

**REPORT ON PROCEEDINGS BEFORE**

**PUBLIC WORKS COMMITTEE**

**GRANTING OF CONTRACT NUMBER OOS17/18-021 BY THE  
OFFICE OF SPORT**

<b>UNCORRECTED</b>
--------------------

**At Macquarie Room, Parliament House, Sydney, on Monday 29 November 2021**

**The Committee met at 9:30.**

**PRESENT**

The Hon. Daniel Mookhey (Chair)

The Hon. Sam Farraway  
The Hon. Trevor Khan  
The Hon. Tara Moriarty

**PRESENT VIA VIDEOCONFERENCE**

The Hon. Shayne Mallard



UNCORRECTED

---

**The CHAIR:** Welcome to the first public hearing for the inquiry into the granting of contract number OoS17/18-021 by the Office of Sport. Before I commence I would like to acknowledge the Gadigal people, who are the traditional custodians of the land on which Parliament sits. I would also like to pay respect to the Elders past, present and emerging of the Eora Nation and extend that respect to other First Nations people present. Today we will be hearing from the Office of Sport, in addition to representatives of Equestrian NSW and Barrie Smith Motorsport.

Before we commence, I would like to make some brief comments about the procedures for today's hearing. While parliamentary privilege applies to witnesses giving evidence today, it does not apply to what witnesses say outside of their evidence at the hearing. I therefore urge witnesses to be careful about comments they may make to the media or to others after they complete their evidence. Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. In that regard, it is important that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily.

All witnesses have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. There may be some questions that a witness could answer only if they had more time or with certain documents to hand. In these circumstances, witnesses are advised that they can take a question on notice and provide an answer within 21 days. Today's proceedings are being streamed live and a transcript will be placed on the Committee's website once it becomes available.

In terms of the audibility of the hearing today, we have witnesses appearing both in person and via videoconference. I ask Committee members to clearly identify who questions are directed to and ask that everyone appearing remotely please state their name when they begin speaking. I ask that witnesses please mute their microphones when they are not speaking. Members and witnesses should avoid speaking over each other so we can all be heard clearly. Also to assist Hansard, I remind members and witnesses to speak directly into the microphone and to avoid making comments when your head is turned away.

UNCORRECTED

---

**KAREN JONES**, Chief Executive, Office of Sport, affirmed and examined

**FEARGUS O'CONNOR**, Executive Director, Office of Sport, affirmed and examined

**The CHAIR:** I now welcome our first witnesses. I invite the representatives of the Office of Sport to make a short opening statement, if they so wish.

**Ms JONES:** Thank you, Chair, I will be making an opening statement.

**The CHAIR:** Ms Jones, could you move the microphone a little bit closer?

**Ms JONES:** I can move it a bit closer and speak up a bit louder. Is that better?

**The CHAIR:** Yes, that is better.

**Ms JONES:** Good morning, Chair and Committee members. My name is Karen Jones and I am the Chief Executive at the Office of Sport. Assisting me today is Feargus O'Connor, an executive director in the office, who has been involved in implementing a range of reforms to our procurement and other processes as recommended by ICAC and probity advisers. I start by saying that I and the Office of Sport welcome the Committee's inquiry today. The Office of Sport has provided a substantial submission, we have briefed you ahead of today's inquiry and we have also answered follow-up questions. In this short introduction I would like to set out a time line, talk about the various steps the office has taken to ensure safety of the facility and the reform of our procurement processes, and discuss some key themes from the submissions that have been made to the Committee.

Let us start with the time line. The time line starts in September 2016 when Equestrian NSW [ENSW] met the Office of Sport to discuss an upgrade of the Sydney International Equestrian Centre [SIEC], in particular the indoor arena. In March 2017 the CEO of Equestrian NSW, Mr Bruce Farrar, and the chair of Equestrian Australia met with the sport Minister to propose the upgrade and seek government funding. The Office of Sport's briefing ahead of this meeting indicated support but advised that no specific funding was available. On 13 March 2017 Equestrian NSW submitted a business case for a \$600,000 upgrade, to be paid by the New South Wales Government. On 7 July 2017 the indoor arena upgrade was included as part of the Office of Sport's minor capital works program, and in August 2017 the Office of Sport conducted a request for interest, including six suppliers. The Office of Sport involved Mr Farrar in this process, due to the level of expertise required.

In October 2017 one potential tenderer complained to Mr Farrar alleging conflicts of interest between Equestrian NSW and another potential tenderer, being Barrie Smith Motorsport. It is important to note that the Office of Sport was unaware of this complaint at the time and the alleged conflict of interest involved a family relationship between the then chair of Equestrian NSW, Mr Peter Dingwall, and Barrie Smith Motorsport. It is understood that this complaint—and, ultimately, the alleged conflict—was considered by the board of Equestrian NSW, but again the Office of Sport was not aware of this complaint at that time and we were not aware of the consideration of the complaint by the Equestrian NSW board.

On 11 October 2017 the tender was released to six suppliers. Then between 24 and 25 October 2017 the tender evaluation committee [TEC] of the Office of Sport assessed the tender and selected Barrie Smith Motorsport. Between 30 October and 1 November the tender advisory committee [TAC], consisting of external experts including Mr Farrar, assessed the tenders and selected Barrie Smith Motorsport. Mr Farrar also signed a conflict of interest declaration on 25 October 2017 declaring no conflict. On 9 November 2017 Mr Matt Miller, the then chief executive of the Office of Sport, approved Barrie Smith Motorsport as the successful tender and that \$745,000 was to be reallocated from the Office of Sport maintenance budget to fund the upgrade. The upgrade works were due to start on 20 November, but on 22 November Barrie Smith Motorsport informed the Office of Sport that the overseas materials were delayed. Instead, he offered to use existing stocks from his warehouse.

On 18 December 2017 Sydney International Equestrian Centre staff reported the potential conflict of interest and this matter was then raised with Mr Farrar. Two days later, Mr Farrar supplied the Office of Sport with the email from 5 October from the potential tenderer complaining about his role. The next day the Office of Sport was made aware that the material to be used in the upgrade was not from a warehouse but instead was actually from Wallaby Hill and contained foreign materials known as rubber grommets. Wallaby Hill is an outdoor equestrian facility owned by an Equestrian NSW board member, Alexandra Townsend. The office demanded geotech testing to ensure that the sand fit the tender specification and demanded that the rubber grommets be removed. Confirmation of this was received on 19 January 2018 and the installation was then completed. On 31 January 2018 riders tested the surface and actually provided good feedback.

That is what we would hope would have been the end of the story, but unfortunately we now skip forward some 20-plus months later to 24 October 2019, when some negative feedback about the rubber grommets was

## UNCORRECTED

provided following the national dressage championships. That negative feedback was verbal; however, the chief steward report of that event was actually a positive report. Between 27 December 2019 and 9 February 2020 complaints were made to the acting Minister at the time about safety, choice of product and also probity. On 6 January I became aware of the complaints and I directed a remediation process, as safety is our first concern at the facility. In March 2020 the Office of Sport also engaged probity advisers to conduct a probity review considering the complaints raised in December. The probity review concluded on 29 April 2020. On 11 May 2020 I also sent the matter to ICAC, who responded on 1 December 2020 finding no evidence of corruption but identifying various corruption risks in the Office of Sport process.

In September 2020 the Office of Sport noted the completion of the remediation work. It is important to know that this was done at no public expense. On 11 March 2021 a quality and safety assessment of the arena found it suitable for Olympic-level dressage and showjumping. In addition to the March 2021 assessment, a further assessment will occur once COVID and border restrictions further ease. This further assessment will involve Public Works Advisory, the National Safety of Equestrian Australia, SafeWork NSW and dressage and showjumping experts. The principal complainants, of which there are two, will also be invited to observe the safety inspection.

In response to the issues identified throughout the process, including those identified by the probity advisers and ICAC, the Office of Sport has reformed its processes and procurement documentation, including the documenting of decisions, conflict of interest and confidentiality requirements and how experts are to be used and managed. ICAC has had input into these reforms and the asset management team staff at the Office of Sport have been trained in the new procedures. We have also issued new funding agreements to all State sporting organisations mandating key governance and probity processes. We now require that risk management standards in accordance with the international standard are to be in place, along with conflict of interest policies that require continuous disclosure of conflicts, including perceived conflicts.

The Office of Sport has also had the opportunity to read the public submissions that have been made to this Committee. The submissions demonstrate that stakeholders are passionate about their sport, they are passionate about each equestrian discipline and, like many aspects of sport and society, they have divergent views. For example, some of the submissions say that the Sydney International Equestrian Centre indoor arena was fit for purpose and should not have been upgraded, while others support the upgrade due to the need to have a top-quality elite facility. Some say the new facility is less than perfect while others, including those with international accreditation, say it is great.

These divergent views suggest a difference of opinion and perhaps tensions within the equestrian community, a difference of opinion between different equestrian disciplines, and various commentary on the governance of equestrian sport. I note the Committee received a number of submissions and responses from people involved in the upgrade beyond the Office of Sport. I also note that many of the submissions provide additional detail and information around the various events I have just stated in the time line. I encourage the Committee to avail itself of this information and, of course, you are meeting with some of these people later today.

Finally, I pose to the Committee that the challenge for the Office of Sport is providing a fit-for-purpose centre that is safe and that is successful. In this context and in reflection on the passionately held and divergent views, I hope the Committee will look at the objective measures. It was appropriate for the upgrade of the Sydney International Equestrian Centre indoor arena. We had lost long-held national events to our competitors and the controlling bodies said so publicly. We have a strong rebound in key bookings. In fact, we have had 11 bookings so far this financial year. Unfortunately, seven did not proceed due to COVID, but had all the bookings gone ahead approximately \$400,000 in fees would have been paid. These events covered dressage, showjumping, show horse and para-equestrian and included State, national and international competitions.

The surface was assessed in March 2021 as safe by two persons with international-level credentials: a technical delegate to the Tokyo Olympics in dressage, and the Fédération Equestre Internationale jumping course designer. We will be holding a further safety assessment involving highly regarded, Olympic-level equestrians; the Public Works Advisory geotech team; as well as the National Safety manager from Equestrian Australia. An arena adviser at the Tokyo Games, national judge level three, and course designer level three in showjumping have also agreed to assist.

In terms of the tender process, I referred the tender to a respected probity firm and I then referred the matter to ICAC, which has investigative powers not available to me or the Office of Sport. As made clear in our submission, I agree with some of the sentiments that our procurement process, while compliant, could have been better. As our submission shows, we have taken significant steps to improve our processes and documentation as a result, having sought external and independent assessment and advice. We took on board their findings and we

## UNCORRECTED

have improved our procurement documentation, which ICAC then reviewed. Thank you for indulging me while I went through my opening statement. I am now available, as is Mr O'Connor, to answer your questions.

**The CHAIR:** Thank you, Ms Jones. If you do have a written copy of your opening statement, would you mind tabling it now.

**Ms JONES:** Yes, for Hansard.

**The CHAIR:** It would be very helpful. We will go to questioning. I will pass to the Hon. Mark Latham.

**The Hon. MARK LATHAM:** Thank you, Chair, and thank you Ms Jones and Mr O'Connor. I thank you in particular for the amount of information you have provided and the improvements you have made to your procurement processes. But as you would understand more than anyone, it is a very complex matter and there are some questions that are further unresolved. In that opening statement you said the geotech report gave some clearance to the idea of getting rid of the grommets. But did the report not also say you would never really get rid of the fabric pieces, and that became the subsequent source of complaint by users?

**Ms JONES:** No. The main complaint from users has been around the rubber grommets and not the geotextile fabric. That is actually mixed in as part of the sand. The equestrian surface is actually made up of high-quality sand and also this geotextile fabric, which is like a well-worn sort of velvet-type material that is actually mixed in with the sand, with consistency across the surface. The purpose of that fabric is to hold moisture. When you are talking about the ebb and flow system, which I am sure we will get a chance to talk a bit more about today, the ebb and flow system that was installed meant that you can pump more water into the substrate of the surface so that the surface itself can become more damp, or you can turn the water off and it dries out. It is actually that fabric that holds that dampness for a longer period of time.

**The Hon. MARK LATHAM:** But this was ripped pieces of fabric, was it not, ripped up from when it was removed from Wallaby Hill?

**Ms JONES:** The fabric is always part of the surface. The foreign part of the surface was the rubber grommets.

**The Hon. MARK LATHAM:** Your evidence is the geotech report did not identify any long-term problem with the quality of the materials?

**Ms JONES:** No, my evidence is that we asked Barrie Smith Motorsport to do some geotech testing. That geotech testing came back saying that the material that was used was consistent with that which we had originally procured and that the rubber grommets would be removed.

**The Hon. MARK LATHAM:** If I can just take you to the ICAC letter on 1 December 2020—a letter addressed to you, Ms Jones—at point five it states:

Mr Farrar approached Barrie Smith Motor Sport prior to the release of the tender to obtain a funding estimate to include in the proposal. This could be perceived as a tenderer with links to ENSW being given advance notice of the tender and scope.

That is the end of their quote, but it is kind of like insider trading. When did the Office of Sport first become aware of that development?

**Ms JONES:** Let me just find out about that to see if I can get a distinct time for you.

**Mr O'CONNOR:** I think we became aware of this probably when one of the complainant's complaints, which was made initially to Mr Farrar, was eventually drawn to our attention, which was some time after it had been made.

**The Hon. MARK LATHAM:** Right. How did they know this had happened?

**Mr O'CONNOR:** I am not entirely—I think they may possibly have—I am not sure. I do not want to speculate about that.

**The Hon. MARK LATHAM:** Who was that complainant?

**Mr O'CONNOR:** It was one of the tenderers who was not selected. I am not sure how you pronounce the name. I think it is referred to as the Verwey complaint—

**Ms JONES:** From Capricorn.

**The Hon. MARK LATHAM:** Didn't they have evidence that Mr Farrar had been to various properties but they, to my understanding, did not have evidence that Barrie Smith Motorsport had been approached prior to the release of the tender to provide a funding estimate that formed the basis of the Equestrian NSW business case?

UNCORRECTED

---

**Ms JONES:** What I will say about that is that we were definitely not aware that Mr Farrar had gone out and sought other price estimates prior to the tender process commencing. In terms of actually having a specific date of when we found out about that, I am happy to take that on notice and provide that to the Committee.

**The Hon. MARK LATHAM:** Given that ICAC interviewed Mr Farrar, you would assume, would you not, that that information came out of the interview?

**Ms JONES:** I think that is a question that you can ask Mr Farrar this afternoon.

**The Hon. MARK LATHAM:** If you had known at that time, prior to the development of the tender and the awarding of the tender, that Mr Farrar had approached Barrie Smith Motorsport to obtain a funding estimate upon which the Equestrian NSW proposal and business case was based, what action would you have taken at that time?

**Ms JONES:** Mr Farrar's role in the actual procurement process was as a member of our tender advisory committee. Whilst providing technical and professional expertise, in terms of the surface that we were trying to procure, Mr Farrar did not actually have a determining role in the very end. Whilst it would have been undesirable for Mr Farrar to actually go off and seek that information, ultimately he was not a decision-maker in the final process. We would have asked why, absolutely. We would have asked why, and to what benefit, and from there we would have made a conclusion about whether or not it was pre-emptive information that should not then be brought into the procurement process.

**The Hon. MARK LATHAM:** Do you believe it gave Barrie Smith Motorsport an unfair advantage that it was their funding estimate that formed the basis of the business case?

**Ms JONES:** I cannot comment on that. All I can say is that the Office of Sport ran its tender process, we released a tender to six organisations, it was a competitive process and those price estimates, as well as non-price criteria, were also assessed.

**The Hon. MARK LATHAM:** Is it true that Mr Farrar was involved in determining the ebb and flow requirement, which again gave Barrie Smith Motorsport an advantage?

**Ms JONES:** I will not comment in terms of whether or not that gave Barrie Smith Motorsport an advantage, but what I will comment on is that, yes, Mr Farrar was involved due to his level of expertise in equestrian sport. He is the Chief Executive Officer of Equestrian NSW, which is the State sporting organisation for equestrian sport in the State. The Office of Sport did actually go to Mr Farrar to seek advice and expertise in determining the scope of the project.

**Mr O'CONNOR:** If I could just perhaps build on that, we also conducted our own research work looking at the kinds of products available. We can have a debate about waxed surfaces and so on but the ebb and flow system, regardless of which manufacturer installs it, is used in such places as Rio. It is used at Boneo Park and Willinga Park, which are two of our major domestic competitors. There was another ebb and flow system to be installed in Tamworth. We would say that it is certainly a legitimate choice. We also took the independent step of sending out the tender specifications to 16 equestrian organisations. Sadly, only four of those got back to us, but all four of those were supportive of the tender design specification.

**The Hon. MARK LATHAM:** But given the conflict of interest that is referred to in your submission, Ms Jones, if you knew of the conflict of interest and you knew of Mr Farrar's action in giving advance notice to Barrie Smith Motorsport and asking them for the funding estimate, at that point would you have—

**Ms JONES:** Absolutely.

**The Hon. MARK LATHAM:** —deemed that Mr Farrar was not an appropriate person to be involved in an independent tender process?

**Ms JONES:** Absolutely. The Office of Sport, I think, has been very up-front in our submission in saying that our tender process at that time was not perfect. What I would actually do is that we would have a lot stricter guidelines and requirements for anybody involved in the tender process, particularly around the declarations of interest, any previous involvement they may have had with any of the tenderers that we were going to and also any relationships that may be either real conflicts or at least perceived conflicts to be declared.

**The Hon. MARK LATHAM:** At one stage Mr Farrar also recommended Oliver Hoberg to be the technical expert. There is a conflict between your submission and that of Equestrian NSW. They say he was ruled out on the basis that he was too expensive; you say he was ruled out on the basis he was overseas and too busy to come to Australia and do the work.

UNCORRECTED

---

**Ms JONES:** Correct. I think if you have a look at the Office of Sport's submission, you will see that we actually quote correspondence between ourselves and Mr Hoberg. If I can just correct the record for that point, it has been suggested that we did not use Mr Hoberg because he was too expensive, but in fact he was actually just busy and not available. In fact, I think there is even an email from Mr Kevin Flynn in there that says, to paraphrase, "He sounds reasonable. How can we make this happen?" Effectively it was an internal email through the Office of Sport that suggested that we engage Mr Hoberg. Mr Hoberg knew that we were proposing an ebb and flow system. That is actually in paragraph (92) of our submission, if you want to cross-reference that. Then we went on to discuss with him the process of building one before he actually withdrew and said that he was too busy.

**The Hon. MARK LATHAM:** Looking back on it, was it ever viable that Oliver Hoberg was going to be coming to Australia to do this work? I understand because of his international expertise and reputation—

**Ms JONES:** Yes, absolutely.

**The Hon. MARK LATHAM:** Do you think it was viable? It was not a ruse to then set up a technical advisory committee headed by Mr Farrar and two of his associates?

**Ms JONES:** No, absolutely. I was not involved at the time, and I should probably make that clear. I was not chief executive at the time at the Office of Sport. But in my review of the documentation, I do believe that there was a genuine intent to engage Mr Hoberg.

**Mr O'CONNOR:** In that light, Mr Latham, at paragraph (92) of our submission we excerpt emails from Mr Hoberg to us which I think could be reasonably interpreted as him being very enthusiastic about helping us with an ebb and flow system and going into some detail about how you would do it. If there was a ruse, which I do not believe there is any evidence of, it was a fairly sophisticated and detailed one.

**The Hon. MARK LATHAM:** In terms of the independence of the tender, Mr Farrar—

**The CHAIR:** Sorry, Mr Latham, we might just pause there. Mr Khan has a question.

**The Hon. TREVOR KHAN:** I am interested in this question of how you separate out, in a sense, the pre-tender inquiry from the tender process. I will not do it in the equestrian context but in terms of hockey. There are a lot of associations that may well be going through Hockey NSW, but I would have thought, in terms of the provision of surfaces, there are probably no more than three or four providers of artificial surfaces for hockey. The associations, I would have thought, as a matter of consequence in terms of pitching a bid to the Government, would inquire of one or more of those suppliers to get an indicative cost estimate before they make the application. That would be a natural way of doing things, would it not?

**Ms JONES:** I would think so. It is appropriate for the Office of Sport to deal directly with the State sporting organisation, as the peak body of its sport, and to seek their expertise. Whilst at the Office of Sport we love our sport, we are not experts in each individual sport, so we do actually rely on the expertise of those State sporting organisations. The organisations at that point may then choose to consult with their preferred or regular suppliers who they deal with, who they know provide quality surfaces, to then provide that advice back to the office.

**The Hon. TREVOR KHAN:** Again, talking about amorphous organisations, you are going to have people coming up with ideas as to which surface is best and which is not, and how much it should cost. What do you think are the implications of pre-tender approaches, being to one or more of the suppliers, in terms of the eventual tender process? Is it negative? Does it have a negative consequence? Does it push up the price, for instance, or does it have no effect? Do you know?

**Ms JONES:** I do not know, to be honest, but what I would say is that by consulting with those product deliverers you are at least understanding what is involved—the type of labour, the type of resources, the time that is required and then the associated figure on that. That information can then come back to someone like the Office of Sport and say, "Look, you are probably looking at something in the ballpark of X here." But that is also the process of the tender process. In this instance, we canvassed six organisations in the hope that we would see what each organisation could actually table for us, in terms of their type of surface, their type of material that they would be using and their price. Then we would go through the tender evaluation process as per the guidelines.

**The Hon. TREVOR KHAN:** Sure. But the problem, it seems to me, is—and I am not suggesting that there is anything wrong—but in terms of the earlier stage, that is, if an association is putting up a business case, if it is going to be worth anything, they are going to have to have done some research with suppliers.

**Ms JONES:** You could call that pre-market sounding—

**The Hon. TREVOR KHAN:** Yes.



## UNCORRECTED

**Ms JONES:** —is what they were doing.

**The CHAIR:** Ms Jones, it is common, as you said, to partner with State sports organisations, particularly those that have specialist knowledge, like Equestrian NSW, in the provision of material for their sport. Did I hear you correctly?

**Ms JONES:** Yes. I would not necessarily say "partner" but we do actually rely on them in terms of expertise for their sport.

**The CHAIR:** But in this particular instance for this particular contract, did that result in the Office of Sport requesting Equestrian NSW to undertake a business case or the market testing process, or did they just do it by themselves?

**Ms JONES:** No, my understanding is Equestrian NSW was receiving a number of complaints from their members around the quality of the Sydney International Equestrian Centre, particularly the indoor arena. We need to bear in mind that at that point in time the equestrian centre was 17 years old and had not actually undergone any sort of upgrade. Also, technology in terms of equestrian surfaces had actually advanced quite significantly. It was the year before in the Rio Olympics, for instance, that they used an ebb and flow system.

**The CHAIR:** But what was Mr Farrar's understanding of his requirements for preventing conflicts of interest at the time he was engaged or was otherwise, for whatever reason, providing you advice as to what the market cost was?

**Ms JONES:** I think you would need to ask Mr Farrar that question, in terms of what he understood his requirements to be. From the Office of Sport, again in our submission we have been very honest in saying that the procurement processes for us, particularly around the declarations of conflicts of interest, were less than perfect. In fact, the level of documentation around the role of the tender advisory committee was also less than perfect. That has also been brought out through the probity adviser's report and also through the ICAC recommendations. That is where we have strengthened our processes now.

**The CHAIR:** It is pleasing that I understand the Office of Sport has reached that conclusion, but the question arises: I understand Mr Farrar might have a separate understanding, but at any point did the Office of Sport explain to him or Equestrian NSW that he was subject to such policies that would prevent him taking steps that would trigger a conflict of interest?

**Ms JONES:** I draw you to the Office of Sport's submission, where we did actually ask for the tender advisory committee members to sign declarations of interest. Within that document itself, it does actually outline what "conflicts of interest" are. Mr Farrar signed his conflict of interest with a nil return.

**The CHAIR:** Before I hand back to the Hon. Mark Latham, the policies that the Office of Sport itself was following, did those arise out of your internal policies or were you following Procurement Board policies, department cluster policies? What were the ones that were, as you saw at the time—

**Ms JONES:** We were following government-wide procurement guidelines, but this was the first time—and in fact, it has been the only time—that we have actually used a tender advisory committee, a panel of experts to help and provide advice on the material to be used. Whilst the procurement guidelines allow you to do that, there are no specific rules around how you actually do that. But as I said, coming out of this process and the lessons learned for the Office of Sport, as well as the probity report and the ICAC recommendations, we have now got governance arrangements should we choose to do that method again. However, we have not done so.

**The CHAIR:** The Office of Sport chose that method at the time. Why?

**Ms JONES:** Because there was limited expertise within the Office of Sport to actually determine what made a good quality surface and what did not.

**The Hon. MARK LATHAM:** Just on that point, wasn't the reason because a decision was made not to do a procurement strategy?

**Ms JONES:** A procurement strategy was in place and it was in line with the procurement guidelines. In this instance, it was decided that we would go out to six selected tenders, which we can do when we think that there is a limited field. The procurement process, as I said before, was in accordance with the procurement guidelines.

**The Hon. MARK LATHAM:** Just on that technical committee, in answer to supplementary question No. 36, in which I had asked:

36. Why did the TAC undertake its review on 30 October-1 November when the TEC had already completed its work five days earlier?

UNCORRECTED

---

In that regard, even though Barrie Smith Motorsport was the most expensive and number two on the list—ranked second—it was still the recommendation. The answer from the Office of Sport stated:

The TEC (Office of Sport staff) was the independent decision maker and made its decision first. The TAP/TAC (externals)—the technical advisory committee—

made a separate assessment and this was then considered in producing the final Tender Recommendation Report.

What consideration was given to it?

**Ms JONES:** It was effectively two independent, parallel processes. You had the tender evaluation committee, which assessed each of the tenders and went through the price and non-price criteria, scored them and then came up with its recommendation. A couple of days later you had the tender advisory committee, which was made up of these experts who then also provided their assessment and their recommendations. Both the tender advisory committee and also the tender evaluation committee recommended Barrie Smith Motorsport. Then both of those recommendations were brought together in the tender recommendation report at the end.

**The Hon. MARK LATHAM:** The technical advisory committee was part of the decision-making process?

**Ms JONES:** They provided advice, and their advice was included as part of the tender recommendation report at the end.

**The Hon. MARK LATHAM:** Have you had a chance to look at the Equestrian NSW submission to the Committee?

**Ms JONES:** Yes, I have.

**The Hon. MARK LATHAM:** They take the view that the tender advisory committee recommendations were superfluous, they were not really a factor in the tender recommendation report. But you are saying that is not right?

**Ms JONES:** We engaged a tender advisory committee on the sole basis that we did not have that level of expertise around the quality of the surfaces at the Office of Sport. The advice that they did provide did carry a certain weight and did carry some influence, but ultimately the final decision rested with the Office of Sport.

**The Hon. MARK LATHAM:** We know that of the members of that committee, Mr Farrar declared no conflict of interest.

**Ms JONES:** Correct.

**The Hon. MARK LATHAM:** Have declarations been found from Farrell and Vallance?

**Ms JONES:** No, not to this date.

**The Hon. MARK LATHAM:** We are expecting they cannot be found, or most likely that they do not exist?

**Ms JONES:** We have been searching for them but we have not found them.

**The Hon. MARK LATHAM:** Is it your conclusion that they just do not exist?

**Ms JONES:** I do expect that they do exist, simply because we do not just target one committee member for a declaration of interest; we typically go out and ask for all of them. But for some reason we cannot locate them.

**The Hon. TREVOR KHAN:** It could mean that none was sought from anyone.

**The Hon. MARK LATHAM:** No, Mr Farrar made a declaration and said he had no conflict. The chair of the committee made a declaration. The other two, it is thought on the evidence that they did—

**The Hon. TREVOR KHAN:** Yes, that is fair.

**The Hon. MARK LATHAM:** —but they cannot be retrieved.

**Ms JONES:** I think you will find that one of the other advisory committee members has made a submission to the Committee, and in that submission she has actually stated that she did submit a conflict of interest with a nil return.

**The Hon. MARK LATHAM:** Right. That is Julie Farrell?

**Ms JONES:** I think so, yes.

## UNCORRECTED

**The Hon. MARK LATHAM:** Okay. Just coming back to the geotech report we discussed earlier, this was undertaken by Alan Peters of Geotech Testing, is that right?

**Ms JONES:** I will refer to Mr O'Connor.

**Mr O'CONNOR:** Yes.

**The Hon. MARK LATHAM:** It was. I have his letter here, the covering letter giving conclusions about his report, dated 19 January 2018. It states:

The samples of material sourced from Wallaby Hill were screened on the 1.18mm sieve prior to testing in order to remove the inert fabric portion of the material. Note that it is not possible to remove all fabric material ...

Does that not indicate you were never going to get rid of all this fabric material because that is what the geotech report concluded?

**Mr O'CONNOR:** I think we need to be clear about what is meant to be in an Otto surface and what is not, and then be clear about what that geotech report was trying to do. There is absolutely no doubt that an Otto surface is supposed to have sand and this fabric in it. It is not supposed to have loose rubber grommets—we agree with that—but it is supposed to have sand. It is an inherent part of it. I think what the geotech report is saying is that for its purpose, which is to assess how much sand—you dig up a given amount of the surface and there should be, if it is following the Otto specification, a certain amount of sand and a certain amount of the matting, but that is before you mix it all together. Once you have mixed it together, the sand adheres to the matting and it is simply not really possible anymore to say precisely how much sand was in there and precisely how much matting was in there. You can look at the granule size, which is what the gentleman did, and advise that that was within the tender specifications. But just to be clear, he is not saying that the fabric is not supposed to be there. It is meant to be there.

**The Hon. TREVOR KHAN:** He is just saying that he cannot do one of the calculations to determine whether it was—

**Mr O'CONNOR:** You have made the omelette. You cannot unscramble it and have the butter and the eggs separate anymore.

**The Hon. TREVOR KHAN:** Yes, that is fair.

**The Hon. MARK LATHAM:** Well, he was saying it is not possible to remove all the fabric material. In what is at SIAC at the moment, can you say that there are no loose materials in there that remain from the removal from Wallaby Hill?

**Mr O'CONNOR:** The fabric is there and it is meant to be there. It is part of the Otto design. The loose grommet material is not meant to be there, and there is certainly a small amount of grommet material still there.

**Ms JONES:** Still present.

**The Hon. MARK LATHAM:** Right, so it is the problem of the needle in the haystack. We really do not know how many needles are in there and whether we can ever really find them.

**Ms JONES:** What actually happened is that once I became aware back on 6 January 2020, like I said, we actually asked for the site to be remediated and for the rubber grommets to be removed. In fact, we actually went through a lengthy negotiation with Barrie Smith Motorsport. Because of the time lapse between when the project was completed and when this issue came about, they were actually out of contract. We actually went through and negotiated with them that they would go out and do the remediation work at no expense to government.

That remediation work was actually conducted, I think, in August or September 2020. It was then decided that whilst a number of rubber grommets were extracted through that process that the rubber grommets were still in existence in the material and that the Office of Sport would then take over the ongoing maintenance, which we do anyway, of the material. Every time there is an event, we basically flip the surface and then we walk the surface, not just to see if there are any rubber grommets available but there is also other foreign material that tends to blow in. Whilst the indoor arena itself is covered, it is still open on other sides, so it is still subject to the weather and the elements and, unfortunately, birds. Often you will find foreign material like sticks, twigs, lolly wrappers and things like that, which the staff will have to go through before every event and just clean the site.

**The Hon. MARK LATHAM:** Just on where the material came from, Barrie Smith told you initially, did he not, that it was coming from overseas and then there was a delay on the docks?

**Ms JONES:** Correct. We were told as part of the successful tender documentation that that material would be coming from overseas.

UNCORRECTED

---

**The Hon. TREVOR KHAN:** As part of the contract, I take it?

**Ms JONES:** As part of the contract, correct. We were then told that there was a delay in that material coming and that instead Barrie Smith Motorsport would be using material from their warehouse.

**The Hon. MARK LATHAM:** From their warehouse?

**Ms JONES:** Correct.

**The Hon. MARK LATHAM:** Do you know where that warehouse was located?

**Ms JONES:** No, we just assumed that it was from their warehouse and it was of a similar consistency—

**The Hon. MARK LATHAM:** That he had a warehouse out there somewhere. Right.

**The Hon. SAM FARRAWAY:** Just quickly, did Barrie Smith Motorsport ever advise what the delay was for the imported product, rather than you—

**Ms JONES:** Not in my review of the documentation, but I am happy to take that on notice and we can find that out.

**The Hon. TREVOR KHAN:** Irrespective of whether it came from overseas or from a warehouse, the material to be supplied was to meet all other specification requirements set down. Essentially, all that was being varied at that stage, if it was a contractual variation, was the difference between an overseas source and a domestic source?

**Ms JONES:** Correct.

**The CHAIR:** Who attested to that? Who attested to the fact that they were aligned?

**Ms JONES:** We were assured by Barrie Smith Motorsport that the material coming from overseas was delayed and they would be using their existing stocks from their warehouse, which was of the same quality.

**The CHAIR:** The attestation that the stock from the same warehouse was of the same quality came from Barrie Smith Motorsport?

**Mr O'CONNOR:** Barrie Smith also brought out an Otto engineer from Europe. That gentleman was on site and we have an attestation from Otto that what was put in matches the tender specifications.

**The CHAIR:** So other than Barrie Smith Motorsport and their engineer, did the Office of Sport have anyone else verify that the two were in fact the same quality and standard?

**Mr O'CONNOR:** It depends at what point in time. Obviously once we became aware that the material was from—

**The CHAIR:** From the time that they requested the variation.

**Mr O'CONNOR:** Okay, so we became aware that the material had been brought to the site from Wallaby Hill and became—

**The Hon. TREVOR KHAN:** Sorry to interrupt, but I take it brought from Wallaby Hill and not spending a quarantine period in a warehouse, as best you know?

**Mr O'CONNOR:** That is correct.

**Ms JONES:** That is right.

**Mr O'CONNOR:** At that point we became aware that, rather than brand-new material, the proposal from Barrie Smith was to use material that had been elsewhere. If that is what you mean by a "contract variation", we did very reluctantly agree to that. It is at that point that we imposed the geotech requirement that Mr Latham was taking us through.

**The Hon. MARK LATHAM:** In effect, Barrie Smith Motorsport misled you about the origins of the material and the first you knew of the second-hand material from Wallaby Hill was when it arrived at SIAC?

**Ms JONES:** Correct.

**The Hon. MARK LATHAM:** Did you ever take that up with Barrie Smith and think about cancelling the contract on the basis you have been misled?

**Ms JONES:** At that point in time the Office of Sport—

**The Hon. TREVOR KHAN:** In fact, deceived.

UNCORRECTED

---

**The Hon. MARK LATHAM:** Deceived, misled, lied to, whatever the description is—

**The CHAIR:** We will just allow the witness to answer the question directly.

**Ms JONES:** At that point in time the Office of Sport was pressing to have the indoor arena completed because we were pushing for an event at the end of January. There was some time pressure involved. In saying that, once we were made aware and once we actually saw the material from Wallaby Hill arrive on the site and we saw rubber grommets in it, we did ask questions straightaway and we would not let that surface be laid until we were given assurances that the quality of the material sans rubber grommets was in line with the tender specification. That is what the geotech provided us.

**The Hon. MARK LATHAM:** In hindsight, it would have been better to cancel the contract, given all the subsequent difficulties—

**Ms JONES:** With the luxury of time—

**The Hon. MARK LATHAM:** —and the conflict of interest with Mr Farrar, but you were pressing to run this event in February 2018.

**Ms JONES:** Yes, at the end of January 2018.

**The Hon. MARK LATHAM:** At the end of January.

**The CHAIR:** Mr Faraway had a question.

**The Hon. SAM FARRAWAY:** I just want to go back—

**The Hon. MARK LATHAM:** In hindsight you would cancel it, if you had your time over again?

**Ms JONES:** In hindsight, if there was the luxury of time, then absolutely we would have gone through and had a look at recourse—or I would have, anyway, as the now chief executive. I would have looked at recourse through our contract and had a very thorough inspection of that material. The fact that it had rubber grommets mixed in it, obviously we would also understand the impact those rubber grommets would have on the surface and the horses in particular.

**The Hon. SAM FARRAWAY:** Just rewinding back to that bit—and I understand, Ms Jones, you were not the CEO of the organisation at the point of time we are looking at—do you know how Barrie Smith Motorsport advised the Office of Sport that the material was not able to be sourced overseas? Was that via email? Was it just over the phone? In these commercial contracts, surely there should be a little bit more discussion about why it is delayed—why, how—rather than just that the first you knew about it, other than initially agreeing to it, was it was coming from Wallaby Hill and it clearly did not come from a warehouse. Is there anything on file in the Office of Sport?

**Ms JONES:** There is definitely email correspondence back and forth, but I am not too sure—

**The Hon. SAM FARRAWAY:** But they do not advise, if you were to keep the imported product, how long that would be? That is probably my question. At no stage have they said, "You can wait another six weeks and you can have the product that"—

**Ms JONES:** No, I do not have that time. I do not understand what that time delay would be.

**The Hon. SAM FARRAWAY:** My second question is having very little—my family are involved in the equestrian space and I am not. I have declared before that I have ridden a horse once and that is about the extent of it. Is it fair to say that the real issue here is the rubber grommets? The fabric is all part of the mix, and we have got that.

**Ms JONES:** Correct.

**The Hon. SAM FARRAWAY:** The real issue here for that facility and for the sand that was put in there was that when it was removed from Wallaby Hill, obviously the excavator with the forks have ripped the rubber matting and lining and it has caused grommets to be within the sand. If that had not have happened, we probably would not have this inquiry, would we?

**Ms JONES:** I would agree with that, simply because the presence of the rubber grommets is not only a visual reminder for people that there is this foreign material that has been mixed in the sand but it has brought some doubt to some of our customers at the site about whether or not the site is actually suitable. As I said in my opening statement, we have got some really divergent views. We had an event on the weekend; it concluded yesterday. If the Committee would entertain me, the feedback that we got was that the surface was "nice and

## UNCORRECTED

fluffy". The competitors commented on how great the surface actually was. If we did not have the issue of the rubber grommets on the site, I do believe that everybody would feel more confident in the material that we used.

**The Hon. TREVOR KHAN:** Was there any discussion with Barrie Smith Motorsport at the time when you found that this is not new material but recycled, if that is an appropriate term, as to how the rubber grommets were to be removed?

**Ms JONES:** I might take that one on notice and see if there were specific instructions around how the rubber grommets were to be removed.

**The Hon. TREVOR KHAN:** It may not have been an instruction; it may have been advice from Barrie Smith. But it seems to me it must involve some style of sieving process, one would think, and that Geotech would have advised on the diameter, width or whatever else of the sieving.

**Ms JONES:** Having been out there myself, I think the issue in terms of the sieving is that you also have this geotextile fabric that is mixed in with the sand. If you were to sieve out the sand and then sieve out the geotextile fabric and then take out the rubber grommets, you are effectively starting from scratch. Once you have taken out the rubber grommets, you then have to mix the geotextile fabric again through the sand before it can be re-laid. It is very hard to actually—as Mr O'Connor said before, quite candidly, it is like the omelette's already made.

**The Hon. TREVOR KHAN:** Sure. What was to be the mechanism for removing the aberrant foreign material, as opposed to the non-aberrant foreign material?

**Mr O'CONNOR:** I agree with what the chief executive said. We certainly have talked about—there was raking that went on as a way of removing some of the rubber grommets and then sort of re-fluffing the surface, which is—

**Ms JONES:** Flipping it.

**Mr O'CONNOR:** —a way of trying to remix the omelette, if we continue to punish that metaphor.

**The Hon. TREVOR KHAN:** You would use raking normally on a surface like that, probably after every event and perhaps after every day, to remove—

**Mr O'CONNOR:** Foreign objects.

**The Hon. TREVOR KHAN:** —sticks, lolly wrappers—

**Ms JONES:** All the things the birds bring in.

**The Hon. TREVOR KHAN:** —and all that sort of stuff. But all that stuff that you were using raking for is on the surface.

**Mr O'CONNOR:** The surface is actually flipped.

**The Hon. TREVOR KHAN:** No, I agree. I do not know how deep this is, but the stuff that you are using raking for, of its very nature, is stuff that is at or near the surface, I would have thought, whereas what you have got on this occasion is rubber grommets that are dispersed throughout the depth of the material. I am no expert in raking, but that seems to me the nature of these things that raking would not get rid of it.

**Ms JONES:** No. That is why we are still finding some rubber grommets to this day. As the Office of Sport staff are out there maintaining the facility, they flip it to turn over the mix every so often. When they do that, the presence of rubber grommets comes back. Just to answer your question, the depth of the surface is approximately 340 millimetres.

**The CHAIR:** Ms Jones, I am going to ask you questions that I categorise as "speak to me like I'm an idiot", which, to be fair, comes naturally to quite a few people. Just to be clear, the harm that is posed by rubber grommet is what exactly?

**Ms JONES:** If I can just explain what the rubber grommet looks like, it is effectively like the stud of a football boot. It is very similar to that size and shape. The advice that we have received from the international experts is that they are of no harm to the horses. However, I do want to acknowledge that with some of the complaints we have received, the complainants have suggested that some horses have experienced some damage as a result. But we have never seen those complaints officially come through before an event, after an event or during an event. The Office of Sport has never officially received any of those complaints.

**The CHAIR:** Do you have an estimate as to how many of these rubber grommets were present or are present?

UNCORRECTED

---

**Ms JONES:** Yes. At the moment, as I mentioned in my opening statement, we are keen to do a further safety inspection. We would have liked to have done that safety inspection before the Committee's hearing today, but unfortunately due to COVID and the fact we require people to travel from interstate to do this, for us it just was not possible. We have, however, organised for Public Works Advisory to go out there and do some testing on the sand and we are still waiting on that information to come back. They did expose some rubber grommets, I think to the ratio of probably about four—

**Mr O'CONNOR:** They sank test pits. Each test pit was a metre square by 10 centimetres deep. Each of those pits disclosed something like four to six grommets across that metre square.

**The CHAIR:** That is pretty high, you would agree?

**Mr O'CONNOR:** It is probably perhaps one grommet per 50-centimetre square.

**The CHAIR:** This is a pretty big arena, right?

**Ms JONES:** Yes.

**The CHAIR:** So there are quite a few of them, we can agree.

**The Hon. TREVOR KHAN:** To what depth was that?

**Mr O'CONNOR:** It was 10 centimetres down.

**The Hon. TREVOR KHAN:** Right. So there are another 20 to go.

**Ms JONES:** Yes. In saying that, and just ahead of Mr O'Connor's evidence, we are still waiting on the final report to come back from Public Works Advisory. But that was their initial assessment when they have gone out there on site. We are still waiting to see that put in writing to the Office of Sport.

**The CHAIR:** Got it. But again, just to be very clear around the chain of questioning—the "12-year-old" questions here—we never ordered these rubber grommets, did we?

**Ms JONES:** No. The rubber grommets are foreign material. When the material was taken from Wallaby Hill and delivered to the equestrian centre, part of that removal of Wallaby Hill was that they basically scraped the surface. In doing that, they caught the rubber matting that was laid and cut off these rubber grommets from the rubber matting at Wallaby Hill.

**The CHAIR:** There is no ability for anyone else to argue that there is a misinterpretation under the contract, as in the original specifications allowed it?

**The Hon. TREVOR KHAN:** No!

**Ms JONES:** No.

**The CHAIR:** That is just to be abundantly clear, and we have to be clear to them as well. Under the Office of Sport, you never sought to buy material that had rubber grommets in it, correct?

**Ms JONES:** No, absolutely not.

**The CHAIR:** And when you were advised—you noticed it at the point of installation, is that correct?

**Ms JONES:** We noticed it when the material was delivered to the site. We said, "What's this?" We were told that they were rubber grommets, and that is when we asked for the geo-testing of the sand and the geotext fabric. We also demanded that the rubber grommets be removed.

**The Hon. TREVOR KHAN:** When it was delivered to the site, what does that mean? Is it delivered and then dumped in the arena, or is it delivered and put onto a hard pad or something? How did it appear?

**Ms JONES:** I am not too sure in terms of the location, but my understanding is that it was stockpiled before it was actually then installed onto the arena.

**The CHAIR:** When you say you noticed it, was that because you inspected it or literally because someone just looked at it and said, "There are rubber grommets in that sand"?

**Ms JONES:** That is my understanding; I am not sure. That is just from speaking to my staff and also reviewing the documentation.

**Mr O'CONNOR:** I would agree with that. My understanding is that it was not brought in dumper trucks and then immediately spread onto the arena. It was put somewhere at the Sydney International Equestrian Centre, so there would have been giant piles of material. I think the assumption is our staff—

## UNCORRECTED

**The Hon. TREVOR KHAN:** All these black rubber grommets sort of rolling down the external surface.

**The CHAIR:** Just to be clear: But for the attention of a particularly attentive Office of Sport employee, no-one would have noticed it at the point of installation. Is that correct?

**Ms JONES:** I think we would have noticed it.

**The CHAIR:** Eventually.

**Ms JONES:** Yes, and I think they were pretty obvious to the Office of Sport staff at the Sydney International Equestrian Centre, and hence it was brought to our immediate attention. In saying that, though, once the surface was laid and the events started happening post-January 2018, we had nearly 20-plus months' worth of events before we actually received verbal complaints about the rubber grommets. The surface was finished in January 2018; we did not actually receive any sort of verbal complaints until October 2019.

**The CHAIR:** Ms Jones, what are we meant to make of the fact that there was a delay in complaints? For want of a better term, people put bad stuff in buildings and it takes time to expose the flaw. What turns on the absence of complaints in the first two years?

**Ms JONES:** I would say that for people who have horses, these horses are worth a lot of money. If they did not have confidence in the surface of the arena then they would have been more vocal earlier.

**The Hon. TREVOR KHAN:** No, I do not think that is the question you are being asked. Let me suggest that the reason you did not have complaints is because the surface was raked so that a good job was done of removing the grommets from the first few centimetres. It is actually as the surface has been more and more used—

**Mr O'CONNOR:** It gets churned up.

**Ms JONES:** It is churned, possibly.

**The Hon. TREVOR KHAN:** —and been more and more turned over that the grommets that were down the bottom are now starting to float to the surface. That is the likely cause, is it not?

**Ms JONES:** Yes, possibly.

**The Hon. TREVOR KHAN:** I am not being critical of you, but that seems to me—

**The CHAIR:** But equally, did you ever disclose to users at the events in those first two years that there are rubber grommets in there?

**Ms JONES:** No.

**The CHAIR:** How is a person meant to complain if they have no knowledge of it?

**Ms JONES:** If they saw them.

**The CHAIR:** And when they did see them, they complained.

**Ms JONES:** Yes, in October 2019.

**The CHAIR:** I return to my first question: What are we meant to conclude from the fact that there was a two-year period from the point of installation to the point of complaint?

**Ms JONES:** It is that there was general customer satisfaction with the arena surface during that period.

**The Hon. TREVOR KHAN:** As it was presented to them.

**Ms JONES:** That is right.

**The CHAIR:** Okay, fair enough. As you have acknowledged, it is clear that you were misled by the installers or the contractors, Barrie Smith Motorsport. You were misled by their engineer. You commissioned a geotech report at the time to give you confidence that it could be installed. Mr Latham is taking you through the details, but can we just conclude that that was wrong? It was not as clear as it should have been that there were problems with the site.

**Ms JONES:** The actual geotech report looked at the sand particles and the fabric mixed in, and that was when they said to us that was fine. Separate to that, the Office of Sport had directed Barrie Smith Motorsport to take out the rubber grommets.

**The CHAIR:** So the geotech report tells you it is fine to proceed to installation.

**Ms JONES:** Correct.



## UNCORRECTED

**The CHAIR:** And on that basis you approve the installation—when I say "you", I mean the Office of Sport.

**Ms JONES:** Not myself, but the chief executive at the time and the people controlling the contract and the tender at the Office of Sport did, yes.

**The CHAIR:** Do you think people's judgement was affected by the fact that there was an event coming, and that if they had complained or otherwise provided the Office of Sport with different advice then that would have had implications for whether that event could go ahead?

**Ms JONES:** There was a time imperative there, absolutely. As I said before, the facility itself had been losing events. We lost events to other competitors.

**The Hon. TREVOR KHAN:** And who were those other competitors that you were losing events to?

**Ms JONES:** I think we lost the National Dressage Championships to Boneo Park.

**Mr O'CONNOR:** Boneo Park.

**The CHAIR:** Where is that?

**Ms JONES:** Down in Victoria.

**Mr O'CONNOR:** Victoria.

**Ms JONES:** My understanding is that the Office of Sport was very keen to showcase the new indoor arena at this event that they had secured.

**The CHAIR:** Was that a reason why further scrutiny was not applied or further diligence not done, or is it the case that you were satisfied with the diligence that was ordered?

**Ms JONES:** I think they were satisfied at that time that the geotech report had given them the confidence that the material was okay to lay. Time also would have played a role in that.

**The Hon. MARK LATHAM:** But surely at the point of seeing those grommets in the materials your staff and the SIEC staff would have thought that the members, the equestrian fraternity, who spend hundreds of thousands of dollars on these horses—their care, their training and so forth—will not like that, will they? They will not like that grommets are in this surface, and inevitably those grommets will be noticed by the customers.

**Ms JONES:** That is why the Office of Sport at that time asked for them to be removed.

**The Hon. MARK LATHAM:** Why were they not removed?

**Ms JONES:** They were removed to a certain extent. As I said and as Mr Khan has said as well, the rubber grommets were removed by Barrie Smith Motorsport at that point, but not all of them. When the surface was laid it presented as a good surface, and 20-plus months later we then start receiving complaints about rubber grommets.

**The Hon. TREVOR KHAN:** When these negotiations were going on with Barrie Smith Motorsport, did they warrant that the surface, albeit not a new surface, would be free of rubber grommets?

**Ms JONES:** I am not sure if they provided us with that assurance, but I will take that on notice.

**The Hon. MARK LATHAM:** Did Barrie Smith not refer to it as the elephant in the room and say that he could not give that assurance? He was going to do his best, but no assurance was ever given.

**Ms JONES:** I have read Barrie Smith Motorsport's submission, and I acknowledge that they do mention "the elephant in the room". I will take it on notice in terms of whether or not there was any assurance given.

**The CHAIR:** Is there any reasonable basis to conclude that Mr Smith felt pressure to obtain this alternative material in a time frame that allowed the event to take place?

**Ms JONES:** It was part of the contractual arrangement that there was to be a completion date in January 2018.

**The CHAIR:** Under that contract, was he subject to any financial penalty if that was not met?

**Ms JONES:** I will take that on notice, actually.

**The Hon. MARK LATHAM:** There has been an assumption, I think, that the second-hand materials arrived at SIEC having freshly been ripped out of the ground at Wallaby Hill. Is that the impression the Office of Sport has that they came out of the ground at Wallaby Hill one week and they logged at SIEC the next?

UNCORRECTED

---

**Ms JONES:** That is the impression that I have, yes.

**The Hon. TREVOR KHAN:** Or one day, followed by—

**The Hon. MARK LATHAM:** One day or one week, but a short period. They came straight out at Wallaby Hill and then were transported to SIEC. The Committee has evidence that in fact they were taken out at Wallaby Hill a good time earlier and stored. There was a stockpile at Wallaby Hill. Are you aware of that?

**Ms JONES:** No, I am not aware.

**The Hon. MARK LATHAM:** Does that not add to the culpability of Barrie Smith that he had a stockpile at Wallaby Hill, where he could have gone to the effort of getting all the grommets out? He did not do that. He transported it some time later to SIEC and took some of the grommets out, but obviously a lot were left in.

**Ms JONES:** I think that is a question you can ask Barrie Smith Motorsport.

**The Hon. MARK LATHAM:** We will. But in the eyes of the Office of Sport, because you have allocated this money, does that not add to his culpability in not reasonably fulfilling or even trying to fulfil the terms of the tender?

**Ms JONES:** Speaking on behalf of the Office of Sport, our expectation is that we were getting brand new material. That is what our contract actually asked for. The fact that the material came to us from Wallaby Hill, we had no knowledge of that until after the material had actually arrived on site. That is when we went through our diligence process of testing it before it could be laid.

**The CHAIR:** At any point did Mr Smith notify the Office of Sport that there were rubber grommets in the material that he was putting forward in lieu of the original design?

**Ms JONES:** No, the first that we knew of the rubber grommets was when the Sydney International Equestrian Centre staff saw them.

**The CHAIR:** Was there any evidence that came through the Office of Sport that Mr Smith had notified Equestrian NSW or otherwise sought their permission to use this alternative material?

**Ms JONES:** I have no information around that, so I would suggest you direct that question to Equestrian NSW or to Barrie Smith.

**The CHAIR:** But it is clear that Barrie Smith was interfacing exclusively with the Office of Sport in fulfilment of a contract.

**Ms JONES:** Yes, our contractual arrangement was with Barrie Smith Motorsport.

**The CHAIR:** That was their understanding, I presume.

**Ms JONES:** Yes, absolutely.

**The CHAIR:** And I presume that they did not entertain any fiction that Equestrian NSW was a decision-maker under that contract and could give them lawful instructions.

**Ms JONES:** I do not necessarily agree with that. Equestrian NSW was not a decision-maker in the tender process. The only role that Equestrian NSW played in the tender process was through their chief executive, Mr Bruce Farrar, who was on the tender advisory committee.

**The CHAIR:** So it is not a reasonable basis for Barrie Smith to say, "We thought Equestrian NSW was our client and we were talking to them. They were saying it is all good."

**Mr O'CONNOR:** In terms of privity of contract, it was a contract between us and Barrie Smith.

**The Hon. TREVOR KHAN:** God, I love those terms.

**The Hon. SAM FARRAWAY:** If I could follow on, I want to go back to the beginning.

**The Hon. TREVOR KHAN:** 1976, I think.

**The Hon. SAM FARRAWAY:** I declare that our family farm is an equestrian centre. We have an indoor dressage arena.

**The Hon. TREVOR KHAN:** Really? And you have only ridden a horse once!

**The Hon. SAM FARRAWAY:** I know.

UNCORRECTED

---

**The Hon. TREVOR KHAN:** You were that child.

**The Hon. SAM FARRAWAY:** I was on the motorbike. Wallaby Hill is an outdoor dressage arena. SIEC, which is the country's premier equestrian facility, is an indoor dressage arena. At any stage did Barrie Smith Motorsport say that the product was coming from an exposed or outdoor dressage arena or storage?

**Ms JONES:** No.

**The Hon. SAM FARRAWAY:** They talk about a warehouse, but you would think a warehouse is enclosed. It does make a difference to the material and to the treatment of it.

**Ms JONES:** Yes, so the answer is no.

**The Hon. SAM FARRAWAY:** We have identified or we have worked out that the grommets are a result of the extraction or removal of that from Wallaby Hill, which no-one knew about until it was installed or stockpiled at SIEC. Correct?

**Ms JONES:** Correct.

**The Hon. SAM FARRAWAY:** Is it fair to say the only way to effectively remove those grommets at that point in time was to actually remove the entire material at the beginning?

**Ms JONES:** Yes, correct.

**The Hon. SAM FARRAWAY:** Or not lay it.

**Ms JONES:** Yes, correct. I say that in hindsight.

**The Hon. SAM FARRAWAY:** Of course, and I appreciate you were not the CEO of the organisation at the time.

**Ms JONES:** Yes.

**The Hon. SAM FARRAWAY:** As Mr Latham said, in hindsight this is effectively second-hand material. This did not meet the contractual commercial obligations between the Office of Sport and Barrie Smith Motorsport, did it?

**Ms JONES:** That is correct.

**The Hon. SAM FARRAWAY:** This question is probably directed to Ms Jones' time at the Office of Sport. What has the Office of Sport implemented with its grant guidelines since you have been the CEO and in more recent times so that this does not happen again?

**The CHAIR:** Do you mean grant or do you mean contract?

**The Hon. MARK LATHAM:** Procurement.

**The Hon. SAM FARRAWAY:** Procurement, yes, and the grant guidelines in terms of the checks and balances from Office of Sport—across multiple disciplines, not just one.

**Ms JONES:** Thank you. I will just correct you there, if you do not mind. It was not a grant; it was a tender process that we went through. There are no grant guidelines around this; it is actually procurement guidelines, but I appreciate that is just a terminology thing.

**The CHAIR:** It is an important distinction.

**The Hon. TREVOR KHAN:** Particularly at the present time.

**The Hon. SAM FARRAWAY:** Yes, especially in the Labor Party.

**The Hon. TREVOR KHAN:** No, for all of us.

**Ms JONES:** I might now hand to Mr O'Connor, who will go through what we have actually done in our lessons learnt from this.

**Mr O'CONNOR:** Thank you. We have made changes both procedurally and structurally in terms of our organisational structure, and then also changes to the documentation. At the time of the contract, we had a chief procurement officer, but that officer had no role in vetting construction contracts. That position only looked at goods and services. The chief executive has now broadened out that position's responsibilities so any construction contract over \$150,000 would go through the chief procurement officer as an external check—internal to the Office of Sport but external to the project. That position was also relatively down inside the pecking order. The chief procurement officer is now a direct report to the chief executive, which is a signal to all staff

## UNCORRECTED

about the importance of getting procurement right. In terms of adjusting our documentation, there have been several waves of this, but I brought together a team that had people from the chief procurement office as well as the assets team and our chief risk officer.

We have made a range of changes looking at the themes in the ICAC and the O'Connor Marsden [OCM] reports. Firstly, the key documents now are the tender evaluation plan, the sourcing strategy, the tender evaluation report and our code of conduct. They have now got, all through them, lots of pointers to say, "Make sure you get all the documents signed". We acknowledge that there were documents that were not signed or not signed by the right people. Secondly, it says, "Make sure that you are documenting decisions". As has been pointed out by ICAC and OCM, we did not really document why we went for a limited tender or why we necessarily went out to those people. Our documentation now requires those decisions to be documented.

We have also made changes around management of experts. To be clear, our position is that there is nothing wrong with involving experts in a highly technical procurement for an Olympic-grade facility. But we agree that was almost undocumented. There are now considerable requirements throughout the tender documentation to decide whether you need externals at all, and if you do need externals what you need them for. They may have a broad remit, which needs to be reflected in their terms of reference and perhaps suggests they get access to a lot of documents. We are now talking confidentiality. Or you may only have a very little slice of information you want from them, which means they only get partial access to critical information.

**The CHAIR:** Mr O'Connor, in this context, who are you referring to when you say "expert"?

**Mr O'CONNOR:** In terms of this contract that we are talking about, I am talking about the tender advisory panel, but it could be any kind of expert. Finally, we have made changes to our conflict of interest and confidentiality documents. All of these documents, by the way, were shared with the Executive Director of the corruption prevention division in ICAC. We took on board some feedback from ICAC about the initial drafts. But our conflict of interest documentation has been updated—firstly to make it very clear that you need to get those conflict of interest declarations early, and if necessary refresh them, and secondly so that the conflict of interest documents make it clear that if you have any doubt about whether you have a conflict then you should declare it. If in doubt, declare; this is Isaac's best practice. It also gives a bit of reassurance that if you declare a contract, it does not mean it is the end of the world. It will just be assessed, and perhaps we can manage our way through it. Finally, we have broadened the concept of what a conflict of interest is; a personal conflict of interest may not necessarily surface all issues.

We can debate what Mr Farrar's role was, but he did not have the family relationship. That was Mr Dingwall. What we have done is broaden out the concept of a conflict of interest to what we might call a corporate conflict of interest. Were this to be repeated, this procurement, then we would probably expect someone in Mr Farrar's position to declare what he knew about Mr Dingwall's family relationship even though Mr Farrar did not have such a relationship. The final thing I wanted to say was we have trained all of this documentation out, so all of the procurement team and the assets team have been taken through the changes. Finally, we have also now got a checklist. We do not have these documents just sitting there; there is a checklist that you go through. It is important to get the conflict of interest declarations, for instance, signed up front. That is contained in the conflict of interest document, but there is now kind of a master timeline that really puts a procurement manager on notice early to get the right documents signed and done at the right time.

**Ms JONES:** Can I just add to that, quickly and briefly? We have also recently gone through a fairly significant training regime from ICAC for some of the key people involved in procurement from the Office of Sport. That was completed about a month or so ago. On top of that, as you would appreciate, we also have relationships with State sporting organisations. The Office of Sport and New South Wales Government recognise—I think we are up to about 96 State sporting organisations now, which are the peak bodies representing their sport for the State. In those recognition agreements, as well as any sort of funding agreements that we might have with State sporting organisations, we have now put in additional clauses around their governance arrangements and also their conflicts of interest. They now need to comply with international standards in relation to that.

**The CHAIR:** On notice, will you able to provide us with a copy of those clauses that are now in those?

**Ms JONES:** Sure, absolutely. We can provide you with a copy of a template funding agreement.

**The CHAIR:** I am conscious that we have 15 more minutes. I know Mr Latham has some more questions, I have some and Mr Khan does. Is the site remediated? How much did the remediation cost, and who paid for it?

**Ms JONES:** The initial remediation that I directed through Barrie Smith Motorsport in 2020 was done at the cost of Barrie Smith Motorsport and not of the New South Wales Government. I was very clear that I did

## UNCORRECTED

not want this to be at the extra cost of the people of New South Wales. As we have already determined here at the Committee, there still are rubber grommets that exist on the site. Every time the Office of Sport flips a site, they actually walk the site and pull out any of this sort of foreign material. That is the cost to us at this stage when we go through and do our diligence. Before we hand over the arena to a hirer, we go through and we collect any rubber grommets.

**The CHAIR:** You are not contemplating ordering any further remediation or wholesale removal of the grommets?

**Ms JONES:** No, we do not think—as I said previously, back in March 2021 we did a safety inspection at that point. We feel that the site is safe. I do acknowledge that we are doing a further safety assessment, which is currently underway. That is just to provide us with additional assurance, but we do consider the site to be safe at the moment. We are happy to run it, and we do not feel like we need to do anything more in terms of the surface other than manage the ongoing visibility of grommets.

**The Hon. MARK LATHAM:** These are hard rubber studs. Can they not injure these valuable horses?

**Ms JONES:** The information that we have from the international experts is no, they do not injure the horses. In fact, we have not received any complaints from people who have injured horses.

**The Hon. MARK LATHAM:** Would it not be like stepping on a stone?

**Mr O'CONNOR:** To be clear, part of our preparation of the surface before any event is for the surface to be flipped and then for the staff to walk the surface. They are not just looking for the rubber grommets; they are also looking for any foreign object. We went out there the other day and there were sticks that I presume birds had brought in and things like that. While we fully agree there are grommets in the sand, the process to prepare the surface for an event, the flipping and then the walking of the surface by the staff—I gather they even do it barefoot, I think one of them told me—

**Ms JONES:** Yes, and they grade the surface as well.

**Mr O'CONNOR:** —will identify the majority of anything that is right on the surface that a horse might step on.

**The CHAIR:** What is the expected life span of the new surface?

**Ms JONES:** I will take that on notice; I am not too sure. In noting that, the former surface was down for 17 years before—

**The CHAIR:** So it is not likely that this will be re-laid in the next five to 10 years in the ordinary maintenance of the facility.

**Ms JONES:** That is not the plan, no.

**The CHAIR:** It basically gets re-laid at some point in the future when someone requests that it be re-laid.

**Ms JONES:** Either when it comes to its end of life or once technology may improve. Again, we are in that competition environment with other arenas around the State or around the country.

**The Hon. TREVOR KHAN:** I want to go back to Wallaby Hill, where this material was stood. It strikes me that if this large number of rubber grommets was torn from the surface beneath the sand then it seems to have been a pretty bodgie job by whoever removed this material, because the under-surface matting will have been damaged. Do we know if that was done by Barrie Smith, or was it done by some contractor to Wallaby Hill?

**Ms JONES:** I think that is a question you would need to ask Barrie Smith.

**The Hon. TREVOR KHAN:** So you have no idea whether Barrie Smith went and acquired this stuff, not having removed it themselves.

**The Hon. MARK LATHAM:** They laid it at Wallaby Hill.

**The Hon. TREVOR KHAN:** They may have laid it; the question is who lifted it, and when did Barrie Smith become involved in that part of the transaction? Were they a continuous party, or did they come in at the last moment and say, "There's a quantity of sand"? You have no idea of the provenance.

**Ms JONES:** We have got no documentation on that. I know Barrie Smith are appearing this afternoon, so that might be a question for them.

**The Hon. MARK LATHAM:** Ms Jones, I come to some of your answers on notice and also to supplementary questions. You say up-front that Alex Townsend was not involved in the tender process, either

UNCORRECTED

---

personally or as a member of the Equestrian NSW board. But is it not true that she was the sole referee for Barrie Smith Motorsport?

**Ms JONES:** That is correct. As part of the tender process they were required to provide referees. For Barrie Smith Motorsport's proposal, their sole referee was Alexandra Townsend, who owns Wallaby Hill. Again, our process was not perfect at the time. We did not check referees.

**The Hon. MARK LATHAM:** Why was that?

**Ms JONES:** I cannot comment on why we did not check them; I just know that we did not.

**The Hon. MARK LATHAM:** There was no referee check on the sole referee for the person who won the tender?

**Ms JONES:** That is correct.

**The Hon. MARK LATHAM:** If there had been a referee check, you might have found the stockpile down at Wallaby Hill and seen all the grommets.

**Ms JONES:** I cannot speculate in terms of what may or may not have been found through the referee check, but it is definitely an issue with our process.

**The CHAIR:** Is Mr Smith a nationally renowned equestrian centre surface installer?

**Ms JONES:** He is the licence holder for the OTTO system. The OTTO system is the system that we installed. The OTTO system comes from Europe.

**The CHAIR:** So he is the sole holder?

**The Hon. MARK LATHAM:** He had installed just one arena, this one at Wallaby Hill.

**The CHAIR:** Did he have an extensive history of applying these surfaces prior to the Office of Sport engaging him?

**Mr O'CONNOR:** I think Mr Latham is correct that at the time, the Wallaby Hill installation was his only prior job. I think that is why he made use of OTTO personnel who came out to assist him.

**The Hon. MARK LATHAM:** He had installed one at Wallaby Hill, which was a cock-up. It was lifted up and sent to SIEC and caused all these troubles, with no referee check.

**The CHAIR:** That is why I am asking. This was a limited tender. Was it a tender by invitation?

**Ms JONES:** Yes, we went to six.

**The CHAIR:** How many bids did you get?

**Mr O'CONNOR:** Four.

**Ms JONES:** Four came back. Do you want to talk through that?

**Mr O'CONNOR:** We got four back: one from Barrie Smith, one from Capricorn and two from Equestrian Services. They put in two tenders: One was for a wax surface; the other was for an ebb and flow. Three out of the four were ebb and flow systems, and one was wax.

**The CHAIR:** Did the other bidders have a prior experience of installation that exceeded Mr Smith's?

**Mr O'CONNOR:** I think similarly relatively limited.

**The CHAIR:** I presume there is not that much demand for these; they do not come up that often.

**Mr O'CONNOR:** No, and ebb and flow probably is a fairly new technology.

**Ms JONES:** It was a new technology at the time.

**The Hon. MARK LATHAM:** Ebb and flow set it up for Barrie Smith.

**The CHAIR:** At this point, my knowledge of dressage has gone up exponentially, let alone what an ebb and flow system is. My point is that presumably no-one's references were checked.

**Ms JONES:** That is right.

**The CHAIR:** What was the point of having the references?

**Ms JONES:** I cannot comment on that.

UNCORRECTED

---

**The Hon. SAM FARRAWAY:** I think Ms Jones may have answered this question in her opening statement, but I will ask it again to double-check. The Office of Sport has implemented an independent probity adviser that reviews all tendering, contracts, grants across the board, has it not?

**Ms JONES:** We had the independent probity adviser come through and review this process particularly, first and foremost because I wanted to understand what happened, why it happened, were there conflicts of interest, did I need to take any further steps and what were the exposure points in the Office of Sport processes—which we did absolutely learn. In terms of the actual tender process now, the additional oversight that we have, as Mr O'Connor outlined, is that we now have the chief procurement officer reporting directly to myself. That was through a restructure at the Office of Sport, and that chief procurement officer now has visibility of all contracts that are over \$150,000 in value.

**The Hon. MARK LATHAM:** Ms Jones, do you recall writing to Maggie Dawkins, who is one of the complainants, in March last year referring to the O'Connor Marsden probity review where you wrote, "The review is examining all aspects of the tender process from project initiation to project completion"?

**Ms JONES:** Yes, I do.

**The Hon. MARK LATHAM:** That was not strictly true, was it? The probity process did not examine the project completion. It cut out just the tender process—not the connection of Alex Townsend and Wallaby Hill or the fact that Alex Townsend, in having this work done for her, is on the Equestrian NSW board where the president's son did the work.

**Ms JONES:** Yes, you are correct in that the actual scope of the OCM review was limited to the tender process. What was meant by that letter to Ms Dawkins and also to another complainant was that we were looking at the entire process around the tender process.

**The Hon. MARK LATHAM:** But that is not what the letter says, is it?

**Ms JONES:** I appreciate that, but I do want to clarify that point.

**The Hon. MARK LATHAM:** So you acknowledge that the letter is misleading.

**Ms JONES:** I acknowledge that what was meant by that term was that it was to cover the tender process.

**The Hon. MARK LATHAM:** When I asked questions on notice about this illicit Alex Townsend connection, you drafted a two-line response to say there was nothing to see here.

**Ms JONES:** It is important to understand my limitations in terms of holding Alexandra Townsend to account. The contract at the Office of Sport was not with Alexandra Townsend; the contract at the Office of Sport was with Barrie Smith Motorsport. Any arrangements that Barrie Smith Motorsport made with Alexandra Townsend to gain access to that material from Wallaby Hill is between them and not through the Office of Sport. Post the probity report from OCM, after reviewing their recommendations and again understanding what some of the particular conflict of interest risks or exposure risks were to the Office of Sport, the decision was then made to refer it to ICAC. That ICAC referral happened some days after we received the OCM report and then we did not hear from ICAC for, I think, about six or seven months at least.

**The Hon. MARK LATHAM:** But the OCM terms of reference did not include Alex Townsend. In terms of propriety, surely it is a big, big deal, a huge concern, that Alex Townsend is the sole referee for Barrie Smith Motorsport and that there was no referee check. She is on the board of Equestrian NSW. She obviously knows the president, whose son does the work at her property—at a cost to taxpayers—to take out the failed material and send it second-hand to SIEC. That is surely a probity issue that should have been referred to O'Connor Marsden. Because it was not and because you did not, it has not gone to ICAC.

**Ms JONES:** No, the ICAC had access to all the materials. They had access to all of the Office of Sport documentation, so they were fully aware of Alex Townsend's involvement with Barrie Smith Motorsport and the material at Wallaby Hill. I have to reinforce the fact that for the Office of Sport, our contractual arrangement was not with Alex Townsend. Our contractual arrangement was with Barrie Smith Motorsport.

**The Hon. MARK LATHAM:** Yes, but Alex Townsend is closely involved in what appears to be the impropriety that we are looking at. We can talk to ICAC separately and look at the 600 documents, but in the ICAC letter to you dated 1 December there is no mention of Alex Townsend. It is like ICAC does not know about this connection.

**The Hon. TREVOR KHAN:** It may be a jurisdictional question.

**The CHAIR:** Ms Jones, Equestrian NSW is not a government-controlled body, correct?

UNCORRECTED

---

**Ms JONES:** No, that is correct.

**The CHAIR:** It is an association that is incorporated under the Associations Incorporation Act, to the best of your knowledge?

**Ms JONES:** Yes, they are a not-for-profit organisation.

**The CHAIR:** And that is similar to the other 95-odd bodies, correct?

**Ms JONES:** Correct.

**The CHAIR:** What I am struggling to understand about the jurisdiction of ICAC here is: How could ICAC investigate them if they are not public officials?

**Mr O'CONNOR:** I think the fact that some of the people we are talking about had a contract with us may bring them inside ICAC's jurisdiction.

**The CHAIR:** Sure, if they are found to have induced any public official to have behaved corruptly then ICAC would have jurisdiction, but not if they themselves have behaved inappropriately. Do you appreciate that there is a distinction?

**Ms JONES:** Absolutely, I do appreciate there is a distinction. I know that in deciding to refer the matter to ICAC, not only did we want to understand any exposure to any potential corruption activity but also the role of the tender advisory committee and whether or not that also poses a bit of a risk to the Office of Sport.

**The CHAIR:** It may well pose a corruption risk, but it might not be a corruption risk that ICAC has jurisdiction to investigate. That is the key distinction here. Did it occur to anyone that in the absence of ICAC jurisdiction the appropriate people to investigate this may be the police, particularly if there was fraud involved?

**Mr O'CONNOR:** I am not sure that we necessarily had any evidence of that.

**The Hon. MARK LATHAM:** No evidence of fraud?

**Mr O'CONNOR:** No, I do not believe there is any evidence of fraud.

**The CHAIR:** But you have said to us before that you felt that they lied to you—that they misled you around what the surface material was.

**Mr O'CONNOR:** Fraud usually involves some sort of pecuniary benefit.

**The CHAIR:** Not necessarily, but we do not have to have a legal debate. My question is: At any point, did the Office of Sport consider a reference to the police?

**Ms JONES:** No, we did not. I can be honest and say to you: No, we did not. The only reference that we have made to the New South Wales police is in response to the allegation of fraud by a complainant. We said, "If you think you have got evidence of fraud, then we encourage you to take that to the police".

**The CHAIR:** I appreciate that these are often complicated questions, particularly on integrity and probity matters. What I struggle to understand is that when you sought O'Connor Marsden's review, by definition they were almost certainly likely to come back and say no-one from the Office of Sport had done anything corrupt. It seems like this is far more in the category of incompetent, not corrupt, as it applies to Office of Sport. But when it comes to Equestrian NSW and their obligations, this is basic stuff. Under the ICAC Act, a quick Google search will reveal that they do not have jurisdiction to look into Equestrian NSW. Why were no further steps undertaken with respect to what the alternative investigation could be or should be for such an organisation?

**Mr O'CONNOR:** If the suggestion is that we could have set O'Connor Marsden on Equestrian NSW, with no jurisdiction or any power to compel anything, I am not sure how far that would have gone either.

**The CHAIR:** Clearly, it would not have gone anywhere. My issue is how genuine the Office of Sport was in trying to get this investigated. That is the question. The other opportunity would be to go to the Ombudsman, I presume, but there are probably jurisdictional issues there. Will you explain to me why you went through the probity process you did? At the time, were you aware that there were jurisdictional limits that would prevent organisations like O'Connor Marsden and ICAC from investigating Equestrian NSW?

**Ms JONES:** I can absolutely, wholeheartedly say that the approach was genuine. We did actually want to get to the bottom of what had occurred and how it occurred. From engaging O'Connor Marsden in the first instance, it was really important for us, like I said before, to understand: What was the process it went through? Were there any failings, particularly in the procurement process and in the engagement of the tender advisory committee? Coming out of that, the test for ICAC is whether or not there is any sort of reasonable suspicion. The question that we had that was unanswered was: Was the role of the tender advisory committee part of Office of



UNCORRECTED

---

Sport and part of government, or were they solely independent? Hence the referral to the Independent Commission Against Corruption. I have answered your question already in terms of whether or not there was any consideration about referral to the New South Wales police. The honest answer to that is no, but if there is evidence of fraudulent activity that is solid evidence then the Office of Sport could potentially do that.

**The Hon. MARK LATHAM:** Ms Jones, in saying that you were determined to get to the bottom of what had happened, why did it take the Standing Order 52 order to publicly vent the involvement of Alex Townsend, when that could have been part of the answer to my question on notice and part of the O'Connor Marsden referral?

**Ms JONES:** I will go back and say that whilst the material from Wallaby Hill was Alex Townsend's property, the Office of Sport did not have a relationship with Alexandra Townsend. The Office of Sport had its relationship with Barrie Smith Motorsport. Barrie Smith Motorsport could have chosen to take the material from other locations, and it still would have no bearing on the outcome for the Office of Sport. What the Office of Sport was concerned with is that that was not the material that we had contracted and that we had signed up to through the tender process.

**The Hon. MARK LATHAM:** That might be technically true. But given what we now know to be the connection between Farrar, Dingwall, Smith and Townsend, is there not a reasonable suspicion of fraud that should have been reported to the police?

**Ms JONES:** We thought that reasonable suspicion would be considered by ICAC.

**The CHAIR:** Ms Jones and Mr O'Connor, you have been very generous with your time this morning. Thank you very much. The Committee thanks the Office of Sport for its cooperation with this inquiry as well. It has most certainly made our role a lot easier to have such cooperation.

**The Hon. TREVOR KHAN:** It is exceptional.

**The CHAIR:** It is exceptional, as Mr Khan says, and to be encouraged. We thank you for that. You have taken some questions on notice, for which you will have 21 days after the date of receipt of the transcript to return answers. Due to pressures that Hansard are under, you are unlikely to get that transcript until January or thereabouts, so you are free over Christmas not to spend your time answering our questions on notice. The Committee might send you further supplementary questions arising from today as well. There is a chance we might invite you back at the conclusion of the public hearings to respond to any other evidence if there is a need.

**Ms JONES:** Sure.

**The CHAIR:** Otherwise, we thank you very much for your time and we look forward to engaging with you further on this matter.

**(The witnesses withdrew.)**

**(Short adjournment)**

## UNCORRECTED

---

**MATT MILLER**, Former CEO, Office of Sport, before the Committee via videoconference, sworn and examined

**The CHAIR:** We welcome our next witness, who is appearing via videoconference. We invite you to make a short opening statement, if you so wish.

**Mr MILLER:** I am getting a bit of delay and feedback, so apologies if that is going to be a problem. I am really pleased to address the Committee's inquiries, and I welcome the opportunity to provide whatever evidence I can to assist the Committee. I was appointed as the inaugural chief executive of the Office of Sport in November 2014 and resigned in April 2019. In my view, over that period the Office of Sport has delivered strongly on the Government's agenda for sport and laid the foundations for the Executive to contribute broadly to a wide range of outcomes for the people of New South Wales.

**The CHAIR:** Mr Miller, I will ask you to stop there. We are getting some interference and some delay, which probably arises if you have another video on or if you have a live stream on. Do you have any other application running?

**Mr MILLER:** No.

**The CHAIR:** Do you mind turning your video off, Mr Miller? That might make it easier on bandwidth.

**Mr MILLER:** Yes, just bear with me.

**The CHAIR:** Thank you. Do you mind starting again from the beginning of your opening statement?

**Mr MILLER:** Sure. Thank you, Chair. We are still getting the feedback at my end. Anyway, I am pleased to assist the Committee in any way that I can.

**The CHAIR:** Mr Miller, I am sorry. We are still getting the feedback. The secretariat will call you with some instructions about how to dial in so we have the audio coming in from your phone and not from your computer. We will probably then be in a position to have your video put back on. We might just pause for a couple of minutes to allow us to resolve the technical difficulties.

**(Short adjournment)**

**The CHAIR:** We will resume the public hearing, having resolved some of those technical issues. Mr Miller, I invite you to make your opening statement again.

**Mr MILLER:** Thanks, Chair. I am pleased to assist the Committee in its inquiries. I welcome the opportunity to place on public record some responses to claims of potential conflict of interest I might have had when I performed a voluntary role as chair of the nominations committee process for an Equestrian NSW board recruitment. I note that I was appointed as the inaugural chief executive of the Office of Sport in November 2014, and I resigned that position in April 2019. In my view, over that period the Office of Sport delivered strongly on the Government's agenda for sport and laid the foundations for the sector to contribute broadly for the people of New South Wales. It is particularly important to note as chief executive my remit was a broad one, extending beyond direct accountability for the Office of Sport to also include oversight and advice to the sport Minister and the Government on sport policy and strategy, and harmonising where appropriate the actions of the Office of Sport, Sydney Cricket and Sports Ground Trust, Venues NSW, NSW Institute of Sport and Sydney Olympic Park Authority. I was supported by a team of high-calibre CEOs and executive directors with unquestionable commitment to integrity. That is the extent of my opening comments.

**The CHAIR:** Thank you, Mr Miller. We will go to questioning.

**The Hon. MARK LATHAM:** Thanks, Mr Miller. I am just wondering what was involved in being a member of the Equestrian NSW board selection advisory.

**Mr MILLER:** I am struggling to hear, but is that Mr Latham?

**The Hon. MARK LATHAM:** Yes, it is. I was just wondering—

**Mr MILLER:** Yes, I got the question; I just could not pick up who it was. Through you, Chair, I was asked around September or October 2020, nearly 18 months after I left the Office of Sport as its chief executive, to perform the role of chair of a nominations committee. Being retired and in a voluntary capacity, and really keen to give back to not only equestrian but also a range of sports—and I could talk to those activities if the Committee needed me to—I was quite happy to take up the voluntary role of forming a committee to assess nominations for board positions for Equestrian NSW, in much the way that any nominations committee process would work for these sporting organisations.

## UNCORRECTED

**The Hon. MARK LATHAM:** Are you aware of the answers that the Office of Sport has provided to this Committee?

**Mr MILLER:** I am.

**The Hon. MARK LATHAM:** One of the questions that I asked supplementary to the earlier briefing we had was: When did the office first become aware that Matt Miller had become a member of the ENSW board selection advisory board? They answered that Mr Farrar invited you to join that board nomination committee on 26 July 2016 and the Office of Sport became aware of the invitation on that date.

**Mr MILLER:** That is incorrect. My current board role is with Netball NSW as a director on that board, and I have not had any board roles on State sporting organisations or national sporting organisations. The only exception to that has been this offer to chair a nominations committee process as an independent chair from outside the sport, so I was not even on Equestrian NSW's board. I was an independent external chair of a nominations committee process, which as I say occurred around October or November 2020. I can furnish the Committee with emails to that effect.

**The Hon. MARK LATHAM:** Why would the Office of Sport seemingly have records to say that actually dates from 26 July 2016, an exact date that they have given for your role on the Equestrian NSW board nomination committee?

**Mr MILLER:** I have no idea, Mr Latham. I have not seen that in any of the material that I briefly have canvassed prior to agreeing to be a part of this process. I am happy to be pointed to that and respond as appropriate.

**The Hon. MARK LATHAM:** Okay. It is a big four-year discrepancy that we will obviously have to pursue elsewhere.

**The CHAIR:** Mr Miller, just to be clear, is there any other board or committee process for which the Office of Sport may have this confused? Is your evidence that you held no such position at that time whatsoever?

**Mr MILLER:** That is my recollection, yes.

**The Hon. MARK LATHAM:** Mr Miller, when did you first become aware of the Equestrian NSW proposal for a procurement to redo these two arenas at SIEC?

**Mr MILLER:** Towards the end of 2016, from memory.

**The Hon. MARK LATHAM:** What response did you give? What did you do about it?

**Mr MILLER:** As the chief executive, I have an executive director in charge of that venue. We run, as you would be aware from the Office of Sport's submission, a raft of what are referred to as ex-Olympic venues. The equestrian centre is only one of them. The executive director raised with me the fact that we were suffering issues in terms of potential loss of events in respect of that and that in terms of the Government's agenda of trying to maximise utilisation of its assets and attract tourism events—because sport tourism is a major driver of the economy—we were very keen to make sure from a health and safety perspective but also with the ageing infrastructure and managing that world-class facility that we needed to have a state-of-the-art surface at the venue. Equestrian NSW had made it known that they had concerns about the loss of events and that there were concerns around the ageing nature of the surface at the SIEC.

**The CHAIR:** One question I am sure Mr Latham was implying was: How did you become aware of this proposal? Was it from Equestrian NSW, your executive director or elsewhere?

**Mr MILLER:** Both.

**The CHAIR:** Did Equestrian NSW contact you directly about this?

**Mr MILLER:** I would see CEOs of most State sporting organisations at sporting forums and other functions. I do not recall whether it was specifically raised at such a forum, but it was certainly raised with me internally.

**The CHAIR:** By Mr Farrar? Was he the CEO of Equestrian NSW at the time?

**Mr MILLER:** Yes.

**The CHAIR:** Did he raise it with you directly?

**Mr MILLER:** Yes.

**The CHAIR:** Was that prior to your executive director providing you that advice?

**Mr MILLER:** I cannot answer that question; it was too long ago.

## UNCORRECTED

**The CHAIR:** Okay, but there is a chance that it was?

**Mr MILLER:** It may have been, but it certainly was not raised formally.

**The Hon. MARK LATHAM:** Mr Miller, did Mr Farrar lobby you and Minister Ayres about this proposal at one of the awards nights for Equestrian NSW?

**Mr MILLER:** Mr Latham, I would not say "lobbying" would be the term. In the role as chief executive, I probably attend upwards of 20 or 30 awards nights a year. I certainly have attended and presented awards at Equestrian NSW awards evenings. To the best of my knowledge, I do not have any recollection of any lobbying in respect of the SIEC arena at those awards nights. As I say, Equestrian NSW is a major, if not the major, client-tenant at a government-owned facility called SIEC. The Government has a very clear agenda about maximising utilisation of its facilities to generate income, to defray the costs of maintaining and operating those facilities, and it is in that vein that my executive director would have been raising with me the sense of, "Well, we're already losing an event to Victoria", and the New South Wales Government had a very clear and strong agenda around sporting tours, not just in respect of equestrian but stadiums and a whole raft of other world cup events which are now flowing. The primary driver, from my recollection for investment in the surface upgrade, was the fact that we were getting intel that our ageing infrastructure was a constraint on our ability to generate income at the centre and thereby defray the net outgoings that inevitably come with running a shooting centre, the equestrian centre et cetera.

**The Hon. MARK LATHAM:** Mr Miller, in your time as the CEO at Office of Sport, in your five years there, how many times did you roll over maintenance funding as you did in this instance to have capital works greater than half a million dollars?

**Mr MILLER:** I could not answer that question—not because I do not want to but simply I do not have that detail. It is not just a matter of rolling over maintenance funding. It is a matter of: Is this a priority investment in terms of government strategy and our plans and our budgets? Is it the priority to invest in this as opposed to other things? Do we have any access to funds that might actually support such an investment? Clearly I formed the view, based on congruence with government policy and our need to generate revenue to defray incomes and to support a broader government agenda on sports tourism through events and these sort of centres, that the investment of circa \$500,000 or \$600,000 was something that we needed to do, given we are the owners on behalf of the people of New South Wales of SIEC.

**The Hon. MARK LATHAM:** Can you think of another procurement where you did the same thing?

**Mr MILLER:** I cannot off the top of my head, Mr Latham, because I am afraid I have been gone for 2½ years and it is not that—I am sure we would be able to find something in the Office of Sport records but I do not have access to that stuff and have not had for 2½ years.

**The Hon. MARK LATHAM:** Do you recall two meetings back to back, 7 March and 13 March 2017, with Minister Ayres and Mr Farrar to try to advance the funding allocation for this proposal?

**Mr MILLER:** No, I do not, and I do not necessarily believe I was at those meetings. I think the meetings you refer to were probably between Mr Farrar and some others, based on my recollection of the papers I have read prior to coming into this forum. I do not believe I was in attendance at the meetings, but I stand to be corrected if there is evidence to the contrary.

**The Hon. MARK LATHAM:** Yes. The meeting on 7 March, which the Office of Sport says went ahead, is not in Minister Ayres' published diary so there is some confusion about that, but you are described as approving a ministerial brief—

**Mr MILLER:** Yes.

**The Hon. MARK LATHAM:** —to say it is a good project but no money available. Do you recall that?

**Mr MILLER:** I know the brief you are referring to because it is covered in the Office of Sport's submission to the inquiry.

**The Hon. MARK LATHAM:** Right. So you recall the brief where you said it was a good project and there was no money available, and subsequently you find the money in the maintenance rollover and the postponement of the truck parking area and amenities block at SIEC. Is that your recollection of how it happened?

**Mr MILLER:** Well, I do not have any recollection of the truck parking area et cetera, but I certainly have recollection that I was convinced of the value in paying attention to resurfacing of the two arenas. I just go back to your previous question. The mere fact that I have signed a brief on the way, through the Minister, does

## UNCORRECTED

not mean that I intended the meeting. Quite often briefs are sent to the Minister where I am not in attendance at the meeting.

**The Hon. MARK LATHAM:** Right. When did will—

**The CHAIR:** Sorry. Just before you go beyond that point, Mr Miller, just to be clear, though, when you signed briefs to the Minister, it was your practice to read them. Correct?

**Mr MILLER:** Oh yeah, absolutely.

**The CHAIR:** And to ensure that the information the Minister was being provided with was accurate?

**Mr MILLER:** Correct.

**The CHAIR:** Thank you.

**The Hon. MARK LATHAM:** Mr Miller, when did you first become aware that Mr Farrar, who had extensive involvement in this process—in its origins, the technical committee, establishing the tender specifications and consulting Barrie Smith Motorsport in advance to get their funding estimates—had not declared any conflict of interest, given the relationship between his president, Peter Dingwall, and Barrie Smith?

**Mr MILLER:** I am in receipt of the fact that there had been complaints to the Office of Sport and that this inquiry was being contemplated.

**The Hon. MARK LATHAM:** When did you first know that this in-law relationship between Peter Dingwall, the President of Equestrian NSW, and Barrie Smith and the involvement of Stephen Dingwall, the president's son, in doing the work?

**Mr MILLER:** Same answer, really—at about the time that the inquiry was being called.

**The Hon. MARK LATHAM:** Right. If you had known that as the CEO, what action would you have taken?

**Mr MILLER:** Well, I would have made inquiries to satisfy myself as to whether there were perceived or real conflicts of interest, but since I was not aware of any of that there was no need at the time to make those sort of inquiries. I go back to the point that my fundamental role in this process—and I do not want to diminish it in any sense—is really to make sure that what we are doing is congruent with where the Office of Sport strategic plan and government policy wants us to go and to, I guess, provide advice to the Minister and find funding, if in fact it is agreed that it is a worthwhile project to actually invest in. I have a team of really highly competent people working for me who handle the day-to-day issues in respect of the tender process and its details so I have little contact, apart from the sort of evidence in the briefing that the Office of Sport has provided you, in terms of day-to-day involvement in this process, nor should I have given the sort of breadth of the remit that I outlined earlier.

**The CHAIR:** Mr Miller, just to follow up on that, you made the point that you, as CEO, considered your job to ensure, for want of a better term, that the project was strategically aligned with government policy. Is that a correct way of perhaps distilling it?

**Mr MILLER:** Yes.

**The CHAIR:** But do you accept that, as CEO of the Office of Sport in respect to this project and all projects, you also had an obligation to ensure that government policy and standards are being followed?

**Mr MILLER:** Yes.

**The CHAIR:** Equally, do you accept that you had an obligation to ensure as best as possible that the taxpayers were getting value for money in terms of the expenditure of dollars?

**Mr MILLER:** Yes.

**The CHAIR:** Also do you accept that it was your responsibility, as CEO, to ensure that what taxpayers had procured to buy was in fact what taxpayers had received?

**Mr MILLER:** Yes.

**The CHAIR:** And is it your evidence that, in discharging those duties, you were relying on your staff?

**Mr MILLER:** I was relying on a number of things, so my evidence is very clearly that I was relying on the existence of an accredited procurement process that was compliant with the New South Wales procurement policy and Act and, being an accredited agency, gave me some confidence that at least our processes were

UNCORRECTED

---

complying with the relevant Acts and policies of the New South Wales Government. I was also relying on the fact that I had highly competent people working for me in the business that were managing this project.

**The CHAIR:** In terms of the decision to form a technical advisory committee—is that what it was called, Mr Latham?—was that a decision you made and approved or was that a decision that your staff made and approved?

**Mr MILLER:** A decision that the staff made in our asset management group, who had at the time—and I note that Ms Jones has subsequently stiffened up the procurement process in the Office of Sport, but at the time our asset management group had carriage of these sort of matters. I had no involvement or knowledge of the technical advisory group or the tender evaluation plan or the tender evaluation committee or the tender recommendation report, if I recall the Office of Sport's submission that you have been discussing this morning.

**The CHAIR:** Did you see Ms Jones' evidence this morning?

**Mr MILLER:** I did.

**The CHAIR:** Did you see that Ms Jones had observed that this was the first and only time that she was aware of where such a technical advisory committee had been used by the Office of Sport?

**Mr MILLER:** I did.

**The CHAIR:** So do you agree that, under your tenure as CEO, the use of a technical advisory committee was not common?

**Mr MILLER:** Based on what the Office of Sport has submitted, yes.

**The CHAIR:** So, if the decision—

**Mr MILLER:** But at the same time I would say why would I not think it acceptable to have expert advisory panels involved in the process, if it had been brought to my attention? As I have said consistently, I had an executive director—well, I had multiple executive directors sitting below me—who was running oversight over these processes and not even actually hands-on in those processes. I had a process that is compliant with the New South Wales' policy framework. I was not even aware that such a constructed was being used for this tender. I mean, this is a tender for \$600,000, \$700,000. We are dealing with multiple tenders across many, many projects—certainly way beyond the level of detail that another chief executive in the Office of Sport could reasonably expect to engage themselves in.

**The CHAIR:** Look, Mr Miller, just to be clear: I am not suggesting by any means that the use of such a committee was inappropriate.

**Mr MILLER:** Sure.

**The CHAIR:** Equally, what I was asking, though, is if it is a one-off time whether or not you were notified. You have answered that by saying you were not notified.

**Mr MILLER:** No.

**The CHAIR:** So I presume you were not notified, yes?

**Mr MILLER:** Correct.

**The CHAIR:** But then the question that Mr Latham was asking about—the conflicts of interest—in terms of the selection of the membership of that committee, was that something that you decided or the asset management team decided?

**Mr MILLER:** Well, I think I have answered that. I had no knowledge of the committee. The asset management team would have—

**The CHAIR:** I just have to put it to you, Mr Miller, to be clear. I am putting it to you so that you can clearly answer it and there is nothing further; there is no other motivation in asking you. But you were not aware about the committee. Correct?

**Mr MILLER:** Correct.

**The CHAIR:** So, presumably, in terms of the conflicts of interest declarations that was signed by members of the committee, I presume that was not brought to your attention either.

**Mr MILLER:** Correct.

**The CHAIR:** So when you say—

## UNCORRECTED

**Mr MILLER:** Nor was it brought to my attention, Chair, that I should sign a conflict of interest declaration, which apparently is now the process. I mean, to be frank, I find it really a belts and braces approach that a chief executive, whose only real role in the process of procuring such a contract is to be the interface with the Minister's office on policy and to sign the funding check, could be required to have a conflict of interest. But if that is what people who were more attuned to this than me at the time deem as appropriate, I would have been happy to sign one but it certainly was not part of our process in 2016-17.

**The CHAIR:** So, Mr Miller, when you were asked when you first became aware of this conflict or potential conflict of interest, you said it was as a result of the formation of this inquiry.

**Mr MILLER:** And the complaints that led to the inquiry.

**The CHAIR:** It is because at the time you are CEO no-one had made you aware that such a committee was formed, who was on it and whether or not or if any declarations they had made.

**Mr MILLER:** Correct.

**The CHAIR:** Sure. Thanks, Mr Latham.

**The Hon. MARK LATHAM:** Mr Miller, why did you allow this project to go ahead with the funding allocation of \$700,000 or a bit more in the end when it well exceeded the limit on minor capital works of \$500,000?

**Mr MILLER:** Because, as I said, the minor capital works was only one funding source. The Office of Sport has a broad budget and it is not uncommon to reprioritise investments across various projects and various funding sources. My recollection is, Mr Latham, that we were hoping to be able to roll forward some of the unspent recurrent funding from the previous financial year but, as has been outlined by Ms Jones this morning, there was a perceived imperative to have this work completed by January the following year. So, it was important that there was a commitment made that we would do the work and we would find the funding, be it from the rollover funding with Treasury approval or through reprioritisation of other funding, be it even from outside of the maintenance program, to have this work done because SIEC was a major operational part of the business.

**The Hon. MARK LATHAM:** At any stage did Minister Ayres say to you he wanted this work completed for the event they had at the end of January 2018?

**Mr MILLER:** I do not recall Minister Ayres saying it needed to be finished by 2018 but we would have certainly discussed post his meeting with Equestrian NSW and consistent with discussion we would have on a weekly basis around what the Office of Sport was doing to progress the Government's sport agenda that we would be discussing the wisdom of investing in this particular project.

**The Hon. MARK LATHAM:** In evidence to the Committee Ms Jones and the Office of Sport, when asked how many times in the past five years the Office of Sport had funded a capital works project exceeding \$500,000 from the reallocation of maintenance funds, they answered none, so out of all the excellent sports projects you could fund in New South Wales, why was this one so unprecedented that it had to be funded this way with the obvious problems that subsequently flowed?

**Mr MILLER:** Well, I do not think it is unprecedented and it gets to the fact that we, as the custodians of the asset on behalf of the Government and the people of New South Wales, need to make sure that we are getting good use of that facility. Clearly, failing to do something along the lines of the surface upgrade would simply see the facility continue to decline in terms of its usage and public value. So, whether the upgrade was funded through cuts elsewhere across the Office of Sport programs or through a minor works upgrade program seems to me to just be a question of prioritisation and availability of the funds.

**The Hon. MARK LATHAM:** At any stage prior to the reallocation of the maintenance funds—the \$700,000—did you run that past Minister Ayres and get his approval?

**Mr MILLER:** I do not recall, Mr Latham. That is a genuine answer. These are matters that are probably three years or more ago and I just simply do not have that, but I would have no doubt discussed with Minister Ayres the validity of investing in the upgrade.

**The Hon. MARK LATHAM:** What did he say when you discussed it with him?

**Mr MILLER:** Well, he would have supported it or we would not have proceeded.

**The Hon. MARK LATHAM:** Right. So it is fair to depict Minister Ayres as an enthusiastic supporter of this project all the way through?

**Mr MILLER:** Well, he was a supporter. You would have to ask Minister Ayres whether he was an enthusiastic supporter, but he certainly was supportive of such an investment in the project.

## UNCORRECTED

**The Hon. MARK LATHAM:** On the Equestrian NSW Facebook page on 17 December last year they claimed that Minister Ayres had told them that the SIEC project was "a model for how the Government wanted to partner with State sporting organisations to deliver facilities across New South Wales." Do you think that is an accurate depiction of how Minister Ayres looked at this project—that it was actually a best practice model for how we should be doing things in partnership with State sporting organisations?

**Mr MILLER:** Yeah, I think so because I do not believe that is referring to some of the issues that have been uncovered in terms of the robustness of the procurement process. I think it goes to the heart of how we want to work with sporting organisations, both national and State, to drive sports tourism events, to drive utilisation of our assets. So if we step out of the equestrian centre and go to our sport and recreation centres, for example, where very keen to have partnerships with State sporting organisations, such as sailing et cetera, to utilise our sport and recreation centres to host regattas and other events as well. So it is about how you work together to utilise government assets.

**The Hon. MARK LATHAM:** The Office of Sport submission mentions at the outset, when this was first raised in 2016, it was suggested that the Office of Sport at that time—this is 15 September 2016—confirmed that they would be supportive of joint funding for the project—

**Mr MILLER:** Yep.

**The Hon. MARK LATHAM:** —joint funding between the Office of Sport and Equestrian NSW, so in terms of that partnership whatever happens to the idea of joint funding?

**Mr MILLER:** Again, I cannot recall the specifics of it but our starting point would have been that we would have been looking to the relevant State sporting organisation to be a co-contributor. My assumption, without having any basis to it sitting here in Canberra today, is that that was not possible. That is frequently the case in my experience for State sporting organisations: they do not have large amounts of money around. But I have no other basis at this point; I have no ability to enquire into the specifics that you are asking.

**The Hon. MARK LATHAM:** Mr Miller, when did you first find out that the material outside the tender specifications—the material delivered to SIEC—was second-hand material that had come from Alex Townsend's property at Wallaby Hill? Alex Townsend being a board member of Equestrian NSW.

**Mr MILLER:** When I read the submissions on the Committee's website.

**The Hon. MARK LATHAM:** You were never told of this even though it was known to the Office of Sport in late 2017 that second-hand materials had been delivered to SIEC?

**Mr MILLER:** No. My recollection is I had never been told.

**The CHAIR:** Can I just pause there? Ms Jones made clear that this was noticed at the point of receipt of the material at SIEC and equally that caused the Office of Sport to interrupt its installation pending receipt of a geotechnical report. Did you see/hear that evidence?

**Mr MILLER:** No.

**The CHAIR:** Okay.

**Mr MILLER:** So, Chair, it is on a basis of needs to know and I guess I go back to the point that the role of the chief executive of the Office of Sport is a very broad one and it is supported by a raft of CEOs of places like the Sydney Cricket Ground and Sports Ground Trust, Venues NSW et cetera. I had two executive directors who had involvement in this project—one running our infrastructure and one running our sport and recreation centres and Olympic venues sport and recreation services. They were the ones that would have had knowledge, I assume, of the sorts of matters. Certainly, I had not.

**The CHAIR:** Okay. So we can infer from that that the most likely decision-makers within the Office of Sport who had organised that response that I described to you was either of those two executive directors.

**Mr MILLER:** Yes.

**The CHAIR:** But is this something that you would have expected to be told, or not?

**Mr MILLER:** No, not really because, as I say, it is on the basis that it was being managed effectively. I probably in hindsight would have liked to have known but I guess everyone at the time with the best intent was moving to try to make sure that the January deadline was being achieved and my recollection is certainly that these issues were not raised with me.

**The CHAIR:** Were you at the time aware of the January deadline on this particular project?



UNCORRECTED

---

**Mr MILLER:** Yes.

**The CHAIR:** Were you making inquiries with your executive directors as to whether or not this project was likely to meet that time line?

**Mr MILLER:** Yes—only through our normal internal monthly reporting processes. I mean, I was not specifically going and asking on this project because, as I say, on the Richter scale of everything that is going on it is a relatively small project.

**The CHAIR:** Okay. But the expectations were clear to the executive directors and others. It was expected that this facility would be operational in time for the January event.

**Mr MILLER:** Well, that was the whole basis for us agreeing ahead of formal funding source identification—to get going.

**The CHAIR:** So do you, either at the time or now with the benefit of hindsight, see that that may have created pressure on others to deviate from practices or otherwise privilege or prioritise the installation of the material as opposed to checking on its quality in accordance with the contract specifications?

**Mr MILLER:** Look, I could understand that somebody may infer that but I go back to we have got robust processes that were accredited processes. We have a team that is highly competent and they have to manage when these sorts of unforeseen occurrences occur and that is what, as a chief executive, I would expect—that they would manage through and, if they could not manage through, that they would escalate. Now it seems to me, based on the Office of Sport depositions formerly and this morning, that they at the time took a raft of appropriate measures to either stop the project or to gain satisfaction that the material that was being imported was from Wallaby Hill and was in fact going to meet the specifications.

**The CHAIR:** Mr Latham?

**The Hon. MARK LATHAM:** Just to confirm, Mr Miller, in the monthly reports from your staff, no-one mentioned to you that they had found these grommets in the second-hand material at SIEC and there was consideration as to whether or not the tender should be abandoned and start again?

**Mr MILLER:** No. Not to my recollection, Mr Latham.

**The Hon. MARK LATHAM:** During this period, what discussions did you have with Mr Farrar about the delivery of the project?

**Mr MILLER:** I would not have had specific discussions with Mr Farrar about the delivery of the project. I might have run into Mr Farrar at, as I say, sports forums and other more general sport-type gatherings that occur, such as Sport NSW functions, but I did not have any specific meetings with Mr Farrar in relation to this project.

**The Hon. MARK LATHAM:** If you had been running into him at sports functions you never said to him, "How's it going out there at SIEC—that funding that we discussed?"

**Mr MILLER:** Yes, absolutely I would have because it is a very important project in terms of SIEC and Equestrian NSW is not the only tenant but a very important tenant for such a facility and the partnership with Equestrian NSW is an important one for the viability of SIEC. I would certainly have had some high level discussion around the satisfactory or unsatisfactory nature of progress but, as I am sure you could appreciate at awards-type functions et cetera, you would not necessarily go into the nitty-gritty beyond, "Is everything okay? Is it tracking okay?" et cetera, et cetera.

**The Hon. MARK LATHAM:** So at the awards functions when you said, "How's it going out there?", Mr Farrar never replied, "Oh, well, it turns out we had to get the material from Wallaby Hill."?

**Mr MILLER:** No.

**The Hon. MARK LATHAM:** No?

**Mr MILLER:** No.

**The Hon. MARK LATHAM:** What would he have said?

**Mr MILLER:** The very clear message was the project—and as I think Ms Jones evidenced this morning from an Office of Sport perspective and certainly from mine—until complaints were raised many months after I had actually left the conventional wisdom within the office was that this was a very successful project. The outcomes based on rider testing prior to around January 2018 was that the surface was fantastic and that we had made a really good investment to deliver a future for the equestrian centre going forward.

UNCORRECTED

---

**The Hon. MARK LATHAM:** And what about updates from Mr Dingwall, the President of Equestrian NSW?

**Mr MILLER:** Well, this is another sort of thing that I find a bit irritating. I had never met Peter Dingwall until I performed, again in a voluntary pro bono basis, a role as an independent chair for all the State-based member organisations in equestrian when Equestrian Australia was in administration—this is like 2020. I had never met Peter Dingwall before then and if I had it would have been in a shake-the-hand at an Equestrian NSW awards function. Nothing more, nothing less.

**The CHAIR:** Thank you. Mr Miller, we are going to bring this part of the hearing to an end. It is 12 o'clock, which is the time that we were due to expire. We do thank you very much for joining us this morning and helping us resolve the technical difficulties especially. I do not think you took any questions on notice.

**Mr MILLER:** No, I did not, but that is because I am sitting up here in Canberra and I do not particularly want to have to go and riffle the files. But look, Chair, I could make it my business to get to New South Wales and to Sydney if I need to, but in all honesty I hope the answers I have been given might mitigate the need to do so. But, as you said to Ms Jones this morning, if it is necessary I will certainly be happy to help.

**The CHAIR:** Thank you. We really do appreciate that. Should you have any other additional information which you wish to provide to the Committee, you are free to make a submission or a supplemental submission to your evidence today; but, otherwise, we thank you very much. We will wish you the very best for the coming holiday season.

**(The witness withdrew.)**

UNCORRECTED

---

**HELEN BASTON**, Board Member, Equestrian NSW, sworn and examined

**BRUCE FARRAR**, Chief Executive Officer, Equestrian NSW, affirmed and examined

**BRAD FRANKUM**, Chairman, Equestrian NSW, before the Committee via videoconference, affirmed and examined

**The CHAIR:** I welcome the next set of witnesses, who are representatives from Equestrian NSW. I invite the representatives to make a short opening statement, if they so choose. As I understand it there are two representatives who wish to make an opening statement so I ask them to keep it relatively short, if that is possible. Mr Farrar, we will commence with you because you are in the room, or would you prefer the Chair of the board of Equestrian NSW to go first?

**Mr FARRAR:** I would prefer the Chair.

**The CHAIR:** Professor Frankum, do you mind going first?

**Professor FRANKUM:** Certainly. I will go right ahead. Thank you. Just by way of background, I am a medical practitioner. I work as a consultant.

**The Hon. SHAYNE MALLARD:** Point of order: I am sorry to do this. I am participating remotely. I am sure there are others who also are watching this remotely and who are having the same trouble we had with the previous witness, which is the echo that is exaggerated over the internet quite badly. My experience from previous inquiries has been to ask the person to shut down watching it on live stream, which is delayed, or even log out and log back in. That would be my advice from previous inquiries.

**The CHAIR:** Okay. Professor Frankum, do you have this hearing displayed on any other computer or the same computer which you are using?

**Professor FRANKUM:** I hope not.

**The CHAIR:** Okay. Professor, I think we might dial you in. We cannot necessarily hear the issues that Mr Mallard can hear but of course we take Mr Mallard at his word on that. You can probably stay on video if you wish, mute yourself and use the phone number we have just dialled you from.

**Professor FRANKUM:** I think I have got it here.

**The CHAIR:** Professor, we will call you. You can mute your audio.

**Professor FRANKUM:** You will call my mobile number?

**The CHAIR:** Yes. Just mute your audio and you can stay on the video. I think that works. Professor, you will have to leave Webex and we will rely on your evidence via phone.

**Professor FRANKUM:** So I have to leave altogether?

**The CHAIR:** Leave the Webex altogether, I am sorry.

**Professor FRANKUM:** All right.

**The CHAIR:** Great.

**Professor FRANKUM:** How is that now?

**The CHAIR:** That is better. Is that all right, Mr Mallard? Is that coming through? Thank you. Professor, I invite you to restart your opening statement. We might ask the witnesses, if it is possible, to stay an additional 10 minutes just to complete, if that is okay?

**Ms BASTON:** That is fine.

**The CHAIR:** Great. Professor, feel free to go ahead.

**Professor FRANKUM:** Sure. Can I just ask: After I have given this statement, am I able to go back on and on mute just to listen? I am sure that Ms Baston can answer any questions?

**The CHAIR:** We can try, Professor. We will give it a whirl. Why not?

**Professor FRANKUM:** All right then.

**The CHAIR:** But if you wish to make your statement that would be great, and then we could see whether you can participate or view the proceedings via Webex.

UNCORRECTED

**Professor FRANKUM:** All right. Thank you. Just by way of background, I am a medical practitioner and I am a consultant physician in immunology. I apologise that I could not be there in person today due to clinical commitments here. I am here in my role as Chair of Equestrian NSW. I have been a member of the board of ENSW since November 2020 and have held the position of chairman since that time. I have formerly served as President of the New South Wales branch of the Australian Medical Association as well. With me today is Ms Helen Baston, who joined the board of Equestrian NSW in October 2020 and just left it in November 2021. She has previously been a member of Dressage NSW committee for over 10 years and has held various executive positions, including that of president. She is a director of the agricultural import company Hypumps (Australia) Pty Limited.

Both Helen and I are competitive riders—myself in showjumping and Helen in dressage. We have both ridden at SIEC many times and have firsthand knowledge of the venue and the arenas. Helen has also been and is currently a long-term member of the Sydney CDI and Australian Dressage Championships organising committees, which utilise the SIEC venue. Equestrian NSW is a not-for-profit organisation comprised of over 8,000 individual members, affiliated clubs, constituents, coaches and officials. The membership is extremely diverse with strong representation from rural and regional New South Wales, as well as outer metropolitan Sydney. ENSW is the State branch of Equestrian Australia, which is the peak body for equestrian sports in the country. Its primary function is to provide a structured and regulated framework for equestrian competitors and stakeholders with fair rules and regulation for competitors and to promote, develop and grow the sport.

In New South Wales ENSW's role is to encourage and promote equestrian sports and horse welfare, to represent members' interests, including working to improve facilities and access to competitions and training throughout New South Wales, as well as to administer coaching and officials' education programs and to attract sponsorship and grant money. ENSW embraces many equestrian disciplines, including driving, dressage eventing, interschool show horse, jumping and vaulting. The Equestrian arenas at SIEC were built for the 2000 Olympics, some 21 years ago. Over the years there have been various stopgap maintenance programs conducted on the arenas, such as adding woodchips to the surface. However, none of the arenas had a significant upgrade to bring them up to modern standards and were increasingly becoming the subject of complaints. The ongoing decline and overall poor condition of the arenas was a well-known issue at SIEC and among the Equestrian NSW membership, particularly with jumping and dressage communities.

However, it was the relocation of the National Dressage Championships to Boneo Park in Victoria—the first time it had been held outside New South Wales in 16 years following complaints about the condition of the arenas surfaces and horse welfare—which displayed the extent to which something had to be done about the competition arenas. On 25 February 2016 the ENSW board authorised the CEO, Bruce Farrar, to prepare and make a submission to the New South Wales Government to seek funding through the Office of Sport for the upgrade to arenas 5 and 6. ENSW did so in its capacity as the representative of its members and the primary stakeholder and users of the SIEC premises. ENSW is in fact the best placed body to make and draft such a request, given that its members are the most frequent users of the facilities and the depth of its knowledge of the issues involved in this area.

I pause here to note that it is not unusual that ENSW approach the Office of Sport for the request of funding. In fact, ENSW regularly prepares funding submissions which are submitted to Office of Sport under its grant programs. ENSW prepared a request for funding, which was submitted to the Office of Sport on 13 March 2017. That is the extent of ENSW's involvement in the process. ENSW was not involved in the review or the awarding of the tender to Barrie Smith. It was not involved in the funding or the decision to fund. The tender process and the completion of the works were managed by the Office of Sport for the benefit of all New South Wales equestrians and users of SIEC. ENSW strongly believes that the upgrades to SIEC arenas 5 and 6 were and are a success. The ebb and flow technology used accommodates the differing footing requirements needed by the various disciplines. From a technical standpoint, the Otto surface was the best choice.

The Otto solution offered the combination of superfine sand, geo fabric and fibre, cushion mats and ebb and flow watering to achieve a superior surface. The Otto system has been used internationally for over 30 years by British, US and German Olympic medallists and is installed in over 6,000 arenas worldwide and in some of the most prestigious venues in the world, including the Palm Beach International Equestrian Centre. Inclusion of the cushion mats—an innovation not provided by the other tenderers—provides a clean separation of the layers, as well as concussion absorption, which is important for dressage, and skid resistance, which is important for jumpers. The upgrade to the arenas means riders can be confident that the condition of the surface will lead to enhanced performances by horses while putting an end to the occurrence of some career-ending injuries under the former degraded surface.

ENSW is aware of concerns regarding some perceived conflict of interest between Mr Farrar and other members of the Equestrian NSW board—namely, Ms Townsend and Mr Dingwall and Mr Dingwall's son. Those

## UNCORRECTED

concerns are addressed in our submissions and further submissions and are, in Equestrian NSW's opinion, not made out. ENSW currently occupies a small cottage located in a remote part of the SIEC site as its administration office at a licence fee of \$1 year. As a not-for-profit body this arrangement provides a benefit to our members, many of whom are regionally based and whose membership fees would otherwise be used for rent payments. For example, in the past 18 months, in lieu of rent of approximately \$40,000 per annum, which would be standard for commercial premises, ENSW has been able to provide free education seminars and workshops for 175 dressage judges and officials throughout New South Wales; sponsor a two-day coaching seminar for 200 equestrian coaches free of charge; and provide some seed funding into a learning management system to assist our remote and regional officials maintain their education standards.

There is no opportunity cost to the New South Wales Government by allowing ENSW to occupy this cottage as it is located within the Western Sydney Parklands and it is not accessible outside of normal business hours. In fact, the Government benefits from our paying all of the utilities and maintaining the cottage in a good condition at no cost to the taxpayers of New South Wales. ENSW wishes to thank the Public Works Committee for affording us the opportunity to provide evidence at this inquiry.

**The CHAIR:** Thank you, Professor. Mr Farrar, I believe you have an opening statement as well. If we could keep it short, so that we have time for questioning, that would be helpful.

**Mr FARRAR:** Chair and Committee, yes, I will keep it brief. Thank you for the opportunity to assist with this inquiry. I have been involved in equestrian for a very long time. I am passionate about all aspects of our sport—from grassroots to the high performance level. Thirty years ago I first sat on a horse to woo my now wife. Ever since then I have been involved in the sport right throughout New South Wales. I attend about 30 events every year. It is a small community. We are very well connected. As has been mentioned by Karen Jones and others, we are very, very passionate about our sport.

Since 2014 I have been the CEO for Equestrian NSW located out at the Sydney International Equestrian Centre at Horsley Park. My professional background is in engineering and business. I have a degree in engineering; an MBA; I am a graduate of the Australia Institute of Company Directors; and I have worked in executive director, managing director and CEO roles in both the private and public sectors, both in the role as a client and a contractor. Throughout these roles I have received numerous hours of training to do with probity and managing conflicts in major projects. As the former CEO and executive director of the New South Wales Government-owned Rail Infrastructure Corporation, I am familiar with and have worked under the probity requirements for major engineering projects with the State Government, often reviewed by the Auditor-General. So, I have an intimate understanding of government-funded projects, and how they are managed and delivered.

As I outlined in my statement, in 2015 I began investigating and researching various ways to improve the SIEC arenas, for which the feedback we were receiving right across the board were substandard and losing business to other newer facilities such as Boneo Park in Victoria and Willinga Park, Tamworth et cetera. I looked at the companies that specialise in this type of work. It is quite specialist but in actual fact the engineering is quite simple. In 2016, after I had undertaken quite a lot of research, I was asked by my board to draft a funding proposal to go to the State Government for the upgrade of the arenas. That took me about a year. In September 2016 I met with Darren Crumpler and was invited to make that submission to Government.

In March 2017, along with Judy Fasher, who was the then Chair of Equestrian Australia, and Brett Parbery, an international dressage rider-coach, we presented to Minister Ayres out at SIEC. He liked the idea and said he would try to find the funding. A week later I formally submitted the funding request to the Office of Sport and it was put through the system. In about September 2017 the funding was made available and I was invited by the Office of Sport to assist with the project, providing advice about the scope, the time line and some of the pre-qualified tenderers. I am proud to have been involved in the project. The Office of Sport is to be congratulated for the transparent and collaborative way that they deliver the project. Equestrians of New South Wales are unbelievably fortunate: SIEC is one of only two legacy sites from the Olympics for the last 50 years. Successive State governments have continued to support the site and even today the site continues to be upgraded. I am happy to answer any questions that you have got. Those that I cannot, I will take on board and get back as soon as I can.

**The CHAIR:** Thank you, Mr Farrar. We will go to questioning now. Mr Latham?

**The Hon. MARK LATHAM:** Thanks, Mr Farrar. I suppose to start with, clearing up this inconsistency between the Office of Sport which says that you offered or invited Mr Miller to join the Equestrian NSW board nomination committee in July 2016, you might have heard Mr Miller is evidence that in fact that was in September 2020. When did you invite him on board?

**Mr FARRAR:** Mr Miller's statement is correct, 2020.

## UNCORRECTED

**The Hon. MARK LATHAM:** Do you have any understanding why the Office of Sport would have records showing it was in 2016?

**Mr FARRAR:** No.

**The CHAIR:** Sorry, was there any other appointment that that possibly could have been referring to?

**Mr FARRAR:** Not that I am aware of, Chair. It was at least 18 months after Mr Miller left the Office of Sport that we invited him to assist with our board nominations committee.

**The Hon. MARK LATHAM:** Mr Farrar, why did you go to Barrie Smith to get a costing for the funding for this project, knowing that he was likely to be an applicant for the tender?

**Mr FARRAR:** I went to at least five or six arena suppliers, Mr Latham, and Barrie Smith was one of them. I went to Boneo Park, Willinga Park; I was invited by Lou Verwey from Capricorn to attend a construction site at Moss Vale where he was installing a new ebb and flow arena. Lou provided me with sand specification details, showed me all of the components for the ebb and flow system, the water balance system. I visited Equestrian Services Australia's own site at his home and, as I say, looked at the Martin Collins surfaces at Boneo Park. Most of the concept cost estimate that I provided in the funding request I did from my own knowledge in terms of sand, transport, geo fabric, polypropylene fibre—all of the components that go to make up the project. So, it was not just Barrie Smith that I got information from; it was a whole raft of suppliers. All for the purposes of providing as much detail, or accurate detail, in the funding request to Government.

**The CHAIR:** Just to be very clear: This cost discovery process that you were doing was for the construction of a funding proposal from Equestrian NSW to the New South Wales Government.

**Mr FARRAR:** Correct.

**The CHAIR:** And all of the due diligence that you have just described took place before you lodged that proposal.

**Mr FARRAR:** Correct.

**The CHAIR:** Thank you.

**The Hon. MARK LATHAM:** And when you say you lodged the funding estimate from your own knowledge, what did Barrie Smith tell you in advance that it would cost?

**Mr FARRAR:** He provided—he did not tell me how much it would cost. I asked him specifically about the rubber mats, which was the thing that I could not estimate. That was the main piece of information that was missing and what I asked him about, yes.

**The CHAIR:** Just to be clear, you chose the specifications to which Barrie Smith and others responded?

**Mr FARRAR:** I prepared a funding request which had a suggested specification based on my research, which had been done both locally and internationally.

**The CHAIR:** Sure. But that was your definition of what you thought the specs should be.

**Mr FARRAR:** That is correct.

**The Hon. TREVOR KHAN:** Were those specs adopted in terms of the tender process or were they adjusted?

**Mr FARRAR:** They were adjusted. In the funding request we recommended ebb and flow and cushion mats on the basis that ebb and flow was very popular and had been used at the German Equestrian Federation at Warendorf for 30 years, as the Office of Sports said, and it was used all over Europe and used at the Olympics, so that was a fairly standard specification. The cushion mats were a new innovation but based on what we had seen in Europe, it provided extra cushioning for high performing horses. So the tender specifications required ebb and flow but didn't make cushion mats mandatory and tenderers were invited to put in nonconforming tenders if they thought that there was a better solution. Equestrian Services Australia did that.

**The Hon. MARK LATHAM:** Mr Farrar, you were interviewed by ICAC, weren't you, as part of the process following the Office of Sport referral of the OCM report?

**Mr FARRAR:** No, I was not.

**The Hon. MARK LATHAM:** Why then would ICAC say, in its letter to Karen Jones dated 1 December, "Mr Farrar approached Barrie Smith Motorsport prior to the release of the tender to obtain a funding estimate to include in the proposal"?

## UNCORRECTED

**Mr FARRAR:** I don't know why they said that. I didn't have any conversation with them about that.

**The Hon. TREVOR KHAN:** For anything.

**Mr FARRAR:** No. I was not contacted at all by ICAC. Indeed, ICAC came back with a letter to Karen Jones saying that they would not be investigating the matter due to no viable lines of inquiry.

**The Hon. MARK LATHAM:** Well, ICAC in its letter is heavily critical of you in a number of points as to perceived conflicts of interest. How do you respond to that?

**The CHAIR:** Firstly, have you seen the letter?

**The Hon. MARK LATHAM:** Have you seen the ICAC letter dated 1 December?

**Mr FARRAR:** Yes, I have. If I could just go back to the very beginning, my board president Peter Dingwall's son Stephen Dingwall is married to Niki Dingwall, the daughter of Barrie Smith. When I signed the conflict of interest declaration for the Office of Sport to participate in the tender advisory committee, Stephen Dingwall did not work for Barrie Smith, and so there were three degrees of separation between myself and the contractor and, therefore, being familiar with State procurement guidelines, I didn't feel as though there was a conflict of interest that I had to declare.

A complaint was received by Darren Crumpler at the Office of Sport by two SIEC employees. He referred that on to me. I passed that on to my board, who investigated it and responded to the Office of Sport to say that the Equestrian NSW Board was satisfied that I did not have a conflict of interest. That is what Mr Crumpler also determined and, when Karen Jones referred the matter to independent probity consultant O'Connor Marsden, they wrote to Karen Jones and I quote, "Bruce Farrar did not have a conflict in this tender. His role was as an adviser and subject matter expert." When the matter was referred to ICAC, ICAC decided not to investigate because there were no viable lines of inquiry. So I am quite comfortable that I did not have a conflict of interest when I signed the declaration and at any time during the tender process.

**The Hon. MARK LATHAM:** Were you interviewed by O'Connor Marsden?

**Mr FARRAR:** Yes.

**The Hon. MARK LATHAM:** And did you tell them that you had approached Barrie Smith in advance to get a costing on the proposal?

**Mr FARRAR:** Yes. And I said to O'Connor Marsden that I approached at least four of five other suppliers to get details about the components of the various parts of the system.

**The Hon. MARK LATHAM:** So you have told O'Connor Marsden that, but just moments ago you said you did not get a costing from Barrie Smith. You just sort of had a general talk about the project and some of the specs.

**Mr FARRAR:** No, what I did say was that I got costing for the rubber cushion mats, which was the one thing that I did not know much about, whereas most of the other components I was able to get costs, having been provided with the technical specifications by Lou Verwey and others in terms of the sand, piping, pumps, civil works et cetera.

**The Hon. MARK LATHAM:** So you built that information from Barrie Smith into your cost estimate that went forward in the business case.

**Mr FARRAR:** Correct.

**The Hon. MARK LATHAM:** Do you think at that point it was wrong to do that, given that it tipped off Barrie Smith that this was a goer and that Barrie Smith was an in-law of your president?

**Mr FARRAR:** No, I don't, sir.

**The Hon. TREVOR KHAN:** Just in answering that, there were two parts to Mr Latham's question.

**Mr FARRAR:** I understand. In my previous role as CEO of Rail Infrastructure Corporation looking after the country regional network, it was very common practice to engage with our customers for them to have input into asset management planning, capital works processes et cetera. It was not unusual for those customers—in those days, Queensland Rail, freight rail, Pacific National et cetera—to get their own cost estimates to provide input to that process. It is common practice amongst infrastructure-heavy government agencies to consult and collaborate with their customer base to determine what needs to be built and in some cases what that might cost. So I was very comfortable in preparing that funding agreement with as much technical detail and costing detail as I could find.

## UNCORRECTED

**The CHAIR:** When you say funding agreement, do you mean funding proposal?

**Mr FARRAR:** Funding request.

**The CHAIR:** Request. Okay.

**The Hon. MARK LATHAM:** How do you hold your position as CEO? Who appoints you?

**Mr FARRAR:** The board of Equestrian NSW.

**The Hon. MARK LATHAM:** Who do you report to?

**Mr FARRAR:** The president of Equestrian NSW.

**The Hon. MARK LATHAM:** At the time of this, this was Peter Dingwall.

**Mr FARRAR:** Yes.

**The Hon. MARK LATHAM:** Who was an in-law, as you have described, of Barrie Smith.

**Mr FARRAR:** Correct.

**The Hon. MARK LATHAM:** You do not think that is of sufficient importance to declare in a conflict of interest statement to the Office of Sport, given there is barely a stage of this procurement that you were not involved in?

**Mr FARRAR:** I do not believe I needed to declare it. President Peter Dingwall was not provided with anything except high-level detail. He was not provided with any detailed briefing about the tender process because I had signed the confidentiality and conflict of interest deed with the Office of Sport. I provided none of the confidential technical information arising from the tenders or the process to recommend Barrie Smith or any other part of the process. Neither Peter Dingwall nor the rest of my board were provided with those details because I was bound under the confidentiality deed.

**The Hon. MARK LATHAM:** Your board signed off on the funding request, didn't it?

**The CHAIR:** Just before we go to that, can I just infer from that answer that at no point did Mr Dingwall declare any conflict of interest to the Equestrian NSW board?

**Ms BASTON:** I will answer on behalf of the Equestrian NSW board. Obviously neither Professor Frankum nor I were on the board at the time, and the reason both of us chose to be involved in this was because we wanted to cast a fresh set of eyes across the process to determine exactly what happened without any bias. I have spoken to all the board members at the time to ascertain what they knew or what they did not know. Our supplementary statement actually includes the details Peter Dingwall provided me and also the details that Alex Townsend provided me, but I have also spoken to Suzanne Doyle, who has a PhD in economics as a risk assessment officer for AMP. She headed up a subcommittee of the ENSW board, which we term the FARM committee—that is, the finance, audit and risk management committee.

There was a discussion at the board meeting where the funding submission was signed off that Alex declared she had an OTTO surface on her property and therefore had a conflict of interest. Peter also discussed the fact that his son was married to Niki Dingwall and it was decided that, if there was any substantive matter that needed to be discussed in terms of the SIEC arenas, it should go to this FARM committee, not to the whole board. Hence, that is why in the board meetings there was no substantive update throughout the project. The members of the FARM committee were Suzanne Doyle, also Ms Katie Robinson, who is a CFO at Macquarie Bank, and also, at the time, Mr Derek Major who is a FEI vet.

**The CHAIR:** So the short answer is they did declare a conflict of some form and took steps to manage it.

**Ms BASTON:** Exactly. Internally within our board process.

**The CHAIR:** So we accept that they thought they had a conflict but, Mr Farrar, your evidence is that you did not think that that was a conflict that required disclosure from you because you did not have—

**Ms BASTON:** I will say that neither of them—

**The CHAIR:** Sorry, Ms Baston, just to Mr Farrar. Can we infer from that that you had reached the conclusion that, even if they had a conflict, that does not necessarily mean that you had a conflict?

**Mr FARRAR:** I signed a conflict declaration on behalf myself, not on behalf of the board, and I was comfortable in signing that conflict that I had no conflict.



UNCORRECTED

---

**The CHAIR:** Ms Baston, did you want to add to that?

**Ms BASTON:** I just wanted to say, to be clear, neither Alex nor Peter felt they had a conflict of interest. So they declared that there could be a perception but neither of them actually felt they had a conflict because they would have no interest whatsoever in the tender process. In fact, ENSW does not run the tender process and did not run the tender process, and no information at any stage had come to our board about the tender process.

**The Hon. SAM FARRAWAY:** Just to follow-up, did Ms Townsend ever change her position on a conflict of interest at a later point or was it ever brought up with the FARM committee, or was it ever referred, to change her position at a later point, to the Equestrian NSW board at all or through the FARM committee?

**Ms BASTON:** My conversation with Alex Townsend has been that she never felt she had a conflict of interest. She was not aware, when her surface was removed, where it was going. The first time she found out—and this is included in our supplementary submission—that the surface had gone to SIEC from her outdoor arena was when she received a phone call from a staff member at SIEC asking, "Did you know your surface was up here?" Prior to that, she did not ask for her surface to be removed either.

What happened was, shortly after it was put in and before it was even really in use, they had a heavy rain storm there and it did not drain in the way that she thought it would—the outdoor arena. The OTTO representative from Germany—the OTTO engineer—was still there, in Australia. She rang him and said, "My arena is not what I expected," and he came down and they did a soil sample. The soil sample showed that the composition of the sand that had been supplied by the contractor in Australia to her arena was slightly different from what had been sent to Germany as being suitable for an outdoor arena. So they said, "That's all right. This sand should be in an indoor arena," and in fact is exactly the same composition which still remains in her indoor arena, which was put in the indoor arena originally and remains to this day in her indoor arena. They asked could they stockpile it on her property. She said that was fine.

**The Hon. TREVOR KHAN:** When you say "they", can we just be clear who they are.

**Ms BASTON:** OTTO, I believe. Alex had no relationship with Barrie Smith. He was not the contractor installing her arena. She purchased the materials directly from OTTO in Germany. She originally went to OTTO several years before because she was looking for a solution to the slippery slope on her gallop track, and so she went looking for a mat-type solution that allowed—

**The CHAIR:** Ms Baston, I am sorry to interrupt but I am conscious that Ms Townsend is coming to the inquiry, or might be coming to the inquiry. I am just not sure, Mr Farraway, if your question has been answered as to whether any point—

**The Hon. SAM FARRAWAY:** Just a quick follow-up. If Mr Dingwall had a clear relationship by association of family with the contractor, did he at a later point change his conflict of interest once the contract was awarded? Or was it referred to your finance and risk management committee at a latter point once the contract was in place?

**Ms BASTON:** His statement is included in our submission. I referred to that. He never felt he had a conflict of interest, and the reason he explained to me was that he never felt it was appropriate ever to have any discussion with his father-in-law about his father-in-law's own business, that he is not an arena expert, he does not ride himself, he has purely been involved in the equestrian community to support his son's interest in the sport and therefore he was never in a position where he ever would have had or did have a conversation with Barrie Smith. Because it was being managed internally in the board—no documentation came to the board—he feels he had no knowledge. He also told me he did not even know that Bruce had been placed on a tender advisory panel.

**The Hon. MARK LATHAM:** What about his son Stephen? He had no conversations with his own son about doing the work at SIEC or removing the materials at Wallaby Hill?

**Ms BASTON:** From my understanding, Stephen Dingwall was not employed by Barrie Smith at the time the contract was awarded.

**The Hon. MARK LATHAM:** In the undertaking of the works?

**Ms BASTON:** I believe from what I have been told that Stephen Dingwall was employed from early 2018 by Barrie Smith.

**The Hon. SAM FARRAWAY:** Can I ask a question to both you, Ms Baston, and Mr Farrar. Declaring conflicts of interest—what you are saying a lot of people would say would not pass the pub test. Mr Farrar would have heard me earlier. You probably know my younger sister, Sarah. You probably know my family. I have no interest in dressage much; my family do.

UNCORRECTED

---

**The Hon. TREVOR KHAN:** He has only ridden a horse once.

**The CHAIR:** But you have a dressage centre in your home.

**The Hon. SAM FARRAWAY:** But I have said that on the record so that it forms some context so that people do not perceive that there is a conflict of interest as well. I would say to both of you, in looking back on it, do you think in your own view that Mr Dingwall did have a conflict of interest from the beginning, because it could be easily perceived that Mr Dingwall's view about his conflict of interest just does not pass the pub test?

**Ms BASTON:** I guess that is a hypothetical question because I was not there at the time. I can only say what Peter Dingwall told me, which is he never felt he had a conflict of interest and he is a lawyer so I guess he has some understanding of what that might be.

**The Hon. SAM FARRAWAY:** Mr Farrar, did you ever urge that your chair consider, even if he did not think there is, to cover himself, his reputation and the reputation of Equestrian NSW—did you ever urge the chair to maybe consider that he, like you did, declare a conflict of interest? This was taxpayers' money that was being used, and no-one here begrudges or does not support—myself included—SIEC developing, as you say, the legacy infrastructure from the Olympics to be better and to compete with Victoria, but he was a direct association by family. Whether he is associated or not—like I am with family in that industry, in that hobby and participating in that sport or not—it is an association by family. You should declare it. Did you ever urge Peter to do that?

**Mr FARRAR:** No, I didn't. As I say, with my background in government procurement, I felt comfortable with the degrees of separation. With Stephen Dingwall not working for Barrie Smith during the tender phase and Peter's complete lack of involvement in any part of the process, I felt comfortable with what was declared by both Peter and myself.

**The CHAIR:** Just to be clear, I am just struggling to understand how to reconcile these two points. The first is you do not think there is a conflict but you have just said you altered the ordinary decision-making processes of the board to a subcommittee in response to at least two members feeling like they had a perceived conflict. So is it the decision to route all such discussions through the finance management committee or however it is described—did that arise because there was a perceived conflict as opposed to an actual conflict?

**Mr FARRAR:** My recollection is in the board meeting, I think it was in February 2017, Peter and Alex disclosed, "I am Peter Dingwall. My son is married to Barrie Smith's daughter." The board said that they were comfortable with that disclosure but that there was no apparent conflict of interest but if any arose it would be referred to the finance, audit and risk management committee. That was the conversation at that board meeting.

**The CHAIR:** But Ms Baston just said to us that the substantive oversight by Equestrian NSW, or at least its engagement in this respect of the project, was undertaken by that committee at first instance. Did I misunderstand that?

**Ms BASTON:** No, but there were no substantive items referred to that committee. I have checked the minutes and it was never discussed. There was never anything referred to ENSW that required discussion.

**The Hon. TREVOR KHAN:** Because there was no action that needed to be taken.

**Ms BASTON:** No, because ENSW was not involved in the tender.

**The CHAIR:** That procedure you just described—it is best that we should interpret it as precautionary?

**Ms BASTON:** Absolutely, and we have done it in other instances where there have been complaints, for example, and a board member might be called to be a witness or happen to be at the event—we have also done that.

**The CHAIR:** But when Ms Townsend apparently is unaware that her material is arriving at SIEC, at that point did Ms Townsend come to the board and say, "I now have a conflict," or, "There is a problem here"?

**Ms BASTON:** The tender had already been awarded at that point. My understanding of the timing is that it was after the award of the tender anyway.

**The Hon. TREVOR KHAN:** It had to be.

**The CHAIR:** But, to be clear here, your evidence is that the decision to locate the alternative material was Barrie Smith's decision.

**Ms BASTON:** Absolutely.

**The CHAIR:** And that did not involve Equestrian NSW?

UNCORRECTED

---

**Ms BASTON:** No. Not whatsoever. Until there was a phone call from SIEC—and I believe Barrie Smith disclosed that to SIEC—the first anyone knew on ENSW board was when Alex Townsend received that phone call saying, "Did you know that material from your property has come to SIEC?"

**The Hon. MARK LATHAM:** Ms Baston, just on that, did Alex Townson request that the material be removed from the outdoor arena and stockpiled?

**Ms BASTON:** No. My understanding is that, when they did the soil sample, there was a realisation that the sand that had been supplied was the incorrect one. She told me that she did not request the removal and that they said, "This is the wrong sand. We will take this off and replace it with the new sand. This is sand that should have been put in an indoor arena."

**The Hon. MARK LATHAM:** At that point, did she approve the stockpiling of this inappropriate sand on her property?

**Ms BASTON:** Yes, because to be able to mix the sand and the fibre material you have to stockpile it somewhere. So there was already a stockpile established on the property from when the sand and soil and fibre had been mixed, and so it was stockpiled in the same place.

**The Hon. MARK LATHAM:** And she has paid for the sand? It is her sand on her property?

**Ms BASTON:** I am not sure, and you should probably question her about that. But she bought the sand directly from the sand supplier. She paid a civil works contractor directly herself.

**The Hon. MARK LATHAM:** So it is her sand. She bought the sand.

**Ms BASTON:** I understand she had not paid all her invoices at that point.

**The Hon. MARK LATHAM:** But it is your evidence that, even though she has bought the sand and it is on her property, it just disappeared without her knowledge one time and lobbed at SIEC.

**Ms BASTON:** I understand from her she had not paid for those materials. Therefore, she was not the owner at that point. Her property is big. It was stockpiled up the back. There were trucks coming and going. She told me she was not aware when it left her property. There were trucks coming and going.

**The Hon. MARK LATHAM:** So when the trucks were coming and going she did not ask, "What are you doing here on my property?"

**Ms BASTON:** She gave authority to stockpile on her property.

**The Hon. MARK LATHAM:** The trucks were coming and going to take it away.

**The Hon. TREVOR KHAN:** Let's be clear—

**The CHAIR:** You might want to take a point of order, Trevor.

**The Hon. TREVOR KHAN:** Point of order: This witness can give evidence as to her understanding. She cannot give evidence as to the fact. She can only give evidence as to what she has been told.

**The Hon. MARK LATHAM:** I appreciate that.

**The CHAIR:** I uphold the point of order. The question that does arise is the information that you are relaying to us arises after questioning you made of Ms Townsend?

**Ms BASTON:** Yes.

**The CHAIR:** And you were doing that questioning on behalf of the Equestrian NSW board?

**Ms BASTON:** Yes, I wanted to understand the process so our submission could be fulsome and accurate to the best of our knowledge.

**The Hon. TREVOR KHAN:** So that questioning is like 2021 questioning it.

**The Hon. MARK LATHAM:** Mr Farrar, when did you first find out that Alex Townsend had this outdoor arena soil ripped up and stockpiled?

**Mr FARRAR:** After the fact.

**The Hon. MARK LATHAM:** How soon after the fact?

**Mr FARRAR:** I think it was about probably a week.

UNCORRECTED

---

**The Hon. MARK LATHAM:** Did you play any role in talking to Barrie Smith to say, "Look, here is a solution. We can take this to SIEC," and that was agreed to?

**The CHAIR:** Before we do that, how did you become aware, Mr Farrar?

**Mr FARRAR:** I recall having a conversation with one of the SIEC staff. I think it was Dave Porter. I was unaware nor had any involvement whatsoever in the transaction. I was simply having a conversation with Dave Porter to say, "Did you know that the Wallaby Hill surface is here?" I went, "No. What's all that about?"

**The Hon. SAM FARRAWAY:** So you still assumed that it was, as per the contract with the Office of Sport, being imported from OTTO. You are fully aware, Mr Farrar, obviously, even with my basic knowledge, and we have learnt this through the committee—when you found out that the surface was from Wallaby Hill, which would have been an outdoor arena, and it was going into Australia's premier equestrian facility, which is an indoor arena, what was your first reaction then?

**Mr FARRAR:** The way it was explained to me was exactly as Ms Baston has said. It was applied to an outdoor arena at Wallaby Hill and it had a slightly higher clay content, which meant that when they had a significant weather event it did not drain as it should, but in an indoor application where there is no rain the slightly higher clay content actually provides a better surface to—

**The Hon. TREVOR KHAN:** Because it retains the moisture.

**Mr FARRAR:** —compete on, and the indoor surface at Wallaby Hill and the indoor surface at SIEC are exactly the same. I can give you irrefutable evidence as to the quality of that surface. Australia's premier equestrian facility is Willinga Park owned by Terry Snow on the South Coast. Terry Snow has got four large arenas—

**The Hon. SAM FARRAWAY:** It is now but it was not a few years ago when you started this process.

**Mr FARRAR:** Yes. So Terry has invested millions and millions of dollars in a new facility and he has got the same solution. I spoke to him yesterday and he said, "Well, I've got better outdoor arenas than Wallaby Hill and SIEC but my indoor arena is still as good as Wallaby Hill and SIEC." So in terms of the application and the outcome, the SIEC indoor is regarded as the best indoor surface in Australia.

**The CHAIR:** Mr Farrar, at the time you are made aware a week thereafter of the use of the Wallaby Hill material at SIEC, are you still at this point a member of the technical advisory committee?

**Mr FARRAR:** My role on the technical advisory committee—

**The CHAIR:** Had ceased.

**Mr FARRAR:** —terminated at contract award.

**The Hon. TREVOR KHAN:** With the award.

**The CHAIR:** With the awarding of the contract.

**Mr FARRAR:** Not even at contract award—at recommending our feedback.

**The CHAIR:** So you would not have had any duty or otherwise to provide technical advice at that point in time to the Office of Sport as to whether the surface was appropriate?

**Mr FARRAR:** No.

**The CHAIR:** And even if you had that obligation, your view is that it was fine?

**Mr FARRAR:** Correct. I did have a role in helping organise a group of elite dressage and showjumping riders to road test the completed works in early 2018, but that was the entire extent of my involvement post serving on the tender advisory committee.

**The CHAIR:** So the official from the Office of Sport who calls you to alert you to the use of the Wallaby Hill surface material—was that just a casual call?

**Mr FARRAR:** I do not remember the exact details. I recall it might have been a face-to-face conversation with the operations manager, Dave Porter, but I don't recall the exact details. What I can say definitively is that I had no knowledge of that transaction or situation until after the event, and I think it was about a week.

**The Hon. TREVOR KHAN:** Could I just ask a related question. Did you inspect the material at or about that time of the conversation with Dave Porter?

UNCORRECTED

---

**Mr FARRAR:** I drove past it to get my office each day, looked out the window—there is a pile of stuff. But I did not get out of the car.

**The Hon. TREVOR KHAN:** But that does not quite get to the stage of inspection.

**Mr FARRAR:** No. I did not get out and do the sniff and feel test.

**The Hon. TREVOR KHAN:** Run it through your hands.

**Mr FARRAR:** No.

**The CHAIR:** Ms Baston, I am not sure if you covered this earlier but in case I missed it—how exactly did Ms Townsend find out that her material was in use?

**Ms BASTON:** Again, I have noted it in our supplementary inquiry, she received a phone call from one of the SIEC staff who actually said to her—so it was Ms Sue Hartog who rang her. Alex was riding. Sue Hartog left a voice message. When she got off and checked her voice messages, there was a message from Sue Hartog saying, "It is Sue Hartog here. Can you please ring us. Your surface from Wallaby Hill is here at SIEC." Alex did not ring her back because Ms Hartog did not hang up the conversation and then went on to make some derogatory comments about Alex, so Alex was quite offended when she heard that. So she never returned the phone call.

**The CHAIR:** Fair enough. But for the fact that there was terminus work occurring at Wallaby Hill and SIEC, this never would have happened. Is that the implication?

**Ms BASTON:** The Wallaby Hill project had just finished, but because they were replacing that arena there were trucks coming and going still at Wallaby Hill and obviously they were bringing new stuff in and—

**The CHAIR:** But the Wallaby contractor was Mr Smith as well?

**Ms BASTON:** No. Alex Townsend engaged her own subcontractors. She had her own plumber and her own civil earth works constructor. She did give me the names. I did not put them in the submission. She purchased the OTTO material direct from OTTO in Germany but Barrie Smith was down there with the OTTO engineer watching the process.

**The CHAIR:** Maybe I am missing something here, but basically Mr Smith has no engagement whatsoever contractually with Ms Townsend.

**Ms BASTON:** No.

**The CHAIR:** But he turns up to her property to take the material.

**The Hon. TREVOR KHAN:** Because the connector is OTTO.

**Ms BASTON:** Yes. He had not installed—he was not their contractor. She engaged—just like when someone is building a home, they can engage an architect and engage all their contractors themselves or they can go with the project-type package. But he was there working with the OTTO engineer because he was going to be OTTO's representative in Australia. So they were, "Come down. Watch this arena being installed. Learn about the OTTO surface."

**The CHAIR:** Forgive my ignorance here, but we are not talking about a wheelbarrow of sand. We are talking about quite a few trucks, aren't we?

**Ms BASTON:** Yes.

**The Hon. TREVOR KHAN:** Lots of trucks.

**The CHAIR:** Lots of trucks, as has been described. How is this not trespass or theft on behalf of Mr Smith? Basically, Ms Townsend gave authority to OTTO to remove the material and they subdelegated it?

**Ms BASTON:** The OTTO engineer was the one who said, "We will replace this." I cannot speak to the arrangements between OTTO and Barrie Smith.

**The Hon. MARK LATHAM:** It is part of a commercial set-up.

**The CHAIR:** But when you are told this, Mr Farrar—Ms Townsend discovers all of this and never comes to the board and says, "What is going on here?"

**Ms BASTON:** The board had no involvement in the process and, as far as Alex Townsend was concerned, she also had no involvement in the process.

**The CHAIR:** But Mr Farrar did. That is why the question is to Mr Farrar.

UNCORRECTED

---

**The Hon. TREVOR KHAN:** Not anymore. It is over.

**The CHAIR:** But at this point in time your involvement had formally ceased but Ms Townsend, who is still on your board at this point—you are the CEO—never called you up and said, "Hey, isn't this weird?" or "Wow, my material has turned up at the International Equestrian Centre." That never happened.

**Mr FARRAR:** No.

**The Hon. MARK LATHAM:** Ms Baston, could I take you back to the statement that Stephen Dingwall did not work for Barrie Smith until January 2018. When you say "work for", are you ruling out that he was acting as an agent for Barrie Smith Motorsport?

**Ms BASTON:** I just asked the question when did he work for Barrie Smith. You would have to inquire with Barrie Smith about that.

**The Hon. MARK LATHAM:** You made the statement under oath here in giving evidence. Are you aware of the social media post by Stephen Dingwall in 2014 talking about adjustable training water jumps, "Barrie Smith Motorsport Equestrian about to import some of these from France"—this is Barrie Smith, his father-in-law—"and they will retail at \$530. Message me if you are interested in ordering one." Doesn't that point to a longstanding arrangement where Stephen Dingwall was working for his father-in-law as an agent?

**Ms BASTON:** I have never met Stephen Dingwall. I am not his Facebook friend. I have never had anything to do with Barrie Smith Motorsport. I simply asked the question when did Stephen Dingwall start working. I can only put in our statement what we have been told and take that at face value. I suggest—

**The Hon. MARK LATHAM:** Given what I have just told you, doesn't it indicate your statement is false?

**The Hon. TREVOR KHAN:** No, it indicates what she has been told.

**Ms BASTON:** Yes, that is exactly what I have been told

**The Hon. MARK LATHAM:** Were you misled?

**The CHAIR:** We are going to do question and answer. Mr Latham has asked the question. Ms Baston can respond and then, if the Government wishes to ask a follow-up, they can.

**Ms BASTON:** I can only repeat what I have been told, but I suggest that you ask Barrie Smith that question. I asked the question. We have faithfully reproduced what we have been told. I do not think it is up to us to request employment records. We have to go with what we have been told.

**The Hon. MARK LATHAM:** Knowing that, Mr Farrar, shouldn't you have declared this conflict of interest? It beggars belief, doesn't it, that people at Equestrian NSW do not know who the president's son is working for? Barrie Smith is an agent who has got this tender.

**Mr FARRAR:** I was not aware of that at the time. All I can go on, as Ms Baston has said, is in good faith responding to my advice, which was that Barrie Smith did not employ Stephen Dingwall until January 2018.

**The Hon. MARK LATHAM:** Does your submission say the equestrian community is close knit?

**Mr FARRAR:** Correct.

**The Hon. MARK LATHAM:** And most people know everyone else's business?

**Mr FARRAR:** I did say it was close knit, yes. I did not make the latter comment, no.

**The Hon. MARK LATHAM:** Except in these relationships?

**Mr FARRAR:** All I said was that the equestrian community is close knit and well connected.

**The Hon. MARK LATHAM:** Could I just go briefly to Professor Frankum. In terms of declaring interests, are you the brother-in-law of John Vallance, who was on the technical advisory committee organised by Mr Farrar?

**Professor FRANKUM:** Can I just ask who is asking the question?

**The Hon. MARK LATHAM:** Mark Latham is asking that question.

**Professor FRANKUM:** He is not my brother-in-law but he is the long-term partner of my sister, so close enough, yes.

## UNCORRECTED

**The Hon. MARK LATHAM:** Everyone is related to everyone else. Do you think that was worthwhile declaring to this Committee at the outset of your evidence?

**Professor FRANKUM:** That John Vallance is my brother-in-law?

**The Hon. MARK LATHAM:** Yes, given that he was on the technical advisory committee organised by Mr Farrar and had a role in the tender process that we are examining?

**Professor FRANKUM:** No, I did not. Otherwise I would have done so. I have only been on the board of ENSW for one year. All of these events were well in advance of that and John, my brother-in-law, is an international course designer who actually built the course at the Sydney Olympics, so he has been involved in the sport for 30 years. Sorry, I don't quite understand what I would have had to declare there.

**The Hon. MARK LATHAM:** I know everyone in equestrian are wonderful people but nobody seems to declare conflicts of interest when they are related to someone else.

**The Hon. SAM FARRAWAY:** I do.

**The Hon. MARK LATHAM:** Other than Sam Farraway.

**Professor FRANKUM:** But, sorry, I don't feel I have a conflict of interest in this matter having John as my brother-in-law because I don't know that his advice has been under any sort of questioning, has it?

**The Hon. MARK LATHAM:** Yes, it has to the point where he is on the technical advisory committee that recommended for Barrie Smith Motorsport to get the contract as part of the tender recommendation report we heard earlier on from Karen Jones, and Barrie Smith is an in-law of your predecessor Peter Dingwall, and his son Stephen is a long-term agent of Barrie Smith Motorsport. So these are all things that in the normal course of declarations people would make.

**The CHAIR:** I will ask Professor Frankum to respond and then I want to ask some questions if that is possible.

**Professor FRANKUM:** I am very happy for the Committee to know that John Vallance is my sister's long-term partner, but I did not and do not feel any sort of conflict of interest in me representing ENSW and giving the statement that I gave earlier. I think it is fair to say that in the sport John would be recognised as a true expert in this area and an appropriate person on that advisory committee.

**The CHAIR:** Mr Farrar, how did you become a member of the technical advisory committee?

**Mr FARRAR:** In the original funding request that I drafted, I suggested that Oliver Hoberg be engaged. He is an international showjumping arena footing expert, engaged by the FEI, and he was recently involved in the Tokyo Olympics and Rio Olympics before that. When I actually contacted Oliver Hoberg to ask him whether he would be available, I had an exchange with Oliver. He provided some prices. I had an exchange with Jim Kasif in which we agreed that the price was excessive. But I now know that there was subsequent correspondence, which I have not seen, which concludes that Oliver would be available to do the work and that eventually his work commitments prevented him from doing so. But I have not seen any of that correspondence.

When Oliver Hoberg was not available, I had a discussion with the Office of Sport about how we could provide some sport input to the tender assessments and I was asked for my suggestion about who might form a sport representative committee. I said John Vallance, a high-level Australian representative dressage rider, Heath Ryan, and myself. Heath Ryan declined and, on the basis that Julie Farrell is a high-level dressage owner and breeder and heavily involved in the dressage community—Brett Parbery, one of our best international riders, was riding for her at the time—we were asked to form the tender advisory committee. We signed conflict of interest declarations and I actually have seen the declarations executed by Julie Farrell and John Vallance. I have them in a file at my office and so, from my perspective, once again, I was satisfied with the processes that we were following.

**The CHAIR:** The choice to use a technical advisory group—was that a suggestion that Equestrian NSW made in its original funding proposal?

**Mr FARRAR:** No, it was not. We suggested Oliver Hoberg as the technical expert to assist the Office of Sport. When he was unavailable—and bearing in mind, this is a fast-tracked process to try and get the contract awarded and work done before the competition calendar kicked in at the end of January 2018, so it was the Office of Sport, as I said in the start, which was offering transparency and collaboration to get sport buy in for the project.

**The CHAIR:** Sure. So it was the Office of Sport's decision to form the group?

**Mr FARRAR:** Correct.

UNCORRECTED

---

**The CHAIR:** And then they sought your advice as to its composition?

**Mr FARRAR:** Correct.

**The CHAIR:** And then you provided the names—

**Mr FARRAR:** Suggestions.

**The CHAIR:** —as you just described. And they presumably endorsed it?

**Mr FARRAR:** Correct.

**The CHAIR:** Secondly, the choice to find a supplier via a limited tender—was it Equestrian NSW's recommendation to the Office of Sport to pursue the proposal via a limited tender?

**Mr FARRAR:** In the original funding request, I recall I included six potential contractors and when the funding was made available so late it meant that we had to fast-track the whole process and so I was asked for my recommendations about who were suitably qualified and competent tenderers. I gave them a list which I had updated because I then became aware that Barrie Smith Motorsport was the agent for OTTO Sport and so I provided a list of—I think it was five potential tenderers to the Office of Sport.

**The CHAIR:** So again, just to unpack that step by step, the decision to pursue the tender via a limited tender was technically the Office of Sport's, correct?

**Mr FARRAR:** Correct.

**The CHAIR:** And they made that decision in order to meet the timetable of having a facility in place for the January event?

**Mr FARRAR:** That is my understanding, yes.

**The CHAIR:** And they approached you for the names of the people who should be approached?

**Mr FARRAR:** Correct.

**The CHAIR:** And you provided it to them?

**Mr FARRAR:** Yes.

**The CHAIR:** And they then invited them to tender, correct?

**Mr FARRAR:** Correct.

**The CHAIR:** Was any organisation or person not on that list invited to tender?

**Mr FARRAR:** I believe so. There was a firm that approached the Office of Sport direct—Equestrian Services Australia or a name like that. The two principals were Marty McInerney and another gentleman's name that I cannot recall. So I think they were invited to tender as well but they subsequently pulled out due to commitments elsewhere.

**The CHAIR:** Were you thereafter, either individually or as a part of that group, invited to evaluate the tenders?

**Mr FARRAR:** Yes, we were. Each of the three individuals on the tender advisory committee were asked to provide their feedback to Jim Kasif, which we did—John, Julie and myself each sent an email to Jim Kasif with our views about the tenderers—and that feedback was provided after the tender evaluation panel had selected Barrie Smith but our views were included in the submission to the chief executive recommending the award of contracts to Barrie Smith.

**The Hon. MARK LATHAM:** Could I just jump in there to say in that email to Mr Kasif, Mr Farrar, you described Barrie Smith Motorsport as easy to do business with and Capricorn as difficult. What experience did you have to make those two conclusions—that Barrie Smith was easy to do business with and Capricorn difficult?

**Mr FARRAR:** For a start, that view was supposed to be confidential, but it was formed on the basis of my experience about those individuals in the market. Equestrian NSW had purchased some cushion mats from Barrie Smith for our outdoor cross-country course and that was an easy transaction. Barrie had been accommodating in terms of providing details to prepare the funding request, and I was aware of some conflicts that Capricorn had had with a number of customers.

**The Hon. MARK LATHAM:** So you had already had a commercial dealing with your president's in-law?



UNCORRECTED

---

**Mr FARRAR:** Yes.

**The Hon. MARK LATHAM:** And that was the basis on which you said he was easy to do business with?

**Mr FARRAR:** Yes, as well as the understanding that OTTO, being the main subcontractor, was highly regarded in the market and had a really, really good reputation internationally delivering both at the Olympics and elsewhere. So it was not just Barrie Smith; it was the package.

**The Hon. MARK LATHAM:** Was Stephen Dingwall the agent for that commercial dealing with the mats?

**Mr FARRAR:** No.

**The CHAIR:** Mr Farrar, do you accept therefore, having gone through the step-by-step around the design, that is fair to say that you and/or the other two members of the technical advisory committee were heavily involved in the tender process?

**Mr FARRAR:** Our role was as representatives of the sport. We were not experts. We were advisers. Oliver Hoberg is an expert. I regarded the technical advisory panel as informed stakeholders—

**The CHAIR:** Mr Farrar, sorry to interrupt but we have got limited time. You provided the original list. You then had the opportunity to inspect the returns from the people who were invited. You then were given the opportunity to provide feedback direct to the CEO. Surely, you would agree that that is at least some involvement?

**Mr FARRAR:** It is definitely involvement but it is in an advisory capacity only.

**The CHAIR:** Sure, that is fair.

**Mr FARRAR:** The whole tender process was managed by the Office of Sport.

**The CHAIR:** Sure, but at any point did anyone at the Office of Sport explain to you the policies and procedures that apply to New South Wales government officials when it comes to procurement?

**Mr FARRAR:** No, but as I said previously, I was familiar with them from my previous experience working as a public servant.

**The CHAIR:** Did anybody explain to you the specific policies that apply to limited tenders?

**Mr FARRAR:** No.

**The CHAIR:** Okay. And so you were relying on your background as a CEO of a public service agency before?

**Mr FARRAR:** Correct.

**The CHAIR:** What about the other two members of the committee? Did they have such experience?

**Mr FARRAR:** I don't know. Sorry, in terms of public sector experience, not that I am aware of, no.

**The CHAIR:** I guess we can put this to the Office of Sport but, but for the fact that you had that previous experience, you would have had no knowledge of the public sector procurement rules, would you?

**Mr FARRAR:** Correct.

**The CHAIR:** In terms of your obligations to the Office of Sport versus your obligations to Equestrian NSW, did you see them as being in conflict at any point?

**Mr FARRAR:** No, I did not. My role with Equestrian NSW is to develop the sport and as part of that I drafted the funding request and was fortunate to participate throughout the project, but my role on the tender advisory committee was clearly as an adviser to the Office of Sport and I kept the details confidential as I was required to under the terms of engagement.

**The Hon. MARK LATHAM:** Finally, it has been put to me, Mr Farrar, that you instructed your staff at Equestrian NSW to ensure that all material about the SIEC procurement was not put on the server so that it could not be traced. Is that true?

**Mr FARRAR:** No.

**The Hon. MARK LATHAM:** It was all there on your server? You could print out now all the material that relates to this procurement?

UNCORRECTED

---

**Mr FARRAR:** Yes.

**The CHAIR:** Thank you for staying the additional 10 minutes. We appreciate that. Thank you as well to you, Professor. No questions were taken on notice. We very much appreciate your time today and equally the submissions that you have put in, both in your primary submission and your supplemental submission. Thank you for your attendance.

**(The witnesses withdrew.)**

**(Luncheon adjournment)**

UNCORRECTED

---

**BARRIE SMITH**, Barrie Smith Motorsport, sworn and examined

---

**The CHAIR:** We welcome our final witness for the day. Thank you for making the time. If you would like to make a short opening statement, you are most welcome to.

**Mr SMITH:** I am really here to support the Office of Sport and to help squash what I see as bullying by ignorant, uninformed and mostly uninvolved outliers who use social media for their own notoriety. I would like to address some of the terms of reference relative to my involvement. The first one is the terms "failed" and "second hand surface", which have been used quite heavily. Both of them are not correct and I have documentation—evidence from OTTO—to support that. The riding surface moved from Wallaby Hill was a brand new surface. It consisted of OTTO-ArenaTex imported from Germany and OTTO-PerforatedMats imported from Germany, and the sand content was a local sand which was tested by OTTO. It was installed at Wallaby Hill in their outdoor setting.

A lot of our clients have particular concerns, if you like, with arenas. Terry Snow is paranoid about water leaks because he has had a number of them. In our case, at Alex's, it is a very high rainfall area and the property is right on the escarpment, so they are quite paranoid about the arena's handling large volumes of rain. Before we could test it the heavens opened and indicated that the clay content in the sand precluded the correct amount of drainage and therefore the decision was made by OTTO to remove the arena and stockpile it. I should point out at the time that I had no commercial dealings with Alex. My involvement really was assisting OTTO in the logistics. Alex had paid OTTO directly for all the installations on her property.

Because I had the successful tender with SIEC and because the material, the sand that was used, in that outdoor situation was absolutely perfect for an indoor—it is the same material that is used in Alex's indoor—discussing it between OTTO and myself, it seemed a very sensible thing to install that in the SIEC situation. I was not present when the contractors, under the supervision of the OTTO engineer, removed the surface and stockpiled it. I arranged for the stockpiled material to be transferred to SIEC and it was only when that was sitting in one of the top car parks and had had some rain on it that a couple of the particles, which were instantly recognisable as pieces of the OTTO-PerforatedMats, which is the underlayer for the arena—it was obvious that there were some particles there. What was not obvious was the quantity of particles. In reverse engineering it, making inquiries some months later—really the arena was there for several years with no problems—it was only when the volume of the particles was recognised that I inquired at OTTO.

When the arena was taken off Alex's property, the mats that were in the bases of the riding surface were up-ended, just to remove the last bits of material, and that sand and fabric mix did contain the particles of OTTO-PerforatedMats. The OTTO engineer, when questioned, said, "Well, it is no problem. It is just part of the matter. It will not affect the rider or the horses." So he said, "Add it to the pile." Had I been there I would have said, "Don't do that. That is crazy because it is a visual problem." It may not be a technical problem but it is a visual problem. So I was not present when that material was added to the pile and, had I been asked, I would have said, "Hell, no."

So my first understanding of the quantity was really after we were requested by the Office of Sport to address the issue of the particles of OTTO-PerforatedMats. I wasn't happy certainly with the quantity of them and so we offered to do that at our expense and we performed really a fluffing up of the arena with a machine called a Harley rake. We spent two days there doing that and I believe at the end of that we removed many, many of the particles that were present. So I question "failed surface"—absolutely not. It was a brand new surface and had been tested. When it was sitting in the car park, Darren Crumpler from the Office of Sport requested, prior to its use and prior to its installation on the indoor, that it be geo-tested. That was done and the results of that were in my submission to the inquiry.

The second thing we did was take a number of samples—six samples—of each of the stockpiles. One was the already mixed arena surface. The second one was the sand that was going to be used for the outdoor arena. Those six samples were taken and sent to OTTO. I have a copy of the letter from the CEO of OTTO for each one of you, which was something I was only aware of recently, otherwise I would have included that in my submission. We have had it tested in Australia and we have had it tested by OTTO, and in all cases it has been approved. So "failed" does not work. "Second-hand"—it was never used so it cannot be second-hand. I have touched on the contamination. It is particles from the OTTO-PerforatedMat, which sit under the riding surface. There is a maintenance procedure, which we have found to be very beneficial for the OTTO arenas, and it is only possible because they use this mat structure under the riding surface.

You effectively pile the surface up by using a bobcat, go down to the top of the mat, pile it up, remix it and then re-lay it and laser-level it. That effectively gives you a brand-new arena of the same quality you have when the arena was first installed. Other arena systems cannot do that because, even if they are OTTO-Ebb&Flow,

UNCORRECTED

---

the sand in the irrigation level—the lower level—is different from the sand in the riding surface and over time they tend to mix a bit, so you cannot really tell where you are up to, whereas with the OTTO mat it is very straightforward. As I said, if I was aware of the quantity of those particles at the time, I would not have gone ahead with it either. But 20/20 hindsight is a wonderful thing. What we did do was address the issue and we did our best to overcome it.

The other thing I have seen is "corrupt contract" and "conflict of interest". All I can say is—and it is under oath—a tender document was prepared entirely by myself with no input from anyone at Equestrian NSW or the Office of Sport or any of my relatives or in-laws whom I have heard mentioned. My son-in-law, his father and my daughter, Niki, were not able to do it. It is not a skill set they possess. Every tender I have produced since then—and we have had a couple of successful ones and a lot of private work—I do all the quoting because I am able to do it and I am a bit of a control freak, and I want to make sure we are actually going to get it right. My motivation for being involved in this whole thing is to ensure that Australian equestrian competitors—top-level ones—can compete on an equivalent surface to the overseas riders and be on the same surface here that they compete on when they go overseas.

In particular, if you talk to showjumpers, they will agree with you 100 per cent. Dressage riders are a little more delicate. It is an understanding thing. It is a new system. It is a very scientific system. Certainly SIEC was the first public installation by OTTO in Australia but, as you are probably aware, they have done the Rio Olympics, they have done many major competitions overseas and they are a major provider of equestrian surfaces. They also have an involvement with the FEI in order to try to promote the scientific approach to equestrian riding surfaces, because you will not find an Australian standard; you will not find a world standard. It is not like making a road or building a bridge, where you can look at all the standards and say it complies. The best you can hope for is a paper that the FEI sponsored. A Swedish professor at a Swedish university has had a lot of input into that and there is quite a lot of discussion about the desirable aspects. He has facilities to actually test the features that he says a top-level arena should have.

**The CHAIR:** Thank you, Mr Smith. I am just conscious that we want to get the questioning.

**Mr SMITH:** I am done, thank you.

**The CHAIR:** Thank you for your opening statement. I might kick off with some basic questions. When were you given the contract by the Office of Sport?

**Mr SMITH:** When was I?

**The CHAIR:** Yes. When were you given that contract?

**Mr SMITH:** When I received the email with the letter of award.

**The CHAIR:** Sure, but what time? Are we talking the start of 2017 or the end of 2016?

**Mr SMITH:** I had been overseas. I believe it was October or November of that year. I apologise; I do not have the dates in front of me.

**The CHAIR:** In the contract that you were given, you were required to source the material or the surface from overseas. Is that correct?

**Mr SMITH:** Correct.

**The CHAIR:** Specifically, were you given any further guidance in the contract as to where you were to get that material from?

**Mr SMITH:** I do not think so. When I put the tender response in, I certainly would have outlined the construction of the arena. The Ebb&Flow system would certainly be made of local products. The two imported products were the fabric that is included that is mixed with the sand, and that is a non-woven geotextile material. The other component was the OTTO-PerforatedMat.

**The CHAIR:** When you bid for the work, you won it because, presumably, amongst other things, you warranted that you could source that material from overseas?

**Mr SMITH:** Certainly. There was a very tight deadline but I indicated a provisional start date, which turned out not to be correct; it moved a couple of weeks because the approval process took a bit longer. But certainly I indicated that it was possible to get that material and bring it in.

**The CHAIR:** Part of the reason you could make such a warranty was that you were the agent for OTTO Sport. Is that correct?

UNCORRECTED

---

**Mr SMITH:** Correct. We put an OTTO arena into our premises 10 years ago—so, 2011—so there was an existing contact there, if you like. When they were looking at doing some work with Alex Townsend, who had contacted them some years earlier, it made sense for me to assist them with the logistics of the imported component because in our other business, which is importing high-level motorsport equipment, that is what we do. We have a lot of that experience. They are in Germany. They put things on trucks and send them around Europe; they do not put things in containers and ship them around the world.

**The CHAIR:** If you had therefore got the contract because, amongst other things, you warranted that you could, why did you not succeed in finding this material from overseas?

**Mr SMITH:** Sorry, could you speak up? I missed some of that.

**The CHAIR:** If, as you say, you had the ability to obtain these materials from overseas and you had warranted such in the tender and got the contract in part because you said you could, why then did you not find this material from overseas?

**Mr SMITH:** I did. The perforated mats were sourced from overseas and we have, from memory, five containers. The ArenaTex fabric was also sourced from overseas.

**The CHAIR:** Was it always the intention to then obtain the sand or other material from Ms Townsend's property?

**Mr SMITH:** Certainly. The sand has to be a local product. You cannot—

**The Hon. TREVOR KHAN:** You could, but it would be a hell of a lot more expensive to import sand, I take it.

**Mr SMITH:** Yes. OTTO have produced arenas in Europe where the sand has been trucked 1,000 kilometres. I know they did one in South America where they shipped the sand from Germany. There are two important factors in an OTTO arena. In any riding arena the sand is number one. It is absolutely critical. OTTO go to extreme lengths to ensure that the sand has what they call an appropriate sieve line, and therefore an appropriate distribution of particles. You must have that distribution so that you get the correct characteristics.

**The CHAIR:** To be clear, when you bid for the contract and got it, it was always your intention to source the sand from Ms Townsend's property?

**Mr SMITH:** No, it was not.

**The CHAIR:** Where were you planning to get the sand from?

**Mr SMITH:** The sand on Alex Townsend's property is the same sand that we sourced, and we had that sand sourced back in 2011 by the then international sales director of OTTO Sport, who came to Australia on a private trip.

**The CHAIR:** But where, Mr Smith? At the time that you signed the contract, where was your plan to get the sand?

**Mr SMITH:** There were two sources. One was from a Hanson quarry at Clarence up in the Blue Mountains. The second source of sand was Paragalli sand from the Lake George area around Canberra.

**The CHAIR:** Why, then, did you not source the sand from those areas?

**Mr SMITH:** Well, we did. I am sorry—

**The CHAIR:** Sorry, you sourced it—

**Mr SMITH:** I do not understand.

**The CHAIR:** The material that you sourced from Ms Townsend's property—what was it again?

**Mr SMITH:** There were two sources. The initial sort of sand from Townsend was the Paragalli one from Lake George, and that was the one that we ultimately discovered had a clay content that was inappropriate for an outdoor arena.

**The CHAIR:** But that was not your intention at the time you signed the contract.

**Mr SMITH:** I think it was. Certainly, it was.

**The Hon. TREVOR KHAN:** I think we have to be clear as to what contract we are talking about.

**The CHAIR:** We are talking about with the Office of Sport.

UNCORRECTED

---

**The Hon. TREVOR KHAN:** Yes.

**Mr SMITH:** The Paragalli sand would have been the choice for the SIEC arena.

**The CHAIR:** Presumably that is a different source of sand to Ms Townsend's. Is that correct?

**Mr SMITH:** No, the Paragalli sand is what is in the Townsend indoor arena. The one in the outdoor arena was from the Clarence Quarry because once we were aware of the clay content in the sand from the Lake George quarry, it was appropriate to change to the alternate sand. I was aware of both those sands from the construction of our arena in Murrumbateman in 2011. The proportion of the sands there was, from memory, 80 per cent of the Hanson sand from the Clarence colliery and 20 per cent from the Lake George colliery.

**The Hon. MARK LATHAM:** To follow up on that set of questions from the Chair, do you believe you would have got the contract if you had told the Office of Sport that the sand was coming from the Blue Mountains and Lake George, but via Wallaby Hill?

**Mr SMITH:** That was not the intention at the time, Mr Latham, certainly. The brand-new surface that was installed at Wallaby Hill that was discovered to have a bit too much clay inside was a perfect solution for the indoor at SIEC. Had it been used—had it been anything else—the decision would not have been taken, but it was taken between myself and OTTO in the presence of the OTTO engineer and, as I recall, the OTTO CEO. It was decided that it was absolutely perfect for the indoor at SIEC. Because it was a brand-new mixture, it did not seem to be a problem, really. Hindsight is a wonderful thing. Because of the particles that were included by the action of the OTTO engineer, it has turned out to not be the best solution. But, at the time, it was a brand-new mixture suitable for an indoor arena and was deemed to be the appropriate step. Just to explain, the clay content provides additional grip and additional features for a riding surface, but it is only appropriate when it is in an indoor situation. SIEC is totally indoor—the walls enclose everywhere—so it was what seemed a very commonsense approach.

**The Hon. MARK LATHAM:** Just to clarify the difference between Barrie Smith Motorsport and OTTO, when I google "OTTO Australia" it comes up:

Clearly the world's best arena base mats, OTTO Sport has chosen BSMSport Equestrian to represent the product exclusively in Australia.

So you are OTTO's agent in Australia, are you not?

**Mr SMITH:** Yes.

**The Hon. MARK LATHAM:** How many OTTO staff were at Wallaby Hill? You mentioned an engineer and a supervisor.

**Mr SMITH:** Yes, there was.

**The Hon. MARK LATHAM:** Who are they? Does OTTO actually have an office and staff here in Australia?

**Mr SMITH:** No, not at all. They flew in. Gerd Hermann is the OTTO engineer and he supervised all the work at Alex Townsend's place. He also supervised the installation at SIEC.

**The Hon. MARK LATHAM:** Right, so they fly in and out according to your projects, with you acting as their agent. To build that outdoor arena initially at Wallaby Hill, was there a development consent for that through Wingecarribee council?

**Mr SMITH:** I have no idea. It would have been all organised by Wallaby Hill. I do not have any knowledge of that.

**The CHAIR:** But as the agent of OTTO, you had entered into the contract with Wallaby Hill.

**Mr SMITH:** I beg your pardon?

**The CHAIR:** OTTO at this time was providing work for Wallaby Hill?

**Mr SMITH:** We became the agent—given that Alex decided to go ahead with the OTTO arena and her dealings were directly with OTTO, I provided the assistance for the logistics.

**The CHAIR:** So she dealt directly with OTTO, despite you being their agent locally.

**Mr SMITH:** I was dealing with OTTO then and it just became something that seemed like it was going to be a workable arrangement, that we would try to promote the product in the country. Really, we did nothing. SIEC was the first opportunity we had, and when that tender document came out it looked like a great opportunity to introduce the OTTO system into Australia, and certainly at one of the premier locations.

UNCORRECTED

---

**The Hon. MARK LATHAM:** Had you asked Alex Townsend at that stage to be your referee for the tender?

**Mr SMITH:** When I did the tender, yes, because the only OTTO arena installed in Australia had been at Wallaby Hill.

**The Hon. SAM FARRAWAY:** Mr Smith, just to make some sense, I will ask very direct questions. How old was the mix of the surface at the Townsend property—the OTTO surface—before it was removed?

**Mr SMITH:** A matter of weeks—not many weeks. I do not have an exact time because it is quite some time ago.

**The Hon. SAM FARRAWAY:** Why did you not just create your own mix from scratch?

**Mr SMITH:** Part of the trouble then would have been the tight timescale on providing the arenas at SIEC. We had to have them done, from memory, by the second weekend in January. We did not get the containers off the wharf with the mats and the fabric until probably the end of the first week because Christmas got in the road.

**The Hon. TREVOR KHAN:** The end of the first week of January?

**Mr SMITH:** Of January, that is right. That gave us a bit of a head start by having an already mixed surface.

**The CHAIR:** But when you got the contract you had contracted on the basis that you would produce an original mix. Is that correct?

**Mr SMITH:** Yes.

**The CHAIR:** So that was November-ish, I think you said before.

**Mr SMITH:** No.

**The CHAIR:** So you got the contract with the Office of Sport sometime around October or November that year.

**Mr SMITH:** In November, yes.

**The CHAIR:** At that point you had bid on the basis you would be producing an original mix, correct?

**Mr SMITH:** Yes.

**The CHAIR:** But thereafter you became aware that there was this alternative source.

**Mr SMITH:** Yes.

**The CHAIR:** And you therefore decided to use it instead of producing your original mix.

**Mr SMITH:** Yes. The arena in the outdoor at SIEC is an original mix.

**The CHAIR:** But that was not what you bid for, though, or what you warranted to the Office of Sport that you would do?

**Mr SMITH:** It was not my intention at the time, no. Correct.

**The CHAIR:** Did you tell the Office of Sport that you had made a unilateral decision to change the mix?

**Mr SMITH:** I did not highlight it at the start because it was a brand-new surface. It was an original mix in my understanding and in OTTO's understanding. It was a perfect mix for the site where it was going—on the indoor at SIEC—so it seemed a straightforward matter. It did not seem to be anything unusual.

**The CHAIR:** Except for the fact that someone somehow deposited all this material in the mix that they should not have.

**The Hon. SAM FARRAWAY:** Well, it seems that was a result of moving. Mr Smith, you said at the beginning that the second-hand material or product—and I appreciate that, in a perfect world, if you or OTTO had removed the surface successfully from Wallaby Hill, without the rain event while it was stockpiled at SIEC, and if it was laid without the grommets in it and without the matting ripping up, we would not have this parliamentary inquiry. The reality is, unfortunately—and I do not know if you heard earlier, but I know just a little bit about this—it was a second-hand product because of the result of it being removed from Wallaby Hill. It became a second-hand product when it was removed from Wallaby Hill, even if it was only a matter of weeks.

UNCORRECTED

---

It is a bit like a used car—at the end of the day, as soon as you put plates on it, it is a used car. The thing is, once it was installed at Wallaby Hill, the mix is complete; it is down. Yes, you could have moved it and taken it to SIEC and in a perfect world, if the grommets and matting was not ripped up in the process, we would not be here today. But it was. That is my take on it, whether you agree or not. But did OTTO International ever offer—their reputation is on the line here because it is Australia's premier equestrian facility and it is their first major job in the country—to come and remove the entire surface to get those rubber grommets out of the surface that was laid at SIEC? The reality is, from what we have learned today, the only way you could have effectively gotten rid of all those rubber grommets was to get rid of all of it once it was laid.

**Mr SMITH:** That is correct, and OTTO have certainly never offered to do that. From what I have heard earlier today from the Office of Sport, there was no question of any problem with the arena for the first couple of years. Everyone was very happy with it. Certainly the test riders were very happy with it. We were there for some of the earlier competitions; in fact, we sponsored Dressage NSW, I suspect, who were using the SIEC arenas for one of the major championships. For the first couple of years there was no issue.

**The Hon. TREVOR KHAN:** Mr Smith, at the time when you, for instance, sponsored that dressage event, were the grommets evident to you on the surface?

**Mr SMITH:** Yes, some of them were, but the number of grommets was never really an issue. Initially, it seemed that there were some grommets and we knew exactly where they were. We had confirmation from OTTO that those grommets would not have represented a safety problem for either horses or riders. What was not evident until much later was the quantity of grommets that were there.

**The Hon. TREVOR KHAN:** That is, they were coming to the surface as—

**The Hon. SAM FARRAWAY:** When it is raked.

**Mr SMITH:** Yes. As part of the maintenance of the arena, OTTO supply the grooming equipment, which has tines that go down and you can adjust the depth of the tines. As the surface compacts a bit, you would want to put them down a bit further. So maybe instead of 10 millimetres you would put them down 20 millimetres or 25 millimetres. That process will bring a couple more to the surface.

**The Hon. TREVOR KHAN:** Well, it is not a couple, by anyone's imaginings.

**Mr SMITH:** No, there were too many, for sure. I remember in a meeting I had with the Office of Sport at SIEC, they were questioning the clay content of the arena and had a few other questions. Ultimately, my response to that is documented in my submission. It was a letter to Michael Toohey, I think. Really out of that meeting the only issue was the number of grommets, and that was something I totally agreed with. It was something that I was very annoyed about and not happy about because, in a way, that was our signature site. To have an issue like that is not good.

**The Hon. SAM FARRAWAY:** Are you still the agent for OTTO?

**Mr SMITH:** Yes.

**The Hon. SAM FARRAWAY:** Is Wolfgang Otto aware that there is a New South Wales parliamentary inquiry featuring his company?

**Mr SMITH:** They are aware of it, yes.

**The Hon. SAM FARRAWAY:** Have you ever sought from Wolfgang or Mr Otto any further remedy that they could have done to address the issue?

**Mr SMITH:** I have spoken to them on many occasions and had the discussion with them of what the best procedure was. Following that meeting with the Office of Sport, I agreed to provide our best efforts to remedy the situation. I spent two days there with the same contractors that we would use for every installation with a device called the Harley Rake, which fluffs the arena. It would have gone right down to the level of the mats and basically fluffs up the arena like a super grooming, if you like, and then provided labour for several days to go round and collect all of the grommets that appeared after every pass of the Harley Rake. So a lot of work was done to try to get the major proportion of those pieces of OTTO-PerforatedMat out of the arena.

**The CHAIR:** Mr Smith, had you proceeded with the original plan of producing an original mix, what would have been the cost of producing an original mix?

**Mr SMITH:** There would have been no difference in cost.

**The CHAIR:** That was not my question, Mr Smith. What was the actual cost?

**Mr SMITH:** Of?



UNCORRECTED

---

**The CHAIR:** Producing an original mix.

**Mr SMITH:** I would have to do some work on that, I am sorry. It depends on the size of the arena and such.

**The Hon. MARK LATHAM:** Didn't you do the work for the tender?

**Mr SMITH:** Yes, I did, but I do not have that work in front of me, though, Mr Latham.

**The CHAIR:** Can you take on notice the original cost?

**Mr SMITH:** I can do that, yes.

**The CHAIR:** Did you pay Ms Townsend for the material you took from her site?

**Mr SMITH:** No, it was not her material; it was OTTO'S material, as I understand. She had paid OTTO—

**The CHAIR:** But had she not made the decision to remove it, it would not have been available; correct?

**Mr SMITH:** Well, had—

**The CHAIR:** Had Ms Townsend not made the decision to have that material removed—

**Mr SMITH:** No, she did not make the decision.

**The CHAIR:** You are saying that OTTO did?

**Mr SMITH:** OTTO did.

**The CHAIR:** So OTTO turns up and decides to take out her surface?

**Mr SMITH:** The decision was made between OTTO and myself. There was a problem. Where is the solution to the problem? Well, hang on, we have a perfect site for it, being the SIEC indoor. In an ideal world, as I said, if there were no pieces of OTTO mat in there, it would have been an ideal situation and we would not be here.

**The CHAIR:** But do you understand how this appears? In order to solve one problem with one client, effectively OTTO or you have created another problem for another client.

**Mr SMITH:** Certainly, the way that history has gone, that seems to be the case. Yes.

**The Hon. SAM FARRAWAY:** Did you purchase the sand from OTTO? Did they bill you for the sand? Because they technically owned the matting and the product and the mix and, I suppose, the sand.

**Mr SMITH:** Yes.

**The Hon. SAM FARRAWAY:** So you would have budgeted, as part of your tender, to purchase the sand from either Clarence or—

**Mr SMITH:** What I did was replace the sand that OTTO used to put a different surface into Alex Townsend's outdoor arena.

**The CHAIR:** So you ended up paying to put the sand back into Ms Townsend's arena?

**Mr SMITH:** Effectively, it was a quid-pro-quo thing. We used OTTO's surface that they had installed at Alex's place, and so I provided them with the sand and the fabric content, which they then used to replace the surface.

**The CHAIR:** I presume what you provided to Ms Townsend after you took the sand did not have the issues with the—what you call it? Divots?

**The Hon. TREVOR KHAN:** No, he got the grommets.

**Mr SMITH:** No, it did not.

**The CHAIR:** So her site did not have the grommets but the SIEC site did.

**Mr SMITH:** Yes.

**The CHAIR:** You did that as a quid pro quo with OTTO; correct?

**Mr SMITH:** Yes.

**The CHAIR:** Is that because OTTO had an obligation to replace the sand for Ms Townsend?

UNCORRECTED

---

**Mr SMITH:** Yes.

**The CHAIR:** In order for them to meet that, you effectively funded it and took the sand away to be used to meet your contractual responsibilities with the Office of Sport.

**Mr SMITH:** It seemed like the best solution at the time.

**The CHAIR:** You never disclosed this to the Office of Sport; correct?

**Mr SMITH:** I did not rush up and highlight it, no, because to me—

**The CHAIR:** And you never sought their permission.

**Mr SMITH:** —we had a brand-new arena which was totally suitable and perfect for the location and perfect for the purpose. It was absolutely world-class. It did not occur to me that there would be a problem. It was only when the surface stockpile at SIEC was rained on and the presence of some of the pieces of the mat were revealed.

**The Hon. TREVOR KHAN:** And then you got the Geotech report. Is that correct?

**Mr SMITH:** Yes. We had a meeting with the Office of Sport following the appearance of the mats. There were a number of people there. I think Darren Crumpler was the person who was mostly in charge there, and there is a copy of his email to me in my submission to this inquiry. He insisted on a number of things, and one of them was to have the material sitting up in the stockpile geo-tested, and that was duly done. The results are included in my submission to this inquiry and the difference really is only in the very fine microns—75 to 150 micron level. That is a clear indication of the presence of the sand in the surface for the indoor arena and lack of clay in the sand designed for the outdoor arena.

**The Hon. TREVOR KHAN:** Did Mr Crumpler's exchange with you occur before the surface was laid or the storm?

**Mr SMITH:** Correct, yes.

**The Hon. TREVOR KHAN:** So irrespective of whether you disclosed it, certainly the negotiations that occurred that may be said to constitute a variation of your contract occurred before the surface was actually installed.

**Mr SMITH:** Correct. There were two stockpiles. One was the sand ready to be mixed for the outdoor; the other was the already mixed surface from Wallaby Hill. In addition to that testing, we took six samples from each of those stockpiles and sent them to OTTO Sport in Germany. The result of that is confirmed in that document that has just been handed around.

**The Hon. TREVOR KHAN:** You talked about two piles. Can you just explain that again?

**Mr SMITH:** Okay. One pile was sand only that was to be mixed with the Otto-Arena-Tex for the outdoor arena. The other pile was the stockpile taken from Wallaby Hill—

**The Hon. TREVOR KHAN:** Which is the indoor stuff.

**Mr SMITH:** —which at that stage, to us, was a brand-new arena using a different quality of sand but a sand better suited to an indoor. The surface you get from the sand with the clay in it is better for equestrian purposes than the sand without the clay. The difficulty is that for an outdoor situation you cannot have the clay because for an Ebb&Flow system to work properly—and I do not know how much you understand about it.

**The Hon. TREVOR KHAN:** Very little.

**Mr SMITH:** Basically it is a plastic liner that may be 200 or 300 high. Then there are irrigation pipes laid every two metres in a grid with a peripheral circuit with 200 to 250 millimetres of washed sand on top, which is low-quality sand, but sand that will allow water to flow through it. Then on top of that is the OTTO-PerforatedMat. The reason for the mat is a couple of things. It gives you a separation between the riding surface and the irrigation layer. The mat also provides a 40 per cent concussion reduction for the horse riding on the arena, which is important for dressage but it is even more important for showjumping. On top of that is 100 millimetres of sand and fabric mixture.

**The Hon. MARK LATHAM:** Mr Smith, after you told the Office of Sport that there was a delay on the wharves, did you tell them that you would have to source the material from one of your warehouses.

**Mr SMITH:** No, we never had the material in our warehouse, Mr Latham.

**The Hon. MARK LATHAM:** No, did you tell them that it was in your warehouse?

UNCORRECTED

---

**Mr SMITH:** No. I have a warehouse, but the warehouse is down in a place called Murrumbateman just outside Canberra. All the material that we were going to use was basically delivered straight to the site at SIEC.

**The Hon. MARK LATHAM:** What did you tell them about where it was coming from, if not a warehouse? Why didn't you tell them it was coming from Wallaby Hill?

**Mr SMITH:** It did not occur to me at the time to tell them where anything was coming from because clearly we had to supply a sand approved by OTTO. They did not necessarily need to know where it was coming from.

**The Hon. MARK LATHAM:** The project was delayed. There had been a delay on the wharves and you were running out of time—

**Mr SMITH:** No, there was not a delay on the wharf.

**The Hon. MARK LATHAM:** The Office of Sport says you misled them. Is that true?

**Mr SMITH:** I do not believe so, no. There was not a delay on the wharves. There was no delay as such in the project. In the schedule for the project I had accounted for the fact that Christmas occurred just prior, within weeks of the project requiring to be completed. The components coming from overseas were the OTTO-PerforatedMat and the OTTO-ArenaTex fabric—the pieces of non-woven geotextile material. So nothing could proceed beyond a certain point, and that point was completing the Ebb&Flow system. So it stopped at the washed sand level and until we got the OTTO mats from the containers that were being delivered in that first week, say, of January, we could not proceed—whether it be proceeding with the mixture for the outdoor arena or the mixture for the indoor arena. The mats had to go down. Once the mats were laid, then we could put the surface on top and turn the water on.

**The Hon. MARK LATHAM:** So it was always your intention to get the material from Wallaby Hill.

**Mr SMITH:** Sorry?

**The Hon. MARK LATHAM:** It was always your intention to get the material from Wallaby Hill.

**Mr SMITH:** It was not. It was only once the option became available to use that surface.

**The Hon. MARK LATHAM:** When did that become available? When was that deemed to be an arena where was it removed and stockpiled?

**Mr SMITH:** I would have to go and check that. I would have to take that on notice.

**The Hon. MARK LATHAM:** You mentioned earlier that Alex Townsend paid OTTO for the arena.

**Mr SMITH:** Correct.

**The Hon. MARK LATHAM:** So she was unhappy with it and OTTO said they would take it out and stockpile it?

**Mr SMITH:** OTTO were the ones who were really unhappy about it. They said, "Look, we need to replace this."

**The Hon. MARK LATHAM:** In agreement with Alex Townsend because it is on her property?

**Mr SMITH:** It was on her property.

**The Hon. MARK LATHAM:** Right, so there was a stockpile on her property. Who made the decision to remove the stockpile to SIEC?

**Mr SMITH:** That was made in conjunction with OTTO and myself.

**The Hon. MARK LATHAM:** And Alex Townsend, given that she has paid for it and technically it is her sand on her property?

**Mr SMITH:** She really did not have part of that decision.

**The Hon. MARK LATHAM:** How many trucks came in and out to remove it?

**Mr SMITH:** A lot. I can show you invoices.

**The Hon. MARK LATHAM:** Is a lot 50, 100, 150? What is a lot?

**Mr SMITH:** I would have to measure the quantity of sand that was there, and then I can tell you exactly.

**The Hon. MARK LATHAM:** No, it has already happened; it is historic. How many trucks were used?

UNCORRECTED

---

**Mr SMITH:** I would have to go and have a look at that. I have invoices.

**The Hon. MARK LATHAM:** Are we talking a dozen? Was it 50?

**The Hon. TREVOR KHAN:** He is entitled to take it on notice.

**The Hon. MARK LATHAM:** You will take it on notice, will you?

**Mr SMITH:** Yes, I will take it on notice. But certainly—

**The Hon. MARK LATHAM:** Did you have a development consent to move the huge quantity of sand that had been stockpiled in all these trucks through the streets of Robinson?

**Mr SMITH:** I do not think you need a development consent for that sort of thing.

**The Hon. MARK LATHAM:** You do not think you needed one. Okay.

**Mr SMITH:** I am certainly not aware of it, no. In all the projects I have done—and Wallaby Hill recently is the largest one; it is 11,800 square metres, which is basically more than twice the size of SIEC—there was no need for any application like that to truck sand in.

**The Hon. MARK LATHAM:** But it is your evidence that even though Alex Townsend owned the sand that was on her property, there was no need to tell her that you were taking it away. Did she pay for the removal of it?

**Mr SMITH:** No, I paid for the removal.

**The Hon. MARK LATHAM:** So you just took it.

**Mr SMITH:** I did not just take it.

**The Hon. MARK LATHAM:** Were you worried that it was like theft?

**Mr SMITH:** Not at all. Alex would have been—that is crazy, your suggestion of theft.

**The Hon. MARK LATHAM:** Well, no. If I owned a bunch of dirt on my property and somebody just took it and trucks were rolling in and out, (a) I would ask what the trucks were doing there and (b) I would be saying that that needs my consent before you can come onto my property and do that.

**Mr SMITH:** I am sure OTTO asked Alex would she mind if we stockpiled the material on her property.

**The Hon. MARK LATHAM:** To leave it there forever or to say that then they would move it to SIEC?

**Mr SMITH:** No, I do not know what OTTO told Alex. I do not think Alex was aware where it was going. I think they just said, "We would like to stockpile this for a moment. Do you mind?" Alex has plenty of space.

**The Hon. MARK LATHAM:** You are working with OTTO. What did they tell you?

**Mr SMITH:** They told me that they removed the surface and stockpiled it at Alex's. Then we discussed the suitability of that material for SIEC because it seemed to be perfect. Between OTTO and myself—

**The CHAIR:** Mr Smith, just to be clear, at this point do you understand that the owner of that stockpile is Ms Townsend or OTTO?

**Mr SMITH:** OTTO.

**The CHAIR:** You think OTTO owns the sand?

**The Hon. MARK LATHAM:** Even though she paid for it.

**The CHAIR:** Is that your evidence?

**The Hon. TREVOR KHAN:** I do not think there is evidence that she paid for it.

**The CHAIR:** Let me just ask the question. At this point, you are operating off the assumption that OTTO is the owner of the sand on Ms Townsend's property?

**Mr SMITH:** Yes.

**The CHAIR:** And you therefore entered into an agreement with OTTO to take the sand?

**Mr SMITH:** I guess OTTO had not—it is my understanding that OTTO had not handed over the project to Alex. It was not at the stage where—when you are building a house there is a particular point when the builder

## UNCORRECTED

hands over the house to the owner. OTTO certainly had not handed the arena over to Alex, so it was my assumption that it was still OTTO's arena.

**The CHAIR:** It was your assumption. Fair enough, if that is the assumption that you held at the time, but did you check or did you just assume that they were the owner of the sand?

**The Hon. TREVOR KHAN:** Point of order: I am not quite sure where this goes. Mr Smith's understanding of the law in this matter—

**The CHAIR:** No, it is not the law. It is the person who obtained the material and then, as Mr Smith said, replaced it on a quid pro quo. I am just trying to understand what was—

**The Hon. MARK LATHAM:** To the point of order: Mr Smith's evidence twice earlier was that Ms Townsend paid OTTO for this work.

**The Hon. TREVOR KHAN:** No, that is not his evidence at all.

**The Hon. MARK LATHAM:** Yes, that has been his evidence.

**The CHAIR:** I am going to rule. I do not uphold the point of order, for the reason that I am probing an earlier answer that he gave to this and that is the reason why. If you want to take a point of order about relevance, that is a different question.

**The Hon. TREVOR KHAN:** Look, I was going to go onto that because I am not sure quite where this goes in this whole inquiry.

**The CHAIR:** On the basis of relevance, I still uphold my ruling that it is in order. I am not planning to press it much further. I am asking: Did you check, Mr Smith, or did you assume that OTTO owned the sand?

**Mr SMITH:** I probably assumed, and I assumed that there was an agreement—certainly permission from Alex—that the surface be removed from her place on the understanding that OTTO would replace the arena.

**The CHAIR:** And then you took over OTTO's obligation to Ms Townsend yourself.

**Mr SMITH:** Sorry?

**The CHAIR:** You assumed OTTO's obligation to Ms Townsend to replace her mix.

**Mr SMITH:** Effectively, I took a product that I believed was OTTO's product and I replaced it with sand and fabric to the same quantity because it was in the same arena.

**The Hon. SAM FARRAWAY:** Even though I understand why you did it—in terms of you paid for that to offset that—did Alex Townsend know that you were, effectively, replacing the sand and that Barrie Smith Motorsport was paying for that? You have answered this before, but how much did Ms Townsend know about all of these conversations and arrangements you had with OTTO?

**Mr SMITH:** Right now I am really not sure. The OTTO engineer and the CEO who was there for some of the time were staying in her house, so I would assume that there were conversations about that. I was certainly not privy to that. The whole idea that I stole sand from Alex is preposterous, to be honest.

**The Hon. SAM FARRAWAY:** Mr Smith, because we are on limited time, we are going back to the point where—

**The Hon. TREVOR KHAN:** We have less than limited time.

**The CHAIR:** Mr Smith, do you mind staying until 3.00 p.m., which is an additional 10 minutes?

**Mr SMITH:** No, that is fine.

**The Hon. SAM FARRAWAY:** Rewinding to the day that the OTTO engineer—because this is the real critical point, from what I can see—made the decision and how they removed the surface from Wallaby Hill, which is where the matting got ripped up and that is how the grommets got into the mix to begin with, had you been in the conversations up to that point with OTTO to agree to do that and to then stockpile it? Or was the agreement to take that mix that was at Wallaby Hill to SIEC made after the event? Because you said you were not there that day.

**Mr SMITH:** OTTO made the decision to remove the arena. I cannot really recollect the exact order of things, but the fact that there was a ready-mixed surface of the right material that could be used at SIEC seemed to—

## UNCORRECTED

**The Hon. SAM FARRAWAY:** The question I have for you following on from that is this: I suspect from what you are saying that the agreement to use that pre-mixed stuff that was stockpiled at Ms Townsend's place for SIEC was made after it was removed, because otherwise you had no need to be at Ms Townsend's that day to watch the removal, did you?

**Mr SMITH:** No, and I was not there. I wish I was because—

**The Hon. SAM FARRAWAY:** That is the whole point: I bet you wish you were there.

**Mr SMITH:** Yes.

**The Hon. MARK LATHAM:** Mr Smith, when did Stephen Dingwall start working for you as an agent?

**Mr SMITH:** He has never worked for me as an agent. I use him as a subcontractor occasionally.

**The Hon. MARK LATHAM:** When did that start?

**Mr SMITH:** The first time I think I used him was at the end of the SIEC project, when we had to train the SIEC staff to groom the arena. Stephen uses our arena in Murrumbateman and had been grooming it for, I suppose, five years. He really understood the whole process of grooming it—how to set the depth for the tines and generally the whole process—so it was easy for me to get Stephen to do the training for the Office of Sport.

**The Hon. MARK LATHAM:** As far back as 2014 he was on social media saying that some whiz-bang water jumps were about to come out from France through Barrie Smith Motorsport and retail at \$530 and if you want to order some, contact him. So wasn't he acting as your subcontractor as far back as 2014?

**Mr SMITH:** No.

**The Hon. MARK LATHAM:** Was he just doing that for fun?

**Mr SMITH:** No. Stephen found those water jumps; I remember that. We imported them and we stocked them. Stephen, at that stage, was one of quite a few young riders who we provided sponsorship for. I could give you a list if you want a list; I would have to take that on notice. Stephen was sponsored in a peppercorn sponsorship; it was in product, not in actual money. We were importing some products from a company in the Netherlands that produced a lot of stable equipment: some jackets, boots that go round the horses' legs—a whole lot of things like that. Stephen was doing us a favour in the same way as other people we have offered sponsorship have done, including people who bought horse floats from us. We used to import floats from France and we have had people do the same thing there: put up something on Facebook or whatever saying how great these floats are.

**The Hon. MARK LATHAM:** It is more than a favour, isn't it? In return for the sponsorship he is trying to drum up some trade for you.

**Mr SMITH:** Yes, it is what people who are sponsored by a company do. They try to repay the sponsorship. That is all Stephen would have been doing. Certainly he has never been an employee and the first time he would have done work for us, in my recollection, would have been the training for the grooming of the SIEC arenas. We also used him for some of the subsequent competitions there, particularly the first major dressage competition because, as I said before, dressage riders are a bit of a fussy bunch. I know he got together with one of the maintenance guys at SIEC and the riders' representative at that dressage competition and made sure that the staff there understood how to groom the arena to the satisfaction of the riders' representative.

**The Hon. MARK LATHAM:** In your tender submission, how many arenas did you claim to have produced as part of your experience?

**Mr SMITH:** In that submission I would have said that OTTO have produced two arenas and the gallop track at Wallaby Hill, but in terms of—

**The Hon. MARK LATHAM:** But none directly yourself. OTTO did that through their engineers.

**Mr SMITH:** They were OTTO ones—correct, yes.

**The Hon. MARK LATHAM:** Can you recall Mr Farrar coming to see you initially to say, "We are requesting this funding from the State Government; can you give us a few clues about the costing?"

**Mr SMITH:** Not really, no. I have spoken to Mr Farrar in overall terms. He may have asked me at one point roughly what the per square metre cost of Alex's ones were. I know we sold him some of the perforated mats because he used them for jumps at SIEC—like the coffin jump on the cross-country course, because the mats give you a very stable surface when it is a wet event. On something like a coffin jump, which is quite a dangerous jump, if there is quite a lot of slippage either on the landing or the take-off area the mats provide a very stable surface. I certainly sold some mats to—Mr Farrar organised it but it was probably Equestrian NSW, I expect.

## UNCORRECTED

**The Hon. MARK LATHAM:** So you gave him some costings and at that point you thought that is alright because the tender was coming up and you would be a part of that?

**Mr SMITH:** No, not really. I was surprised when the tender came up—surprised and really excited at the prospect of being able to make a difference, I guess, in Australia. Because if you understand my other business background, we have been a major supplier of top-level motorsport equipment for over 25 years. We currently hold the contract for brake products for V8 supercars, so every brake disc, brake pad and brake caliper for supercars for the last five years and for next year and, with a bit of luck, for the new Gen3 car. We do very nicely out of all of that, thank you very much. I am not a rider but I have a lot of riders in my family. I know from talking to people that many top-level competitors would not go to SIEC because the surface was deemed to be unsuitable for them, so here was an opportunity to make a difference.

**The Hon. MARK LATHAM:** Mr Smith, one thing that puzzles me in all of this is why you did not source the sand from the Blue Mountains and Lake George.

**Mr SMITH:** Well, we did. The sand that we took from the arena at Alex's place—

**The Hon. MARK LATHAM:** No, to go directly to SIEC as per the contract.

**Mr SMITH:** A lot of it did.

**The Hon. MARK LATHAM:** Mr Smith, you got together with Alex Townsend, didn't you—

**Mr SMITH:** I didn't.

**The Hon. MARK LATHAM:** —and decided she had a problem that you would fix at the taxpayers' expense?

**Mr SMITH:** No, that is absolutely incorrect.

**The Hon. MARK LATHAM:** No?

**Mr SMITH:** No.

**The Hon. MARK LATHAM:** You can understand why any reasonable person would think that and find your evidence just to be completely incredible?

**Mr SMITH:** I beg your pardon?

**The Hon. MARK LATHAM:** Can you understand why any reasonable person looking at this would think that you got together with Alex Townsend to solve her problem at taxpayers' expense and why your evidence here today does not pass the pub test?

**Mr SMITH:** Only someone who is looking for a problem probably would find that.

**The Hon. MARK LATHAM:** No, you found the problem at Wallaby Hill—

**The Hon. TREVOR KHAN:** You asked him the question; he is entitled to finish it.

**The Hon. MARK LATHAM:** Why didn't the sand directly come from the places you mentioned earlier—Blue Mountains and Lake George—to go to SIEC as per the contract?

**Mr SMITH:** The intention was always that that is exactly what would have happened.

**The Hon. MARK LATHAM:** That is not answering my question. Why did you not just buy the sand as per the contract and your original intention? Was it that you thought you would fix the problem at Wallaby Hill at taxpayers' expense?

**Mr SMITH:** Not at all. The taxpayer had nothing to do with the situation at Wallaby Hill. I have read in various Facebook—no, sorry, in some of the submissions, and I have addressed these issues there, that it was moved to SIEC at taxpayers' expense. That is absolute rubbish. I can give you copies of the invoices from ICF Haulage who did the work for me.

**The Hon. MARK LATHAM:** Yes, but as part of the money you were receiving from the Office of Sport for that contract.

**Mr SMITH:** No, not at all; it was additional. Look, if I made any money out of the SIEC project I would be totally surprised, because we have an obligation to produce a world-class product with as few issues as possible. With the extra work we have done both on the outdoor arena when they turned the water off and inadvertently caused a problem with that, and the remediation work we have done on the indoor arena and with the other work we have done, I am sure we have not made any money. But it does not concern me that we have not. What I am

UNCORRECTED

---

trying to do is improve the level of the riding surfaces that our competitors ride on. That is really why I am involved in this whole business.

**The CHAIR:** Thank you, Mr Smith, and thank you for staying the additional time to assist the Committee. You have taken some questions on notice, for which you will have 21 days to return an answer after you have received the transcript, which I am advised is likely in January. You can stay in touch with the secretariat if you have any further inquiries or questions about those questions on notice. Thank you for your time. That brings today's public hearing to an end.

**(The witness withdrew.)**

**The Committee adjourned at 15:00.**