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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 MONDAY 27 MARCH, 2023

AT 10.00AM

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

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

THE COMMISSIONER: Yes. Mr Cox, you're subject to the same promise you made at the commencement of your evidence to say the truth. Do you understand?---Yeah.

Yes. Thank you.

10 MR ENGLISH: Thank you, Chief Commissioner. Mr Cox, on Friday you gave some evidence in reference to come questions I was asking about the incorporation of Marble Arch on 19 February 2018 about hospital and not knowing where your head was at the time. Do you remember that?---Yeah.

Can you just come in a bit closer? I'm not trying to pry at all here but is it the case that you had a child that was born on 26 February 2018 in a premature state?---Yeah, that's correct, yeah.

20 And quite premature, is that right?---Look, we've had a history of tough pregnancies but the, her, her elder brother was born just over a year before. He was about, he was about six weeks premature and then the pregnancy was a tough one. And then during his first year he caught a thing RSV, and he, he, basically I, I brought him in the A&E one night, he stopped breathing in my arms, and he spent a couple of weeks in ICU. And then wife was pregnant with Aoibheann and I was doing all the, the feeds with, with, with the, our newborn, so then Aoibheann's pregnancy was really tough too and I, so she was, she was born at, she was born at 29 weeks and basically, like, we didn't have much in the way of support. And so she, she was born at 29 weeks and she spent a couple of months in the ICU and so it
30 was tough. My, that's pretty much, like 'cause we had one, a baby that just turned 1 that was already premmie and already had some health complications, and then we had a newborn 29 weeks and she was in hospital at the time for that 11-week period or whatever it was, and then, it's just, it was difficult. You know, so I, there wouldn't have been much sleep, you know, it's just, it's a difficult period.

Yep. And after the birth of your second child did you have to - - -?---Third.

40 Sorry?---Sorry, it was our third.

That's your third, is it?---Yeah.

This is in February of 2018?---Yeah, that was our third.

And did you have to keep going back to the hospital for appointments after the baby was discharged?---Yep. So like, 'cause when you're preemie, the, not all the organs develop or, so she had some, lots of checks and stuff to do. It was, and probably the fact that her, you know, the experience with her brother, who wasn't even as preemie. But, yeah, we had to go back to the hospital.

10

All right. So those concerns were playing on your mind at the time, were they?---It's just a period of time where, you know, like, raising kids is tough on everybody. I'm sure everybody with kids will tell you that. But when one's in the hospital, the other one's at home, the one in hospital needs, they call it, I think they call it skin, skin time, you know, to create the bond with parents, and the one at home's still bottle-feeding during the night, it's just, you don't get much sleep, you don't, it's just, you know, those couple of years for me are just a blur.

20

Sure. You also gave some evidence on Friday, I think you were talking about the brownfield, in the context of a brownfield rail site, and you described - did you describe the, was it the Lithgow project you described as "a bomb" or can you - -?---Oh, I don't know what I said. Maybe. Look, the, the, I mightn't have meant, I would have probably meant any rail site because it's always, it's always a big unknown. You know, you don't know, you don't know what is, you've no idea what you're going to encounter until you, until you get into it. You know, like, you've things called DSS, detailed survey search, right. It's, you know, it's basically a crayon on a page. You don't know where things are. You're, it's, it's all pretty grey. So it's, it's just a bit unknown.

30

So you don't know how these risks might materialise until you've taken actual possession of the rail corridor, is that right?---That's right, yeah. You have to, you have, it's a, it is a gamble, a bomb's not a good example or, you know, it's just a pure gamble what you're up against until you open it up and see what's there.

And the gamble, you mean that that has cost consequences that can either go for or against you?---Oh, huge. Yes.

40

You assisted the Commission on Friday by disclosing the existence of a spreadsheet that you thought was in your hard drive where you were tracking some profits with respect to council work and what might be paid back to Mr Nguyen. Do you recall giving that evidence?---Yeah. I thought there was something like that, and if it's anywhere it's on that hard drive.

And so Commission officers were able to locate a spreadsheet on those hard drives over the weekend and I wonder if that might be brought up, first in its Excel format so you can have a look at it and see whether that's the
10 spreadsheet you were referring to, and then we might bring it up in a PDF after that to go through the different tabs. Do you see that, the document that's on the screen?---Um - - -

If we just scroll down a little bit it's got a reference to down the bottom Aidan and Laura. Do you see that?---Yeah.

Laura, is that Tony Nguyen?---Yeah, yeah.

And then if we just go to the next - and I'll bring this up again for you.
20 We'll look at a bit more closely. If you can just bring that Account slide up, please? Is this what you recognise, is this page titled Account Tracking Costs with respect to IWC jobs?---Yeah, it looks to be.

And other things.---Yeah.

Inner West Council, I mean. And if we can go to the next tab, which is SC Liabilities. What does SC stand for?---I don't, I'm not - it probably could be subcontractor.

30 Oh, okay. And there you can see some further details that seems to relate to some of the information on the Forecast tab, which is the first tab. Is that the spreadsheet you were referring to on Friday?---Yeah. This was at the start, he had asked for a percentage.

I'll come back to that in just a moment. Might it be brought up in PDF form, please? So just looking here you can see, right-hand side, it says, "Includes payment for air-raid shelter." Do you see that?---Um - - -

40 Just where the cursor is, do you see that "Includes payment for air-raid shelter"?---Yeah.

And that's a job that was performed by Marble Arch for the council, correct?---Correct, yeah.

And you can see, just what I asked you before, that Laura, who you've said is a reference to Mr Nguyen, "20 per cent cash, \$12,987.54." So, that's obviously an amount you've calculated. What does that represent there exactly?---It must have been a percentage of the profit.

10 And do you recall - there's a reference to air-raid shelter. Do you recall how many jobs that's a profit reference to?---I don't know.

I just wonder, I might provide a copy of MFI 12 back to you in hard-copy form. Chief Commissioner, do you have a copy of that? It's the Marble Arch jobs awarded to - I'll hand another copy up for the Chief Commissioner and one for the witness.

THE COMMISSIONER: Thank you.

20 MR ENGLISH: So if you see here - and where it says Date in the column on MFI 12, that's just the date that the works were approved by council or recommended to be approved by council is probably more accurate. So I'm not saying that's the completion date, do you understand, of the job?---Yep.

30 So you can see that there's the War Memorial Park toilet block upgrade first, then some works to the Pioneers Memorial Park electrical slab reconstruction, then the air-raid shelter demolition, lavatory block, and then the vegetation removal at the air-raid shelter and then the upgrade works at the air-raid shelter. Item 4, do you see that? And that's the larger item, \$130,000 contract. Do you see that?---Yeah.

So does that assist at all in ascertaining what projects you may have been paid for to ascertain this profit split between yourself and Mr Nguyen?---I, I'm not sure. It's either one to three year or one to four, probably, or - - -

Okay, yeah, so - - -?---Or one to four year, either one to three year or one to four year.

40 Okay, and if we can go, please, to page 2 of the PDF. So here these are these entries that you can see. There's reference to the War Memorial there. Do you see that?---Yeah.

And then if we scroll down, keep scrolling, please. We come to a summary at the bottom. Again, there's reference in yellow to War Memorial. Do you see that? And then some additional amounts. Down the bottom again a reference to the War Memorial. Are you able to assist what those references specifically relate to?---Just, where, where are we talking about?

In where the cursor is. Do you see the War Memorial?---I don't, I honestly don't know what they are.

10 Okay. All right, and if we can just go back to page 1, please. So your evidence on Friday was although you'd kept this spreadsheet, this money was never paid to Mr - - -?---It was never paid.

Okay. And did Mr Nguyen from time to time ask you how much you were accruing in this spreadsheet?---I think at some point in time he decided he didn't, he, he no longer wanted it. So initially he, he wanted something but then at some point he changed his mind and he said don't worry about it.

20 All right. Would he from time to time ask you how much profit you were making from the council work that he was providing to Marble Arch?
---Possibly, I don't know.

Okay. Might the Excel spreadsheet that we've seen on the screen and the PDF please be tendered together as one exhibit, Commissioner?

THE COMMISSIONER: Yes. do you have a hard copy or - - -

MR ENGLISH: No, we don't have hard copies.

30 THE COMMISSIONER: I'll mark it as 68.

MR ENGLISH: Thank you, Chief Commissioner.

#EXH-068 – AIDAN COX INNER WEST COUNCIL PROFITS SPLIT TABLE

40 MR ENGLISH: I just wonder if a telephone call can be played and if the transcript can be placed on the screen while it's played. It's session 03603. Volume 21.1, call number 1.8, extract number 1. And it's from 2 June

2020. Might the transcript be placed on the screen first and then played.
And if the first extract can be played, please. That's from 11.37.55 to - - -

AUDIO RECORDING PLAYED

[10.24am]

MR ENGLISH: Can we just pause it?

10 THE COMMISSIONER: We'll play it again. Is there a copy of this? It's not - I'm just struggling to follow it on my screen for some reason.

MR ENGLISH: We'll have some arrangements made. Chief Commissioner, do you want to take a short break while that's done?

THE COMMISSIONER: I don't know what's happening whether it's, it's some, it's some sort of static and it's not (not transcribable) this screen for some reason.

20 MR ENGLISH: We'll have that done as soon as possible.

THE COMMISSIONER: Do you want to take a break?

MR ENGLISH: If that would assist you that might be the best course.

THE COMMISSIONER: All right, thank you.

SHORT ADJOURNMENT

[10.27am]

30

THE COMMISSIONER: All right, thank you. Are we ready to resume?

MR ENGLISH: Thank you. Yeah, thank you, Chief Commissioner. I'm sorry about the delay.

THE COMMISSIONER: That's all right.

40 MR ENGLISH: I hand up a copy of the transcript of this call, which is session number 03603 from 2 June 2020. There's two extracts. We'll go back to playing the first extract.

THE COMMISSIONER: All right, thank you.

MR ENGLISH: Might that be tendered?

THE COMMISSIONER: Hopefully this will work okay.

MR ENGLISH: Might that be tendered, the call and the transcript, please,
as Exhibit 70?

10

THE COMMISSIONER: Yes. We were up to 69, weren't we?

MR ENGLISH: Did we just do 69 for the expert?

THE COMMISSIONER: No, 68 was the spreadsheet.

MR ENGLISH: Oh, that was 68, was it? Okay. So 69. Thank you very
much.

20 THE COMMISSIONER: The call and the transcript can be 69.

**#EXH-069 – AUDIO AND TRANSCRIPT OF
TELECOMMUNICATION INTERCEPT SESSION 03603 FROM
AIDAN COX TO TONY NGUYEN ON 2 JUNE 2020 EXTRACT 1
FROM 11:37:55 TO 11:40:03 AND EXTRACT 2 FROM 11:41:01 TO
11:42:06**

30 MR ENGLISH: So, perhaps if the transcript's brought back up on the
screen and if the first extract from 11.37.55 to 11.40.03 can be played,
please?

AUDIO RECORDING PLAYED

[10.44am]

MR ENGLISH: I'm sorry, Chief Commissioner. We just have to do that
again.

40

MR ENGLISH: So, Mr Cox, I just want to ask, this is a discussion that you're having with Mr Nguyen about Marble Arch's financial position. That's right, isn't it?---Yep.

10 Is that something that Mr Nguyen would inquire into with you from time to time?---Well, obviously on this occasion. Possibly. Definitely he, but I don't know what - I mean, I think what's happened there is he's asking me when do I want to get, paid before or after the end of the financial year and, but I don't think I actually told him when I wanted to get paid but his main concerns were that, you know, if he wanted me to pay things like BAS.

Yeah. But just casting your mind back. We looked at Exhibit 68, which was the spreadsheet that was discovered over the weekend - - -?---Yeah.

20 Did Mr Nguyen ask you "Well, how much is accruing on that spreadsheet for me?" at any time?---I don't know. I can't - - -

You don't know or you don't recall or - - -?---I don't recall.

Did you ever tell him "I have accrued 12-odd-thousand for you"?---I don't recall. I honestly cannot remember.

30 So your evidence before the Commission is he wasn't paid a cent from any moneys awarded to Mable Arch? And when I say a cent, I mean in cash or in EFT or anything like that.---I honestly, I, I don't think so. I don't ever recall giving him anything other than a mobile phone.

And some lunches.---And lunch, like, I'm concerned that I'm, you know, not telling the truth here but I honestly don't believe I ever gave him anything.

40 Sure. So just on page 2 of the transcript you say to Mr Nguyen, "And then 60 grand or something like that, something like out of that wee job I did for you." Do you know what job you're referring to there?---I don't know. I was just looking through this here. Maybe it was a combination of a number of them. I'm not, I'm not sure.

Do you understand you to be referring there to a job when you say that “I did for you” that you mean for the council or did you ever do a - - -?---I’d say it’s for council.

Did you ever do a personal job for Mr Nguyen?---No.

Did he ever refer you any work that wasn’t council work?---No, I don’t think so.

10 Okay. And then you have a reference there to “then ARCH about 150 grand”. What’s that a reference to?---Some consulting he was doing for - - -

Who to?---A company called ARCH Services.

Okay, and that’s through Marble Arch, was it?---Yeah.

Okay. If that can be taken off the screen, please. All right, I want to turn now to the Kingswood project.---Yeah.

20 And RJS Infrastructure was awarded the building package first for that project, is that right?---Yep.

Can you tell the Chief Commissioner how was it that you learnt that that tender had been awarded to RJS Infrastructure?---So a couple of days after, Tony brought me, we were counting up the shares, he announced that we’d won a project at Kingswood, and I didn’t even know that we were tendering a project at Kingswood.

30 Okay.---Look, I might, I might have known we were tendering, but, like, I hadn’t been involved at all in the tender process, so it was a big sort of surprise to me and I was a bit annoyed about it because I just got these shares, you know, and then to, you know, not really feel involved in - - -

But he’s telling you we’ve got a new contract. Isn’t that good news?
---Yeah, but it was a surprise.

40 Okay. Can exhibit 34, volume 1.4, page 330 please be brought on the screen. All right, so here’s RJS Infrastructure’s quote dated 21 June 2019 for \$388,756 in respect of the Kingswood TAP project, is that right?---Yep.

So you didn't draft this quote, is that right?---I didn't draft this. I didn't. I don't think I did, sorry.

And if we go down to the next page, please, you can see the scope of works are there. And if we go down again, please. All right. And one more page, please. And one more page, please. You can see there - is this something that Mr Nguyen would have had the skills to price up himself as far as you're aware?---I think he had, he told me that Monty assisted so it was I guess between the two of them.

10

Oh, I see. And if we go to the next page, which is 335, you can see there's a quote there from SDL Project Solutions for this project. Do you see that? ---Yep.

And if we go down, please, to page 340, you can see there's a quote from Constructicon, Monty's company, do you see that?---Yep.

So you have a recollection of Mr Nguyen saying he drafted the RJS quote in conjunction with Monty and Nguy's assistance, is that right?---Yeah.

20

Okay. And did he tell you anything else about the tender?---He asked me, he told me that we picked up this work and that Monty was going to deliver it and he asked me to basically go out and to - because Monty hadn't much experience, if any, I don't know, in the, in the rail industry, for me to go out and basically initially do things like do some of the checks and the drawings and basically help with the, the, the project set-up and just basically make sure everything was up and rung smoothly for the project.

30 So did you have to go on a daily basis to Kingswood?---I, I would have went out there a bit. I don't know exactly how often but I was out there a bit.

What about Mr Nguyen, was he out there, do you recall?---I'm not sure how often. I, I don't know how often he would have been out there.

Did he tell you about whether Mr Abdi or Mr Aziz were involved in this project?---I - - -

40 Or anyone else I should say that he was getting assistance from?---I was, I was, look, what do you call him? Nima was the client side project manager so I was aware there was something going on between the two of them but I

just assumed it was like, he was going to, he was giving them the budget or something and he was just working to the budget.

So you assume that, you weren't told that, is that right?---Yeah.

But there was a payment made, wasn't there, to Nima in relation to Kingswood from RJS?---Yeah.

10 What were you told he had done to entitle, that is Nima, to entitle him to that payment?---Oh, look, there's, there's no, there's no reason why he should have been paid anything.

You might have formed that view but did Mr Nguyen tell you "We're paying him this he's done something for us"?---No. I don't know. I, I can't remember if there was ever a conversation like that. I knew, I knew that had he had, I knew that he paid either, either him or Abdal, I knew that he had paid the, one of the two of them something. Exactly what was paid, the, the spreadsheet that I put together was my best guess of what was going on but I wasn't sure.

20

Were you ever told that someone by the name of Sairam Pilli was assisting RJS Infrastructure with this job?---Not at the time. It was much later on, it could have been, like, 12 months later before Tony told me something about that.

Then how did you, if at all, factor in any payment made to Mr Pilli when you prepared your spreadsheet?---I didn't, I didn't realise there was anything happening there. That's why - - -

30 Okay, all right. In relation to variations for Kingswood, did you have any involvement?---Probably. I'm not sure. I can't, I can't remember exactly but possibly.

If Exhibit 35, volume 1.5, page 97 can be brought on the screen, please? Here you can see a Downer document for Kingswood identifying the subcontractors as RJS Infrastructure. Do you see that?---Yeah, yep.

And there's the contract sum of \$388,756 and then a further \$435,344 worth of variations?---Yep.

40

Are you able to assist in any way in informing the Commission whether some or all of those variations may have been inflated?---My understanding of what was happening was that I thought Nima was telling him where the other prices or the threshold was for a variation.

Okay. But Nima's for Transport for NSW. He's not approving the variations, was he? Or was he?---I don't know. I had no idea.

10 So you understood he had some role in advising where the price could be for a variation?---Yeah.

And where'd you obtain that information from?---I don't know, maybe conversations with Tony. It's, I don't know, like, look, I can't really remember. I'm not - - -

Did you meet Kevin Watters at Kingswood?---There was, there was, like, at the start of the project and to kick the project off, I think he was out there at that stage.

20 Okay, and did you meet him on that occasion?---I think I met him once.

Yeah. And did you have any ongoing discussions with him or was it just - - -?---No.

- - - one meet-and-greet and that was it?---That, that, I think it was one, a one-off meeting. It was just about expectations in terms of the project and - - -

30 So do you say in that one-off meeting it was just a purely professional discussion with Mr Watters?---Yeah, it would have been, yeah.

Okay. Were you aware - if not then, subsequently - as to whether Mr Watters played any role in approving - - -?---I don't think he - - -

- - - works on behalf of RJS or for RJS in relation to Kingswood?---I don't think he had, I'm not, I don't know. I don't know the mechanisms of how it was done but I don't think he had any involvement in any of that.

40 Okay. If we can go to Exhibit 35, volume 1.5, page 406, which is your spreadsheet. So for Kingswood, you've got the contract sum there and the variations. Do you see that?---Yeah.

And you've identified the cost in orange at \$391,501 and there's a profit at contract closure of 510,000. See that?---Yeah. Look, these numbers may not be accurate, yeah.

Yeah, well, you've already said it doesn't incorporate any payment to Mr Pilli, is that right?---Yeah, well, I didn't, I wasn't aware of anything, so - - -

10 Okay. So this was your best estimate on the information available to you at the time?---This was, this was me trying to, yeah, it was me trying to put it all together, trying to figure out what was going on.

And did you ever show this spreadsheet to Mr Nguyen?---I don't think, I don't know, I'm not sure. I, I don't think so, though.

And can I just ask, if volume 1.5, page 426 can be brought on the screen, please. Have you seen this document before?---I'm not sure.

20 Okay. It's a spreadsheet. I think the evidence discloses it's prepared by Mr Nguyen. If we scroll down a bit, you can see the contract amount and the variations, what we've been talking about for Kingswood. Do you see that?---Yeah.

388,756 for contract and variation 435,211. Same as your spreadsheet. And then if we scroll down to the next page, please. So you can see there what the costs as identified are. And that's got you being paid \$90,755, and I mean Marble Arch. Do you see that?---Yeah.

30 Is that right for this job?---I don't know. I don't know exactly what I was paid.

Well, your spreadsheet has you - - -?---My, my - - -

- - - receiving \$127,000.---Yeah.

That would be an easy cheque for you, wouldn't it, to - - -?---It could, yeah.

40 So, are you able to assist in what that figure might represent, \$90,755, to Marble Arch?---Look, it, like you said it would be an easy cheque. I could just check to see, like, there would have been an invoice I'm sure I would have put in but whatever that figure, whatever the figure is it would

have been a makeup of the, you know, going out with the, the, the building works, any time I would have spent out there doing that, anything in relation to some of the civil works and - I don't know. I would have thought that it was a, like a, a percentage of the profit as well.

And if volume, I think it's 7.4, the financial brief for Marble Arch.

THE COMMISSIONER: 7.4.

10 MR ENGLISH: You can see there, on Friday we looked at the payments. There's 385 for Lithgow and then 18,436 identified as being, I think that was for Lithgow brickwork. Do you remember that?---Yeah.

Sorry, it's on the screen now. Do you see those two entries in about the middle of the page?---Yeah.

Number 13 and 14. And then the next payment from RJS is on 23 January 2020 for \$172,092. Do you see that?---Yep.

20 Do you recall what that was in relation to?---No idea. If, there would be an - because I, I would have invoiced, there should be an invoice for that?

Yeah. I can't point you to that unfortunately but if we go to page 31 of that brief you can see that entry in the bank account.---Yeah.

Where it's been credited that amount. I'll endeavour to see if there's an invoice that I can find for you.---I, I'm sure I could probably get you one.

30 Okay, all right. Well, we might have a look first and if we need to I'll let you know.---Okay. Like, sorry to cut you off, but like that could be related to some of the other - because we had, some of the other projects we were working on aren't being discussed here.

Yep.---So it might be related to - - -

When you say "some of the other projects we were working on", do you mean train jobs or rail jobs or something else?---Oh, there was other, there was site investigation and platform upgrades and buildings, rail, rail station buildings.

40 Do you mean separate to - - -?---Well, no, it's not part of your inquiries.

Oh, okay. Is this work that RJS Infrastructure obtained without any inside information from Downer or Transport for NSW?---Yeah, yeah.

And Mount Victoria, is that one of those jobs?---Yeah.

What are the other jobs where work was obtained from Transport for NSW or Downer without inside information?---Well, there was the site investigation - - -

10

Where was that?---It was across the TAP stations. So it was basically, although they, there was no - I did see the budget for that work but it wasn't, like, provided to me by, by anybody related to the work.

When did you - I withdraw that. When did RJS Infrastructure perform the site investigation work that you just referred to?---Might have been in around that period.

20

In around 2020. So before or after Wollstonecraft or during it?---Before.

And you say you saw a budget for that but it didn't come from someone involved in the job, is that right?---Yeah.

Who provided you with the budget?---Ben Vardanega.

Oh, I see.---But it wasn't, it was just chance, right? It was, he just happened to have it on the screen one day and so I thought, but then somebody else related to the work actually made a phone call to me and asked me if I would manage it for them.

30

Oh, I see. So was this when you went to the Burwood Club with Mr Vardanega or - - -?---No. That was, that was in relation to Wollstonecraft.

Okay, so this is another time in, so you - but you saw the final figure, did you, for the budget?---Something like that, yeah.

Was it a Sydney Trains project?---No.

40

Was it a Transport for NSW project?---It was for a design house called Arcadis.

It was for Arcadis, was it?---Yeah.

Did you ask Mr Vardanega how he had obtained that?---I think he might have got it off Andrew Gayed.

And, sorry, you said something else that - did someone else provide you with that same information as well?---No.

10 You said Mr, you saw it on the laptop screen and then - oh, someone else called you and offered you the job.---Yeah, yeah.

20 That was afterwards, was it?---Yeah, but they, so they, they rang me 'cause, you know, like, this stuff here is all pretty difficult to - it might sound like it's real simple but it's quite, the logistics and doing this type of work is all, you know, you need to know what you're doing, right. And for instance, I'll give you a good example of that site investigation work that we done. I probably made it look simple but there's another company went to do site investigation on a platform one weekend and they got their truck stuck and spent the two days of a possession trying to get out of the ballast. So, like, you only make money if you're good at what you do and that's, so that was the situation there. And but somebody had rang me, asking if I'd manage it for them. I said I'd no interest in managing it for you but I just - look, it was a gift horse in the mouth. Just thought, look, I, I'll give you a price for it and if you're interested in it, we'll go with it.

Okay. And when you said I'll give you the price, you were cognisant of what the budget was because - - -?---I had an idea roughly in my head of what the budget was, yeah.

30 Yeah, okay. And how did you split the profit on that job with Mr Nguyen? ---I can't remember.

Would it have been fifty-fifty?---Probably.

And you would have been paid for your time and then fifty-fifty whatever's left over?---I, maybe, maybe something like that, yeah.

40 Okay. And any other jobs that RJS Infrastructure Group obtained without inside assistance?---Sorry, what did you say?

Were there any other jobs that RJS Infrastructure obtained without any inside assistance?---Well, we, yeah, the, the, the Mount Vic.

Mount Vic?---Yeah.

And what did that job involve? In a nutshell.---So I think initially we priced the platform extensions but we didn't get that, and then the company that had that - - -

10 THE COMMISSIONER: Sorry, where was this at?---Mount Victoria.

Sorry, yes, okay.---So the company that had that work went bust and then we priced basically cutting the rebate for tactiles on the platform surface and retiling the two platforms and then doing a bunch of, a bunch of upgrades to rooms and stuff like that.

MR ENGLISH: All right. And how much was that contract worth with variations to RJS Infrastructure?---I can't remember.

20 It's not on your spreadsheet at page 406 of volume 1.5. Is there a reason for that?---Oh, it's probably 'cause the, I was trying to work out what was going on here with how Tony was divvying out payments to these other guys.

Oh, okay.---So because there was nothing like that, that's why it's not on it, no doubt, and it's probably the same with that site investigation.

But you've got the Arcadis job on here even though it's only a profit split to you and Mr Nguyen.---I don't know, then. I'm not sure.

30 Okay. Now, what about after Wollstonecraft? Was RJS Infrastructure engaged to rectify defects at Banksia Station?---Look, so basically after, you know, the, I think it was 2 December 2020, I was in a difficult situation where you've, you've got this contract that, like, if I walked away that thing would have fallen apart, so I had to stay. It was tough trying to stay. But as soon as it was finished I said, right, I'm going to do something else.

So were you involved in rectifying defects at Banksia?---No.

40 Is that something Mr Nguyen did, are you aware he's gone on to do that?
---Yeah, he told me, yeah.

Okay. And is he out there doing that by himself with the tools or do you know has he got someone else involved?---I don't know. But he, he's not, like, you laugh, he would be on the tools himself. I don't know whether, I'm not sure.

But you've heard that there were quite a number of defects involved in that job, have you heard that?---I have heard that somewhere, yeah.

10 And would you think that he would need more than one person to carry out that work?---I, look, I probably would have got a couple of lads in to give him a hand all right.

Yeah. But you had parted ways by then?---Oh, look, I used to catch up with him but I made the decision to, to do other things.

And can I ask you this, and we'll come to Wollstonecraft in a little bit, but so the search warrants were executed at your premises and Mr Nguyen's premises on 2 December 2020.---Ah hmm.

20 Do you think what day of the week that was?---I don't know.

Well, you probably had to turn up to work the next day, is that right?---Oh, yeah, yeah.

And then Mr Nguyen was at that stage working onsite every day at Wollstonecraft, wasn't he?---Yep.

30 So you must have had a conversation about the fact that Commission officers executed search warrants at your premises?---But he was onsite, he was, he was at my house the day that - - -

Right.---They, we were on, we were, he was, we, I think we were pouring one of the lifts, we had a big, massive concrete pour the next day, I think. I think, I can't remember really but - - -

Yeah.---He was actually on, in, in, in my, he was at my front door the day that that happened because we were going to drive, I think we were going drive over together or something.

40 But when the warrants were executed, did he stay at your house or did he leave your home?---He stayed for a while I think.

But the next day you must have had to work together, or later that day once you'd got away from the residences?---By the next day, yeah.

And what did you say to each other about the fact that the warrant had been executed?---Well, like, I know you're not supposed to talk about any of this but, like, when the eight officers arrive on your front step it's like, I, I think we, you know, like we said, "What the" - you know? I think shortly after that I might have went and spoke to my solicitor and she said, I just
10 explained the situation so then basically, like, I don't know. I can't remember what happened the next day. It's, it's, it was a pretty stressful experience. I cannot remember.

But you had to finish the Wollstonecraft job with him and so you were onsite with him for a, you know, probably weeks if not months after those warrants to get that job finished, right?---Yeah.

And I guess what I'm asking you is, did you ever have a discussion with him about what might happen following the execution of those warrants in
20 relation to this Commission? Did you ever have a discussion with him about how that might play out?---I don't know. Like, I think we were probably trying to figure out, you know, what all this meant. You know, it's, it's not like he wasn't on my street the day it happened. You know, I think I was struggling with just breathing at that stage.

Sure.---You know - - -

Was there ever a discussion about what should be said? I'm not suggesting there was, I'm just inquiring of you. Did he ever say, you know, "We
30 should deal with it this way" or give you any guidance like that?---I think there was, he was just (not transcribable) I think to tell the truth, which is what I've been trying to do. I've been trying to tell youse - - -

So that's what Mr, you recall Mr Nguyen saying that to you, "Just tell them the truth", do you?---Yeah.

If I can revert back to Kingswood. There was a landscaping package that was awarded to RJS Infrastructure Group as well. That's right, isn't it?
---Yeah.
40

And your spreadsheet records that package at a contract value of \$59,790 with some additional variations. Can, please, Exhibit 35, volume 1.5, page 152 be brought on the screen, please? This is a quote on the Marble Arch letterhead dated 27 November 2019 in relation to the landscaping works at Kingswood Station. Do you see that?---Yeah.

And if we go to the next page, you can see that the GST-inclusive quote is \$74,800?---Yeah.

10 Did you draft that document?---No.

Do you know who did?---Tony.

How did you learn that?---I stumbled across it, some time after the fact.

How did you stumble across it?---I think I saw it on the email account of Laura.

The Laura Donnelly one?---Yeah.

20

And what did you say to Mr Nguyen, if anything, when you discovered that?---Well, for me, this was, like, it sort of changed a bit from knowing the budget and working to the budget to manipulating the tender and that was the thing I didn't like anything to do with. So I think I got a bit angry with him.

When you say you got a bit angry with him, what did you say to Mr Nguyen?---I don't know. I, I got angry, like, I don't know. I can't remember.

30

But you were aware for the building package at Kingswood that Monty Nguy was involved in quoting and carrying out the works?---Yeah, but I, I didn't know, I didn't know that Monty had, I, I thought he quoted it for RJS. I didn't know he quoted it separately.

So you didn't know that Monty had submitted a quote. Is that right?---I thought he quoted it just for RJS.

40 Okay. And why was it that you drew a distinction in your mind about a difference between being disclosed budget figures and manipulating a tender through providing a dummy quote? Can you tell the Commissioner

that, please?---I'd say, look, industry budgets are, you know, it, it's not, it would be unheard of of companies to know the budget for work.

Before tendering?---You know, like, yeah. But it's different when you're, you know, getting a couple of prices and just inflating the thing.

10 And when you say it's not unusual for companies to be aware of the budgets, do you say that both in relation to a private context and a public context where government moneys are being spent?---I don't know. Look, I, I'm, I'm not sure. Look, I, I just, you know, I don't know whether, look, I've some sort of, maybe I've got some sort of a view that ones are, one's maybe not as bad as the other.

Just cast your mind back to the Lambert Park, remember that we looked at the Lambert Park email, do you remember that, where Tony had copied in a - - -?---I, I don't even remember that. I - - -

20 All right. But, so, you got angry with Tony after you learned that he'd used Marble Arch to provide this quote?---Yeah.

And did you say to him, well, I don't want you using the Laura Donnelly email address from now on?---I don't know. I can't, I'm not sure what, I just, I don't know, I, I, I got angry and I think I told him I didn't want anything more to do with Kingswood. And I just focused on the, the other couple of projects that we had going on.

30 All right. And were you aware - I withdraw that. Were you told anything about the procurement process for the landscaping works at Kingswood? ---Look, look, I knew he put a quote in and I knew he put a second quote in, so I knew that there was something funny going on. I just didn't want anything to do with it.

Do you know who the works ended up being subcontracted out to?---No, I, I just basically stayed away and went and did the, I think at that, that stage, maybe North Strathfield up and running? Sorry. Sorry. Sorry. I need to go to the toilet.

40 Commissioner, it's 11.25. I'm in your hands, Commissioner, if we want to take an early morning tea?

THE COMMISSIONER: Sorry? Did you want a break, did you?---I just need to go to the toilet.

Okay. We'll take a break now for morning tea.---Sorry about this.

Okay. Thank you.

SHORT ADJOURNMENT

[11.24am]

10

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?---Yes.

Thank you. Yes.

20

MR ENGLISH: Thank you, Chief Commissioner. So Mr Cox, I was asking you some questions before the break about this quotation and the Marble Arch letterhead that Mr Nguyen drafted for the landscaping package at Kingswood and you said after you found out about that you got angry with him. Do you recall that?---Yeah.

And so the quote's dated 27 November 2019. Was it around that time you found out that he had sent that?---I, I, I don't know if it was - I'm not sure, I'm not sure when it was. I can't, I can't remember exactly when it was.

30

Well, was the job still going at Kingswood when you found out?---I don't know. I, I honestly, I, I have, I don't know when I found out. I can't remember. I don't, I don't know.

Well, look, was it before the search warrants on 2 December 2020?---Oh, yeah. Yeah, sure. It was before, yeah, it was before that.

Can you remember what job you were working on when you found out? Because it would have had to be either Kingswood or Macdonaldtown or it could have been North Strathfield or Wollstonecraft. Is that right?---It, it could have been North Strathfield, Macdonaldtown, Mount Vic or the site investigation stuff. It could have been any. I - - -

40

So you really can't recall?---I don't know. I, honestly, if, if I knew I would tell you.

Okay.---I don't remember when.

Because in relation to the Macdonaldtown job - excuse me. So in relation to Macdonaldtown and I'll look at this in a bit more detail, Mr Vardanega had supplied you with some confidential information in relation to that tender, is that right?---Yeah. He, he, I think he told me roughly where the, the figure needed to be.

10 And did he - sorry, go on.---Oh - - -

Did he supply you with information from a completing tenderer?---I think, I, I don't, I cannot remember exactly what it was but I, I knew somehow where the figure needed to be to get the work.

Did he send you some methodology from a company called PJ O'Connor?
---Was that the containment or the - - -

20 Well, if volume 13.2, page 81 can be brought on the screen, please. So this is an email from Mr Vardanega to you on 26 September 2019, so before that quote, the Marble Arch quote for Kingswood landscaping. Do you see that? And he sent you various attachments, Macdonaldtown Lift Study, Staging Plan, Rhino Hook, High Rail Pick and Carry. It seems like there's two documents bearing that name. 3M Jib document, Multi-Crane.---Yeah.

Sennebogen, do you see that, 608?---Yeah.

30 What's Sennebogen?---Sennebogen is a make of, it's like, it's about, basically this is about the methodology that the company was proposing we use to get the spoil out from the trenches that were, that we were going to generate to do the electrical containment. So, electrical containment being the conduits, excavation, putting pipes in the ground and backfilling them and this is the, this was the method that this company was proposing to use.

And so this is to do the work prior to the electrical containment works, was it?---No, this, this is part of the, this is the electrical containment.

40 And did RJS Infrastructure tender for those works for electrical containment works?---Yeah. So basically Ben had, Ben had - like, we were doing consulting, right, writing methodologies on how to build railway stations and he was working for us. He had a company - - -

ProjectHQ?---ProjectHQ. And I was, so the two of us were just consulting to another company and so I think the, whoever it was was trying to basically, so a stabling yard you've got like maybe 20 railroads and walkways between them and the trains all parked there at night and the cleaners clean them. But these guys were looking to basically use a Sennebogen's, like, a type of tele, telescopic handler, it's a thing that booms out, you know, it's got like a telescopic arm on it and extends out, and they were looking to basically put this underneath the powerlines to take the
10 spoil out, and it was, it's not a very, 'cause electricity, you've got 1,500 DC electricity on the contact wire of the train, and if you put something in underneath that within the safe approach distance, then the voltage can arc and you'll kill somebody. So this was the methodology that they were proposing to do in this situation.

All right. But there, if we just scroll to the next page, please, when you say "they", that's these people here, Mr Randall from O'Connor Electrical, is that right?---It must be, yeah.

20 And that must have assisted you insofar as you prepared a tender or a quote for RJS Infrastructure Group in relation to the Macdonaldtown containment works?---This is the methodology. This isn't the price. This is the methodology.

I know, but that's - - -?---It would have, like, like, here, I, I promise you this much, I would never have proposed to put a Sennebogen Telehandler directly underneath a 1,500 DC lane.

I don't suggest you would have but - - -?---Yeah.

30

- - - when someone works out a way to engineer a complex project and then supplies that methodology - - -?---Yeah, but we didn't - - -

Just let me finish.---Sorry, sorry.

In connection with a job, if you were to do that, you'd expect that your methodology would be kept confidential from competitors, right, for that job?---Yeah.

If this project that Mr Randall was proposing here, if the methodology was of a different nature, you might have actually taken some parts of it and used it yourself, isn't that possible?---I didn't take any of that, well - - -

No, I'm saying if it was different, it's possible that you may have.---Oh, yeah, yeah, I suppose, yeah.

So it's got the potential to give you an advantage, correct?---Yeah, when you explain, I suppose, when you put it like that.

10

And it's also, it also gives you the opportunity to suggest, does it not, why this isn't such a good proposal?---I think they already knew it was a really bad proposal. That's why he came to me. It was, this was a really bad idea, like. This was definitely not what you should be doing in this situation.

All right. But this is irregular, isn't it, to receive a competitor's methodology like this when you're bidding on the same project, would you agree?---Well, at that stage we weren't bidding.

20 Well, you shortly were, weren't you?---Yeah.

So it's unfair, isn't it, to receive this. It's not a level playing field, do you agree?---Well, it's not like, like, this situation here it's a survey of a survey. It's not like, like not all tenders are put up on some big platform and, you know, there's a lot of horse trading goes on in some situations, where it's not directly for a government organisation.

All right. Can page 76 be brought on the screen, please. This is your email to Mr Vardanega the day before 25 September 2019. You've sent it to his
30 Gmail address where you say, "Hi, Ben. Following our discussion and site visit, we're pleased to submit a price for Macdonaldtown varied containment works. See attached for consideration. Please do not hesitate to contact me if you have any questions." Do you see that?---Yeah.

And if we go down to page 78, we can see the quotation, "To Whom It May Concern", for \$448,209. Do you see that?---Yeah.

All right. So why was that sent to Mr Vardanega's Gmail address rather than his Sydney Trains address?---Because the work was for TCQ, not
40 Sydney Trains. So my understanding was that TCQ already had the work and they were trying to find a contractor to deliver it.

But why would you - - -?---But I - - -

Sorry, go on.--- I didn't have a contact in TCQ and he asked me if I would be interested in tendering it.

Well, why provide it to Mr Vardanega at his personal email address before providing your quote to TCQ?---I, I, this is a while ago so I can't really remember but I guess that it was probably to forward on but, you know, I
10 don't know - did it have TCQ's email address? I'm not sure.

I don't know but why not just send it to Mr Vardanega's Sydney Trains email address?---Because I didn't see him as working, this, this - so I don't think this was his project and the contract wasn't directly for Sydney Trains. It was for this company, TCQ, and he was, like, working as a contractor. Like, he was wearing a couple of hats and where I met him was where we were working together on something completely different.

Well, the next day he sends you the O'Connor methodology that we've
20 looked at on page 81.---Yeah. We, we had a big laugh about that beforehand about, you know, how stupid, how dangerous that proposal was.

All right. And then if we go to page 107, you're submitting a quote to TCQ here, michael@tcqconstruction. Do you see that, on 10 October 2019. Do you see that?---So I sent an email on 26 September to Michael, did I, by the looks of it, for the buried containment and then I sent another one on 10 October to be considered in conjunction with it.

Yeah. So can you explain that? Because there's only one quote which
30 follows which starts at - I'm sorry. Just bear with me one moment.---Can, can you show me the - - -

Page 108. So, there's a quote for the above-ground electrical containment works for \$237,900.---Yeah.

Was that accepted?---No. This is to do the electrical. So the first bit was the electrical containment and this is the electrical work. So a mate of mine was an electrician and he was looking for a bit of work at the time and he did a bit of work on the railways and I was going to basically partner up
40 with him to deliver this if we got it, but we didn't.

And was the quote that you provided in relation to the buried containment works, was that the same quote that we saw on page 76, which is the - sorry, 78 - the "To whom it may concern" quote for \$448?---So this is a different scope.

Is that this quote for - - -?---These, these two things are two different things. One is the pipe, the other one is the cable. To be very blunt, like, it's obviously, it's 600 linear metres of pipe between roads of, where you've trains running all day long, live overhead powerlines and then this is
10 basically supplying all the electrical componentry and wiring everything up.

So, just to summarise here. So you provided this quote that's on the screen now, that's page 78 of the volume, and then - - -?---I don't see the page number when you say page 78.

Oh, that's all right. It's just for the transcript.---All right, okay.

Just so it's there.---Yeah.

20 You can see it down the bottom there. Do you see that one?---Yeah.

The bottom right.---Okay, yeah.

And then the next day you've received the O'Connor methodology from Mr Vardanega.---Okay.

And I think, in fairness to you, you may have submitted the quote to, we'll just check, at page 107, the timing, you provided the containment quote to michael@tcqconstructions at 7.59am. Do you see that?---Yeah. 7.59am on
30 26 September.

And that was before you'd received the PJ O'Connor materials?---And the other thing is the, the, the PJ O'Connor methodology was completely different to what we proposed. We, we basically went with a real simple solution using mechanical wheelbarrows and small excavators and hand digging the majority of the trenches, so we changed our - sorry, we didn't change. We did something completely different to, to using telehandlers to take things out.

40 So is your evidence that this was all aboveboard insofar as you were tendering for these works?---Look, I, I'm not, I'm scared to say something

like that in case I'm accused of lying or something, but my understanding of what was going on here was that Ben had a mate in Sydney Trains who was delivering a job and they, they had a contractor who already had the work and they were trying to find somebody to deliver it. I didn't, I didn't see what the, the big - - -

All right. You didn't see what the big deal was in this. Is that - - -?---I don't know.

10 Okay. Can I ask you this, then. A kickback was paid to Mr Vardanega, right?---Yeah, like, a finder's fee - - -

Yeah. If this is all aboveboard, why do you have to pay him a kickback for?---Well, a finder, like, if, if he hadn't have given us, like, a referral or send it through to this other company (not transcribable) we'd never find the work. I didn't, I didn't see him as a public official.

But he was. He was working for Sydney Trains, right?---He was working with me at ARCH, doing work through his company ProjectHQ.

20

But he was also working for Sydney Trains, wasn't he?---As (not transcribable) look, he was, yeah. He was, like, that's not where I met him, though.

Yeah, but you paid him, how much was it? Was it 25 or \$40,000 cash?---I don't know, I'm not sure what was paid, Tony gave me money, I gave it to him. I didn't, I didn't actually count it. I don't know what - - -

30 But this was at a golf day, wasn't it?---I think so, yeah. I think it was, I, through, he had a, his company ProjectHQ had sponsored it or something?

Yeah. Do you agree it's an awful lot of money to hand to someone in cash?---We, we did all right in this, here, like, we, you know, like, TCQ never raised any issues about giving us the work. They seemed all right with it - - -

40 Yeah, look, I'm not going to say anything adverse about your skill and expertise in delivering a project, Mr Cox. You don't have to worry about that. We're looking at the process by which these contracts were awarded. And, in this case - - -?---But it was awarded by TCQ. They're the ones who gave it to us.

But in this case, a substantial kickback, I suggest to you, in cash, was paid to Mr Vardanega, who was working for Sydney Trains then?---He was part-time at Sydney Trains, he was part-time at ARCH and where I met him was at ARCH. And the company that we were working for was a subcontractor to Sydney Trains, who already had the contract. They were trying to find somebody to deliver the work. I didn't see it as a kickback.

10 All right. So this was a commission, a finder's fee, you called it?---Well, I don't know.

Was it a commission payable to Mr Vardanega for finding you the work?
---It was some money, I don't know - - -

Do you agree it was a commission payable to Mr Vardanega for finding you the work?---Yeah.

Okay. It was paid in cash?---Yeah.

20 It wasn't disclosed? You didn't tell TCQ that you were paying him this money, did you?---No.

And you didn't tell Sydney Trains?---No.

Okay. And so is the distinction you're drawing that because you didn't think of him as a Sydney Trains employee, it was okay to pay him that undisclosed commission?---But the Sydney Trains, I, like, I don't know the work was awarded but did Sydney Trains awarded us that work?

30 Sorry?---Did Sydney Trains have any influence - - -

No. No. Can you answer the question. Are you drawing a distinction that it was okay to pay him that money in those circumstances, an undisclosed cash commission, because you didn't consider that he was working for Sydney Trains at the time?---I, I guess I didn't really consider what I was doing. I don't know.

40 Well, what about right now. Do you say it's okay to pay someone an undisclosed cash commission irrespective of whether they work for a public or private enterprise?---No, it's, it's not okay.

Okay. And did you hold that view at the time?---I thought, I thought as, like I said, it's all that finder's fee, you know. It was work we never would have got. We never knew nothing about it. He's obviously, I don't know.

All right. Can exhibit 69, extract 2, please - - -

THE COMMISSIONER: Just on that.

MR ENGLISH: I'm sorry.

10

THE COMMISSIONER: So you see Mr Vardanega's position at Sydney Trains as having absolutely no relevance to you getting this work?---I didn't, at the time I didn't think that he had anything to do with, like, it wasn't his project. I thought all he had was basically say, "Here's a company that you should speak to."

The question I asked you is did you see that Mr Vardanega's position at Sydney Trains was of absolutely no relevance to you getting this work? That's the question I asked you.---Well, okay. Can I, if he hadn't been working at Sydney Trains and he had put that, you know, he spoke to the project manager and said, "Here, speak to these guys," we probably still would have got the work.

20

That's not an answer to my question.---I, I thought the reason we got the work was because we put in a competitive price and we proposed a good methodology and we delivered it. That's, you know - - -

And Mr Vardanega's position at Sydney Trains was of absolutely no relevance. Is that how you put I think?---Yeah. Yeah. I didn't think it, it was relevant, his position in Sydney, you know. I didn't think it was relevant 'cause I thought he was a contractor for ProjectHQ that was doing something at Sydney Trains but it wasn't that project.

30

All right. Thanks.

MR ENGLISH: Chief Commissioner, if extract 2 of exhibit 69 can be played. Perhaps if the transcript can be brought on the screen first and then played. This is the second part of that same call from I think 2 June 2020, Mr Cox. And the extract is from 11:41:01 to 11:42:06.

40

MR ENGLISH: All right. So that's you in this call on 2 June 2020 saying you paid Ben 40 grand in cash or something. Do you see that?---I, I don't think it was that much. Look, I don't know.

10 Well - - ?---I actually said "or something" at the end of it, you know. If I thought this was being recorded I might have been a bit more accurate with my figures.

Sorry. Well, the golf day was on 6 March 2020.---Was it?

Yeah. If volume 13.2, page 125, can be brought up on the screen, please. 13.2, page 125. Do you see, so this is the Permanent Way Institution 17th Annual Rail Industry Golf Day, do you see that, Friday 6 March 2020.--- Yeah.

20 And if we go down to page 128, please, you can see there down the bottom your names are identified on there, do you see that?---Yeah.

With also Mr Dunlop, who was Mr Vardanega's - was he his manager, to your understanding, at Sydney Trains?---I think they were friends.

All right. You didn't know that he also worked at Sydney Trains, Mr Dunlop?---No, he did. He was, he was the project manager.

Yeah, yeah.---Yeah.

30 Okay.---But - - -

So then just coming back, so on 2 June 2020, you say in a phone call to Mr Nguyen that you paid him 40 grand or something, cash.---I don't know what the figure. I don't, I'm, I don't think it was that high.

You're not one to make up figures to your business partner, are you?---No. I, look, I don't know. I'm not sure what the figure was.

40 You're not prone to exaggeration, are you?---I, look, I don't think it was that much.

All right.---I'm not sure. I don't know. If I knew, I, I swear, if I knew, I'd tell you. The difference between 40 and 25 in relation to paying somebody is probably not that - I, I don't know what, I don't know what it was.

All right. And then Mr Nguyen said in that call, you might recall, "Fucking, then, then we, we took cash out as well for ourselves and that's it then." Do you see that, or do you recall that, rather?---Is that on the - - -

10 That's, if we go, yeah, if we can go back to Exhibit 69, page 4. You see that there, the last entry for Mr Nguyen on the page?---Yeah.

"Fucking, we took cash out as well for ourselves and that's it then." Is that something you'd do with the money that was in the RJS account, take cash out for yourselves?---Tony, Tony used to, like the, all the, all these, like the money that was given to Ben and Kevin Watters, Tony, Tony sourced that, like.

20 But it's suggesting money was taken out from a project. Is that what would happen? Sometimes you'd take some cash money out of a successful project?---Yeah, Tony would give me cash sometimes.

All right. And how much was that, do you recall, that was taken out from the Macdonaldtown project?---I honestly don't know.

Okay. If we can go back, please, to - perhaps if we start with volume 1.5, page 406, Exhibit 35. You've got there the split for this project being, between you and Mr Nguyen, \$96,181.63. You see that?---Yeah.

30 And if you go to the left-hand side you've got BV Mac. Do you see that? ---Yeah.

Is that Ben Vardanega?---Yeah. But I don't, I don't know what this means, the - - -

Well, it's your spreadsheet. Can you assist?---Yeah, but I, I don't know what the - 245 (not transcribable) I don't know what that means.

40 THE COMMISSIONER: Doesn't that mean Macdonaldtown?---Oh, yeah. That probably means Ben Vardanega Macdonaldtown, but the three numbers underneath it, I don't know what they mean.

MR ENGLISH: But you created the spreadsheet.---Can you put it up in spreadsheet format?

You mean in the Excel file?---Because it might have functions or something on it.

Okay. We might be able to do that. I probably can't do it right now. And below that you've got, this is for Lithgow, Three Amigos. Who is that a reference to?---That would have been Tony, Nima and Abdal.

10

All right. And then if we can go, please, to volume 7.4, page 1. You might recall we were looking at the amount there, 172,092.80, before the break. Remember that?---Yeah.

And you said, "Is there an invoice?" Well, I've located the invoice, or actually my instructing solicitor has. Perhaps if that can be brought on the screen. It'll need to be tendered.

THE COMMISSIONER: This is the one of 23 January?

20

MR ENGLISH: It is, Chief Commissioner, and I'm sorry I don't have a hard copy of it at the moment. So there you can see what's identified as comprising those monies. So Kingswood concourse works, Kingswood platform works, Lithgow finishing works and North Strathfield Station. Do you see that?---Yeah.

Does that accord with your recollection now?---Yeah. Yeah. So that's, I don't know, this is - what's the question, sorry?

30 Does that accord with your recollection? You said, "When I see the invoice I'll be able to tell you".---I really, there's the 172 and there's the split of what it's made up to be.

And if we go back to page 1, please, of volume 7.4. The next payment in time is on 29 June 2020. That's item number 23 for \$198,000, that square amount. Do you remember what that was in relation to? And I don't have the invoice right now, I can try and locate it for you.---I think it was just a, a, sort of a ballpark number.

40 You just sucked your index finger and placed it in the air?---So I think, I think that one is related to the next one. So see the one for 676?

Yep.---I think the two are related. So the first one was a sort of a ballpark figure and then the next one is basically a correction. So if you have a look at both of those invoices there might be some sort of correlation between the two.

I'll have to try and find them for you but - - -?---Yeah.

10 So when you said it was a sort of finger in the air type of calculation for 198,000, is this in relation to the Wollstonecraft job or does that include Macdonaldtown as well?---Wollstonecraft wouldn't have started at that stage, would it? No, this was probably more, this would have been more - - -

I think you might be right there.---The - okay.

20 All right. We'll endeavour to find that invoice for you. Now, on or around 27 February 2020, Mr Vardanega added RJS Infrastructure to the Sydney Trains supplier system. That was pursuant to your, your request. Do you remember that?---Yeah.

THE COMMISSIONER: Sorry, added who?

MR ENGLISH: Sorry, RJS Infrastructure to the Sydney Trains supplier list.---Yeah.

Did you get any work? Did RJS Infrastructure get any work?---No. No.

30 Okay. And what was the discussion you had with Mr Vardanega about that?---Oh, I don't know. I think, I just thought maybe if you get on that platform you might be able to tender some work. I don't know. I can't remember but nothing ever came of it so - - -

Okay. And the Macdonaldtown job was subcontracted out to Ballyhooly. Is that right?---No.

40 No.---The, it was, it was managed. So basically it wasn't, when you subcontract something out what you're doing there is you're passing on the risk, right.

Oh, okay.---So when you're doing something, that would have been sucking me thumb, finger in the air, working out how much I think that job's going to cost. It's a gamble, right. If they had a, a production, that's basically all, all that work was, how much money we, we make on that work is dependent on how many metres in the ground you get done, 'cause that job's all about metres in the ground. But all Ballyhooly were doing was providing the plant and labour. If they hadn't, you know, if they hadn't had done very well, then we were going to, you know, like, say, say they had have done half the metres that they got in, in a day, then it would have cost twice as much and we wouldn't have made any money.

So the, the contractual risk remained with RJS Infrastructure and there was a labour-hire agreement for - - -?---Yeah, I don't know if there was any sort of, like, the rates probably were verbally agreed but that would have been about the height of it.

Okay. In relation to the North Strathfield job, how did that come about? ---North Strathfield, I think, God, I don't know, off the back of the work at Kingswood I think maybe Kevin Watters might have contacted to me or something, to, to tender the work.

All right. And were you responsible for quoting that job?---I quoted it a few times.

Yep. So if we can go to exhibit 36, volume 1.6, page 306. That's the first quote, 30 September 2019 for \$34,209. Is that right?---Yeah.

And were you given any instructions by Mr Nguyen or anyone else as to how to quote this job?---I think, I'm not, I think originally it was quoted with, like, yellow tongue chipboard and vinyl as the, the, the finish. Is there a list of assumptions at the back of that?

If we can scroll down. I'm not, yeah, there is.---Yeah, this would have been, originally quoted was chipboard, so it's a thing called YELLOWTongue chipboard, or Red Alert, so it's basically a chipboard floor with vinyl on the top. That's what we priced.

All right. And if we can go to page 313, please. On 17 October 2019 you can see there's a further quote, this time for \$45,107. Do you see that? ---Yeah.

And why was there that, the need to provide a second quote? And you can go down. There's the scope of works on page 314. If you can go down to page 314, please. Scroll down a page.---I think there was a set of drawings that were provided at that stage and it was, but, look, there was, there was a site meeting and between the original quote and that quote where I went through it with Kevin Watters. I think there was, I think there was a set of drawings provided but he also said that, because I think I would have had a number about, I don't know, 40 or something or 40 something, but he said, you know, put a few extra in for him and we'll get the job.

10

All right.---So the, the price was going up anyway because there's - - -

Changing scope.--- - - - a more defined scope.

Yep.---But, and like I don't think that would have even covered the cost, the, the price here. But on a - - -

The 45 figure, 45,000?---I don't think it would even cover the cost of the work. In the end, what it actually cost was higher than that figure there.

20

But there were variations, and we'll come to that.---Yeah.

So where were you - just tell the Commissioner, as best as you can recall, please, where you were, when it was in this discussion that you had with Mr Watters.---So I think there was a site meeting and went down and had a look at the room and after that went up to the Downer's offices and had a discussion with Kevin about the work and he didn't say anything, but then when I was driving off, or maybe I'm not sure if it was shortly after or, you know, but some stage that day I got a message to say, "If you put a few extra in for me," or something like that, "you get the work."

30

Okay.---Something like that.

And did you pass on that instruction from Mr Watters to Mr Nguyen?
---Yeah, I told him about it.

And what did he say?---So we wanted the work.

So, what, he agreed, he just said do it, did he?---We wanted the work.

40

All right, and did - you wanted the work. Did you end up paying money to Mr Watters?---Yeah.

Do you recall how much?---I don't know, maybe about, I don't know, I, I don't know, about six grand or something. I don't know what it was. Something in cash.

Whereabouts?---In a, a car park in North Strathfield.

10 THE COMMISSIONER: Who paid it? Did you pay it?---He, Tony gave me the money, I gave it to, gave it to Kevin.

MR ENGLISH: Did you have a discussion, was it in a bag?---I don't know, can't remember.

Okay. Did you have a discussion with Tony about how much he'd given you?---You tell me, I'm not sure. Possibly. He, he would have gave me money and I gave it on. I don't - - -

20 THE COMMISSIONER: Sorry, I just want to clarify a couple of things. What car park was this at?---It was a car park in North Strathfield.

Yeah, whereabouts?---It was in, I think it was in an underground car park in, in, on, on the main street.

Sorry, yes.

MR ENGLISH: So that's now Mr Vardanega and Mr Watters who you provided cash to.---Yep.

30

And on your evidence without ever truly understanding how much was provided over.---I don't know exactly, look, you're asking me about something that happened three or four years ago and I never actually physically counted the - but it could have been, I don't know, maybe six, some, maybe eight. I don't know, I don't know what exact number it was.

But you've said Watters said, "Put a few in there for me," and - - -?
---Something like that, yeah.

40 But you've given him more than a few.---Yeah, I don't know, Tony gave me the money, I gave it to him.

But you're splitting the profits with Tony. Don't you have an interest in understanding how much of your profit's being paid to people by way of kickback?---Yeah, but what we're talking about happened about three years ago, four years ago.

Yeah?---I don't, like, I can't remember the exact figure that was given to him.

10 All right. And what did Mr Watters say to you when you handed him that money?---I don't know. I, I don't think there was much of a discussion.

Did he ever say anything along the lines of, you know, I'll make sure you guys are now looked after on this job or anything like that? I'm not suggesting he did. I just want you to tell the Commission if that happened? ---I don't know. I honestly don't know, but, I don't know. I can't remember. If I remembered it, I'd tell you.

All right. Do you remember variations for this job?---Yeah.

20

Can we go please to volume 1.6, Exhibit 36, page 425? So there you can see the original subcontract sum and the variations issued. So the original subcontract sum is \$51,007 and the variations are \$46,735. Do you see that?---Yeah.

30

Do you remember what those variations were on account of?---Well, so I think pretty much straightaway we started the work, we stripped the floors out and we uncovered hard stone from about the 1800s, so automatically changes the goalpost, right. It's, it's now like state heritage and this thing was stuck right in the middle of where the floor was to go. So there was a few things in relation to that, but, like, I think the first, I think there was, then it had to, I think the drawings or something then had to go to a bunch of people for approval or something. And I think there was, we were told you have to have this finished by this time, it was really critical to have this finished and have this station open, right, and youse have to start on this date. So we turned up onsite, about five of us turned up on a Monday and we didn't get going till, like, I don't know, about the Friday. So there was, there was issues with the discovery of that hard stone - - -

So these were legitimate variations, were they?---There was, there was more, I've got tons more. There was, the walls, the walls were discovered to have lead paint on them and - - -

10 So it might assist if we go to the next page?---The walls were discovered to have lead paint and, basically, we had to, there was a hygienist removed the lead paint off the walls. But then the soil all become contaminated, so, and there was something in relation to ventilation. So the soil all had to be lowered but the, the spoil, and I remember 'cause I took it out myself, bloody, with hazmat suits on, night shift, carried it out, bucket by bucket, to a skip. It was restricted waste for the, the, the spoil, which is, like, you know, the most - so, anyway, then you had the cutting down of the piers. The piers were all too high because the floor was getting lowered. Then we had to top point the whole perimeter of the building. And the original job was supposed to take three weeks and it took about three months.

All right. So these were legitimate variations?---They're, like, yeah, they're, it's all, there's, it was all, yeah, it was all variations, yeah.

20 And was the cost inflated in relation to any of them?---I don't know if, look, you know, like, three weeks to three months, there's going to be inflation in the, in the cost.

Okay. So there's going to be some inflation in what?---Well, like, I'll tell you how you, I'll tell you if you, you've been going to that spreadsheet of mine. Have you got, can you go to that for a second now?

30 Yeah, that's 1.5, page 406.---So North Strathfield we said here cost to date at this stage was 58,000.

Yeah.---And then the certified date was about 98. So basically not including, this doesn't, this, this profit doesn't include physical work. You know, I was out onsite for, you know, so, there's \$40,000 between the actual cost but it doesn't include any of my time.

Well, why is Mr Nguyen being paid more than you on your spreadsheet?---I don't know.

40 It's your spreadsheet though.---I know but I don't know. I don't know, I'm not sure what that's about.

THE COMMISSIONER: Well, you drafted it. Why did you put the figure in?---If you look at the - I don't know. It doesn't make any sense. Maybe - no.

Well, presumably it wouldn't have made any sense to you when you put the figures in.---Like, I, I didn't actually, I don't know why, I'm not sure. Maybe that was, at that point in time that's all they were being paid but maybe that changed later on or - I don't know. But what, what I do know is that I had the cost at \$58,000 and the claim was around 98.

10

MR ENGLISH: Is the discrepancy between you and Mr Nguyen reflective of you taking part of this payment in cash?---Oh, he might have gave me some cash. Yeah, that might have been it.

All right. Do you remember how much?---Oh, I don't know.

Did it seem like Mr Nguyen had a lot of available cash to you?---Yeah.

20 Did he ever tell you where he had got it from?---Yeah. He told me some, some project or something in the past.

Which project?---I don't know. Look, it was, it was either the, that Vic Street one or that other thing in Glenfield, the, I don't know, I was, I don't know what the - - -

So either Victoria Street transcription Glenfield he'd obtained at lot of monies paid by way of cash?---I think so.

30 Now, in relation to Wollstonecraft, how did that project come on your radar?---Wollstonecraft, so, how did that come on the radar? I would have been aware of, I would have been aware of the, through the TAP site investigation I would have been aware of the design and development for the projects that were coming up for the next round of TAP. That would have probably been the first time it came on my radar.

40 So you were scoping out stations that needed to have some works completed in relation to that site scoping investigation, is that right?---So the, so as part of the design and development for the stations you'd probably get a, like, a concept design and then they would develop it through to, like, so we could go 30%, 70 or 100 and between 30 and 70 you would do investigation works to develop the design. So the investigation works would have been

the site investigation and I coordinated a lot of that. So, I was aware of some of the stations.

Could I ask you this? You were awarded that package by Downer, correct?
---Which one?

The site investigation package.---No, no. Arcadis.

Arcadis.---Yeah.

10

To your understanding were people from Downer aware that you were performing that work for Arcadis?---Oh, yeah, they would have, yeah.

Who would have and how?---Oh, anybody that we come into contact with onsite.

Project managers?---Yep. Yeah.

20 And were those project managers that you came into contact with onsite when you were performing the site investigation work, were they also aware that you were a part of a subcontracting organisation to carry out works for Downer?---I don't know. Sorry, what was, what's the question there?

30 The project managers you came into contract with onsite when doing the site investigation works, were they - - -?---They were, so basically with those site investigation works, basically, I engaged, like, a surveying company, a geotech company, a utility-locating company, and then all the hi-rail access gear that you'd require to facilitate those different companies getting all their gear up onto platform islands and side platforms to undertake the work. So they, you know, it's a sort of a, it's like, it's the sort of activity that nobody really would be a specialist in.

Okay, just focus on the questions here if you can. Did you do a site investigation for Wollstonecraft?---No.

Okay. What stations did you do a site investigation for?---Banksia, Rosevale, Roseville, Rose something, and Canley Vale.

40 Was Birrong included as well?---Birrong, Banksia or Birrong, which, Birrong, I don't know, actually. I can't remember which one it was.

And RJS Infrastructure ended up tendering for some of those stations. It might not have been successful but it tendered as well for the subcontracts. ---Yeah, but, look, the, the two things aren't, if you think it gives you a comprehensive advantage, it doesn't.

I'm not suggesting that at the moment.---Okay.

But just as a matter of fact RJS Infrastructure tendered for Canley Vale, didn't it, a package at Canley Vale?---Yeah.

10

Banksia it tendered for?---I say we probably tendered on a lot of things, you know, just casting out wide and see what comes in.

Roseville, did it tender for Roseville?---Possibly, yeah.

And Birrong?---Maybe.

All right. So in the course of carrying out the site investigation, you found out about the Wollstonecraft project.---I, but look, you know, you would have known about it anyway, I'm sure.

20

Well - - ?---But, like, so then I think Ben, Ben at some stage was looking for me to come and he wanted to tender some of the work and he was looking for me to come and give him a hand.

This is Mr Vardanega?---Yeah.

So he wanted to, where was he working at that point, do you recall?---Don't recall.

30

So he wanted to do some work on the Wollstonecraft job?---Yeah.

How had he learned about it?---Probably through, I think he had a good relationship with the project manager, Andrew Gayed.

Yep. Okay, and so, what, he said to you, I want himself or ProjectHQ to do this work?---I think he was originally thinking he might like some of the work himself.

40 And did he price some of it, to your knowledge?---You know, he wouldn't have had the capability of delivering it.

But the question is did he price some?---I don't know, I don't know.

Okay. So he provided some information to you, did he?---I think he showed me something, all right. He showed me the, I think he showed me the budget or it might be somebody's price.

All right. Chief Commissioner, we'll probably have to play some more calls soon. I can hand up some more papers now if that's convenient.

10

THE COMMISSIONER: All right.

MR ENGLISH: This is a call with session number 04358 on 16 June 2020. And if extract 3 can please be played, which is the only extract on the transcript, but if that can please be played. And brought up, and if the transcript can be brought on the screen too, please. It's a call between Mr Cox and Mr Nguyen.

20 **AUDIO RECORDING PLAYED**

[12.56pm]

MR ENGLISH: Might that be tendered, please, Commissioner.

THE COMMISSIONER: Exhibit 70.

MR ENGLISH: 71 I think it might be, Commissioner.

THE COMMISSIONER: 70.

30

MR ENGLISH: 70. I'm sorry.

**#EXH-070 – AUDIO AND TRANSCRIPT OF
TELECOMMUNICATION INTERCEPT SESSION 04358 FROM
TONY NGUYEN TO AIDAN COX ON 16 JUNE 2020 EXTRACT 3
FROM 10.23.22 TO 10.25.39**

40 THE COMMISSIONER: 69 was the previous call.

MR ENGLISH: I must have overlooked tendering the Marble Arch invoice, Commissioner. I'll have that brought back on the screen and we can tender that separately. I'll just ask you some questions about exhibit 70 which is the transcript. Do you agree, Mr Cox, you're pretty active, it seems, here in trying to get Mr Vardanega on side to assist with the Wollstonecraft package?---Yeah, but prior to that he wanted me to come work with him.

10 Yeah, but you're offering him to become a partner in this deal, "If you can get it over the line." That's what you're discussing with Mr Nguyen.---
Pretty much, yeah. Yeah, that sounds, yep.

And then there's a talk about needing to involve Andrew Gayed because with Ben "we don't know the fella", that's on page 2. You've just gone past it, sorry. This might be a slightly different page transcript. See that there, "Cause without Ben we don't have Andrew Gayed," "Without Ben because we, we don't know the fella." Do you see that?---Yeah.

20 What were you contemplating doing with respect to Andrew Gayed there?
---I don't know.

You do know because if you - - -?---I guess, like, Andrew Gayed would have been the person that had awarded the work.

Yeah. So - - -?---So it would have been, like, saying, you know, Andrew Gayed, you sort of need him to give you the job.

30 Yeah, 'cause look at the next entry, "Know exactly from Nguyen, that's like Abdal and Nima but now," and you say, "Yeah." Do you see that?---Yeah.
Look, I'm not denying that I didn't know about Abdal and Nima, just didn't have any involvement with them.

But, but on your evidence you despised Abdal and Nima, correct?---Yeah, I didn't have any relationship with them.

But you despised them. You despised the fact you were giving them money just for passing on confidential information, correct?---Yeah. I, I didn't have any relationship with or, here.

40 But here you're trying to, to get Andrew Gayed to become like Abdal and Nima, correct?---I just wanted them to give us the job.

And, what, you'd pay them in, you'd pay them in return?---Just wanted to get the work.

But you'd pay them in return. That was what you were contemplating, wasn't it?---Like, it was, it was systemic in Downer. Like, everybody doing work. That was basically how they were getting it.

10 THE COMMISSIONER: Sorry?---It was systemic. It was, the whole, the whole, like all those jobs were like that, or at least that's what I understood to be the case.

MR ENGLISH: How did you form that view that all those jobs were like that?---Well, there was something funny with that company Dalski and - - -

Dalski and who?---I don't know, what's his name, Vlad.

20 Yeah.---And, like, Kevin Watters approaching us saying, "Give me money. I'll give you work." You know, it's, it's, the whole time. So I was just trying to get work. It was wrong. I get that, but that's what it was at.

And when you said it was systemic, were there any other examples of conduct that, that made you think it was systemic?---At that point in time or now?

Well, either?---Like, you know, things, just small things as well, like paying for Christmas parties and stuff like that.

And, and - - -?---That's, you know that's not right.

30 What was that? What's that a reference to?---Oh, I think we were asked to contribute to the Christmas party.

For Downer?---For Downer.

I'll come back to that. Can I ask you this, did you ever have any concern that if you approach someone like Andrew Gayed he might have rebuffed you and then reported your conduct to his superiors at Downer?---I don't know. I don't think I ever considered that.

40 You never thought that was a risk?---Never thought about that.

Okay. And I just, I'm assisted - - -?---Ben seemed to have a relationship with Andrew and - - -

Well, Ben was working for Transport for NSW under ProjectHQ at this time. Did you know that?---Yeah.

And you're proposing to bring him in on this scheme, you agree?---Yeah, but the scheme that you talk about is getting a contract and delivering work. You know, it's not like, like, we did get those contracts and we, we, you
10 know, there was a huge, huge amount of work. It might be, I might, in this hearing I'm talking about making 300 grand. That 300 grand was hard made. There was a lot of, lot of hard work behind that, or whatever it was, you know, but there was a lot of hard work behind it.

And what about further down where Mr Nguyen says to you "I'm going to pull 20 in paper. Do you want to split it?" and you agreed to go ten-ten. Is that an example of what you said before of Mr Nguyen seeming to have a reasonable amount of - - -?---Yeah. Money, yeah.

20 - - - available cash?---Yeah.

And he says, if you can see there, "Oh, I thought I would reduce the tax and then they had this plan a whole back." Do you see that?---Oh, yeah, yeah.

Do you know what he's talking about there?---Possibly, I don't know, mmm. "And he has it ready for me." Somebody has money ready for him, I guess.

30 Sorry, what was that?---Somebody has money ready for him.

What does that mean?---Dunno. Tony was always good at getting cash.

But how does pulling out 20 reduce tax, in cash? What was your understanding of that?---Well, I suppose if you have less income then you've got less - - -

You pay less tax.---Yeah.

40 But if it goes into the bank account of RJS, what does it matter if you pull out 20? It's still gone into the bank account, it's taxable income. Do you agree?---Yeah.

So, what, was there some other mechanism to your understanding Mr Nguyen had to pull out cash?---Possibly through a friend or something. I'm not really sure.

If that's a convenient time, Commissioner, but just before that I might have that document that I meant to tender brought on the screen and if it's convenient that can be made Exhibit 71. That was the invoice from Marble Arch. It's just on the screen there, dated 31 January 2020. Might that be
10 tendered, please?

THE COMMISSIONER: Exhibit 71.

**#EXH-071 – INVOICE FROM MARBLE ARCH TO RJS
INFRASTRUCTURE DATED 31 JANUARY 2020**

MR ENGLISH: Thank you, Chief Commissioner.
20

THE COMMISSIONER: We'll adjourn for lunch and resume at 2 o'clock.

LUNCHEON ADJOURNMENT

[12.08pm]