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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE JOHN HATZISTERGOS AM  
CHIEF COMMISSIONER

PUBLIC HEARING

OPERATION HECTOR

Reference: Operation E19/1595

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 27 MARCH, 2023

AT 2.00PM

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

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

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

Thank you. Yes.

10 MR ENGLISH: Thank you, Chief Commissioner. If volume 1.9, page 3 could be brought on the screen, please. It's exhibit 39. You can see here it's an email, down the bottom of the page, from Mr Vardanega, this time at his ProjectHQ email address, to you on 8 July 2020. Subject Wolly or Wolly. Do you see that?---Yeah. Yeah.

That's for Wollstonecraft.---Wollstonecraft, yeah.

20 Yeah. And he says, "Aidan, Excel sheet and drawings, Friday, Club Burwood at 2pm. Dropbox for SDR. Apparently is a lazy title change so not worth it. DDR coming Wednesday." Can you explain what that message means, particularly the acronyms?---It's just a link to a set of drawings. SDR is substantial detail or substantial design review or something and DDR is detailed design review, I think, something like that. It's just like a different stage of the design development.

Okay. So these are the design materials for Wollstonecraft?---Yeah.

And would they ordinarily be supplied to a prospective tenderer?  
---Normally the design would be supplied at the tender stage.

30

When you say the design, is that the SDR or the DDR or both?---So I suppose it depends what stage that the (not transcribable) tender at.

Okay. So you're getting a head start here, are you?---Yeah, I think that this was probably when Ben was considering pricing some of the stuff himself and he was looking for me to give him a hand.

All right. So did you go to the Burwood Club two days later on 10 July and discuss these matters?---Probably, yeah.

40

He brought a computer with him, Mr Vardanega, did he?---I honestly, I, I can't remember but I'd say we probably sat there and looked at the drawings.

Yep. All right. If volume 21.1, call 1.11 can be brought on the screen in the transcript, please, and I will provide a copy to you, Chief Commissioner.

THE COMMISSIONER: Thank you.

10 MR ENGLISH: About to have that played, if that could be tendered, please.

THE COMMISSIONER: Yes. That will be exhibit 72.

**#EXH-072 – AUDIO AND TRANSCRIPT OF  
TELECOMMUNICATION INTERCEPT SESSION 06480 ON 11  
JULY 2020 AT 11:55:31AM FROM AIDAN COX TO TONY  
NGUYEN**

20

MR ENGLISH: This has a session number 06480 and it's a call on 11 July 2020 between Mr Nguyen and Mr Cox. If that can be played, please.

**AUDIO RECORDING PLAYED**

**[2.15pm]**

MR ENGLISH: Trying to steer Mr Vardanega into getting Mr Gayed, the project manager from Downer, to come in on your corrupt scheme?---Yeah.  
30 We would have been trying to, I think by the sounds of it, get pricing and get contracts.

Well, you already got the pricing because on page 4 you say you had - - -?  
---I mean the competitors.

You're trying to get competitors' pricing, are you?---Yeah. It sounds like it, hey?

40 So you - - -?---So basically once you - - -

You've got the bills of quantity already, is that right, here?---Must have. I thought it was only drawings because that's what those two things, refer to DDR and SDR, but we must have had the budget as well at that stage.

And now you're trying to get competitors' pricings as well?---Sounds like it, yeah. Because if you have that then you know what price then you can go in at to win the work.

10 That's right. And on page 5 you say, bottom of the page, yeah, there, "I said 'It doesn't make any sense because you need to actually bring something to the table for that to happen.' So I said this is, I said, 'I tell you, this is what we want. We want you to get Andrew Gayed onboard'".---Basically he gives the, because he's got the power to, to award contracts, I guess.

Yep. "He said, 'He's onboard'. I said, 'Well, not really'". And then you said, "He's onboard when the four of us, the four of us are sitting at a table talking about how we can maximise profit on this station." That's not very honest, is it?---No. That, it didn't happen.

20 Yeah but we're talking about your intention at the time.---Yeah. It's not good but none of this actually eventuated but it's obviously not good.

Then it goes on, you say, "And he's onboard when we're using him to fuckin' manipulate the tender to put it into scope and scare everybody off and then take them out but that'll be doing, taking the budget out or something." Do you see that?---Yep. None of that ever happened.

30 Yeah, but you gave evidence on oath before the Commissioner to say that before when you realised Mr Nguyen was using the Marble Arch quote for the purposes of the landscaping, you said that was too much because he was manipulating the tender. Those were your words.---At that time, yeah, I, I guess I had a, like, I just wanted to win this work and deliver this work.

40 So you weren't happy for Mr Nguyen to use the Marble Arch quote to manipulate the landscaping tender at Kingswood but you were more than happy to use Mr Vardanega and Mr Gayed to manipulate the tender for Wollstonecraft?---Yeah. But what I meant was basically - it's, there's, you know, I just wanted to get the competitor's prices and be able to put in the lowest price.

All right. If we go to page 6, please. Thank you. You see there towards the bottom of the page it's attributed to you, "If we can't get that man onboard then there's nothing for, but if you just get them onboard then there's probably a good opportunity, you know, to be another Lithgow." Do you see that?---Yeah.

10 You gave evidence before the Chief Commissioner that Lithgow was so profitable because you were able to use your skill to work out a way to do the job in an efficient manner. Do you remember that?---I, that, that was part of the reason it was profitable.

Well, that was - - -?---The other part, the other part of it was because the price was inflated.

Yeah. So here you're acknowledging that without someone on the inside you can't have another Lithgow. Do you agree?---Well, on this project we actually got the contracts and nothing was inflated on it and it still was very profitable.

20 Is this for Wollstonecraft, is it?---Yeah.

And RJS Infrastructure was paid in the order of \$4.6 million for the Wollstonecraft packages, correct?---Yeah, yeah.

And that's for platform, civil and FRP? Yes?---Yeah.

Station, civil and FRP?---Yeah.

30 And piling?---Yeah.

And then over on page 10, please. Mr Nguyen says to you there at about a third of the way down, he's talking about Vardanega, "Does he seem, did he, did he, does he know you've done this before?" And you say, "No, but I was, I was saying, I was thinking, shit, I could, something, to experience in this." Do you see that?---Yeah.

40 So is that Mr Nguyen suggesting what, you've cooked contracts up like this before, to your understanding?---I, I didn't do, I didn't cook the contract at Lithgow. I just delivered the work at Lithgow.

Okay.---So the experience I had at Lithgow I guess was association with Tony.

THE COMMISSIONER: Sorry? Say that again.---Experience at Lithgow would have been, like, the, the, like at Lithgow the work was awarded but there was like a provisional sum in there, and that provisional sum was probably, like, 'cause the contract was awarded it might be 30% or something and there was a provisional sum that was drawn down on. That's basically how the price was inflated. But, yeah.

10

MR ENGLISH: Just bear with me, please, Chief Commissioner. And you were subsequently told, weren't you, in relation to this, in relation to this tender for Wollstonecraft, you were told in relation to the four at one stage by Mr Vardanega, and I suggest on 2 September 2020, that you were told by him that "Out of the four station civils, it sounds RJS was smack bang in the middle." You were given that inside information in relation to that package, weren't you?---Which one, sorry?

20 In relation to station civils, Mr Vardanega told you that RJS was smack bang in the middle of the tender quotes or prices.---Possibly. I'll take your word for it.

So you were given this inside information throughout the course of the tender process by Mr Vardanega and Mr Gayed. Do you agree?---I'd say it was Mr Vardanega. Forgive me. I don't know that I had any conversations with Andrew Gayed and if I did it would have been probably through him.

30 But you knew information was coming from Gayed to Vardanega to you? ---Yeah. There's no doubt about it. We, the reason we got that work was because we knew where we needed to be in terms of the price.

All right. I just want to play you some calls involving - - -

THE COMMISSIONER: Just one moment, please.

MR ENGLISH: Sorry, Chief Commissioner.

THE COMMISSIONER: Yes, okay.

MR ENGLISH: Thank you, Chief Commissioner. You just agreed with me a moment ago that the amount paid to RJS Infrastructure in relation to Wollstonecraft was in the order of 4.6 million.---Yep.

How much of that was profit?---I'm, I don't know. Could we go to your spreadsheet?

You might recall the warrants were executed on 2 December, so the Commission doesn't have complete information in relation to  
10 Wollstonecraft, so - - -?---All right.

- - - I'm asking for your, to the best of your recollection, do you know how much of that was profit?---Do you not have a spreadsheet, though, that had RJS column and Wollstonecraft on it, no?

I'm asking you from your recollection how much of that was profit.---I don't know, it might be, I, I would have got half of whatever the profit would have been, so it could have been well over a million dollars, probably. But I don't, the profit is actually your time as well, because that  
20 project was, like I, like I would have spent 15 months on that project.

And you weren't paid a wage, were you?---No.

Okay. Was that a million dollars in total or a million each to you and Mr Nguyen?---Oh, no, it would have been - look, the invoices there where I could tell you if - - -

Yeah, I don't have the invoices at hand.---All right, okay, well, I don't know the exact figure, then.  
30

Okay. There's another call. I'm going to play you a series of calls relating to Mr Watters now. Chief Commissioner, I'll hand up a transcript. It's volume 21.5, call 1.1, session number 09539 on 19 August, 2020. It's a call between yourself and Mr Nguyen.

THE COMMISSIONER: Just going back to that last question. Do you know whether it was a million dollars each or whether it was a million dollars combined?---Ah - - -

40 I know you don't know the exact figure, but - - -?---I don't know the exact figure, but - - -

But surely you'd know whether it's a million or half a million.---Maybe six or \$700,000 each. The, the contract - - -

That's about 1.5 million all-up.--- - - - the contract scope was delivered.

I'm sorry?---But you know the, the scope was delivered and we did all the work so it wasn't like, it's not like we just got the money for nothing, like. There was a real concerted effort there in the delivery. Like, on any one of  
10 those possessions I walked maybe 60 kilometres and maybe had about eight hours sleep all weekend, you know. And that's only the possessions. The project went for a long period of time.

Was that the same for Mr Nguyen?---Yeah, he, he worked those possessions too, yeah.

MR ENGLISH: Chief Commissioner, might you make a section 35(2) direction for all outstanding invoices in relation to the Wollstonecraft project held by Mr Cox?  
20

THE WITNESS: Yeah.

MR ENGLISH: And that's invoices relating to, were you paid by Marble Arch or through Marble Arch?---I invoiced RJS.

So when you say I, do you mean Marble Arch?---Marble Arch, yeah.

Yeah, for those invoices, please - - -?---Yeah.

30 - - - from Marble Arch relating to that project.

THE COMMISSIONER: RJS Civil, is it?

MR ENGLISH: RJS Infrastructure.

THE COMMISSIONER: Infrastructure. Sorry.

MR ENGLISH: RJS Infrastructure Group Pty Ltd.

40 THE COMMISSIONER: Are you able to bring in those invoices from Marble Arch to - - -?---Yeah. I'll just send them with - - -



- - - RJS Infrastructure - - -?---Yeah.

- - - in relation to the Wollstonecraft project?---Yeah.

By 4 o'clock tomorrow?---Yeah.

10 All right. Well, I direct you pursuant to section 35 of the Independent  
Commission Against Corruption Act to provide to the Commission by 4pm  
tomorrow outstanding invoices issued by Marble Arch Pty Ltd to RJS  
Infrastructure Pty Ltd in relation to the Wollstonecraft Station upgrade.

20 **DIRECTION TO PRODUCE: I DIRECT YOU PURSUANT TO  
SECTION 35 OF THE INDEPENDENT COMMISSION AGAINST  
CORRUPTION ACT TO PROVIDE TO THE COMMISSION BY  
4PM TOMORROW OUTSTANDING INVOICES ISSUED BY  
MARBLE ARCH PTY LTD TO RJS INFRASTRUCTURE PTY LTD  
IN RELATION TO THE WOLLSTONECRAFT STATION  
UPGRADE.**

MR ENGLISH: Thank you, Chief Commissioner. Might the call I've just  
handed a transcript for be tendered, please?

THE COMMISSIONER: Yes. That will be exhibit 73.

30 **#EXH-073 – AUDIO AND TRANSCRIPT OF  
TELECOMMUNICATION INTERCEPT SESSION 09539 ON 19  
AUGUST 2020 AT 09:21:47 FROM AIDAN COX TO TONY NGUYEN**

MR ENGLISH: And if that could be brought on the screen and played,  
please.

**AUDIO RECORDING PLAYED**

**[2.47pm]**

40

THE WITNESS: I never made that phone call. That was me venting. The, there was - - -

MR ENGLISH: I haven't asked you a question yet, Mr Cox, but - - -?  
---Yeah.

- - - let me ask you this. That confirms, does it not, that the amount of money that was paid - - -?---Yeah, it was eight grand.

10 Was eight.---Yeah.

Does that accord with your recollection?---Look, it's eight in the call so it must be eight.

Okay. And it seems like you were of the view as at the date of this call, 19 August 2020, that in exchange for that eight grand Mr Watters owed you or RJS something. Do you agree?---Yep.

20 So when you gave evidence about just handing over money and you didn't know how much it was, that wasn't really accurate, was it?---Well, I, I, I wasn't really sure of the value. So, that there, you know, that, that's probably closer to the time. So the, or the, the number, I think I said six or eight.

Yeah. You were giving the impression it's just Tony handing you cash and you're giving it on. You're actually of the view that it's getting you something in exchange, this money, Mr Watters' influence or loyalty. Do you agree?---I'm not sure what the context of that call was but, look, it sounds like it was like work that - yeah, look, I, I suppose maybe there's an  
30 expectation that we get future work by giving them that money.

Commissioner, I hand up another transcript. This is volume 21.2, call 2.6, session number 03940 on 8 September 2020. I tender that.

THE COMMISSIONER: That's Exhibit 74.

**#EXH-074 – AUDIO AND TRANSCRIPT OF  
TELECOMMUNICATION INTERCEPT SESSION 03940 ON 8  
40 SEPTEMBER 2020 AT 08:48:31 FROM TONY NGUYEN TO AIDAN  
COX**

MR ENGLISH: The transcript and the call, as with all of these exhibits. And if the transcript can be brought on the screen, please, and then the call played. It's a call between Mr Nguyen and Mr Cox.

**AUDIO RECORDING PLAYED**

**[2.53pm]**

10

MR ENGLISH: So at the start of that call on page 1 you say, "Apparently we're cheaper than Maize by 200 grand." That's Maize Group, a building company, isn't it?---Yeah.

And so that's inside information you obtained in relation to the building package at Wollstonecraft?---Yes.

Who supplied that to you?---I would guess it came from Ben.

20 Ben Vardanega?---Yeah.

And you say then, "I'm going to say to Kevin Watters this morning we want everything, including building, and ask him why not."---Yeah.

See that?---Yeah.

Did you do that?---I, I'm not sure if I made that, I'm not sure if I made a call.

30 Okay. But ultimately RJS Infrastructure wasn't successful for the building package, is that right?---Yeah, I think we were told that we weren't going to get everything.

And who told you that?---I think it was Andrew Gayed.

And do you know whether Andrew Gayed had any association with the company Maize Group?---I had suspicions there was something, some sort of relationship there.

40 What were those suspicions based on?---Just the way they interacted.

That's it? Nothing else?---Well, I think we were told that we weren't going to get the building works on top of everything else so just put in a throwaway price.

Okay. The next call, Chief Commissioner, I'll hand up and it is volume 21.2 again, call number 2.6, extract 1, session number 4566, from 18.51.37 to 18.17.01. And the participants in the call are Mr Watters and Mr Cox. Could that be tendered, please, Commissioner.

10

THE COMMISSIONER: Exhibit 75.

**#EXH-075 – AUDIO AND TRANSCRIPT OF  
TELECOMMUNICATION INTERCEPT SESSION 4566 ON 10  
SEPTEMBER 2020 FROM AIDAN COX TO KEVIN WATTERS  
EXTRACT 1 18:15:37 TO 18:17:01**

20 MR ENGLISH: And if it could be brought on the screen and played, please. Chief Commissioner, I'm told there might be an issue with Webex. I'm just waiting to find out if it can be resolved. Chief Commissioner, we might need to take a short adjournment, I think.

THE COMMISSIONER: All right, we'll stand down for a moment, Mr Cox. I'll return when we've fixed up this issue.

**SHORT ADJOURNMENT**

**[3.59pm]**

30

THE COMMISSIONER: We'll resume.

MR ENGLISH: Thank you, Chief Commissioner.

THE COMMISSIONER: Mr Cox, you're under the same oath. Do you understand?---Yes.

40 MR ENGLISH: If the transcript for Exhibit 75 could be brought on the screen, please, and the call played.

**AUDIO RECORDING PLAYED**

**[3.32pm]**

MR ENGLISH: This call, Mr Cox, Mr Watters says to you about the middle of the page, “Just making sure we’ve all got coverage on that.” Do you see that?---Yes.

10 What did you understand he was referring to there?---I guess he was looking a kickback.

All right. And had you discussed that with him at a time prior to this call on 10 September 2020?---Probably.

Is this for Wollstonecraft?---I think maybe - - -

20 Well, it says Wollstonecraft. See he rings at the start and says “quick call about Wollstonecraft”?---Yeah. I possibly had a previous conversation. I honestly cannot remember. If I could, I’d tell you. And I’m not keen on listening to all these calls so I wish I could remember, but I can’t. I probably had a call or a discussion about it prior to this.

About paying a kickback to him in relation to Wollstonecraft, is that right? ---Yes.

And you say at the end, “As long as everything goes well, do you know we can all eat.” Do you see that?---Yeah.

30 When you say “we can all eat”, who are you including in the “all” there? ---Well, well, he’d made reference to coverage, so it’s just me saying we can all eat.

40 So I’ll ask again, who did you mean by the “all”?---To be honest, I don’t really know who, like, it was like, it’s hard, it was hard, I wasn’t sure who would want some form of payment for, because, like, I didn’t know if Andrew Gayed wanted something or didn’t. Ben was spending time onsite. He was doing like a, you know, he was doing a role there. I wasn’t really sure who wanted what. And, yeah, so, and, but what I meant in relation to that first possession is because the, the first possession had so much scope in it and I think we put our price together, we front-end loaded the activities

that were at the start of the project, so if it went well, then everything would go well.

All right. Chief Commissioner, if I hand up another transcript. It's another call. In fact it's the same call, this time session 4566, 10/9/2020, and the extract is from 18.17.57 to 18.18.29. Again it's between Mr Cox and Mr Watters. I tender that call and the transcript.

THE COMMISSIONER: Just a moment. Exhibit 76.

10

**#EXH-076 – AUDIO AND TRANSCRIPT OF  
TELECOMMUNICATION INTERCEPT SESSION 4566 ON 10  
SEPTEMBER 2020 AT 18:15:37 FROM AIDAN COX TO KEVIN  
WATTERS EXTRACT 18:17:57 TO 18:18:29**

MR ENGLISH: Thank you, Chief Commissioner. Might that call be played, or that call extract be played, please.

20

**AUDIO RECORDING PLAYED [3.38pm]**

MR ENGLISH: So just the words attributed to Mr Watters in the middle of the transcript. "That's fine, yeah, just making sure I can influence, I can influence it one way or another." What did you understand Mr Watters was seeking to influence there?---The award of the work.

30 Who to?---He can give it to one person or another, it's - - -

Yeah. And you understood him to be seeking to influence it in favour of RJS, did you?---Yes.

And he says, "Obviously have to try and pitch it your way. Keep all of us comfy, then that's good." What did you understand him to mean by "keep all of us comfy"?---He wanted a kickback.

40 Okay. Chief Commissioner, the third extract of this call, again on 10/9/2020 between Mr Cox and Mr Watters. The extract time is 18.20.18 to

18.21.13 and it's session number 4566. I'll hand that up and tender that when it's convenient to you, Chief Commissioner.

THE COMMISSIONER: Exhibit 77.

**#EXH-077 – AUDIO AND TRANSCRIPT OF  
TELECOMMUNICATION INTERCEPT SESSION 4566 ON 10  
SEPTEMBER 2020 AT 18:15:37 FROM AIDAN COX TO KEVIN  
10 WATTERS EXTRACT 18:20:18 TO 18:21:13**

MR ENGLISH: Thank you, Chief Commissioner. If that can be played, please.

**AUDIO RECORDING PLAYED**

**[3.41pm]**

20 MR ENGLISH: So in the first part of the call Mr Watters is saying to you, "I can shape that one as well because it comes up to the Project Team." And then at the end of that part of the conversation, he says, "I suppose I'm the last one of the roadblocks for these things for the guys at the moment." Do you see that?---Yeah.

What did you understand he was referring to there?---I guess they have some form of an approval process where different people sign off on the document. That's my guess. And he's probably the last person to sign it.

30 Yep. And then he says, if you go down two more entries to Mr Watters, just where the cursor is, "I'll let you come up then" - probably should say "with" - "an idea later on of what it's worth." What did you understand him to be saying there?---How much to pay him.

Yep. And you say, "I will work you here. Have I let you down in the past?"---That's probably me basically referring to the money that I gave him at North Strathfield.

40 Okay. And did you end up paying Mr Watters anything for Wollstonecraft?---No.

Did you discuss the possibility of paying money to Mr Watters in relation to Wollstonecraft with Mr Nguyen?---Yes.

What was that discussion? Can you tell the Chief Commissioner, please?  
---We're trying to figure out what he wanted because basically, you know, he basically, this, this phone call he rang me, saying, "Right, I'm going to approve these things. You can work out what I'm owed." So we had a conversation about what does he want, what's the expectation.

10 And what did you settle on, if anything?---I, I don't know that we did. I think it was round in circle type - I have no idea, like, you know, there wasn't a final. Basically what happened was after 2 December I think he rang me that following weekend and I just basically hung up on him. So there was never actually a - - -

Well, this is a call on 10 September. There's two and a half months before the warrants were executed. So did you have any other discussions with Mr Watters during the time about being, him being paid for Wollstonecraft?

20 ---Possibly. You're probably going to play one for me.

Can you remember any of them?---I, I don't, if, I wish I could. I don't remember.

Okay. Chief Commissioner, I hand up a transcript of an SMS message from 11 September 2020, session number 4759. The message was sent at 15.14.00. And might that be tendered, please.

THE COMMISSIONER: Exhibit 78.

30

**#EXH-078 – TRANSCRIPT OF TELECOMMUNICATION  
INTERCEPT SESSION 4759 SMS FROM KEVIN WATTERS TO  
AIDAN COX ON 11 SEPTEMBER 2020 AT 15:14:00**

MR ENGLISH: And if that can be brought on the screen, please. And it is volume 21.2 and it's SMS 2.7. So this is the SMS from Mr Watters. "Hey mate, Kev at Downer here (personal number). Approved the first 2.8M for you guys this morning. Have the rest in my approval queue. Good result  
40 for RJS. Make sure we're looked after well! Smiley face with a wink."  
You recall receiving this message?---Yep.



What did you understand Mr Watters was saying by this message?---He wanted money.

And what part of it conveyed that message to you?---“Make sure we’re all looked after well.”

Yep. And he’s used it looks like an emoji there. Did that convey a message to you?---No.

10

Okay. All right. Next call, Chief Commissioner, I’ll hand up is from 28/10/2020, session number 15118. It’s an extract from 17.31.10 to 17.31.46, call between Mr Cox and Mr Watters. I tender that, the call and the transcript.

THE COMMISSIONER: Exhibit 79.

20 **#EXH-079 – AUDIO AND TRANSCRIPT OF  
TELECOMMUNICATION INTERCEPT SESSION 15118 ON 28  
OCTOBER 2020 AT 17:31:10 FROM AIDAN COX TO KEVIN  
WATTERS**

MR ENGLISH: Thank you, Chief Commissioner. If that can be brought on the screen, please, the transcript, and then the call played. It’s volume 21.2, call 2.13.

30 **AUDIO RECORDING PLAYED** **[3.48pm]**

MR ENGLISH: So here there’s a reference, you say, “You’ve made a bit of money. I’ll look after you.” And then you say, “I’ll sort you out maybe at Christmas or something.”---Mmm.

Was that your intention at the time?---Aye, to give him some money, yeah.

40 And had you worked out with Mr Nguyen how much to pay him by that stage?---I don’t know that we did. I think the, I think it was like a running discussion as to what, what he wanted. There was an expectation that he

was going to be paid something but I'm not sure if we came on a final figure.

All right. And this is your, a reference to Christmas, and you gave some evidence earlier about being requested, that is RJS, was it, to pay for a Christmas function at Downer?---I, yeah, we were asked to pay for the Christmas party.

10 That's separate to what you're discussing here with Mr Watters, is that?  
---Yeah, that's different, yeah.

Who made that request of you?---I believe Andrew Bedwani.

All right.---Hang on. Hang on. Project director, I met him for lunch one day because he was, before the award to RJS of this project and he, he said something like, "I'm sure, knowing Andrew Gayed, he'll have sorted out the Christmas party," something along those lines, and then I believe Andrew Gayed may have mentioned it as well.

20 And what was conveyed to you about the request for RJS to pay for that function?---Like, they wanted us to pay for the - - -

When you say you think, did someone say something or did you just - - -?  
---Yeah. Yeah. Andrew Gayed onsite requested it.

What did he say, to the best of your recollection?---I, I wish my memory was better 'cause I can't remember.

30 Well, had he booked a venue or anything, to your recollection?---Possibly something about a boat.

Okay. And had any cost of that function been run by you?---I can't remember.

Okay. The warrants were executed in December, on 2 December, so - - -?  
---Nothing was paid, if that's what you mean.

40 Did you run, did you discuss it with Mr Nguyen that this request had been made?---Yeah.

What did he say?---I think we had a discussion around it.

And what did he say?---Well, I think the expectation was we were wanting to make some sort of contribution towards the Christmas party.

Some sort of contribution or pay for the whole thing?---I think we were paying for half of it and somebody else was paying the other half.

Do you know who the other person that was going to pay for the other half was?---I can't remember.

10

Somebody, would that have been another subcontractor?---Yeah.

Think about the subcontractors you worked with onsite.---Maybe, I'm only guessing here but possibly Maize.

Okay. Is that something, who told you that?---Possibly, like, I really can't remember but if that was, that, that vaguely rings a bell but I think Andrew Gayed.

20 Okay.

THE COMMISSIONER: So was this a private Christmas party for Downer employees or was this a - - -?---Yeah.

Sorry?---Yes.

So this was just a select group of - - -?---Downer employees.

- - - Downer employees were going to go on a boat?---Yeah.

30

I see.

MR ENGLISH: Chief Commissioner, the next item is an SMS from Mr Watters to Mr Cox. The date is 26 November 2020. The time of the message is 15.00.17. The session number is 19582. I'll hand that up, and for the operators, it is volume 21.2, TI 2.14. I tender that.

THE COMMISSIONER: Exhibit 80.

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**#EXH-080 – TRANSCRIPT OF TELECOMMUNICATION  
INTERCEPT SESSION 19582 SMS FROM KEVIN WATTERS TO  
AIDAN COX DATED 26 NOVEMBER 2020 AT 15:00:17**

MR ENGLISH: If that can be brought on the screen, please. Okay. So there you see Mr Watters saying to you, “Okay. I can almost guarantee the Birrong package now. I know Jason wants an improvement on price. Don’t drop much. You don’t have to. Keep it and cover you and me,” and it looks  
10 like there’s another wink emoji there. Do you see that?---Yeah.

All right. So when did you start discussing the Birrong package with Mr Watters?---Probably around November 2020. I think the, there was two packages that came out. One was for Birrong and one was for Canley Vale and Canley Vale was a civils package and Birrong was a building package and I think I had a phone call with him one day to ask him about the two packages and whether we could, whether we, whether there was the view that we could get both of them or one of them or - and I think I had a  
20 conversation around the fact that Birrong hadn’t had any hazmat survey, something or other along those lines, that was the conversation.

All right. And Birrong, that was one of your site investigation stations wasn’t it, from earlier on?---Yeah, but the hazmat investigation wasn’t part of the scope of the site investigation.

But you had some familiarity with the works that would need to be performed due to that previous job you performed for Arcadis?---Not, not really to be honest because the site investigation, it’s like using a surveyor with a, a specialised scanning instrument to scan the station, choosing the  
30 geotech company to do drilling. Like, it’s not, it doesn’t give you any - like, if you went and walked, if you went and caught a train to Birrong and walked around, you, you would have the same level of exposure.

Well, you wouldn’t have the geotech results, would you?---Yeah, but everybody tendering that would, I didn’t - when, when, I was managing the geotech I didn’t have the results. We were doing the geotech so it’s, you know like, everybody working on that would, would have had that level of information. It didn’t give us any competitive edge.

40 And who did you understand Jason to be, who Mr Watters said he wanted improvement - - ?---He would have been the project manager.

And he's telling you not to drop the price too much?---Yep.

And then "You don't have to keep it and cover you and me." What did you understand by "cover you and me" to mean?---Give him some money.

Did you speak to Mr Nguyen about the possibility of giving Mr Watters some money for Birrong?---I'm sure we did.

10 And do you remember what was said between you two?---It would have been a discussion around what he wanted.

Chief Commissioner, one more message from, this time, Mr Cox to Mr Watters, 26/11/2020 at 15.10.03. Session number 19586. I hand that up. For the operators that's volume 21.1, TI 2.15. I tender that.

THE COMMISSIONER: That will be Exhibit 81.

20 **#EXH-081 – TRANSCRIPT OF TELECOMMUNICATION  
INTERCEPT SESSION 19586 SMS FROM AIDAN COX TO KEVIN  
WATTERS ON 26 NOVEMBER 2020 AT 15:10:03**

MR ENGLISH: Thank you, Chief Commissioner. So there you can see you say to Mr Watters, "Shit, we put a provision sum in for floor removal based on timber. It's concrete, conformed today. We were going to increase price by 6 K. Will this knock us out of pole position?" Do you see that?---Yeah.

30 So you're asking for Mr Watters to give you some information by reference to confidential price submissions that he already knows from other tenderers?---Yeah. It looks that way, yeah.

The next SMS is from 26/11/2020 at 15.23.09. Session number 19587. Message from Mr Watters to Mr Cox. I hand up a copy, if you would be kind enough to tender that, please, Commissioner, or give it a marking.

THE COMMISSIONER: Exhibit 82.

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**#EXH-082 – TRANSCRIPT OF TELECOMMUNICATION  
INTERCEPT SESSION 19587 SMS FROM KEVIN WATTERS TO  
AIDAN COX ON 26 NOVEMBER 2020 AT 15:23:09**

MR ENGLISH: Thank you. If that can be brought on the screen. Mr Watters says to you “Not quite but will be very, very close. If it goes up by 6 K would be good to sharpen a little elsewhere to soften the blow.” Do you see that?---Yeah.

10

Is that some advice - let me ask you this. Did RJS Infrastructure submit a quote for Birrong?---I think we would have put a quote in for both Birrong and Canley Vale, but shortly after decided to pull out of both those two tenders.

Yep. Did this - - -?---After 2 December.

Sure, after the search warrants.---Yeah.

20

But was this information that was used to prepare those quotes?---Well, yeah, ‘cause like he was saying don’t drop your price and I’m thinking, well, the price needed to go up because of the issue with the floor, and he’s saying they can go up a bit but not too much. So it would have influenced -  
- -

Would have influenced the tender?---The tender, yeah.

30

Can I just ask you one other question about Dalski. Did you hear anything about workers from Dalski hitting a powerline or anything at a particular site?---I think I have some sort of a recollection of this but I’m not entirely sure. I don’t know whether I heard it or - did they hit a powerline at Kingswood?

I’m not sure. I’m just asking.---I don’t know.

You don’t know? If you don’t know, that’s fine.---I, I, I don’t know.

Okay, all right. Thank you, Chief Commissioner, that’s the examination and I note the time.

40

THE COMMISSIONER: Yes, all right. Now, there's been a request, as I understand it, to cross-examine Mr Cox.

MR ENGLISH: There has been a request to cross-examine.

THE COMMISSIONER: We'll have to do that tomorrow. So, Mr Cox, you'll need to come in tomorrow.---Sorry?

You'll need to come in tomorrow.---Oh, come in tomorrow.

10

There'll be further evidence that you'll need to give. Thank you. So we'll resume at 10 o'clock.

**THE WITNESS STOOD DOWN**

**[4.02pm]**

**AT 4.02PM THE MATTER WAS ADJOURNED ACCORDINGLY**

**[4.02pm]**

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