going to do your quotes, he was going to review as the person responsible at the council?---Correct.

I see. And that's as you understood it?---Correct.

20 MR ENGLISH: So in this conversation here, you can see he says, that's at the top, 479, "What do you guys think?" and Monty Nguy writes back, "What do you mean?" and then he sends you attachment, do you see that, on 21/3/2018, do you see that?---Yes.

And he says, "Like another legit company we can use for pricing." Do you see that?---Yes.

Was that something you discussed with Tony at the time, that Marble Arch could be used for pricing?---I don't, I don't recall it but I don't think so.
30

Well, you don't recall it but you don't think so. You just don't want to have a memory that maybe you discussed that. Is that what you mean?---No. What I mean is my, my understanding at the time was that I was giving him access to that email, so that he might be able to, you know, put a quote in for me.

Put a quote in for you?---To do work.

40 But how was he going to make sure that you got the work if it was just one quote of however many had to be put in? What did he tell you about that, if anything?---I don't know that we ever discussed it. If anything, I, maybe

that I'm lowballing, you know, putting a quote in low balling, you know, putting a quote in lower than the competition.

Yeah, but you're a man with a masters qualification and you're a skilled civil engineer and you'd worked for tier 1 building companies for a long time, Mr Cox. With respect, you're no fool. Do you agree?---Thanks, yeah.

10 So it can't just be that you're giving access to Mr Nguyen to your company with a false name, just so he can tinker on the edges of your quotes. There must have been more to it that you discussed?---But that's, that's actually quite a lot in itself if you think about it, tinkering with a quote to give you the work. So that's what I thought was going on.

And did you discuss with him that he was going to use your company to put in similar quotes in circumstances where your company wouldn't get the work but someone else would that he chose?---I don't think so.

20 Well, you say you don't think so. Have you got a memory of that or not? ---I don't have a memory of it but, I don't have a memory of it but I, I wouldn't imagine I would have agreed to it.

Well, again, you say you wouldn't have imagined. Did Mr Nguyen tell you this is how it works, I've got to get enough companies, so I can fill the tender panel and then I can adjust the prices of all of those companies and I can decide who wins it and then you'll be guaranteed the work? Is that what he said?---No.

Something along those lines?---No.

30 Can we go down the page, please. You can see the first message again 21 March 2018. Mr Nguyen saying, "Trying to have full control of price submission." Is that Mr Nguyen, did he ever say that to you, that he wanted to have full control of the price submission for council tenders?---Not that I recall.

40 If we can go to page 50, please. You can see there Mr Nguyen again 479 middle of the page at 909, "The idea is to have control over price submission to maximise our gains." Is that what he said to you or did he say something along those lines to you, this is the aim of what we're trying to achieve here?---I was never party to any of this.

So are you saying your agreement with Mr Nguyen for him to use the Laura Donnelly email address for Marble Arch was a separate arrangement to what we're reading on the screen here?---Yes.

Okay. Did you grant Mr Nguyen access to Marble Arch documents in a shared folder or something like that?---I don't know.

10 How would he tinker with the quotes if he didn't have access to the documents?---Well, maybe, maybe I created documents and sent them to, I honestly, I can't remember but he would have had access to them otherwise how could he modify them?

Yeah. But he must have got the access from you, mustn't he?---Yeah.

Did you have an admin account somewhere, perhaps in the cloud or something, for Marble Arch or an admin email account?---I don't know.

20 Well, do you recall giving Mr Nguyen access to an admin account so that he could access your quote templates, documents of that nature?---I honestly don't remember.

Okay. In one job when you worked for council you were a party to the theft of some tools, weren't you, with Mr Nguyen?---It was tools required to do a job and I told him I didn't have all the gear to do it and he just told me what I need and he'd organise it, so he hired them in and then during the course of the job he reported them stolen.

And he told you that, right, that he'd reported them stolen?---Yeah.

30 And you kept using them.---Yeah.

And not only that, then you took them and worked on a train job later with those tools, didn't you?---Yeah.

Didn't you think that was wrong?---Yeah, but once, once he'd reported them stolen, what do I do?

40 Well, it's open to you to sit down with him and say, "Let's not do this," isn't it, "this is wrong"?---It was done. Yeah, I, I understand what you're saying and I agree it was wrong.

So that happened in relation to a job involving the Petersham Park grandstand, didn't it?---Yeah, correct.

Where the tools were taken and the Petersham Park grandstand that happened in 2020. So by this stage you've spoken to Mr Nguyen, you've given him access to the email account for the false name of Laura Donnelly, he's asked you for a split of profit on council work and now he's inviting you into a scheme to steal tools.---He, he reported them stolen. After that what, what can you do?

10

Well, you're acquiescing by keeping them, aren't you?---(NO AUDIBLE REPLY)

Do you agree?---No.

Okay. All right. Commissioner, I'd just like to hand a table to Mr Cox. This is an updated version of MFI 7 which was missing one particular item, so it's a fresh MFI, please, Commissioner, and I'll hand a copy to you and the witness. If that could be marked, please. Might that be MFI 12, please, Chief Commissioner?

20

THE COMMISSIONER: Yes.

#MFI-012 – UPDATED TABLE 4 – MARBLE ARCH

MR ENGLISH: Thank you. And if that can just be brought on the screen, MFI 12. Just so that people who might be watching this on the live stream can see, this is a table that seeks to summarise all the work that was awarded to Marble Arch by Inner West Council. Have you had an opportunity to look at a table similar to this before coming in today?---No.

30

Okay. If you just have a look at the jobs there, do they look familiar to you as the work that Marble Arch performed for Inner West Council? And I appreciate if you need a bit more time, by all means, you can look at this over the weekend and get back to me on Monday, Mr Cox. You've got a copy in front of you. If we go to page 2, do you recognise these jobs, do you?---Yeah.

40

And if we go to page 3. And I'll just ask you some questions about these briefly in a moment, but before that, can, please, volume 7.4, which is exhibit 66, page 1, be brought on the screen, please. This is a summary document prepared by the Commission that identifies how much money was paid to Marble Arch by Inner West Council. Do you see that? And as well RJS, do you see that?---Yes.

10 And so, for example, the first item on 23 May 2018, it's a reference to invoice number 300401 for \$52,651.50. And you can see the page references. If we can go to page 3 quickly, please. You can see that amount there, 52,651. Do you see that in the credit?---Yep.

And then if you can go to page 50, please. And there you can see the invoice, 52,651, including GST. Do you see that?---Yep.

20 So if we can go back to page 1, please. And again, if you need any time on the weekend if you want to consider these matters, by all means feel free to do that. But would that seem right to you, that Marble Arch was paid, in the period from 23 May 2018 to 21 January 2021, around \$750,000?---Yes.

Okay. All right. If that can be taken off the screen, please, and if I can just draw your attention back to MFI 12, the hard copy version, the table.---Yep.

30 And the first one, the War Memorial Park toilet block upgrade we've done. Can I ask you about the variations there, though. If you see, perhaps if that can be brought on the screen, please, MFI 12. There's variations in that job to the value of \$34,768.51. Were variations a means to increase profit through inflating prices when you did work for IWC, Inner West Council? ---There probably was variations but they would have been of, you know, good value. Sorry, you know, I'm sure I wasn't going to lose out on a variation.

So are you trying to say they were charged fairly, the variations?---I don't know. I - - -

40 Okay, well, let's just break it up this way. Okay, so Tony would say to you he's got a job that you might be able to price up, is that right?---Well, sometimes, like, some of these things I basically just tell Tony what - some of these things I was like, I would send him a quote off another company and he'd then basically give me the instruction to go ahead and do it and tell me the price that I could claim.

So I don't quite understand. You'd send him a quote of another company or he'd send it to you?---I, I would basically, on a couple of these things I'd basically work out what the cost would be, I'd tell him, and then he'd tell me what price I could charge.

Okay. So he'd say I've got a job coming up at, say, the air-raid shelter or wherever it was, and would he ask you to price it up?---I think so, yeah.

- 10 Now, when you think so, I just want you to be - you know, to the best of your recollection, if you received that instruction from him, would the instruction to price it up be with or without a margin for Marble Arch?
---Oh, there'd be no margin. It'd be like the direct cost.

All right, okay. And then he'd come back to you and say, "You can add this much to it," would he?---I think. That's my recollection.

And that way you'd still be awarded the job, correct?---Correct, yeah.

- 20 All right. What about variations? What would happen in relation to variations?---Look, if there was something different to the scope, he'd say, he'd charge me extra for that.

Well, "charge me extra", what, would he say just make up a variation as you normally would and submit it? Or would he want to see the price first or what would happen?---Yeah, I'd say I would send him the, what I thought the variation would be. I'd send it to him and then he'd say go ahead with that or not.

- 30 Would he say you can bump it up here, there's more - - -?---Possibly.

Yeah. And you said that fairly recently into your arrangement or - I withdraw that. Fairly shortly into your arrangement Mr Nguyen said that he wanted a split of the profit. Am I right in characterising your evidence that way? Did he say he wanted a split of the profit?---He did.

Was that across contract sum and variations?---I don't know.

- 40 Well, how did - what kind of split did he want? You might have given this evidence, I'm sorry if you have, but what was the, what did he say that he

wanted you to give him?---I, I, I can't, I honestly can't remember what it was but it was something in relation to a split of the profits.

Okay.---I don't know what the, you know, ratio or percentage or whatever was, but there was a discussion about it. What, at some stage he changed his attitude towards it and said he didn't want it.

10 All right, but if there's a split of the profit and you're making a spreadsheet, you must have known what the split was.---Yeah, but what we're talking about is, like, four, five years ago. I don't remember.

Was it - - -?---And the access, if, if it is, it's probably on that hard drive that I no longer have access to.

All right. I'm just saying, was it 10, 20, 30%? Does any of that ring a bell?---I don't know. Maybe 10 or 15 or 20. I don't know.

20 Okay. Can I ask you please to look at, perhaps if it can be brought on the screen, item number 10A which is on page 2. So you see there that's 10A and 10B, "Supply and install stair nosing at Petersham grandstand," and then it says, "Supply and install stair nosing at Petersham grandstand stage 2," and they're both for the same amount of money. Do you see that?
---Yeah.

Do you recall being paid that same amount of money on two occasions there?---I think there was two sets of stairs.

Was there? Are you sure about that?---No.

30 Okay. I wonder if a call might be played. Is it ready to be played?

THE COMMISSIONER: Sorry, what was that?

MR ENGLISH: I'm just hoping a call can be played, Chief Commissioner.

THE COMMISSIONER: Yes. All right.

MR ENGLISH: For the record, it's volume 21.3, call number 1.5, and both extracts, if that can be played, please.

40

THE COMMISSIONER: Do you have a copy?

MR ENGLISH: Would you like it to come on the screen as it's played, Chief Commissioner?

THE COMMISSIONER: If you could, yeah.

MR ENGLISH: I've got it here. The - - -

THE COMMISSIONER: Is it set up?

10

MR ENGLISH: I'm hoping it is. The session number is 03720, and the call extract is from 10.35.05 to 10.36.30. It's 30 June 2020. The Commissioner would like the transcript brought up as well, please. So there's only one transcript here. There's only one extract.

AUDIO RECORDING PLAYED

[2.54pm]

20 MR ENGLISH: All right, so if we can just go to page 1 of that transcript, please. You can see there there's a discussion towards the bottom of the page that it's a duplicate invoice, got paid twice. Do you see that?---Yep.

Mr Nguyen says, "It's a screw-up." You see that? "I put it through already," the bottom of the page?---Yep.

If we go to the next page. You say, "She's paid me eight grand twice." Mr Nguyen says, "Yeah, no, I paid once and he paid once." Should be "she" probably. And you say that (not transcribable) the stair nosing (not
30 transcribable) doing the stair nosing (not transcribable) and you say, "So the stair nosing was 16 grand." And Nguyen says, "Yeah, yeah, I told you, yeah" and you laugh. See that?---Yes.

So, so there were (not transcribable), were there?---Yep.

Do you agree?---Yeah.

Yeah. And you were just paid twice. It seems, actually, by accident by the council twice for the same job, correct?---Correct.

40

And you didn't refund the money, did you?---No.

In fact, you thought it was funny.---I couldn't believe it.

Well, no, no, you actually thought it was funny that you were getting paid for nothing, do you agree?---Yeah.

Did you give any of this money back to Tony Nguyen?---No.

Did he ask for any of it back?---No.

10

And it didn't raise an alarm bell to you at any stage here, "I've got to get out of this arrangement with this bloke Tony Nguyen, there's just red flags everywhere?" Can you answer the question? Was it raising an alarm bell for you here?---I was too far in at that stage, I guess.

Yep. So, yeah, so what was driving your desire to stay in the agreement with Tony Nguyen then at this stage?---I didn't really have any interest in doing work for council. I wanted to work on those major projects through RJS and I didn't, you know, this wasn't really of interest to me.

20

Well, this is about the same time that the tools went missing. It was in relation to the same project, Petersham Park Grandstand. So you accept that this call suggests that you and Mr Nguyen are being fairly dishonest in relation to your dealings with council?---Yes.

And your evidence is that despite him asking for a kickback or a profit split, you never paid anything to Mr Nguyen in relation to this council work?
---Correct.

30

Is that your firm evidence?---That is my - I honestly can't remember giving him anything.

Well, you say you can't remember.---That's my firm evidence. I gave him a mobile phone. Outside of that, I cannot remember giving him anything. I never gave him any cash or transferred him money or anything like that.

Did you go for lunch often with him and pick up the tab?---Yep.

How often did that happen?---I don't know.

40

Weekly?---Quite often. Quite - - -

Weekly?---Yeah, probably weekly.

Were you drinking at lunch, alcohol?---Rarely if that was the case, not, like, maybe but it wouldn't be like, maybe a beer or something.

Okay. And where would you go for lunch with Mr Nguyen while he was working at council?---Sorry, at council?

10 Yeah.---It could be anywhere.

All right. And how regularly would you go out to lunch with him?
---Possibly a couple of times a week.

And you'd always pick up the tab?---Yep.

All right. And how long would the lunch sessions last for, were they quick or just an hour or sometimes longer?---I'm not, they'd probably vary.

20 So what, can you tell the Commissioner in terms of varying - - -?---Maybe
- - -

- - - would they sometimes go for a long time?---Yeah, maybe half an hour to an hour or - - -

Okay. And did Mr Nguyen ever complain to you - I withdraw that. Did Mr Nguyen ever tell you that he was having difficulty at home with his child and wife?---Yeah, his wife has some sort of skin condition.

30 And did he say that that, did he ever say that I've always got to be at home, you know, it clogs up a lot of my time or anything like that?---I don't, I think, I think the, the condition she has - - -

I didn't ask you about what you thought the condition was. Did he ever tell you - - -?---Well, aye, but I think basically there was times where it was worse than others.

Okay.---And, and in those times he probably would have, he would have said something but it's peaks and troughs.

40

All right. Did he ever say something to you like I need you to work these jobs because I know you're a good builder and I just need to someone I can trust? Did he ever say anything like that?---He did say things and he thought, he, he said that basically by getting the likes of myself and he didn't really have to do too much with, with the site.

Yeah. Okay. So did you ever ask him how are you able to get me all this work? Did you ever have a conversation with him like that from council? How was it, how come you can keep feeding me all this work, Tony?---I
10 don't think I ever had a conversation like that.

Did you have any conversation about how long the work might last for or anything like that or this is great or let's hope it continues?---I think, yeah, in relation to working at RJS I think, yeah, I said, you know, maybe do these sorts of jobs for another few years.

I'm just focusing on the council.---I don't know about council. You know, with the council stuff like I was sort of sick of it. Like, you know, like, you know, I could earn fifteen hundred, two grand a day just consulting without
20 having to work, you know, like this, I was sick of this work. That's the truth.

Is that the council work you're talking about now?---Yeah, especially when it came to that Petersham oval because I didn't really like the way that the, you know, the work was being done.

But weren't you responsible for the work?---Yeah, but it was, it was sort of out of sequence. It wasn't being done very well.

30 But wasn't it being done under your supervision?---Yeah, but I wasn't packaging the work up. I was just doing whatever he asked me to do.

So we're not all builders. You'll have to explain that a little bit more I think.---Like the sensible way to do your work like that at Petersham would be to get all the utilities in initially and then do the slabs around and then do the fit-out. But it was, it seemed to be not following a good sequence.

All right. And was Mr Nguyen responsible for the sequence that you were to implement as far as you understood?---Yeah.
40

All right. Did he seem to you, Mr Nguyen to be someone who was 100% committed to his council job?---No.

Well, what gave you that impression?---Because he had other interests - - -

Well, we know about RJS but what other interests were you aware of that he had?---Well, RJS would have took up a lot of time - - -

10 Yeah. We'll come to that. What else was he doing? Anything?---I think he had a café with Monty.

Was he telling you that he was going out to the café to keep an eye on it ever?---No, I, well, I don't think so.

Right. What else did you think he had going on at the time?---He had some sort of, some sort of a farm arrangement with, with, with Nima.

Yeah. Anything else?---Don't think so.

20 Was he going to work every day as far as you were able to ascertain?---I think so, yeah.

He had an offsider called Lojine Frost, didn't he?---Yeah.

Did you ever meet Lojine?---Once or twice.

Did he ever say anything that she might be covering for him at work?
---Possibly, I don't know. I, honestly, I can't remember.

30 Okay. But, what, it struck you as strange, did it, that he was able to do so much, work on so many different projects and still work for the council? Is that fair?---Yeah, that's fair.

I wonder if volume 5.3, page 61 can be brought on the screen, please? And that's Exhibit 64. And if MFI 12 can be taken from the witness, please, Madam Associate? This is an email on 19 April 2018 which is I think a week after the first email we saw which I think was on 12 April - I withdraw that. I think it might have been 16 April, no - sorry. Let me tell you when that first quote was. Yeah, so the War Memorial Park toilet block, volume
40 7.3, page 59, was 12 April and here, we've got another one on 19 April, so seven days later, 2018, email from Laura Donnelly again to Mr Nguyen, this

time quotation submission for Lambert Park toilet upgrade. Do you see that?---Yes.

And it says, “If you have any questions, please call myself or Aidan.” Do you see that?---Yes.

Now, if we can scroll down, please? If you just have a look at this quote. Do you recognise this?---No.

10 If we go to the next page? Quotes for \$150,678, you see that?---Yeah.

If we go back up one? Are you saying you didn’t prepare this quotation?---I don’t think so. I, no, I didn’t prepare this quotation.

Okay. And if we go back up one more page, please? You’re copied in to the email that submits it to Tony at the council, you see that?---Yeah.

And this is fairly early in the piece, 19 April 2018. And if we can go, please, to page 65? Here you can see this is the assessment for that job,
20 Lambert Park toilet block upgrade. Do you see that?---Yeah.

And there’s SDL Project Solutions as one of the tenderers. Do you see that? And Marble Arch and then there’s one other because the final contractor didn’t submit. Do you see that?---Yes.

If we go to the next page you can see it’s recommended that the tender go to SDL Project Solutions. Do you see that?---Yep.

This is right at the time when you’re having that discussion about using the
30 email, Laura Donnelly giving Tony access and him adjusting pricing or tinkering with quotes and stuff like that. Do you accept that?---Yes.

And you’re copied into this quote that’s then sent that seems to be a dummy quote. Do you accept that?---I don’t accept that at that time I would have known this was a dummy quote.

THE COMMISSIONER: I’m sorry, I didn’t hear.---I said I don’t accept that at that time I would have known this was a dummy quote. Like, I, I don’t accept that at that time I thought this was a dummy quote.
40

MR ENGLISH: But Marble Arch only had you, right?---Yep.

And you'd just been awarded on 16 April 2018, the tender for the War Memorial Park toilet block upgrade with a contract value of \$139,183. You wouldn't have had capacity to do these further works at Lambert Park which are again in the order of \$130,000, right?---I think I probably could. I had the capacity.

You could have?---Yeah.

10 Well, if you had that capacity, you would have had a discussion with Mr Nguyen, wouldn't you, about this and said, "Well, I'll do it. That's fine." Yeah, is that right?---I, honestly, I can't remember exactly what happened here, what's, I don't believe that I would have understood that to be a dummy quote.

THE COMMISSIONER: Did you allow him to commit you to doing work that you were not aware of? Did you ever say to him, "Look, you just put in a bid for some work and I'll just do it. You don't need to tell me what it's about." Did that ever happen? You're taking a long time to think about it.
20 I mean - - -?---I am. I'm trying, I'm trying to, I'm just thinking that, if he did put something in, I'd know that it would be comfortable in terms of the cost. You know, he, like, no, I would never have committed to doing something without him discussing it with me.

MR ENGLISH: If we can go back up to the email, please, which is on page 61. Can I suggest either three things happened when you received this email: (1) you didn't read it, (2) you knew it was a dummy quote and so you didn't need to say anything further to Mr Nguyen about it 'cause you'd already discussed that possibility, or (3) you rang him up with the
30 expectation you were going to get this job. Do you agree they're the only three alternatives that could have happened after you received this email?
---Yep.

And which one was it? Which one of those three did you do or did you do not do?---I can't remember but it would have been either (1) or (3).

So you didn't read it, or you rang him thinking that you were going to get the job?---I think so. I honestly can't remember but I would say it was either I rang him thinking I was getting the work or I didn't read it.
40

Well, if you rang him thinking you were going to get the work, he would have said to you, “No, this is a dummy quote. This is how the system works.” Do you accept that?---I don’t accept that I was ever part of a system. You know, I didn’t have any control over what he was doing with these things. I didn’t, I just didn’t think.

I suggest you were part of the system and the system involved these parts:

(1) Mr Nguyen rigging the tender, do you agree with that?---Yes.

10 (2) Mr Nguyen awarded the tender to the company of his choosing, correct?---So with, my understanding was he was giving me work. So that’s rigging the tender. That, that’s all I - - -

And so in certain circumstances he was choosing to give your company the work, correct?---Correct.

And he was also, people who were involved in this system, he was using their emails and their quotes as dummy bids. Do you accept that?---That bit I wasn’t, I didn’t see the - you know, it’s easy to say that with the benefit of
20 hindsight but at the time I didn’t see, I didn’t know this was happening.

And (4), he was asking for a slice of profits, correct?---Yeah, he did ask for the slice of profit but he was never given it.

You must have known, Mr Cox, you must have known that your company was being used for dummy quotes, looking at these documents I’ve taken you to in volume 5.3, pages 61 to 62.---I didn’t.

30 THE COMMISSIONER: This company was set up in February of 2018?
---Yeah.

How busy were you between February 2018 and April 2018?---Well, I was only setting the thing up.

Sorry?---I only set it up.

Yeah.---So it wasn’t that busy.

40 Yeah, you wouldn’t have been that busy. So if you’re getting something like this in your email, you say you wouldn’t have read it?---Look, I had a

few things going on in my personal life at exactly that time and that probably would have been along my priority.

And you were still going out to lunch once or twice a week during this time with Mr Nguyen?---I don't know.

I'm sorry?---I, I don't think at this stage. Maybe once I started doing a bit of work or him I would have took him out for something to eat.

10 Well, you had already started doing a bit of work for him, hadn't you, at this point, April 2018?---I don't know. I, I'm not sure when, when that, that job started.

MR ENGLISH: Thank you, Chief Commissioner. At some stage, Mr Cox, you must have had a discussion with Mr Nguyen about the prospect of you becoming involved in some Transport work. Is that right, just before you embark on an answer, is that correct?---Yes.

20 Now, you met each other in the context of Transport work, correct?---What do you mean, sorry.

Well, you met at Glenfield, right?---Yeah, correct. Yeah.

When you were both doing Transport work.---Correct.

Then there was a period where you didn't stay in contact and then you got back in contact leading up to the formation of Marble Arch and the awarding of council work to Marble Arch, correct?---Correct.

30 And we've gone through some of the red flags that became apparent as that relationship between you, Marble Arch and Tony Nguyen continued, correct?---Correct.

At some stage Mr Nguyen must have told you, "I'm doing some work for Transport for NSW".---Yeah.

Or Sydney Trains.---I believe it was he had a job at Central Station and he has asked me to undertake supervision for him and I turned him down.

40 So he had a job at Central Station but let's just backtrack a bit. He didn't just come out of the blue and say, "Hey, I've got Transport job at Central

Station". Did he keep you in the loop along the way as to the kind of work or endeavours he was doing with respect to obtaining Transport work?---I don't recall.

Well, you couldn't have possibly - sorry, I withdraw that. Was he working for council when he said that to you, "I've got a job at Central Station", do you recall?---Yes.

I mean, he couldn't have just come up out of the blue and - - -?---Okay. So
10 I see what you're asking me. You're asking did he tell me about the RJS?

Yeah, he must have told you - - -?---Yeah, I think in advance.

- - - what he was doing.---I think in advance of Central Station he said he had work at Central Station and - - -

All right. Did he say anything about a job at Maitland? Did he tell you anything about a job at Maitland before that?---Is that that Mount Vic - - -

20 Not Mount Vic, Victoria Street.---Victoria Street, I, I, I had nothing to do with that and knew nothing about it - - -

That's not the question. Did he tell you anything about it?---No.

So the first job he told you about chronologically in time was Central Station, was it?---Yeah.

Tell the Chief Commissioner exactly what he told you, to the best of your recollection, please?---I don't know.

30

Well, to the best of your recollection, what did he say?---I think he, I think he said something like, that, can, let me think because - - -

Take your time.--- - - - because the, the thing about this is it didn't really have any relevance to me, so I can't really remember how the conversation came up. I think he, he, he told me that he had a job at Central Station and he was asking me to do, he'd set up a company and he wanted me to do some form of supervision for him at the station.

And did you say to him, hey, I thought you worked for council? How come you've got a job out at Central Station? Did you have any discussion like that with him?---Possibly, I, I can't remember.

I mean, did he tell you - - -?---At some stage, he would have told me about setting up RJS but I can't remember when or how or what the conversation was.

10 Why did you turn him down for Central?---He told me he was doing, like, conduit installation or something and he wanted me to come and supervise it and I, I just turned him down. I didn't want anything to do with it.

Why? You didn't want - - -?---I don't know, I don't know, I'm not sure why.

Was it a money thing?---No.

20 Was it you didn't want to do that kind of work?---Possibly, yeah, there, there mightn't have been much interest in doing that type of work.

Were you too busy with the council work at the time?---I don't think so.

'Cause this would have been in about mid-2008, so it would have been pretty early?---Two thousand and - - -

Sorry. 2018. This would have been in July 2018.---Was it? I thought it was 2019? No?

30 No, it was July 2018, the tender went out on 10 July 2018 for the Central Station works.---Right.

All right. So at around that time, you would have been working on the War Memorial Park toilet block upgrade. Is that right?---Correct.

And you might have also been working on Pioneers Memorial Park electrical slab reconstruction. Correct?---I'm not sure.

40 If you want MFI 12 back, do you want the table back?---I'll take your word for it.

And the air-raid shelter, do you remember that, the demolition to start with of the air-aid shelter?---Okay.

Well, in any event, you turned him down and he came to you again - well, before I get there, did he tell you who he was working with at Central?
---Look, I don't think, I don't recall conversations of that nature at that time. I thought it was much later. I thought it was, like, 2019 before he spoke. Did he do other work at Central Station?

10 I think it was - - -?---I think it doesn't seem right in terms of time frame.

It went in to 2019, it did go in, the works went in to 2019.---So I, I think he spoke to me about doing something at Central or doing some form of supervision for him at Central Station in 2019.

Okay. Did he tell you who he was doing the work with?---I, look, he probably mentioned the project manager's name.

20 Where, at Downer or - - -?---At Downer..

And who was that?---It would have been Abdal.

Yeah. And did he tell you, "He's in on it. I'm paying him a cut"?---I don't know. At that stage, I don't know. I can't even remember the conversation.

30 Did he tell you that his project involved Nima Abdi, the person from back at Glenfield, the Transport worker?---I can't even remember the conversation in relation to Central so I don't think he would have got into that level of detail.

Okay. Well, in any event, he contacted you again about Lithgow, didn't he?---Yes.

And what happened there? What was the discussion you had there when he raised that for the first time?---I think he approached me and he said that there was a project at Lithgow that he'd be able to tender but he didn't think he could construct it.

40 Okay. So he came to you for some technical assistance, did he, in that regard?---Yep.

And what was the arrangement you struck?---He had some sort of an agreement with the, Nima and Abdal, and basically he said he'd give them something and that he and I would split the profits of the project.

Okay. And you must have asked, "Well, how much are you going to give them?" Did you ask that?---I don't think so, not at that stage.

10 But that affects how much money you might have made.---Yeah. I don't, I think my focus at the start of that was whether it could be constructed or not.

Just before we go down the Lithgow path, I'm helpfully reminded, if we can go to volume 1.2, page 51, exhibit 31. Do you remember receiving this email from Mr Nguyen? You can see it's 13 July 2018. It's the request for tender and he forwards it to you saying, "Gear up." Do you see that?---I don't remember it. He's, I - - -

20 The tender closing date is 13 July 2018.---I didn't have anything to do with this. I don't even remember a conversation around it and I didn't have nothing to do with it.

So you don't remember any of that?---No.

Can we go to page 55, please. You wrote back the next day, "What do you need?" Do you see that?---Yeah, I see it but I don't remember it.

Okay. But in any event, you weren't involved in this job. Is that your evidence?---Well, I wasn't. That's my evidence, yeah.

30 Yeah. Okay. All right. So if, just coming back to Lithgow, so you were going to pay some money to Nima and Abdal and then split the profit yourself.---No, I didn't have any agreement with those guys. Tony - - -

No. No, sorry, that's what Nguyen told you, "I've got to pay some money to Nima and Abdal and then we'll split the profit on the job ourselves." ---Pretty much that's what happened, yeah.

40 Okay. Now, logically the money paid to Abdal and Nima would come out of the income earned on the job, correct?---Correct.

So it would be in your interest to you know, “Well, how much are you going to pay them,” because it’s going to affect how much money you’d make on the project, correct?---I’m not, look, I don’t, I, I don’t remember. I, I, I would say that the thing that would determine the, the amount of money that you make on a project is how much it’s going to cost.

And paying a kickback to someone is an expense, right?---That’s true, yeah.

10 So is your evidence that you didn’t have any discussion with Mr Nguyen about how much you might have to pay Nima and Abdal?---I don’t, it was possible that that happened. I, I don’t know if it was before or after the work though.

All right. Did Mr Nguyen keep a spreadsheet and show you what the expenses were?---He, he probably did, yeah.

You recall seeing something like that?---Vaguely.

20 Can volume 1.3, page 367 please be brought on the screen? Have you seen this document before?---I think so.

There’s the column that’s orange that says TN and AC Only. That’s Tony Nguyen and Aidan Cox Only. Do you accept that?---Yep.

And it says Actual Actual. Do you see that?---Yep.

And then the next column across says For AA, that’s Abdal Aziz, and NN. It should read NA, Nima Abdi, would you agree?---Okay.

30 And you can see that what - if you look at the bottom of the page you can see that the actual actual costs are much less than what is being reported to Nima and Abdal. Do you see that?---Yep.

And then there’s a left - so the actual costs of some \$416,000 but it’s reported to Nima and Abdal that the actual costs are \$942,000. Do you see that?---Yeah.

40 And there’s \$526,000 that’s left over that they’re not told about. Do you see that?---Yep.

And you split that with Mr Nguyen, didn’t you?---Yep. That was - yep.

So, did you understand Abdal and Nima to be partners in this project with you?---No.

What did you understand their role was?---Tony had a relationship with them. Basically, I guess, without that relationship between Tony and those two, there wouldn't have been a project.

10 Yeah. They were rigging the tender, weren't they, on behalf on Downer and Transport for NSW?---I don't know in terms of the tender what the process was but, yeah, I, I don't know what the internal mechanisms on, on the tender were but I'm sure they must have acted favourably and, to get the work.

But you were instructed to prepare the quote for this job, weren't you, by Nguyen?---I think it was a combined effort.

20 And in that combined effort of comparing the quotes, do you recall seeing the quotes of competing tenderers?---I think I saw one.

Was that Kilmac Civil?---Yeah.

And did you see one for Dalski?---I don't think so.

Well, you saw at least one competing quote, yes?---Yeah.

And you knew that must have come from Nima or Abdal, correct?---It came, I think it came from Tony.

30 It came from Tony but Tony had no means to get that himself.---Yeah. Okay, all right. Well - - -

He had to rely on one of those two, correct?---Yeah, it would have, would have come from somebody, yeah.

Yes. So they've got a role to play in ensuring that this project was awarded to RJS Infrastructure, correct?---Yeah.

40 So, why do you say they weren't partners in the job?---Well, they didn't actually do any of the physical work.

Yeah, that might be so, but they got you the work, didn't they?---Mmm.

Is that a yes?---Yes.

And so you were comfortable to rip them off by some \$526,000 in terms of profit?---Profit is an interesting one, like, because you may have a contract, it doesn't mean you have profit.

All right.---You have to do work to get profit.

10

Okay.---You have to do work smartly and efficiently to make profit.

Have you finished, sorry?---Yeah.

You did work very smartly and efficiently on this job, didn't you?---I think so, yeah.

Yeah. Can volume 1.5, page 406, please be brought up, exhibit 35, 1.5, page 406. So this is a spreadsheet you prepared, isn't it, Mr Cox - - -?

20

---Yeah.

- - - of the jobs that RJS Infrastructure did that you were involved in?
---Yeah.

Apart from Central, according to your evidence.---Yeah, I didn't have any involvement in Central.

30 And did you effectively ask for the bank records from Mr Nguyen and then prepare a bank reconciliation to be able to prepare this spreadsheet we're looking at now?---So I had, I got, yeah, I got bank statements off him and I basically was, I got the payment schedules and then tried to just do a sort of a split, see what was paid to who, basically.

All right, because - - -?---The numbers aren't, the numbers probably aren't correct or may not be correct.

I accept that.---Yeah.

40 But on your assessment, the profit made on Lithgow at the closure of the contract was \$1.322 million.---Yeah.

The costs to date were 512,000. Do you see that?---Yeah.

Ordinary builders' margin is 20%, isn't it?---Yeah, but that job at Lithgow, just that, that project at Lithgow was supposed to be, was basically supposed to be build over two two-week periods, right, a five day, a five day, I think, LPA type of possession. And - - -

10 What's LPA, sorry?---I think it's, I think was LPA, it's like a, it's a type of access that you get to the tracks. You get a small window of access during the day. So it was Monday to Friday, it was an arrangement like that, and then it was a shutdown over the weekend and then the second week a small window for access again and basically there was supposed to be two periods where that was available, one in it might be May and the other one in September. But the reason, the reason why the cost for this was kept down was because, well, a lot of it was down to the fact that I worked on the, on the design and on the methodology so that I could basically build it in two weeks rather than four, so 'cause I went, like, this is, I went and, I knew the designer that had done the work so I went and spoke to the designer and talked about the footing details and looking at changing the details of the footings, the proximity of the track. We looked at the mix designs for the concrete so that we could do it, pour it in those shorter windows rather than over a weekend. The walls were supposed to be backfilled with like a general fill and I, but the problem with that was you had to have strength in the walls to be able to do that and I went to spoke to the chemists, the, the chemistry department (not transcribable) and came up with a special mix design to be able to pour those and strip those within a very short period of time. And then the, the, the backfill that was used, I changed it to a material that could be pumped rather than mechanically installed and, like, there was, so there was a lot, and then there was another thing where the, the topping slab, it would have needed to be done in the September possession initially but I went and got these special angles made up that allowed me to pour it during those shorter windows. So there was, there was lots of reasons why that cost was kept down.

I won't for one minute say that you're not a very skilled engineer and builder, Mr Cox - - -?---Okay.

40 - - - but doesn't that suggest that really if this was an honest quote, what you quoted in your tender submission that's on behalf of RJS should have been a much lower figure, and the fact that it wasn't was because you had Abdal there and Nima there who, on your spreadsheet, were paid \$430,000

combined?---Well, the, the other part of when you're quoting something like this, right, if you were to hit a service, so a couple of weeks ago in the city, there was a server struck and the, the trains were out across the network, right? If you did something like that in this situation, you delay trains, I think the fines are something like, I don't, don't quote me on this, but I think it's like \$10,000 per hour per train. So there's, there's that. There's, if it rains on something like this, this isn't like you're painting a wall. This is basically you've got all this plant booked in for a period of time. If that two weeks, it flowed down, there's massive risk in terms of
10 the, the, there's unknown services, inclement weather, quality issues with, like, the stuff that you're messing with, in terms of the concrete that was being used, if you got cold joints in the pours or there's, there's huge risks there and that's why when you work something like this out, the profit, if everything goes well, is a lot higher than a 20% builder's margin.

Sure, sure. But, in this case, it's over 100% profit - - -?---Look, I agree. There, there shouldn't have been, there's no explanation for why those two guys were paid, there's no - - -

20 Well, they're paid because they guaranteed you the contract, right?---Yeah. There's no, there's no justification for those guys being paid.

And if you quoted it without having to factor in paying them, it would have been less. Do you agree?---Yeah, I, I didn't factor in paying them. I, I just assisted with the tender. The final number I don't know where it came from.

Well, which final number do you mean?---The, the submission. Look, I don't know. I can't, I don't recall exactly what happened in terms of the
30 submission but I'm sure it didn't sit with me.

All right. Well, you quoted originally \$1.291 million and then it was requested that an additional \$300,000 provisional sum be added to that amount. Do you remember?---I have a vague, vague recollection of that, yeah.

And the revised quote was 1.591 million and that can be found at volume 1.3, page 20. So there you can see that that's that amount that was quoted after the provisional sum was added. Do you see that?---Yeah.
40

And it's the case, isn't it, you used messaging platform Wickr to communicate with Mr Nguyen in relation to this job. Is that right?---Yeah.

And what does Wickr do that a normal email doesn't?---Tony asked me to use it. It was, I don't know, some sort of encrypted message service or something.

10 And what were you doing, what type of information were you passing? Is this where you got the competitor information from?---No. I, I think he sent me an email with the, the, the other alternate quote.

The competitor information?---Yeah.

Were you told the budget, the Downer budget for this quote, for this job?---I don't think so. I'm, I'm not sure. I don't - - -

20 You used Wickr for the Kingswood job as well, didn't you, to communicate with Mr Nguyen?---See, was the Kingswood job - I don't know. I, look, I think Tony told me to start using Wickr for messaging. So - - -

So you switched to the medium, did you?---I, I honestly can't, I don't know, I - possibly.

Can we go to volume 1.5, exhibit 35 - sorry. I withdraw that. Volume 1.3, exhibit 32, page 43. This is the RJS Lithgow Station org chart. Now, this was supplied in relation to this job at Lithgow which was in April 2019 on or around that day. If we go up one page you can see when the email was sent and Mr Nguyen forwards it onto you. Do you see that?---Okay.

30 And then so you go back to the org chart on page 43. Tony Nguyen says he's the project manager for this job. Was he there out onsite with you? ---Yeah.

Did he take time off work or something?---I think so, yeah.

He was there every day, was he?---Yeah.

And these other people, are they real people?---Oh, two of them.

40 Who are the two that are real?---Sorry, four. Tony, me, Declan and Sean.

And the rest are make-believe, are they?---I'm not sure if Edward Curran might be somebody. I'm not sure. Yeah, but three, at least three of them are.

THE COMMISSIONER: Sorry?---At least three of them are make-believe, yeah.

At least three of them. Which ones are make-believe?---I think Jerry Donnelly, David Kearne and - - -

10

Sorry, Jerry Donnelly?---Jerry Donnelly, David Kearne and Niall O'Brien.

MR ENGLISH: So did you prepare this chart?---I don't know.

THE COMMISSIONER: They're all Irish names, I've noticed. Did you have a role in that?---Possibly. I think Jeff might have, two are them are from Ballyhooly and another one - - -

20 I'm sorry?---Two of them are from Ballyhooly and the other one is somebody that I know.

Are they names of persons you know?---Yeah.

They are?---A couple, couple of them, yes. Two of them are from, two or three of them are from Ballyhooly and the third one is, is a guy I know.

MR ENGLISH: So, it's likely then that you prepared this, isn't it?---I, I, it's that long ago I can't even remember.

30 But it's been put forward to make RJS deceptively look bigger than it actually is, correct?---Yep.

40 Was there some kind of arrangement you had with Mr Nguyen whereby in relation to waste you'd decide to classify it in a contract on one basis and call it general solid waste or something like that, with a particular subclassification, and then you would try and claim a variation to say that, oh well, it was classified by some other, the collector is a different classification and therefore a higher tip fee applied. Was that an arrangement or a scheme you had with Mr Nguyen?---I don't know what the waste classification was on this project. It was probably - I don't know

what the, I can't, I'm not sure. Tony, on this project Tony looked after the spoil.

But was that a means by which you would, from time to time, try and increase variations by claiming - - -?---It was talked about on the Wollstonecraft project but never materialised.

Did you have a waste contractor who was willing to provide false information about the classifications?---Not, not that I'm aware.

10

Did Tony have one?---I don't know what Tony, he also just looked after the spoil. I don't know what his arrangement with, he looked after the spoil. I don't know. But on Wollstonecraft there was a discussion around that but it didn't happen.

Because here if you go to, just bear with me, if you go to page 46, I believe this was some assistance Mr Aziz was providing to Mr Nguyen in relation to Lithgow about disposal of spoil, as you've just said, as GSW. You accept that's general solid waste, yeah?---Yeah.

20

And recyclable. He's saying, "What's recyclable?" And then it says, "No allowance has been made for disposal of restricted or contaminated materials." Do you see that?---Yeah.

"Any restricted or contaminated spoil will incur additional charges." Do you see that?---Yeah.

30

Is that not something that you did from time to time, said that the waste classification had been changed to restricted or contaminated or hazardous or something like that which would incur additional charges?---I don't, it was discussed at Wollstonecraft but it didn't happen.

Okay. Well, indeed, it wasn't just discussed, wasn't a variation lodged on that basis?---It was withdrawn.

What, because it was queried internally at Downer?---No. I don't know. I'm not sure why but it was withdrawn.

40

In relation to variations at Lithgow, if we can go back, please, to volume 1.5, page 406, you've said there - I'll wait for that to come up on the screen. You've said there were no variations there.---Sorry, where?

Lithgow. "Approved variations," do you see that?---I, did I say there was no variations?

Do you see Lithgow? Do you see that, "Approved variations"?---Approved variations. What is it. Okay. Yeah.

Is that right?---I don't know.

10 Okay. All right. You on behalf of Marble Arch issued an invoice for \$385,000 including GST in connection with this job, didn't you?---Ah, I believe so.

Yeah. If that can come up, volume 1.3, page 359, please. There's that invoice there. You might recall your spreadsheet records that you were actually paid \$412,000 in relation to Lithgow.---Okay.

So how did you receive the other money for Lithgow? Was there a cash payment or something?---No. There wouldn't have been, no.

20

Okay.---Possibly the spreadsheet's not right or - - -

THE COMMISSIONER: Sorry, possibly what?---Possibly the spreadsheet's not right.

MR ENGLISH: If volume 7.4, page 1 can be brought on the screen, please. You can see here there's the payment of 385 on 13 August.

Do you see that?---Yeah.

30

Beneath that there's "Lithgow brickwork", "deposit CBA Lithgow brickwork". Do you remember what that was?---No, I don't. Have you got - - -

It suggests it's a reimbursement, doesn't it, for some cost you've incurred? ---Okay.

Do you agree? I'm not - - -?---I, I don't know. Possibly.

40 Are you sure there wasn't any cash that you were given for this job?---No. No. Honestly, there was no cash.

Okay. After this job Mr Nguyen offered you a shareholding in RJS, didn't he?---Yeah.

And if we can go please to exhibit 30, volume 1.1, page 185, just go down a page if we can. This is the company extract for RJS Infrastructure you can see there.---Yeah.

10 And if we go down we can see share structure. You can see Mr Nguyen holds 50 shares there. And if we go down one more page, you became a 50% shareholder. Do you see that?---Yeah.

Now, why was it that that arrangement was struck between the two of you? What was the discussion there?---I think he offered me the shares on the back of how well the work went at Lithgow and I don't know why I, I'm not sure, look, to be honest, the two days I probably thought most about these shares is probably the day that I signed for them and then the day that the investigators arrived on my front street. I, I, you know, it's not like I, we didn't hold shareholders meetings or, you know, I don't know. I don't
20 know. I don't know the, I'm not sure why I done that, it doesn't - - -

You were already getting a spilt of the company's profit, weren't you?---I know, so that's what I mean. Like - - -

Do you think he was just saying thank you for doing such a good job at Lithgow?---I don't know. I, I, I, he organised the meeting with the accountant. I don't know. I didn't think about it. I never really thought about it.

30 All right. Probably move topics now, Commissioner. Is that a convenient time?

THE COMMISSIONER: Yeah, it is. Can I just ask you a question. Did he, at the time that Lithgow was discussed, was there any reticence on his part to do it?---Any what, sorry?

Reticence. Was he reluctant to take it on?---He, he thought it was extremely difficult in terms of the risk of the work.

40 Was it the case that you persuaded him that it could be done with your assistance?---No, he asked me if, if it was achievable or not.

Yes.---And I, I looked at it and there, there was a large number, there is, like, it's not, it wouldn't be simple to build something like that there but it is achievable and, well, obviously it was achievable because it was done but - - -

Yeah, did you persuade him that it could be done and that you could be involved in it?---No, I didn't. I didn't him coach him into doing it, like. He asked me whether it was achievable or not. I said yes, and that - - -

10

I see. All right. Was there something arising out of that?

MR ENGLISH: No. No, Chief Commissioner.

THE COMMISSIONER: Okay.

MR ENGLISH: Sorry, there is one thing. I omitted to tender the telephone call that was played. Might I do that, please.

20 THE COMMISSIONER: That can be exhibit 67.

**#EXH-067 – TELECOMMUNICATION INTERCEPT SESSION 03720
ON 3 JUNE 2020 AT 10:30:26AM FROM TONY NGUYEN TO
AIDAN COX**

MR ENGLISH: And just for the record, that was volume 21.3, call 1.5 with session number 00625 and an extract - I'm sorry. That's wrong. Let me
30 just - it's session number 03720 on 3 June 2020 and I'm just asked to ask one further question of Mr Cox while he's here.

THE COMMISSIONER: Yes.

MR ENGLISH: Do you remember I asked you some questions about the spreadsheet of the payments you were accruing for Mr Nguyen?---Yeah.

You said it was on a hard drive. Is that a Toshiba hard drive?---I, I don't know if it is on it or not. I don't even - but it, it was big black hard drive.
40

Yeah, it was a hard drive, a black one, did you say?---A black one, yeah.
And I don't know if it's actually there or not.

Was it an Excel document, was it a Word document, or PDF, what was it?
---I don't know. It's from five years ago and it - - -

What program would you normally use?---Probably Excel, if anything.

And do you remember how you named these documents?---No.

10

Was it council, Tony, anything?---No idea. No idea.

Did you have a folder for council work?---Honestly, I have no idea. Like, I haven't seen any of the contents of the hard drive in over two years.

Well, what's your practice? When you work for a new client do you start a new folder?---Yeah, probably. If it was on the hard, it would be, maybe. I don't know. There might be a folder for council and if it was anywhere it would be on that.

20

All right. Was it an internal hard drive or an external drive? Do you know what I mean, a portable one or one - - -?---Portable one.

It was a portable, was it? Okay. And do you recall any of the headings or the rows that might have been used, the names of them to facilitate a search?---Nothing. No. I honestly, I have no idea.

And you're going to have a look and see if there's a version that might have been saved on the cloud or something?---I'll try and see, yeah.

30

All right. Thank you, Chief Commissioner. Thank you, Mr Cox.---Thanks.

THE COMMISSIONER: All right. Now, Mr Cox, I'm going to stand you down. We're going to resume at 10.00am on Monday.

THE WITNESS STOOD DOWN

[4.02pm]

AT 4.02PM THE MATTER WAS ADJOURNED ACCORDINGLY
[4.02pm]