



LEGISLATIVE COUNCIL

PUBLIC WORKS COMMITTEE

Granting of contract number OoS17/18-021 by the Office of Sport

Report 5

September 2022



Public Works Committee

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Ordered to be printed 28 September 2022 according to
Standing Order 231

New South Wales Parliament. Legislative Council. Public Works Committee. Report no. 5.

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September 2022.

Chair: The Hon Daniel Mookhey MLC.



A catalogue record for this
book is available from the
National Library of Australia

ISBN 978-1-922543-81-3

Table of contents

Terms of reference	v
Committee details	vi
Chair's foreword	vii
Findings	viii
Recommendations	x
Conduct of inquiry	xi
Chapter 1	
Background to the inquiry	1
Origin of the inquiry	1
Timeline of events relevant to the inquiry	1
Events prior to the awarding of the contract	2
Tender process	3
Performance under the contract and emerging issues	5
Issues identified following the arena upgrade and subsequent reviews	6
Key issues relating to the tender process	9
Relationship between the Office of Sport and Equestrian NSW	9
Concerns raised regarding the relationship	10
Probit concerns relating to the tender process	13
Conflicts of interest	13
Lack of documentation and a rigorous tender process	18
Office of Sport response to identified probity issues	20
Changes to procurement documentation and processes	20
Changes to engagement with State Sporting Organisations	21
Committee comment	22
Chapter 3	
Key issues relating to performance under the contract	27
Background to the use of material from Wallaby Hill for the arena upgrade	27
Concerns relating to the use of the Wallaby Hill material	28
Safety concerns and a lack of trust in the quality of the arena surface	28
Potential breach of contract	29
Involvement of Ms Alexandra Townsend	31
Positive feedback relating to the upgraded arena	32

	Committee comment	33
Appendix 1	Submissions	37
Appendix 2	Witnesses at hearings	38
Appendix 3	Minutes	39

Terms of reference

That the Public Works Committee inquire into and report on the granting of contract number OoS17/18-021 by the Office of Sport, and in particular:

- (a) the awarding of a contract to Barrie Smith Motor Sports P/L by the Office of Sport to resurface two arenas at the Sydney International Equestrian Centre (SIEC),
- (b) the role played by the board, CEO and members of Equestrian NSW (ENSW), Equestrian Australia and officials within the Office of Sport, in both the application for funding and the process for selection of the grant by the Office of Sport,
- (c) the potential or otherwise for the existence of corrupt conduct and/or conflicts of interest within the Office of Sport, Barrie Smith Motor Sports P/L and ENSW, in the granting of the contract, with reference to the ICAC letter of 1 December 2020 to the Office of Sport,
- (d) Office of Sport correspondence to Mr Barrie Smith showing that the original tender specifications were changed from ‘importing new material and mixing onsite’ at SIEC to ‘relocating a surface from another site which had (already) failed’ and these contaminated materials were taken from the Wallaby Hill (Robertson) property of Alex Townsend, a ENSW Board member,
- (e) whether successive ministers for Sport and the Office of Sport failed to report the information in paragraph (d) above to the appropriate authorities for probity investigation,
- (f) the engagement of and role played by O’Connor Marsden in the examination of probity issues in regard to the granting of the contract and the failure to examine aspects prior to and following the evaluation and awarding of the contract,
- (g) the granting of a peppercorn rent by the Office of Sport to Equestrian NSW for access to and usage of the SIEC site,
- (h) options for rectification of any defects or complete replacement of the indoor arena surface to ensure the arena is safe for horse and rider and capable of use for high level competition, and
- (i) any other related matters.

The terms of reference were referred to the committee by the Legislative Council on 23 June 2021.¹

¹ *Minutes*, NSW Legislative Council, 23 June 2021, pp 2370-2371.

Committee details

Committee members

Hon Daniel Mookhey MLC	Australian Labor Party	<i>Chair</i>
Hon Mark Banasiak MLC	Shooters, Fishers and Farmers Party	<i>Deputy Chair</i>
Hon Lou Amato MLC*	Liberal Party	
Ms Abigail Boyd MLC	The Greens	
Hon Mark Latham MLC**	Pauline Hanson's One Nation	
Hon Shayne Mallard MLC	Liberal Party	
Hon Tara Moriarty MLC	Australian Labor Party	
Hon Peter Poulos MLC***	Liberal Party	

Contact details

Website	www.parliament.nsw.gov.au
Email	publicworks@parliament.nsw.gov.au
Telephone	(02) 9230 2265

- * The Hon Lou Amato MLC replaced the Hon Wes Fang MLC as a substantive member of the committee from 1 March 2022. The Hon Wes Fang MLC replaced the Hon Trevor Khan MLC as a substantive member of the committee from 25 January 2022 to 1 March 2022. The Hon Trevor Khan MLC was a substantive member of the committee to 6 January 2022.
- ** The Hon Mark Latham MLC was a participating member from 23 June 2021 for the duration of the inquiry.
- *** The Hon Peter Poulos MLC replaced the Hon Taylor Martin MLC as a substantive member of the committee from 1 March 2022. The Hon Taylor Martin MLC replaced the Hon Sam Farraway MLC as a substantive member of the committee from 25 January 2022 to 1 March 2022.

Committee secretariat

Ms Madeleine Dowd, Principal Council Officer
 Ms Rachel Buist, Council Officer
 Ms Sharon Ohnesorge, Director

Chair's foreword

This inquiry examined a number of identified probity and integrity issues regarding the granting of contract number OoS17/18-021 by the Office of Sport to Barrie Smith Motorsport Pty Ltd to resurface an indoor arena at the Sydney International Equestrian Centre.

The issues can be broadly grouped into two categories: issues related to the tender process for the contract, and issues related to performance under the contract. These issues are set out in Chapter 2 and Chapter 3 of this report, respectively.

It became apparent to the committee that the tender process for the relevant contract was flawed, and ultimately did not meet the probity standards expected of a NSW Government agency spending public money. It was evident during the inquiry that the Office of Sport did not keep Equestrian NSW, the peak body for equestrian sports in NSW, at arms-length during the tender process. This relationship, in addition to a potential undeclared conflict of interest between Mr Bruce Farrar, the CEO of Equestrian NSW, and the successful tenderer, Barrie Smith Motorsport, clearly gave rise to the appearance of a tender process lacking in integrity.

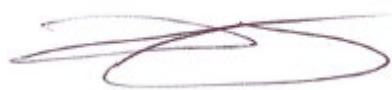
It was also clear to the committee that the Office of Sport failed to adequately document its decision-making process in relation to the granting of the contract. This failure meant that it was difficult to justify the tender being awarded to Barrie Smith Motorsport once various allegations of impropriety had been made.

This report also sets out issues relating to performance under the contract, with specific regard to the use of second-hand material for the arena upgrade at the Sydney International Equestrian Centre. The committee heard that second-hand material from an arena at Wallaby Hill, a private equestrian facility owned by Ms Alexandra Townsend, an Equestrian NSW Board Member, was used for the upgrade. This second-hand material was ultimately found to have been contaminated, in that it contained rubber grommets that had been mixed into the material when it was removed from Wallaby Hill. This contamination led to ongoing concerns about the safety and the effectiveness of the upgraded arena at the Sydney International Equestrian Centre.

Though steps were taken to remediate the surface at no cost to the Office of Sport, and various assessments have determined the surface is safe, it is clear that the perception among some parts of the equestrian community that the surface is somehow defective will be difficult to alleviate.

The committee made a number of findings and recommendations which aim to ensure any probity issues are fully addressed by the Office of Sport, and that any remaining concerns about the conduct of individuals during this process be investigated as necessary by the appropriate authorities.

I would like to thank all participants for their contribution to this inquiry. I also extend my thanks to my fellow committee members for their participation and the committee secretariat for their assistance.



Hon Daniel Mookhey MLC
Committee Chair

Findings

Finding 1**23**

That the tender process for contract number OoS17/18-02 was flawed in that the Office of Sport failed to apply robust probity standards, including a failure to appropriately document numerous aspects of this procurement.

Finding 2**23**

That the Office of Sport's failure to apply robust probity standards led to concerns about real or perceived conflicts of interest affecting the tender, and a perception of a biased and unfair procurement process that lacked the integrity required of NSW Government agencies.

Finding 3**24**

That Mr Bruce Farrar, CEO, Equestrian NSW, should have reasonably foreseen that his involvement in the tender process for contract number OoS17/18-02 would give rise to a perceived or actual conflict of interest, and that this conflict should have been disclosed.

Finding 4**24**

That the Office of Sport failed to uphold robust probity standards by allowing the close involvement of Mr Bruce Farrar, CEO, Equestrian NSW, in the tender process for contract number OoS17/18-02, as set out below:

- Mr Farrar, on behalf of Equestrian NSW, sought funding from the NSW Government for the Sydney International Equestrian Centre upgrade
- Mr Farrar discussed the upgrade with Mr Barrie Smith prior to the contract being awarded
- Mr Farrar included Ebb and Flow technology in the Equestrian NSW funding request, knowing that this requirement would heavily favour Barrie Smith Motorsport
- Mr Farrar was a member of the Technical Advisory Committee set up to provide expert advice on the tender. The Technical Advisory Committee ultimately recommended Barrie Smith Motorsport despite this not being the initial recommendation of the Tender Evaluation Panel, which recommended Capricorn Australia. Barrie Smith Motorsport was ranked second with the most expensive tender. The views of the Technical Advisory Committee helped Barrie Smith Motorsport win the tender.

Finding 5**24**

That the Office of Sport failed to comprehensively investigate the issues relating to the granting of contract number OoS17/18-02, specifically by:

- failing to include in the terms of reference for the O'Connor Marsden probity review the use of the second-hand material from Wallaby Hill at the Sydney International Equestrian Centre
- failing to investigate the potential conflict of interest relating to Ms Alexandra Townsend, and her involvement with Equestrian NSW and Barrie Smith Motorsport

- failing to investigate the potential financial benefit received by Ms Townsend as a result of the second-hand material from Wallaby Hill being used at Sydney International Equestrian Centre
- failing to be transparent about the emerging issues relating to the contamination of the upgraded surface at the Sydney International Equestrian Centre.

Finding 6

34

That the use of contaminated second-hand material from Wallaby Hill for the upgrade of the arena at Sydney International Equestrian Centre was inappropriate and likely constituted a breach of the contract between the Office of Sport and Barrie Smith Motorsport.

Finding 7

35

That the Office of Sport failed in its duty to ensure value for money in the expenditure of public funds by not seeking to terminate its contract with Barrie Smith Motorsport following the installation of the second-hand material from Wallaby Hill at the Sydney International Equestrian Centre. This failure led to questions about the quality of the surface and an ongoing lack of confidence in the facility amongst some in the equestrian community.

Finding 8

35

That the Office of Sport was misled by Mr Barrie Smith about the availability of his product, using the excuse of dock delays to pursue the low-cost option of transferring used materials from a failed arena at Wallaby Hill (saving himself and OTTO Sport money). In evidence to the inquiry, Mr Smith was asked (by the Chair) if it was always his intention to source the materials from Ms Alexandra Townsend's property, to which he replied 'Certainly' and then changed his answer to 'No'. The committee found Mr Smith to be an unconvincing witness.

Finding 9

35

That the Office of Sport has since taken steps to rectify the contamination of the upgraded arena surface at the Sydney International Equestrian Centre, and it appears that the surface is now safe for use. However, as it cannot be guaranteed that all contaminated material has been removed, parts of the equestrian community will continue to have a lack of confidence in the upgraded arena surface.

Recommendations

Recommendation 1

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That the NSW Independent Commission Against Corruption give consideration to reopening its investigation of the granting of contract number OoS17/18-02, with specific reference to the use of second-hand material from Wallaby Hill at the Sydney International Equestrian Centre.

Recommendation 2

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That the Office of Sport continue to seek further advice from the Independent Commission Against Corruption to ensure its current procurement processes:

- are robust and consistent with the highest probity standards
- are compliant with any relevant legislative and policy requirements
- ensure value-for-money for the New South Wales taxpayer.

Recommendation 3

25

That the NSW Government review the relationship between the Office of Sport and Equestrian NSW to ensure independence on the part of the Office of Sport and its administrative and decision-making processes.

Recommendation 4

25

That the Office of Sport ensure that the requirements contained in the new funding agreements with State Sporting Organisations are adhered to.

Recommendation 5

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That the Office of Sport publish its standard funding agreement with State Sporting Organisations in its annual report.

Recommendation 6

25

That the NSW Government give consideration to extending the performance audit function of the Auditor-General to include audits of State Sporting Organisations.

Recommendation 7

35

That NSW Police give consideration to evidence received during this inquiry regarding Mr Barrie Smith, Mr Bruce Farrar and Ms Alexandra Townsend in order to examine whether there has been any potential breach of the *Crimes Act 1900*.

Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Legislative Council on 23 June 2021.

The committee received 28 submissions and 2 supplementary submissions. In the course of the inquiry, the committee also wrote to a number of individuals who had been named in submissions and in evidence, inviting them to respond. The correspondence received in response was subsequently published by the committee.

The committee held two public hearings at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice and supplementary questions.

Chapter 1 Background to the inquiry

This chapter sets out the background to this inquiry, including the origin of the inquiry and a timeline of relevant events, which provide context for matters that are explored later in this report.

Origin of the inquiry

- 1.1 This inquiry was referred by the Legislative Council to the Public Works Committee on 23 June 2021 following a motion moved by the Hon Mark Latham MLC.
- 1.2 In the debate on the motion, Mr Latham told the House that:
 - various probity and integrity concerns had been identified regarding the granting of contract number OoS17/18-021 by the Office of Sport to Barrie Smith Motorsport Pty Ltd to resurface two arenas at the Sydney International Equestrian Centre
 - questions on notice relating to this matter had been put to the previous Minister for Sport, Multiculturalism, Seniors and Veterans, the Hon Dr Geoff Lee MP, but that the answers provided were unsatisfactory and did not adequately address concerns that had been identified
 - following this, relevant papers were produced under a Standing Order 52 order for papers, which raised a number of further concerns regarding the awarding of the contract and performance issues under the contract
 - accordingly, an inquiry was necessary to investigate these issues, with the terms of reference articulating specific aspects of this process that warranted further scrutiny.²
- 1.3 Then new Minister for Sport, Multiculturalism, Seniors and Veterans, the Hon Natalie Ward MLC, stated that the Government would not oppose the motion and indicated that the Office of Sport would cooperate with the inquiry, should it take place.³
- 1.4 The House agreed to the motion and referred the terms of reference as moved by Mr Latham to the committee.⁴

Timeline of events relevant to the inquiry

- 1.5 This section of the report establishes a timeline of events that are relevant to the inquiry. This includes background information relating to the granting of the contract, as well as the process of how the contract was awarded. It also sets out the events relating to performance under the contract, as well as the identification of various issues relating to the work done as part of this project.

² *Hansard*, NSW Legislative Council, 23 June 2021, p 6002 (Mark Latham).

³ *Hansard*, NSW Legislative Council, 23 June 2021, p 6002 (Natalie Ward).

⁴ *Minutes*, NSW Legislative Council, 23 June 2021, p 6004.

Events prior to the awarding of the contract

- 1.6 By way of background, the Office of Sport is an executive agency listed in Schedule 1, Part 2 of the *Government Sector Employment Act 2013*. The Office of Sport was established on 1 July 2014 and is the lead NSW Government agency for sport and active recreation, with responsibility for the 'planning, managing and delivering high quality venues, facilities, sport development and active recreation programs, high performance sport, and sports integrity and safety'.⁵
- 1.7 Equestrian NSW is the state branch of Equestrian Australia Limited, the peak body for equestrian sports in Australia.⁶
- 1.8 Equestrian NSW met with representatives from the Office of Sport in **September 2016** to discuss a potential upgrade of the Sydney International Equestrian Centre (SIEC). SIEC is one of the three Olympic Sport Venues owned and managed by the Office of Sport.⁷
- 1.9 The Office of Sport told the committee that at this stage of the process, Equestrian NSW indicated 'interest in the project being jointly funded'.⁸
- 1.10 The committee heard from Equestrian NSW that while the SIEC facilities were of a relatively high standard at the 2000 Olympics, issues regarding the footings on all of the arenas had emerged even at that early stage. Equestrian NSW told the committee that following the Olympics, the facilities at SIEC had been maintained, but had not been subject to any significant upgrades. It stated that this meant the facilities were 'slipping behind' the quality of new and upgraded facilities within Australia and internationally.⁹
- 1.11 The committee heard that due to these issues, SIEC arenas could not be used to host multi-disciplinary events. Additionally, these issues were causing concerns within the equestrian community about horse welfare, with Equestrian NSW stating that various complaints regarding horse leg injuries were raised in **2016 and 2017**. It stated that these concerns and complaints were relayed to event organising committees, and then on to SIEC management and the Office of Sport.¹⁰
- 1.12 Equestrian NSW outlined an example of these issues and the subsequent consequences, noting that the national dressage governing body made the decision to move the 2017 National Dressage Championships from SIEC to a facility in Victoria. It stated that this was in response to issues identified during the 2016 National Dressage Championships, where reports prepared by the Technical Delegate and Chief Steward noted that there had been issues with the arenas during the competition.¹¹

⁵ Submission 28, Office of Sport, p 3.

⁶ Submission 26, Equestrian NSW, p 1.

⁷ Submission 28, Office of Sport, p 9.

⁸ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 8.

⁹ Submission 26, Equestrian NSW, p 2.

¹⁰ Submission 26, Equestrian NSW, p 2.

¹¹ Submission 26, Equestrian NSW, p 2.

- 1.13** The committee heard that Equestrian NSW and SIEC identified Arena 5, being the indoor arena used for competing, and Arena 6, a sand arena used for warming-up, as priority arenas for upgrade.¹²
- 1.14** The Office of Sport stated that in **2017**, the CEO of Equestrian NSW, Mr Bruce Farrar, and the CEO of Equestrian Australia, met with the Hon Stuart Ayers MP, who was the Minister for Sport at the time. At this meeting, Equestrian NSW proposed the upgrade and sought Government funding. The Office of Sport stated that at this stage, it indicated general support for the concept, but that no specific funding was available for the project.¹³
- 1.15** On **13 March 2017**, Equestrian NSW submitted a business case for a \$600,000 upgrade to the SIEC arenas to be funded by the NSW Government. On **7 July 2017**, the SIEC arena upgrade was included as part of the Office of Sport Minor Capital Works Program.¹⁴

Tender process

- 1.16** The Office of Sport stated that in **August 2017**, a Request for Interest process involving six suppliers was conducted. The Office of Sport involved Mr Farrar as an advisor in this process due to 'the level of expertise required'.¹⁵
- 1.17** The committee heard that in **October 2017**, one potential tenderer emailed Mr Farrar to make a complaint about an alleged conflict of interest between Equestrian NSW and another tenderer, Barrie Smith Motorsport. The complaint alleged that there was a family relationship between Mr Peter Dingwall, who was then President of Equestrian NSW, and Mr Barrie Smith. The Office of Sport stated that it was unaware of that complaint at the time it was made.¹⁶
- 1.18** Further, the Office of Sport stated that it understood the complaint and the alleged conflict were 'considered by the Board of Equestrian NSW', but that it was unaware of this process occurring at the time.¹⁷
- 1.19** The tender for the relevant contract was released on **11 October 2017** to the following six suppliers:
- Australian Horse Arenas
 - Capricorn Australia

¹² Submission 26, Equestrian NSW, p 2.

¹³ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 9.

¹⁴ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 9.

¹⁵ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 10.

¹⁶ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 10.

¹⁷ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 10.

- Equestrian Services
- Martin Collins
- Barrie Smith Motorsport
- Equestrian Sports Arenas.¹⁸

- 1.20** The tender set out that the project be completed 'prior to major competitions being held at the venue in January 2018'.¹⁹
- 1.21** The Office of Sport's Tender Evaluation Committee assessed the tender between **24 and 25 October 2017**, and ultimately selected Barrie Smith Motorsport. This committee was made up of three Office of Sport officers.²⁰
- 1.22** Immediately following this process, the tenders were assessed by a separate Tender Advisory Committee between **30 October and 1 November 2017**. This committee similarly selected Barrie Smith Motorsport. This committee consisted of 'external experts',²¹ namely:
- Mr Farrar
 - Mr John Vallance, Jumping NSW – an expert in show jumping, and accredited show jumping course builder and technical delegate
 - Ms Julie Farrell, Manager of Mulawa Arabian Stud – an expert in the dressage discipline.²²
- 1.23** The three members of the Tender Advisory Committee were recommended by Equestrian NSW. However, only Mr Farrar was an employee of Equestrian NSW.²³
- 1.24** The Office of Sport told the committee that the use of a committee of this kind is not a regular feature of Office of Sport procurement. However, given the short timeframe for the project to be finalised, and the unavailability of other international experts, it was considered to be the most suitable way to establish a 'cross-section of advice in relation to the multi-disciplinary aspects of equestrian sport to provide key input and guidance on the most appropriate way forward'.²⁴
- 1.25** Mr Farrar signed a conflict of interest declaration on **25 October 2017** in relation to his role on the Tender Advisory Committee, and declared that he had no relevant conflicts.²⁵

¹⁸ Submission 28, Office of Sport, p 25.

¹⁹ Submission 28, Office of Sport, p 16.

²⁰ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 10.

²¹ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 10.

²² Submission 28, Office of Sport, p 19.

²³ Submission 28, Office of Sport, p 19.

²⁴ Submission 28, Office of Sport, p 19.

²⁵ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 10.

- 1.26** On **9 November 2017**, then CEO of the Office of Sport, Mr Matt Miller, approved Barrie Smith Motorsport as the successful tenderer. Mr Miller also approved the reallocation of \$745,000 from the maintenance budget to the funding of the SIEC upgrade.²⁶

Performance under the contract and emerging issues

- 1.27** The Office of Sport stated that works were due to start on 20 November 2017. However, on **22 November 2017** Barrie Smith Motorsport told the Office of Sport that overseas materials were delayed and offered to use 'existing stocks ... from their warehouse'.²⁷
- 1.28** On **18 December 2017**, SIEC staff became aware of and reported a potential conflict of interest between Equestrian NSW and Barrie Smith Motorsport to the Office of Sport. The Office of Sport then proceeded to raise this issue with Mr Farrar. On **20 December 2017**, Mr Farrar supplied the Office of Sport with the email sent in October from a potential tenderer complaining about the alleged conflict of interest, as referred to above in paragraph 1.17²⁸
- 1.29** The Office of Sport told the committee that the following day, **21 December 2017**, it was made aware that the material to be used in the upgrade of the arena was not in fact coming from a warehouse. Rather, the material was from Wallaby Hill and was 'contaminated'. Wallaby Hill is an 'outdoor equestrian facility' owned by Equestrian NSW Board Member, Ms Alexandra Townsend.²⁹
- 1.30** Following this discovery, the Office of Sport requested Geotech testing be undertaken on the Wallaby Hill surface to 'ensure the sand fits the tender specification and ... that any contamination is ... removed'.³⁰
- 1.31** The Office of Sport stated that it received this confirmation on **19 January 2018**, and the installation of the surface was then completed. Further, it stated that riders tested the surface on **31 January 2018** and provided positive feedback.³¹
- 1.32** "The Goetech Report dated 19 January 2018 found 'that it is not possible to remove all fabric material' from the surface.³² Therefore, Barrie Smith Motorsport was requested and attempted rectification of the site, to remove all the contaminated material. This was not possible due to the scale and nature of the problem. SIEC staff then conducted 'emu parades' across the arena to try to remove the foreign mat particles. As late as June 2020 the Office of Sport advised

²⁶ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 10.

²⁷ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 10.

²⁸ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 10.

²⁹ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 11.

³⁰ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 11.

³¹ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 11.

³² Submission 28, Office of Sport, p 59.

Barrie Smith Motorsport that the presence of the particles 'may increase the likelihood of injury to an equine or human user of the indoor arena and, as such, are considered a hazardous material; and their presence has resulted in the Contractor not supplying materials which are free from defects and fit for purpose for a facility that must meet international competition standard'.³³ The Office of Sport deemed 'the presence of foreign mat particles a Defect'³⁴ and required Barrie Smith Motorsport 'to make good such Defect at its cost'.³⁵ At no time was the contract cancelled.

Issues identified following the arena upgrade and subsequent reviews

- 1.33 The committee heard that negative feedback was provided to the Office of Sport on **24 October 2019** following the National Dressage Championships. Further, it was noted that between **27 December 2019 and 9 February 2020**, a number of complaints were made to the relevant Minister regarding 'safety, choice of product and probity'.³⁶
- 1.34 The primary complaint received in relation to the surface was in regard to the emergence of rubber grommets, which had been mixed in with the sand. This mixing occurred during the removal of the material from the Wallaby Hill arena. The committee heard that when the sand was removed, the extractor machines performing the removal ripped up the rubber matting the sand was sitting on, and therefore, rubber grommets from this matting were mixed in with the sand. Complainants alleged that these grommets posed risks to horse and rider safety.³⁷
- 1.35 Ms Karen Jones, current CEO of the Office of Sport, explained that on **6 January 2020**, she became aware of the complaints and directed a remediation process take place.³⁸
- 1.36 Additionally, the Office of Sport engaged O'Connor Marsden, a professional services firm, to conduct a probity review in response to the various complaints that had been raised about the tender process. This review was commissioned in **March 2020** and was finalised on **29 April 2020**.³⁹
- 1.37 Ms Jones told the committee that she referred the matter to the ICAC on **11 May 2020**. The ICAC responded on **1 December 2020** stating that due to the 'lack of viable lines of enquiry' they would not be investigating the matter.⁴⁰ Further, the letter stated that the ICAC found 'no evidence of corruption' but did identify 'various corruption risks in the Office of Sport process'.⁴¹

³³ Submission 28, Office of Sport, p 77.

³⁴ Submission 28, Office of Sport, p 78.

³⁵ Submission 28, Office of Sport, p 77.

³⁶ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 11.

³⁷ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 4-10.

³⁸ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 11.

³⁹ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 11.

⁴⁰ Submission 28, Office of Sport, p 88.

⁴¹ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 11.

- 1.38** Turning to the issue of remediation, the Office of Sport stated that the remediation works were completed in **September 2020** at no public expense. On **11 March 2021**, a quality and safety assessment of the arena took place and determined that it was 'suitable for Olympic level dressage and jumping'.⁴²
- 1.39** On **13 June 2021**, Ms Jones wrote to the ICAC a second time requesting that they 'further review and re-examine' the procurement process for the SIEC arena upgrade. Ms Jones provided over 600 documents to the ICAC relating to this matter.⁴³
- 1.40** The Chief Commissioner of the ICAC, the Hon Peter Hall QC, responded to Ms Jones on **26 June 2021**, and stated that:
- ... the new material was considered by the Commission's Assessment Panel...While the material overall continues to demonstrate the risks and concerns identified in the Commission's letter of 1 December 2020, the most recent material did not cause the panel to reconsider its initial determination. Therefore, the Commission's decision not to investigate this matter stands.⁴⁴
- 1.41** Most recently, the Office of Sport told the committee that a second safety assessment was undertaken on **17 March 2022**. This assessment found that the arena was safe, and identified no concerns.⁴⁵
- 1.42** The Office of Sport told the committee that in response to the issues identified in the ICAC response and the O'Connor Marsden review, as well as those identified by stakeholders during the process, various reforms had been implemented. It stated that the Office of Sport had 'reformed its processes and procurement documentation' and 'issued new funding agreements to all State sporting organisations mandating key governance and probity standards'.⁴⁶
- 1.43** These reforms will be explored in further detail in Chapter 2 of this report.

⁴² Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 11.

⁴³ Submission 28, Office of Sport, p 87-88.

⁴⁴ Submission 28, Office of Sport, p 89.

⁴⁵ Written response provided by the Office of Sport in response to comments made during a public hearing on 17 March 2022, 11 April 2022, p 1.

⁴⁶ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 3.

Chapter 2 Key issues relating to the tender process

This chapter sets out the major issues identified relating to the tender and procurement process for the contract that is the subject of this inquiry. This includes the relationship between the Office of Sport and Equestrian NSW and the existence and management of various alleged conflicts of interest. Finally, it also includes an analysis of probity issues that have been identified relating to this process and the steps that have been taken by the Office of Sport to address them.

Relationship between the Office of Sport and Equestrian NSW

- 2.1 By way of context to the particular circumstances giving rise to this inquiry, the committee heard evidence regarding the nature of the relationship between the Office of Sport and professional sporting bodies such as Equestrian NSW.
- 2.2 The Office of Sport told the committee that it works closely with 94 State Sporting Organisations (SSOs) and State Sporting Organisations for people with Disability (SSODs). These organisations are considered to be the 'peak administrative and representational bodies for their respective sports in NSW'.⁴⁷
- 2.3 When describing its relationship with SSOs, the Office of Sport explained that they are often 'key partners' in developing and designing grants, policies and regulations. It was noted that these organisations vary in size and are often volunteer-based and self-governing. Further, while the Office of Sport formally recognises these bodies and does contribute some funding, they are not regulated or owned by the Office of Sport.⁴⁸
- 2.4 Additionally, these bodies are eligible for application-based grant programs which are 'competitive and assessed on merit'.⁴⁹
- 2.5 Referring to its specific relationship with Equestrian NSW, the Office of Sport stated that given the number of participants in equestrian sports is significantly lower than other sports such as netball or football, it is particularly necessary to rely on Equestrian NSW for its expertise in 'promot[ing], develop[ing] and grow[ing] the sport'.⁵⁰
- 2.6 The Office of Sport explained to the committee the various benefits that arise from Equestrian NSW being recognised as an SSO, including:
 - invitations to various networking and professional development opportunities
 - approval to use the Office of Sport logo on various communication materials
 - pre-requisite eligibility to apply for Office of Sport grant funding programs
 - access to administrative and storage facilities free of charge.⁵¹

⁴⁷ Submission 28, Office of Sport, p 3.

⁴⁸ Submission 28, Office of Sport, p 3-4.

⁴⁹ Submission 28, Office of Sport, p 3.

⁵⁰ Submission 28, Office of Sport, p 11.

⁵¹ Submission 28, Office of Sport, p 11-12.

- 2.7 The committee also heard about the financial support provided to Equestrian NSW as a SSO under the Office of Sport's Organisation Support Program. The Office of Sport stated that annual funding under this program ranges from \$5,000 for smaller sports to \$60,000 for larger sports.⁵²
- 2.8 It confirmed that Equestrian NSW currently receives \$48,500 in annual funding through the Organisation Support Program.⁵³
- 2.9 The Office of Sport explained that this funding has historically been regulated by a standard Funding Agreement that the Office of Sport enters into with all SSOs. These agreements did not impose any requirements on the relevant body regarding 'corporate governance or the use of funding'.⁵⁴
- 2.10 In addition to these funding arrangements, SSOs and SSODs often are able to use on-site 'Houses' or offices under a so-called 'peppercorn rent' arrangement with the Office of Sport, meaning the body pays a nominal amount of rent which is primarily used to satisfy the requirements of a legal contract.⁵⁵
- 2.11 The committee heard that while most SSOs use 'Sports House' at Sydney Olympic Park, some entities, such as Equestrian NSW, utilise unique facilities which are specific to their respective sports.⁵⁶
- 2.12 Equestrian NSW pays an annual license fee of \$1 to the Office of Sport for access to, and usage of, an office at the Sydney International Equestrian Centre (SIEC). The Office of Sport noted that Equestrian NSW pays for electricity and maintenance as required. Further, it stressed that this arrangement is 'commensurate with the support that the OoS provides to all other SSOs'.⁵⁷

Concerns raised regarding the relationship

- 2.13 Some stakeholders raised concerns about the relationship between the Office of Sport and Equestrian NSW, with particular reference to the tender process for the SIEC arena upgrade. They argued that Equestrian NSW was able to unfairly influence the tender process and ensure the contract was awarded to Barrie Smith Motorsport. The complainants allege that Equestrian NSW sought to do this because of various relationships that existed between individuals within Equestrian NSW and others associated with Barrie Smith Motorsport.⁵⁸

⁵² Submission 28, Office of Sport, p 12.

⁵³ Submission 28, Office of Sport, p 12.

⁵⁴ Submission 28, Office of Sport, p 12.

⁵⁵ Submission 28, Office of Sport, p 12.

⁵⁶ Submission 28, Office of Sport, p 12.

⁵⁷ Submission 28, Office of Sport, p 12.

⁵⁸ Submission 8, Mrs Maggie Dawkins, p 4-5, Submission 3, Equestrian Services, p 4, Submission 12 Capricorn (Australia) Pty Ltd, p 8.

- 2.14** In addition, the committee heard from some inquiry participants who argued that the fact that Equestrian NSW approached the Office of Sport to request funding for the SIEC upgrade, and ultimately made a submission for funding for the project, was not appropriate.⁵⁹

Origin of the project and early scoping works

- 2.15** Some individuals involved in the equestrian community were highly critical of the process leading up the issuing of the tender. These stakeholders told the committee that Equestrian NSW was too closely involved with the Office of Sport and had an unfair and unreasonable influence both over the initial decision to fund the SIEC upgrade, as well as the awarding of the contract to Barrie Smith Motorsport. They argued that Equestrian NSW should not have been in the position where it could make funding requests to a government organisation.⁶⁰
- 2.16** In particular, Mrs Maggie Dawkins and Ms Berni Saunders, members of the equestrian community, told the committee that it was of significant concern that Equestrian NSW was able to meet with the relevant Minister to discuss the project. They also stated that it was not appropriate for Equestrian NSW to have been responsible for the drafting of a funding submission. Mrs Dawkins argued that this level of access and influence over the Office of Sport was unfair and demonstrated the unreasonable degree to which the Office of Sport relied on the views of Equestrian NSW CEO, Mr Bruce Farrar, from the origin of the project.⁶¹
- 2.17** The committee also heard allegations that Mr Farrar engaged inappropriately with Mr Barrie Smith of Barrie Smith Motorsport, to undertake early scoping works prior to the funding submission being lodged and the funding being allocated. Mrs Dawkins told the committee that Mr Farrar had obtained quotes from Mr Smith before the project had been approved, demonstrating the degree to which Mr Farrar and Equestrian NSW were involved with the upgrade, and the level of influence they were able to exert over decisions which should have been made independently by the Office of Sport.⁶²
- 2.18** Additionally, stakeholders such as Mrs Dawkins and Ms Hannah Brooks, another member of the equestrian community, told the committee that by engaging with Mr Smith prior to the funding submission being lodged, Mr Farrar was able to shape the tender and project scope in a way that benefited Barrie Smith Motorsport.⁶³ This alleged conflict and perceived benefit to Barrie Smith Motorsport will be explored in more detail later in this chapter.
- 2.19** When this evidence was put to representatives of the Office of Sport, they told the committee that it is 'appropriate for the Office of Sport to deal directly with the State sporting organisations, as the peak body of its sport, and to seek their expertise'. Ms Karen Jones, CEO, Office of Sport explained that the office is not an expert in every sport, and therefore, it is necessary to rely on the specific knowledge within these organisations.⁶⁴

⁵⁹ Submission 8, Mrs Maggie Dawkins, p 3.

⁶⁰ Submission 8, Mrs Maggie Dawkins, p 3.

⁶¹ Submission 8, Mrs Maggie Dawkins, p 3, Submission 2, Ms Berni Saunders, p 5.

⁶² Submission 8, Mrs Maggie Dawkins, p 18.

⁶³ Submission 8, Mrs Maggie Dawkins, p 18, Submission 21, Ms Hannah Brooks, p 6.

⁶⁴ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 6.

- 2.20** Ms Jones also told the committee that in her view, it was not unreasonable for organisations like Equestrian NSW to consult with 'preferred or regular suppliers' to obtain advice about detail relating to projects of this kind, such as possible cost and preferred surface types. She stated that information of this kind obtained informally before a tender process can provide an understanding of what may be involved in the process, including possible labour, resource, time and cost requirements. This process was characterised by the Office of Sport as 'pre-market sounding'.⁶⁵
- 2.21** Ms Jones went on to note that the details of any project are then tested and more thoroughly examined during the tender evaluation process.⁶⁶
- 2.22** Equestrian NSW similarly disputed the claims that this early involvement of Mr Farrar on behalf of the organisation was inappropriate, telling the committee:

It is, in ENSW's opinion, not unusual that it would seek the funding for the upgrade to the SIEC given ENSW's members are the most frequent user of the facilities. It is common place for ENSW to make submissions for grants and funding on behalf of our members and happens frequently.⁶⁷

Necessity and efficacy of the project

- 2.23** The committee also heard evidence questioning the rationale for the SIEC upgrade, with some stakeholders, such as Mrs Maggie Dawkins and Ms Hannah Brooks, arguing that it was the influence of Equestrian NSW, an organisation which would directly benefit from the upgrade, that resulted in public funding being allocated to the project.
- 2.24** Mrs Dawkins told the committee that SIEC should be 'expanding its horizons to accommodate the growing market of equestrian leisure and recreation pursuits'. She stated that equestrian sports are declining in popularity, and SIEC should be considering using the space for other means that are not specifically related to Olympic competitive equestrian sports.⁶⁸
- 2.25** This position was summarised by Mrs Dawkins in her submission as follows:

The close association between Equestrian NSW and the Office of Sport is perceived as the Office of Sport being held captive to Equestrian NSW's narrow competition based focus as an Olympic sport. The current perception is that the Office of Sport is influenced and controlled by Equestrian NSW.⁶⁹

- 2.26** Mrs Dawkins and Ms Brooks stated that the decision to allocate funding to this project was not based on the best and most efficient use of public funds, but rather, demonstrated the inappropriately close relationship between the Office of Sport and Equestrian NSW, and the capacity of the latter to unfairly influence decision making for its own benefit.⁷⁰

⁶⁵ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 6.

⁶⁶ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 6.

⁶⁷ Submission 26a, Equestrian NSW, p 3.

⁶⁸ Submission 8, Mrs Maggie Dawkins, p 14.

⁶⁹ Submission 8, Mrs Maggie Dawkins, p 15.

⁷⁰ Submission 8, Mrs Maggie Dawkins, p 15, Submission 21, Ms Hannah Brooks, p 5.

- 2.27** This evidence was contested by representatives of Equestrian NSW and the Office of Sport, both of whom told the committee that the upgrade was necessary and had been prompted by a series of complaints received about the safety and efficacy of the existing surface.⁷¹
- 2.28** The committee heard that the equestrian center was 17 years old and had not undergone any significant upgrades since its installation. Additionally, it was noted that technology in equestrian services had advanced significantly. These advances included the development of the Ebb and Flow watering system, which was ultimately what was installed by Barrie Smith Motorsport.⁷²
- 2.29** The Office of Sport told the committee that SIEC had lost a number of 'long-held national events' to competitors in the period leading up to the upgrade. This was reiterated by representatives of Equestrian NSW, who explained that the relocation of the National Dressage Championships in 2016 to Victoria made clear the increasing need to improve the surfaces. Professor Brad Frankum, Chair, Equestrian NSW explained that this was the first time the Championships had been held outside of New South Wales in 16 years and was a direct result of complaints about the 'condition of the arenas surfaces and horse welfare'.⁷³
- 2.30** In articulating why this upgrade was necessary, the Office of Sport told the committee that since the upgrade, there has been a 'strong rebound in key bookings' across a number of equestrian disciplines including dressage, showjumping, show horse and para-equestrian.⁷⁴

Probity concerns relating to the tender process

- 2.31** This section outlines the key probity issues that were identified relating to the tender process, including concerns regarding conflicts of interest and a general lack of rigour and proper process.

Conflicts of interest

- 2.32** The committee heard evidence regarding real and perceived conflicts of interest that impacted the decision to award the relevant contract to Barrie Smith Motorsport. The primary alleged conflict of interest relates to the relationship between individuals within Equestrian NSW and individuals within Barrie Smith Motorsport.
- 2.33** Stakeholders outlined the following factual circumstances to the committee, which are important to understand when considering the alleged conflicts:
- Mr Peter Dingwall was, at the time of the tender process, the President of the Equestrian NSW Board
 - Mr Peter Dingwall's son, Mr Stephen Dingwall, is married to Mr Barrie Smith's daughter⁷⁵

⁷¹ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 7, Evidence, Professor Brad Frankum, Chair, Equestrian NSW, 29 November 2021, p 34.

⁷² Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 7.

⁷³ Evidence, Professor Brad Frankum, Chair, Equestrian NSW, 29 November 2021, p 34.

⁷⁴ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 7.

- Mr Stephen Dingwall was performing contractual work for OTTO Sport and Barrie Smith Motorsport.⁷⁶

2.34 Some individuals alleged that Mr Bruce Farrar, on behalf of Equestrian NSW more broadly, was able to unfairly influence decision making to provide a benefit to Barrie Smith Motorsport. They contended that this benefit was secured through lobbying for the SIEC arena upgrade and then ensuring Barrie Smith Motorsport was awarded the tender. Further, it is claimed that it was the family relationship between the President of the Equestrian NSW Board and Mr Barrie Smith which motivated the efforts to benefit this specific tenderer.⁷⁷

Influence of Mr Farrar in the development of the project specifications

2.35 As discussed earlier in this chapter, Mrs Dawkins told the committee that she was aware of conversations Mr Farrar had with Mr Smith prior to the decision being made to allocate funding to the project. Further, Mrs Dawkins stated that this ensured Mr Smith already had an unfair advantage, as Mr Farrar was able to ensure the project scope was aligned with the service Mr Smith was able to deliver.⁷⁸

2.36 The committee heard that the project scope required that the arena upgrade include Ebb and Flow Watering system technology. The Office of Sport told the committee that these systems had been used in Europe, and are now becoming popular in Australia. When describing their function, it stated that:

They are manifolds, sub-surface watering systems, using polyethylene pipes, jacketed with a geotextile and mesh shroud, to control the moisture level in the sand. The design is both simple and effective and, once calibrated, can deliver a specified moisture level to optimise surface performance.⁷⁹

2.37 At the time of the project, the committee heard that only one arena with an Ebb and Flow system had been installed in Australia. This was at the arena in Wallaby Hill, which is privately owned by Equestrian NSW Board Member, Ms Alexandra Townsend.

2.38 Some stakeholders pointed to requirement for Ebb and Flow technology in the project scope to demonstrate that it had been designed with Barrie Smith Motorsport in mind. This is because Barrie Smith Motorsport was the exclusive representative of OTTO Sport in Australia, who were the designers of the Ebb and Flow system.⁸⁰

2.39 It was put to the committee by several stakeholders that Mr Farrar worked closely with Mr Smith during the development of the funding proposal to ultimately ensure he would be awarded the contract. They alleged this was done due to the desire on the part of Mr Farrar and Equestrian NSW to unfairly benefit Barrie Smith Motorsport.⁸¹

⁷⁵ Submission 26, Equestrian NSW, p 9.

⁷⁶ Evidence, Mr Barrie Smith, Barrie Smith Motorsport, 29 November 2021, p 60.

⁷⁷ Submission 2, Ms Berni Saunders, p 6-7.

⁷⁸ Submission 8, Mrs Maggie Dawkins, p 18.

⁷⁹ Submission 28, Office of Sport, p 11.

⁸⁰ Submission 8, Mrs Maggie Dawkins, p 17, Submission 3, Equestrian Services, p 2, Submission 21, Ms Hannah Brooks, p 6.

⁸¹ Submission 8, Mrs Maggie Dawkins, p 17, Submission 21, Ms Hannah Brooks, p 6.

- 2.40** When this evidence was put to Mr Farrar, he told the committee that his engagement with Mr Smith prior to the funding request being made was part of his efforts to research the best way to improve the SIEC arena. He said that this research, undertaken between 2015 and 2016, was critical in the decision of the Equestrian NSW Board to then request Mr Farrar to prepare a funding request to the NSW Government for the upgrade.⁸²
- 2.41** Additionally, Mr Farrar told the committee that he went to 'at least five or six arena suppliers', including representatives from Capricorn Australia and Equestrian Services Australia. Mr Farrar argued that the detail he received from Mr Smith was all in the effort to present an accurate funding request to Government.⁸³
- 2.42** Mr Farrar also told the committee that the project scope was varied from the specifications included in his initial funding request to Government. For example, he noted that the original request included a requirement that the arena use cushion mats, which at the time were a 'new innovation' being utilised in Europe and provided 'extra cushioning for high performing horses'⁸⁴. Mr Farrar went on to explain that despite the fact the funding request included these mats, the tender specification ultimately did not make cushion mats mandatory. He also noted that tenderers were 'invited to put in nonconforming tenders if they thought there was a better solution'.⁸⁵

Influence of Mr Farrar during the tender assessment process

- 2.43** The committee also heard evidence which argued Mr Farrar's involvement during the tender assessment process was inappropriate, due to his real or perceived conflict of interest with Barrie Smith Motorsport.
- 2.44** Some inquiry participants said that Mr Farrar was too closely involved in the selection of Barrie Smith Motorsport as the successful tenderer. They said this involvement gave rise to the concern that Barrie Smith Motorsport was not chosen on merit, but rather, due to the alleged conflict which caused Mr Farrar to seek out a benefit for Barrie Smith Motorsport.⁸⁶
- 2.45** Stakeholders raising this concern referred to the fact Mr Farrar was on the Technical Advisory Committee (TAC), which was retained to provide expert advice on the tender. The committee heard that all three members of the TAC were required to submit a conflict of interest declaration.⁸⁷
- 2.46** The Office of Sport told the committee that Mr Farrar completed this declaration and declared no relevant conflict.⁸⁸

⁸² Evidence, Mr Bruce Farrar, CEO, Equestrian NSW, 29 November 2021, p 35.

⁸³ Evidence, Mr Bruce Farrar, CEO, Equestrian NSW, 29 November 2021, p 36.

⁸⁴ Evidence, Mr Bruce Farrar, CEO, Equestrian NSW, 29 November 2021, p 36.

⁸⁵ Evidence, Mr Bruce Farrar, CEO, Equestrian NSW, 29 November 2021, p 36.

⁸⁶ Submission 2, Ms Berni Saunders, p 2, Submission 8, Mrs Maggie Dawkins, p 18, Submission 12 Capricorn (Australia) Pty Ltd, p 7.

⁸⁷ Submission 8, Mrs Maggie Dawkins, p 5, Submission 21, Ms Hannah Brooks, p 6.

⁸⁸ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 2.

- 2.47 The committee heard that it was inappropriate and unethical for Mr Farrar to be in a position of giving expert, unbiased advice when he had an undisclosed conflict with one of the tenderers.
- 2.48 Additionally, some inquiry participants stated that Mr Farrar had a general level of involvement which was inappropriate and gave the perception of a possible conflict. For example, Mrs Dawkins told the committee that it was Mr Farrar who informed Barrie Smith Motorsport they were the successful tenderer. She argued that this degree of involvement in the process on the part of Mr Farrar was inappropriate. Further, she said that it gave the impression he was a decision maker and acting on behalf of the Office of Sport.⁸⁹
- 2.49 Both Mr Farrar and the Office of Sport responded to the evidence regarding Mr Farrar's position on the TAC, and his involvement in the tender process more generally.
- 2.50 The Office of Sport explained that in the funding request prepared by Mr Farrar, it was suggested that Mr Oliver Hoberg assist with the 'technical analysis of the proposals' during the tender process. Mr Hoberg was identified as an International Federation for Equestrian Sports recognised expert and consultant in equestrian sports. It was noted that this was standard practice and in line with the 2016 Procurement Manual, which provides that the Office of Sport can be assisted by technical advisors given they do not have internal experts for all sports.⁹⁰
- 2.51 While Mr Hoberg initially indicated he would assist with the provision of technical advice during the tender process, he ultimately was unavailable due to other commitments overseas. The committee was unable to establish if this was known in advance and if Mr Hoberg was a viable participant in the process.⁹¹
- 2.52 Following this, the Office of Sport stated that it 'explored other options for technical advisors to advise on the technical aspects of the procurement without success'. Due to these issues, it was determined that the TAC would be formed and include representatives from across various equestrian disciplines. The members of the TAC were recommended by Equestrian NSW.⁹²
- 2.53 The Office of Sport told committee that 'establishing and engaging a TAC is not a common feature of OoS procurement'. However, the Office of Sport determined this was the best way forward given the niche area of expertise and the tight timeframes, as the aim was to have the arena ready for an event that it intended to hold at SIEC at the end of January 2018.⁹³
- 2.54 Further, the Office of Sport explained that Mr Farrar had specific knowledge and expertise in the area of arena surface design and technology engineering which made him an appropriate choice to be on the TAC.⁹⁴

⁸⁹ Submission 8, Mrs Maggie Dawkins, p 3.

⁹⁰ Submission 28, Office of Sport, p 18.

⁹¹ Submission 28, Office of Sport, p 19.

⁹² Submission 28, Office of Sport, p 19.

⁹³ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 11.

⁹⁴ Submission 28, Office of Sport, p 19.

- 2.55** When summarising the role of the TAC, Ms Karen Jones, CEO, Office of Sport, told the committee that:

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.⁹⁵

- 2.56** A similar position was echoed by Equestrian NSW when describing the role of the TAC. They told the committee that:

[The TAC] was not the decision-making body in the process to select the winning tender. Its role was to provide technical advice as to the suitability of the tender submissions to the NSW Office of Sport.⁹⁶

Awarding of the tender to Barrie Smith Motorsport

- 2.57** Some inquiry participants expressed concerns about the awarding of the contract to Barrie Smith Motorsport, including that its tender proposal was flawed and not the best option, and that Barrie Smith Motorsport only became the successful tenderer due to Mr Farrar's inappropriate influence and position on the TAC.

- 2.58** As referred to earlier in this chapter, some stakeholders argued that the awarding of the contract to Barrie Smith Motorsport was fundamentally unfair given the project specification required the use of Ebb and Flow watering technology. According to these stakeholders, this kind of technology was relatively new and not necessary for the delivery of an effective arena surface. They therefore disputed that this technology was 'industry best practice for arenas'⁹⁷, and stated this requirement was only in place to facilitate Barrie Smith Motorsport being awarded the contract.⁹⁸

- 2.59** The committee heard that Barrie Smith Motorsport had limited experience installing Ebb and Flow arenas in Australia. The only previous arena of this kind installed in Australia was the arena at Wallaby Hill owned by Ms Townsend. Ms Townsend was the sole referee for Barrie Smith Motorsport in the tender.⁹⁹

- 2.60** Inquiry participants such as Equestrian Services, also told the committee that at the time the contract was awarded, it was 'common knowledge' that there were issues with the arena at Wallaby Hill and that steps were being taken to rectify these issues.¹⁰⁰

- 2.61** Stakeholders told the committee that these factors, being the limited experience installing this kind of arena in Australia and the emerging issues with the installation at Wallaby Hill, showed that Barrie Smith Motorsport should not have been the preferred tenderer. They argued that based on these factors, it can be established that Barrie Smith Motorsport may have been

⁹⁵ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 8.

⁹⁶ Submission 26, Equestrian NSW, p 8.

⁹⁷ Submission 3, Equestrian Services, p 2.

⁹⁸ Submission 21, Ms Hannah Brooks, p 6

⁹⁹ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 20.

¹⁰⁰ Submission 3, Equestrian Services, p 2.

unfairly preferred due to the conflicts between Mr Farrar, on behalf of Equestrian NSW, and Barrie Smith Motorsport.¹⁰¹

2.62 Additionally, the committee heard that Barrie Smith Motorsport did not have the highest scoring request for tender (RFT) response. The Office of Sport confirmed that Equestrian Australia was the highest scoring RFT respondent.¹⁰²

2.63 Some stakeholders argued this demonstrated an ongoing and unfair bias towards Barrie Smith Motorsport and ultimately concluded that the contract was not awarded on the basis of merit.¹⁰³

2.64 In responding to this evidence in its submission, the Office of Sport told the committee that it was 'reasonable and justifiable that the successful RFT response was not the highest scoring RFT respondent'. It noted that this was due to highest scoring tenderer appearing to be more interested in a contract variation which involved the use of a wax product. The Office of Sport stated that this variation did not satisfy the Scope of Works and 'was deemed unsuitable for the Australian climate'.¹⁰⁴

Lack of documentation and a rigorous tender process

2.65 The committee heard that the documentation and probity processes in place at the Office of Sport were not sufficiently robust and posed a significant governance risk. Stakeholders explained that there was a lack of adequate record keeping which ultimately resulted in the appearance of conflicts and a lack of integrity in the process.

2.66 Several stakeholders pointed to the fact that the Office of Sport does not have in its possession conflict of interest declarations of the other two TAC panel members, namely Ms Julie Farrell and Mr John Vallance. When this was put to the Office of Sport, Ms Jones told the committee that the office was unable to confirm with confidence if these declarations had been filled out and could not be found, or if they never existed.¹⁰⁵

2.67 Further, the committee also heard the documentation setting out the rationale for decision making during the tender process was not sufficient. For example, the Office of Sport acknowledged that the RFT documents did not accurately reflect why the tenderer with a lower RFT score was ultimately the successful candidate. It was also noted that the Evaluation Criteria and the general scoring criteria in the RFT documents did not accurately reflect the Office of Sport requirements and what was being tested during the procurement process.¹⁰⁶

2.68 It also emerged that the Tender Evaluation Report was not signed by all members of the Tender Evaluation Committee. Stakeholders identified this as another key area of concern,

¹⁰¹ Submission 3, Equestrian Services, p 1, Submission 12 Capricorn (Australia) Pty Ltd, p 9.

¹⁰² Submission 28, Office of Sport, p 50.

¹⁰³ Submission 8, Mrs Maggie Dawkins, p 6, Submission 3, Equestrian Services, p 1.

¹⁰⁴ Submission 28, Office of Sport, p 50.

¹⁰⁵ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 8.

¹⁰⁶ Submission 28, Office of Sport, p 50.

noting that without this report being signed by all members of the TEC, it is difficult to be certain who agreed to the contents of the report.¹⁰⁷

- 2.69** Similarly, the committee heard that there was minimal documentation recorded relating to reference checks for the tenderers, as well as other 'records that would normally be relied on to support the integrity of the tender'.¹⁰⁸
- 2.70** These issues were reiterated in the probity report prepared by O'Connor Marsden (OCM). OCM's terms of reference were confined to a review of the tender documentation and the tender process more generally. OCM's report identified 'better practice activities to enhance the probity of the processes'.¹⁰⁹
- 2.71** Further, these concerns were also identified in the letter from the ICAC to the Office of Sport dated 1 December 2020. While the ICAC made a determination not to investigate the matters raised, it stressed the need for further documentation relating to the procurement, noting that 'there appears to be a lack of clearly documented decisions'.¹¹⁰
- 2.72** In addition to issues relating to documentation, the ICAC also observed the 'significant role' of Mr Farrar and recommended that there was a need to formalise and document the role he was playing during the tender process.¹¹¹
- 2.73** The ICAC reiterated the identified 'risks and concerns' set out in the 1 December 2020 letter in further correspondence to Ms Jones, dated 26 August 2021. This correspondence was in response to a request from the Office of Sport to re-examine the issue in the context of a number of additional documents provided to the ICAC. The ICAC found the information contained in the new material did not result in a reconsideration of its initial determination not to investigate this matter.¹¹²
- 2.74** Both OCM and the ICAC identified concerns with the use of the Tender Advisory Committee and noted that there was a lack of detailed documentation in the Tender Evaluation Report regarding how the views of the TAC would be incorporated into any decision making. Stakeholders suggested that the failure of the Office of Sport to adequately record the role of the TAC, of which Mr Farrar was a member, allowed the perception of a conflict to develop.¹¹³

¹⁰⁷ Submission 28, Office of Sport, p 51.

¹⁰⁸ Letter from Mr Andrew Garcia, Manager, Assessments, NSW Independent Commission Against Corruption, 1 December 2020 quoted in Submission 28, Office of Sport, p 51.

¹⁰⁹ O'Connor Marsden probity report quoted in Submission 28, Office of Sport, p 51.

¹¹⁰ Letter from Mr Andrew Garcia, Manager, Assessments, NSW Independent Commission Against Corruption, 1 December 2020 quoted in Submission 28, Office of Sport, p 60.

¹¹¹ Submission 28, Office of Sport, p 35.

¹¹² Submission 28, Office of Sport, p 87-89.

¹¹³ Submission 28, Office of Sport, p 20-21.

Office of Sport response to identified probity issues

2.75 This section outlines the steps taken by the Office of Sport to address the probity issues identified during this process. As discussed above, these issues related to record keeping and documentation, the use of expert advice during tender processes, and general engagement with State Sporting Organisations (SSOs).

Changes to procurement documentation and processes

2.76 The Office of Sport told the committee that 'significant' changes have been made regarding procurement documentation and processes since the awarding of the relevant contract. It noted that these changes have largely been in response to findings and recommendations that came out of the feedback from the ICAC and the OCM report.¹¹⁴

2.77 The committee heard that changes had principally been made in the following areas:

- the documenting of decisions
- conflict of interest and confidentiality requirements
- how experts are to be used and managed.¹¹⁵

2.78 The Office of Sport outlined a number of specific reforms which have been made since 2017 in order to address the areas identified above. These are summarised below:

- The Office of Sport expanded the role of the Chief Procurement Officer (CPO) in the organisation, giving the CPO greater seniority and visibility across the office. The CPO also has oversight across construction-related procurement.¹¹⁶
- A procurement management system has been implemented and is being utilised by the procurement team within the Office of Sport. The Office of Sport stated that this system allows for greater transparency, and ensures that the Director, Finance and Procurement has increased oversight of activities being undertaken by the Asset Management Team.¹¹⁷
- The Office of Sport undertook a review in 2018 of the templates and other operational documents used during procurement activities. These documents were revised to bring them in line with the relevant policies in place by the NSW Government.¹¹⁸
- A further reform process which commenced in May 2020 in response to the OCM report has attempted to ensure the overarching Office of Sport policy and procurement documents are consistent with the NSW Government Procurement Policy Framework. These documents included: a Procurement Strategy, Procurement Manual, Procurement

¹¹⁴ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 3.

¹¹⁵ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 11.

¹¹⁶ Submission 28, Office of Sport, p 89.

¹¹⁷ Submission 28, Office of Sport, p 90.

¹¹⁸ Submission 28, Office of Sport, p 91.

Governance Manual, Administrative Delegations for Procurement, and a Disposal of Goods Policy.¹¹⁹

- The Office of Sport has established a taskforce to 'oversee the continuing development of procurement procedures and Templates' and to 'lead a range of assurance processes directly in response to the SIEC Arena Upgrade'. The taskforce will continue to review relevant documentation, seek advice from ICAC on procurement risks and design best practice staff training.¹²⁰

2.79 The committee also heard about changes regarding the use of experts when undertaking a procurement. Mr Feargus O'Connor, Executive Director, Office of Sport, acknowledged the issues relating to the use of experts during this tender process, and stated that:

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 [in this case] that was almost undocumented.¹²¹

2.80 Mr O'Connor went on to describe the changes that have been made to better manage this process:

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.¹²²

Changes to engagement with State Sporting Organisations

2.81 The committee also heard that the Office of Sport has implemented reforms regarding its engagement with SSOs. Specifically, it was noted that the Office of Sport has entered into new Funding Agreements with all registered SSOs.

2.82 As noted in Chapter 1, previous Funding Agreements did not impose any requirements or constraints on the SSOs in terms of corporate governance or funding. However, the new Funding Agreements include a number of requirements, including obligations to:

- adopt and comply with sound policies and practices in relation to its corporate governance and financial management
- undertake risk management activities which are consistent
- undertake risk management activities which are consistent with the Australian Standard Risk Management AS/NZS ISO 31000:2009

¹¹⁹ Submission 28, Office of Sport, p 91.

¹²⁰ Submission 28, Office of Sport, p 92.

¹²¹ Evidence, Mr Feargus O'Connor, Executive Director, Office of Sport, 29 November 2021, p 18.

¹²² Evidence, Mr Feargus O'Connor, Executive Director, Office of Sport, 29 November 2021, p 18.

- have in place a robust process for, at a minimum, managing director or committee member conflicts of interests (actual, potential or perceived) which is documented, implemented, enacted and enforced including continual disclosure to the Office of Sport should a conflict arise.¹²³

2.83 The Office of Sport told the committee that as of November 2020, new Funding Agreements that include the above requirements had been entered into with over 94 SSOs.¹²⁴

Committee comment

2.84 This inquiry has ventilated a number of issues regarding the tender process for the upgrade of the SIEC arena, including the relationship between the Office of Sport and Equestrian NSW, potential conflicts of interest both before and during the tender process, and a lack of rigour and proper process throughout.

2.85 From the evidence provided both by the stakeholders who raised these concerns, as well as the Office of Sport itself, it is evident to the committee that the procurement process by which this contract was awarded was flawed. Clearly, there was a failure in meeting the robust probity requirements expected when expending public funds, particularly in relation to documentation standards.

2.86 It is this very lack of documentation and adherence to proper process that has given rise to significant concerns amongst parts of the equestrian community regarding the integrity of the tender and the impact of the relevant conflict of interest. It is clear to the committee that whether or not this conflict impacted on the tender process, there is a very real perception that it did.

2.87 Specifically, it is evident to the committee that Mr Bruce Farrar, CEO of Equestrian NSW, should have reasonably foreseen that his involvement in the tender process for the contract would give rise to the perception of a perceived or actual conflict of interest, and that this conflict should have been disclosed.

2.88 Turning to the Office of Sport's conduct, the committee finds that the Office of Sport failed to uphold robust probity standards by allowing the close involvement of Mr Farrar in the tender process for the contract. Mr Farrar sought funding for the upgrade, prepared the funding request and project specifications and was a member of the Technical Advisory Committee for the tender. This level of involvement was inappropriate, and should have been addressed by the Office of Sport.

2.89 It is also clear to the committee that the Office of Sport failed to adequately investigate the issues relating to the granting of the contract once they had been brought to its attention. This includes failing to include in the terms of reference for the O'Connor Marsden probity review the use of the second-hand material from Wallaby Hill at the SIEC. It also failed to adequately investigate the involvement of Ms Alexandra Townsend and any potential conflict of interest

¹²³ Submission 28, Office of Sport, p 12.

¹²⁴ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 11.

between Ms Townsend, Equestrian NSW and Barrie Smith Motorsport. These matters are discussed in detail in Chapter 3.

- 2.90 Given the inadequacy of these investigations, the committee has recommended that the ICAC give consideration to reopening its investigation of these matters, with specific reference to the use of second-hand material from Wallaby Hill at the SIEC.
- 2.91 The committee also heard concerning evidence regarding the relationship between the Office and Sport and Equestrian NSW, a State Sporting Organisation. In response to this evidence, the committee has recommended that the NSW Government review the relationship between the Office of Sport and Equestrian NSW to ensure independence on the part of the Office of Sport and its administrative and decision-making processes.
- 2.92 However, the committee also acknowledges the work done by the Office of Sport since these events took place, and notes the ongoing work of the Office of Sport in implementing the findings and recommendations made by the ICAC and O'Connor Marsden in its probity report. Additionally, the committee supports the changes that have been made to the standard funding agreement with State Sporting Organisations, and recommends that the Office of Sport ensure that the requirements contained therein are adhered to.
- 2.93 In order to continue this commitment to transparency, the committee recommends that the Office of Sport publish this standard funding agreement in its annual report.
- 2.94 Additionally, in an effort to improve oversight of the expenditure of public funds by third party organisations, the committee recommends that the NSW Government give consideration to so-called 'follow-the-dollar' powers, which would extend the performance audit function of the Auditor-General to include audits of State Sporting Organisations.
- 2.95 Finally, the committee acknowledges the ongoing cooperation of the Office of Sport with this committee and the proactive way in which it has sought to improve procurement processes. The Office of Sport should continue to seek further advice from the ICAC regarding those processes.

Finding 1

That the tender process for contract number OoS17/18-02 was flawed in that the Office of Sport failed to apply robust probity standards, including a failure to appropriately document numerous aspects of this procurement.

Finding 2

That the Office of Sport's failure to apply robust probity standards led to concerns about real or perceived conflicts of interest affecting the tender, and a perception of a biased and unfair procurement process that lacked the integrity required of NSW Government agencies.

Finding 3

That Mr Bruce Farrar, CEO, Equestrian NSW, should have reasonably foreseen that his involvement in the tender process for contract number OoS17/18-02 would give rise to a perceived or actual conflict of interest, and that this conflict should have been disclosed.

Finding 4

That the Office of Sport failed to uphold robust probity standards by allowing the close involvement of Mr Bruce Farrar, CEO, Equestrian NSW, in the tender process for contract number OoS17/18-02, as set out below:

- Mr Farrar, on behalf of Equestrian NSW, sought funding from the NSW Government for the Sydney International Equestrian Centre upgrade
 - Mr Farrar discussed the upgrade with Mr Barrie Smith prior to the contract being awarded
 - Mr Farrar included Ebb and Flow technology in the Equestrian NSW funding request, knowing that this requirement would heavily favour Barrie Smith Motorsport
 - Mr Farrar was a member of the Technical Advisory Committee set up to provide expert advice on the tender. The Technical Advisory Committee ultimately recommended Barrie Smith Motorsport despite this not being the initial recommendation of the Tender Evaluation Panel, which recommended Capricorn Australia. Barrie Smith Motorsport was ranked second with the most expensive tender. The views of the Technical Advisory Committee helped Barrie Smith Motorsport win the tender.
-

Finding 5

That the Office of Sport failed to comprehensively investigate the issues relating to the granting of contract number OoS17/18-02, specifically by:

- failing to include in the terms of reference for the O'Connor Marsden probity review the use of the second-hand material from Wallaby Hill at the Sydney International Equestrian Centre
 - failing to investigate the potential conflict of interest relating to Ms Alexandra Townsend, and her involvement with Equestrian NSW and Barrie Smith Motorsport
 - failing to investigate the potential financial benefit received by Ms Townsend as a result of the second-hand material from Wallaby Hill being used at Sydney International Equestrian Centre
 - failing to be transparent about the emerging issues relating to the contamination of the upgraded surface at the Sydney International Equestrian Centre.
-

Recommendation 1

That the NSW Independent Commission Against Corruption give consideration to reopening its investigation of the granting of contract number OoS17/18-02, with specific reference to the use of second-hand material from Wallaby Hill at the Sydney International Equestrian Centre.

Recommendation 2

That the Office of Sport continue to seek further advice from the Independent Commission Against Corruption to ensure its current procurement processes:

- are robust and consistent with the highest probity standards
 - are compliant with any relevant legislative and policy requirements
 - ensure value-for-money for the New South Wales taxpayer.
-

Recommendation 3

That the NSW Government review the relationship between the Office of Sport and Equestrian NSW to ensure independence on the part of the Office of Sport and its administrative and decision-making processes.

Recommendation 4

That the Office of Sport ensure that the requirements contained in the new funding agreements with State Sporting Organisations are adhered to.

Recommendation 5

That the Office of Sport publish its standard funding agreement with State Sporting Organisations in its annual report.

Recommendation 6

That the NSW Government give consideration to extending the performance audit function of the Auditor-General to include audits of State Sporting Organisations.

Chapter 3 Key issues relating to performance under the contract

This chapter examines issues relating to performance under the contract that is the subject of this inquiry. Specifically, it explores the use of what was effectively second-hand material from Wallaby Hill during the upgrade of the arena at the Sydney International Equestrian Centre. It explores how and why this occurred, and what concerns have emerged relating to its use. Finally, it addresses the steps that have been taken to rectify any issues related to the use of this material and assesses the current status of the arena surface.

Background to the use of material from Wallaby Hill for the arena upgrade

- 3.1 This section outlines the factual circumstances relating to the use of second-hand material from Wallaby Hill during the upgrade of the arena at Sydney International Equestrian Centre (SIEC) under the contract that is the subject of this inquiry.
- 3.2 The Office of Sport told the committee that the first it became aware of any issues relating to materials was on 22 November 2017. The office stated that upgrade works were due to begin on 20 November 2017, but it had been advised by Barrie Smith Motorsport that the overseas materials required for the upgrade were delayed. It was at this stage that Barrie Smith Motorsport offered to use 'existing stocks ... from their warehouse'.¹²⁵
- 3.3 The Office of Sport told the committee that on 21 December 2017, it was made aware that the material to be used in the upgrade was not from a warehouse, but rather, had been taken from Wallaby Hill, an outdoor equestrian facility owned by Equestrian NSW Board Member, Ms Alexandra Townsend. It was also at this point that it became clear that the material had been contaminated.¹²⁶
- 3.4 As noted in Chapter 1, the Office of Sport explained that the material contained rubber grommets. These grommets had been mixed in with the sand when it had been removed from the arena at Wallaby Hill. During this removal, the rubber matting which was underneath the sand was partially ripped up by the excavator machine, which ultimately resulted in grommets from the matting being lifted with the sand and mixed in.¹²⁷
- 3.5 Following this discovery, the Office of Sport demanded Geotech testing be undertaken to 'ensure the sand fits the tender specification' and that any contaminants be removed. Confirmation of the removal was received on 19 January 2018 and the installation was then completed.¹²⁸

¹²⁵ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 9.

¹²⁶ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 9.

¹²⁷ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 11.

¹²⁸ Answers to questions on notice and supplementary questions arising from a private briefing on 29 September 2021, Office of Sport, p 10.

- 3.6 As noted in Chapter 1, issues with the surface started to be identified in October 2019. The Office of Sport was informed that the grommets, which it had previously been advised had been removed, were emerging on the top surface of the arena.¹²⁹
- 3.7 The committee heard that this occurred due to the grommets being dispersed throughout the material and the entire depth of the arena. This meant that when the surface was flipped, raked or used, more grommets from below the surface come to the top of the arena.¹³⁰
- 3.8 The Office of Sport stated that a remediation process was commenced on 1 January 2020 due to the potential safety risks posed by the grommets. This process was subject to 'lengthy negotiation' with Barrie Smith Motorsport due to the time that had lapsed between the installation of the surface and the emergence of the issues. However, it was noted that it was negotiated that Barrie Smith Motorsport would do the remediation work at no expense to the Office of Sport.¹³¹
- 3.9 This remediation process was conducted in August to September 2020 and involved the extraction of a number of grommets. However, it was at this point that it was decided the grommets could not all be extracted and that the Office of Sport would incorporate extraction into SIEC's regular maintenance of the surface. This regular maintenance involves flipping the surface prior to every event, and removing any foreign material, including the grommets, which will continue to emerge over time.¹³²
- 3.10 The Office of Sport acknowledged that while the impact of the grommets on horse and rider safety has been contested, it is clear that the presence of the grommets are a visual reminder of foreign material in the sand. It also noted that this issue has resulted in the emergence of some doubt regarding the quality of the surface and the effectiveness of the upgrade more generally.¹³³

Concerns relating to the use of the Wallaby Hill material

- 3.11 Stakeholders identified three key concerns relating to the use of the second-hand material from Wallaby Hill for the SIEC arena upgrade, namely:
- safety concerns and a lack of trust in the quality of the arena surface
 - the potential breach of contract involved
 - the involvement of Ms Townsend.

Safety concerns and a lack of trust in the quality of the arena surface

- 3.12 Some inquiry participants expressed concerns about the impact of the second-hand material on horse and rider safety. They argued that given it has been contaminated, it is difficult to

¹²⁹ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 2-3.

¹³⁰ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 12.

¹³¹ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 8.

¹³² Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 9.

¹³³ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 11.

ensure it is 'safe and suitable for international level dressage competition and other equestrian related activities'.¹³⁴

- 3.13** In this regard, Ms Berni Saunders explained to the committee that:

The faulty workmanship has resulted in an overpriced installation that cannot be deemed fit for purpose and has caused horse injuries with negative reports being tendered by Officials to the FEI (Federation Equestre Internationale).¹³⁵

- 3.14** The committee heard that given the issues that have been identified, there is a lack of trust in the surface from some horse owners and riders. According to these stakeholders, trust in the surface and the capacity of the Office of Sport to provide a safe arena will only be restored if the entire surface is replaced.¹³⁶

- 3.15** These stakeholders told the committee that it is disingenuous for the Office of Sport to characterise the arena as new, upgraded and high-quality given the issues that have emerged as a result of the installation of second-hand material.¹³⁷

Potential breach of contract

- 3.16** The committee also heard that the use of this second-hand material represented a breach of contract on the part of Barrie Smith Motorsport, and that this conduct under the contract could potentially constitute fraud.

- 3.17** Mr Barrie Smith, Barrie Smith Motorsport, told the committee that the surface at Wallaby Hill was removed following significant rainfall at the site and concerns regarding how the surface would deal with that volume of water. He stated that the clay content in the sand meant that drainage was not occurring in the correct way. Mr Smith explained that this was because the sand used was inappropriate for Wallaby Hill, being an outdoor arena, but that it would be 'absolutely perfect' for an indoor arena, such as the one at SIEC.¹³⁸

- 3.18** Mr Smith said that it was at this point that the decision was made by OTTO Sport, the company with whom Ms Townsend had contracted to install the surface, to remove and stockpile the surface at the Wallaby Hill property. Mr Smith noted that OTTO Sport had designed the Ebb and Flow system, and he acted as their representative and agent in Australia.¹³⁹

- 3.19** When describing the commercial relationship between Barrie Smith Motorsport and Ms Townsend, Mr Smith stated that he had no commercial dealings with Ms Townsend, but rather, was only involved to assist OTTO Sport with logistics, given they are based in Germany.¹⁴⁰

¹³⁴ Submission 8, Mrs Maggie Dawkins, p 10.

¹³⁵ Submission 2, Ms Berni Saunders, p 5.

¹³⁶ Submission 8, Mrs Maggie Dawkins, p 10.

¹³⁷ Submission 8, Mrs Maggie Dawkins, p 10.

¹³⁸ Evidence, Mr Barrie Smith, Barrie Smith Motorsport, 29 November 2021, p 49.

¹³⁹ Evidence, Mr Barrie Smith, Barrie Smith Motorsport, 29 November 2021, p 49.

¹⁴⁰ Evidence, Mr Barrie Smith, Barrie Smith Motorsport, 29 November 2021, p 49.

- 3.20 Ms Townsend supported this evidence and explained that she only had a commercial relationship and relevant dealings with OTTO Sport, given they had been contracted to install the new arena at Wallaby Hill. She stated that she did not have dealings with Mr Smith regarding her arenas.¹⁴¹
- 3.21 The committee heard that the decision to use the material at SIEC that had been removed from the Wallaby Hill arena was made following discussions between Mr Smith and OTTO Sport. Mr Smith stated that it seemed like a 'very sensible thing to install that in the SIEC situation', given it was an indoor arena, and described the material used at SIEC as a 'brand-new mixture'¹⁴².
- 3.22 It was put to Mr Smith that his decision to use the Wallaby Hill material at SIEC was due to the time constraints he was under to have the arena installed by January 2018 and various delays relating the importing of sand that would otherwise be used in the arena.¹⁴³
- 3.23 Mr Smith contested this version of events, and told the committee there was no significant delay on the wharves relating to the importation of material. Rather, he stated that the use of the material from Wallaby Hill was an effective and efficient use of a high-quality product.¹⁴⁴
- 3.24 Further, it was put to Mr Smith that he used the Wallaby Hill material at SIEC in order to keep costs down and increase his profit under the contract. Mr Smith disputed this claim, and told the committee that while he did not pay for the Wallaby Hill material, as that had been paid for by OTTO Sport, he ultimately paid for the replacement material used for Ms Townsend's arena. He described this arrangement as a 'quid pro quo' with OTTO Sport.¹⁴⁵
- 3.25 From the perspective of the Office of Sport, Ms Karen Jones, CEO, expressed to the committee that they had serious concerns when they found out that second-hand material was being used for the upgrade. However, she noted that the office did not consider any legal recourse at the time given the aim to have the arena ready for competition use by the end of January 2018 for the Show Horse of the Year event.¹⁴⁶
- 3.26 The committee heard that despite the issues with the surface, the Bank Guarantee, which was security under the contract, was returned to Mr Smith following the 12-month warranty period.¹⁴⁷
- 3.27 When summarising the view of the Office of Sport regarding the use of this material, Ms Jones stated that:

... 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,

¹⁴¹ Evidence, Ms Alexandra Townsend, Board Member, Equestrian NSW, 17 March 2022, p 2.

¹⁴² Evidence, Mr Barrie Smith, Barrie Smith Motorsport, 29 November 2021, p 49-52.

¹⁴³ Evidence, Mr Barrie Smith, Barrie Smith Motorsport, 29 November 2021, p 56-57.

¹⁴⁴ Evidence, Mr Barrie Smith, Barrie Smith Motorsport, 29 November 2021, p 56-57.

¹⁴⁵ Evidence, Mr Barrie Smith, Barrie Smith Motorsport, 29 November 2021, p 55.

¹⁴⁶ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 11, Submission 28, Office of Sport, p 60.

¹⁴⁷ Submission 28, Office of Sport, p 73.

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.¹⁴⁸

- 3.28** Further, Ms Jones told the committee that 'with the luxury of time', the Office of Sport would have considered recourse options under the contract given what has since been determined about the significant presence of the rubber grommets.¹⁴⁹

Involve ment of Ms Alexandra Townsend

- 3.29** Some stakeholders argued that the repurposing of the Wallaby Hill surface unfairly benefited Ms Townsend at the expense of the quality of the SIEC surface. They told the committee that by having Barrie Smith Motorsport remove the surface from Wallaby Hill and have it installed at SIEC, Ms Townsend did not have to pay for the removal herself.¹⁵⁰

- 3.30** The committee heard that there had been substantial construction activity at Wallaby Hill following the installation of the new arena. This included the arena material being dug up once faults had been identified with its performance, stockpiled and then removed to SIEC by at least eight trucks.

- 3.31** Ms Townsend told the committee that she had paid for the Wallaby Hill surface material, giving rise to a suggestion at law that she owned it. Despite this, Ms Townsend stated that she was unaware of who took the stockpiled surface away from her multi-million-dollar equestrian property, which was protected by security gates.¹⁵¹

- 3.32** Ms Townsend denied recalling the events leading up to the removal of the surface and stated that after she informed OTTO Sport that the surface was not draining correctly, she did not have oversight of the specifics of what was to be done with the removed material. When explaining this, Ms Townsend said that:

I do not know who arranged. I was not part of that arrangement. It was OTTO Sport—Germany's. They said to me, "We're taking it off. We're going to stockpile it. We'll get you a new one." After that, it was of no consequence to me as to who was taking it where and when.¹⁵²

- 3.33** Further, various allegations were made throughout the course of the inquiry that the awarding of the tender to Barrie Smith Motorsport, for whom Ms Townsend was a referee, was in some part done to assist her in removing the surface from Wallaby Hill at no cost to her and therefore 'fixing' her arena.¹⁵³

- 3.34** Ms Townsend categorically rejected these claims and that she was influential in the decision to award the contract to Barrie Smith Motorsport. She explained that she acted as a referee for

¹⁴⁸ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 16.

¹⁴⁹ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 12.

¹⁵⁰ Submission 12, Capricorn (Australia) Pty Ltd, p 3, Submission 8, Mrs Maggie Dawkins, p 18, Submission 21, Ms Hannah Brooks, p 12.

¹⁵¹ Evidence, Ms Alexandra Townsend, Board Member, Equestrian NSW, 17 March 2022, p 8-9.

¹⁵² Evidence, Ms Alexandra Townsend, Board Member, Equestrian NSW, 17 March 2022, p 9.

¹⁵³ Submission 12, Capricorn (Australia) Pty Ltd, p 3.

the OTTO Sport system due to her property being the first in the country to have an OTTO Sport arena. Ms Townsend said that while she could not recall the details of being asked to be a referee, she confirmed she had 'endorsed the product on many occasions' and that Mr Smith 'would have had my permission' to be listed as a referee for his tender.¹⁵⁴

- 3.35** Ms Townsend told the committee that beyond this, she had no involvement in the tender process.¹⁵⁵

Positive feedback relating to the upgraded arena

- 3.36** This section outlines the evidence the committee heard relating the success of the SIEC arena upgrade.
- 3.37** As referred to earlier in this chapter, the Office of Sport explained to the committee the rectification works that have occurred at the SIEC arena. It also outlined the ongoing maintenance being undertaken to address the presence of the rubber grommets.¹⁵⁶
- 3.38** The committee heard evidence regarding the impact on horse and rider safety of the rubber grommets, given it was noted that they will continue to emerge on the surface of the arena because they are mixed through entirety of the material. The Office of Sport stated that it had received information from international experts that the rubber grommets do not injure horses. Further, it stated that no complaints had been received regarding injury to horses as a result of the grommets.¹⁵⁷
- 3.39** The Office of Sport also outlined the various safety assessments that have been undertaken at the SIEC arena since it has been upgraded. It noted that the surface was assessed in March 2021 by two people with international-level equestrian credentials. These individuals determined that the arena was safe.¹⁵⁸
- 3.40** Further, it was noted that the Office of Sport undertook a second safety assessment on 17 March 2022. This assessment was conducted by Ms Mary Seefried, an equestrian expert and Technical Delegate to the Tokyo Olympics. The Office of Sport told the committee that Ms Seefried observed three expert dressage riders and three expert show jumpers using the relevant arena. Ms Seefried and all six riders found that the arena was safe, with no concerns being identified.¹⁵⁹
- 3.41** The Office of Sport also told the committee that since the re-opening of SIEC following the easing of COVID-19 restrictions, several bookings had been made at the arena for 2022. It

¹⁵⁴ Evidence, Ms Alexandra Townsend, Board Member, Equestrian NSW, 17 March 2022, p 3.

¹⁵⁵ Evidence, Ms Alexandra Townsend, Board Member, Equestrian NSW, 17 March 2022, p 10.

¹⁵⁶ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 9.

¹⁵⁷ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 19.

¹⁵⁸ Evidence, Ms Karen Jones, CEO, Office of Sport, 29 November 2021, p 3.

¹⁵⁹ Written response provided by the Office of Sport in response to comments made during a public hearing on 17 March 2022, 11 April 2022, p 1.

noted that a number of these bookings are repeat bookings, which it argued reflects 'use confidence in the facility'.¹⁶⁰

- 3.42 The committee also heard evidence from a number of other stakeholders within the equestrian community who outlined a positive experience with the arena surface.
- 3.43 Dressage NSW, Eventing NSW and Jumping NSW described the new arena as 'absolutely world class', and stated that the new facilities will be a 'total game changer for the elite level of the sport' at the SIEC facility.¹⁶¹
- 3.44 This positive feedback was echoed by Waratah Showjumping Inc, which described the surface as 'the best in Australia', and key to the decision to hold a number of elite competitions at SIEC.¹⁶²

Committee comment

- 3.45 It is clear to the committee that the use of second-hand material from Wallaby Hill for the SIEC arena upgrade was inappropriate and likely a breach of the contract between Barrie Smith Motorsport and the Office of Sport.
- 3.46 The committee notes that the Office of Sport did not pursue any legal recourse at the time, but rather, chose to have Barrie Smith Motorsport rectify the contamination issues that had emerged, due to the desire to have the arena completed in time for what was a relatively minor event in January 2018.
- 3.47 In this regard, the committee finds that the Office of Sport failed in its duty to ensure value for money in the expenditure of public funds by not seeking to terminate its contract with Barrie Smith Motorsport following the installation of the second-hand material from Wallaby Hill at the SIEC. This failure led to questions about the quality of the surface and an ongoing lack of confidence in the facility amongst some in the equestrian community.
- 3.48 Turning to the individuals involved, the committee was not convinced by the evidence of Mr Smith and Ms Townsend regarding how and why the second-hand material from Wallaby Hill came to be used for the SIEC arena upgrade. In particular, the committee finds that the Office of Sport was misled by Mr Smith about the availability of his product, using the excuse of dock delays to pursue the low-cost option of transferring used materials from a failed arena at Wallaby Hill (saving himself and OTTO Sport money). In evidence to the inquiry, Mr Smith was asked (by the Chair) if it was always his intention to source the materials from Ms Townsend's property, to which he replied 'Certainly' and then changed his answer to 'No'.
- 3.49 Additionally, the committee found Ms Townsend's evidence to be lacking in credibility. Specifically, the committee struggled to accept that Ms Townsend, a Board Member of the very organisation that had sought the funding for this upgrade, did not know where the

¹⁶⁰ Written response provided by the Office of Sport in response to comments made during a public hearing on 17 March 2022, 11 April 2022, p 1.

¹⁶¹ Submission 1, Dressage NSW, Eventing NSW and Jumping NSW, p 1-2.

¹⁶² Submission 13, Waratah Showjumping Inc, p 3.

material that had been removed from her arena was going, who was taking it and when it was being removed from her property.

- 3.50** The committee also has concerns around the lack of clarity surrounding the circumstances in which Ms Townsend was listed as the sole referee for Barrie Smith Motorsport's tender. This gives rise to questions about the tender lodged by Mr Smith, and if it contained inaccurate and misleading information.
- 3.51** The committee is of the view that NSW Police should consider the evidence received as part of this inquiry regarding Mr Smith and Ms Townsend, to examine whether there has been any potential breach of the *Crimes Act 1900*. This consideration should also include Mr Farrar's conduct as discussed in Chapter 2.
- 3.52** Separately, we note that the committee has already recommended in Chapter 2 that the ICAC re-consider the matter.
- 3.53** Looking ahead, it is evident that the Office of Sport has taken steps to try and address the contamination issues, and it is important to stress that the costs of these remediation efforts were shouldered by Barrie Smith Motorsport. However, it is also clear to the committee that the damage done to the reputation of the new arena as a result of the use of second-hand material and the ongoing emergence of rubber grommets is significant. The Office of Sport will likely need to continue to demonstrate the surface is safe and effective in order to assure some parts of the equestrian community that the use of this material does not pose any ongoing risk to horse and rider safety.
- 3.54** The committee acknowledges the various safety assessments that have been undertaken since the arena was installed and is of the view that any significant safety risk has largely been ameliorated by the rectification work and ongoing maintenance. It appears that a number of stakeholders are very happy with the current arena, and it has been an asset in attracting international competitions to SIEC.
- 3.55** The committee accepts that an upgrade to SIEC was likely necessary, and despite the issues regarding the use of second-hand material, it appears that the arena is operating safely and reliably. However, with the benefit of hindsight the whole process has been far from ideal, and it is to be hoped that the Office of Sport has learnt from the mistakes made.

Finding 6

That the use of contaminated second-hand material from Wallaby Hill for the upgrade of the arena at Sydney International Equestrian Centre was inappropriate and likely constituted a breach of the contract between the Office of Sport and Barrie Smith Motorsport.

Finding 7

That the Office of Sport failed in its duty to ensure value for money in the expenditure of public funds by not seeking to terminate its contract with Barrie Smith Motorsport following the installation of the second-hand material from Wallaby Hill at the Sydney International Equestrian Centre. This failure led to questions about the quality of the surface and an ongoing lack of confidence in the facility amongst some in the equestrian community.

Finding 8

That the Office of Sport was misled by Mr Barrie Smith about the availability of his product, using the excuse of dock delays to pursue the low-cost option of transferring used materials from a failed arena at Wallaby Hill (saving himself and OTTO Sport money). In evidence to the inquiry, Mr Smith was asked (by the Chair) if it was always his intention to source the materials from Ms Alexandra Townsend's property, to which he replied 'Certainly' and then changed his answer to 'No'. The committee found Mr Smith to be an unconvincing witness.

Finding 9

That the Office of Sport has since taken steps to rectify the contamination of the upgraded arena surface at the Sydney International Equestrian Centre, and it appears that the surface is now safe for use. However, as it cannot be guaranteed that all contaminated material has been removed, parts of the equestrian community will continue to have a lack of confidence in the upgraded arena surface.

Recommendation 7

That NSW Police give consideration to evidence received during this inquiry regarding Mr Barrie Smith, Mr Bruce Farrar and Ms Alexandra Townsend in order to examine whether there has been any potential breach of the *Crimes Act 1900*.

Appendix 1 Submissions

No.	Author
1	Dressage NSW, Eventing NSW and Jumping NSW
2	Ms Berni Saunders
3	Equestrian Services
4	Confidential
5	Ms Meredith Branson
6	Ms Vicki Roycroft
7	Mr James Mathers
8	Mrs Maggie Dawkins
9	Miss Colleen Brook
10	Name suppressed
11	Mr Rod Brown
12	Capricorn (Australia) Pty Ltd
13	Waratah Showjumping Inc
14	Name suppressed
15	Name suppressed
16	Confidential
16a	Confidential
17	Name suppressed
18	Name suppressed
19	Confidential
20	Ms Judith Fasher
21	Ms Hannah Brooks
22	James Mooney
23	Confidential
24	Confidential
25	Mr Grant Mistler
26	Equestrian NSW
26a	Equestrian NSW
27	NSW Independent Commission Against Corruption
28	Office of Sport

Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Monday 29 November 2021	Ms Karen Jones	Chief Executive, Office of Sport
Macquarie Room, Parliament House, Sydney	Mr Feargus O'Connor	Executive Director, Office of Sport
	Mr Matt Miller	Former CEO, Office of Sport
	Mr Bruce Farrar	CEO, Equestrian NSW
	Professor Brad Frankum	Chair, Equestrian NSW
	Ms Helen Baston	Board Member, Equestrian NSW
	Mr Barrie Smith	Barrie Smith Motorsport
Thursday 17 March 2022	Ms Alexandra Townsend	Board Member, Equestrian NSW
Macquarie Room, Parliament House, Sydney	Mr Lou Verwey	Director, Capricorn (Australia) Pty Ltd
	Mr John Vallance	Individual who provided technical advice regarding tender
	Ms Mary Seefried	Individual who provided technical advice regarding tender
	The Hon Geoff Lee MP	Former Minister for Sport
	Mr Peter Dingwall	Former President, Equestrian NSW

Appendix 3 Minutes

Minutes no. 10

Wednesday 7 July 2021
 Public Works Committee
 Via videoconference, 11.02 am

1. Members present

Mr Mookhey, *Chair*
 Mr Banasiak, *Deputy Chair*
 Ms Boyd
 Mr Farraway
 Mr Khan
 Mr Mallard
 Ms Moriarty

2. Apologies

Mr Latham

3. Previous minutes

Resolved, on the motion of Mr Banasiak: That draft minutes no. 9 be confirmed.

4. Inquiry into the granting of contract number OoS17/18-021 by the Office of Sport

4.1 Terms of reference

The committee noted the following terms of reference referred by the House on 23 June 2021:

That the Public Works Committee inquire into and report on the granting of contract number OoS17/18-021 by the Office of Sport, and in particular:

- (a) the awarding of a contract to Barrie Smith Motor Sports P/L by the Office of Sport to resurface two arenas at the Sydney International Equestrian Centre (SIEC),
- (b) the role played by the board, CEO and members of Equestrian NSW (ENSW), Equestrian Australia and officials within the Office of Sport, in both the application for funding and the process for selection of the grant by the Office of Sport,
- (c) the potential or otherwise for the existence of corrupt conduct and/or conflicts of interest within the Office of Sport, Barrie Smith Motor Sports P/L and ENSW, in the granting of the contract, with reference to the ICAC letter of 1 December 2020 to the Office of Sport,
- (d) Office of Sport correspondence to Mr Barrie Smith showing that the original tender specifications were changed from ‘importing new material and mixing onsite’ at SIEC to ‘relocating a surface from another site which had (already) failed’ and these contaminated materials were taken from the Wallaby Hill (Robertson) property of Alex Townsend, a ENSW Board member,
- (e) whether successive ministers for Sport and the Office of Sport failed to report the information in paragraph (d) above to the appropriate authorities for probity investigation,
- (f) the engagement of and role played by O’Connor Marsden in the examination of probity issues in regard to the granting of the contract and the failure to examine aspects prior to and following the evaluation and awarding of the contract,
- (g) the granting of a peppercorn rent by the Office of Sport to Equestrian NSW for access to and usage of the SIEC site,

- (h) options for rectification of any defects or complete replacement of the indoor arena surface to ensure the arena is safe for horse and rider and capable of use for high level competition, and
- (i) any other related matters.

4.2 Provision of documents to participating member

Resolved, on the motion of Mr Khan: That Mr Latham, who has advised the committee that he intends to participate for the duration of the inquiry into the granting of contract number OoS17/18-021 by the Office of Sport, be provided with copies of meeting papers and unpublished submissions

4.3 Private briefing with the Office of Sport

Resolved, on the motion of Mr Khan: That the committee write to the Hon. Natalie Ward MLC, Minister for Sport, Multiculturalism, Seniors and Veterans requesting a private briefing from the Office of Sport regarding matters related to the inquiry.

4.4 Request for additional information from the Department of Premier and Cabinet

Resolved, on the motion of Mr Farraway: That the committee write to Mr Tim Reardon, Secretary, Department of Premier and Cabinet, seeking an update on the review being undertaken by DPC into the granting of contract number OoS17/18-021 by the Office of Sport.

4.5 Closing date for submissions

Resolved, on the motion of Ms Moriarty: That the closing date for submissions be Friday 3 September 2021.

4.6 Stakeholder list

Resolved, on the motion of Mr Mallard: That the following stakeholders be invited to make written submissions, and that members have two days following the meeting to nominate additional stakeholders:

- The Hon. Natalie Ward MLC, Minister for Sport, Multiculturalism, Seniors and Veterans
- NSW Office of Sport
- Independent Commission Against Corruption
- Department of Premier and Cabinet
- Equestrian NSW
- Ms Alex Townsend, Board Member, Equestrian NSW
- Mr Barrie Smith, Barrie Smith Motorsport
- Wingecarribee Shire Council

4.7 Advertising

The committee noted that the inquiry will be advertised via Twitter, Facebook, stakeholder letters and a media release distributed to all media outlets in New South Wales.

4.8 Hearing dates

Resolved, on the motion of Ms Boyd: That the committee hold one hearing in October/November 2021, the date of which is to be determined by the Chair after consultation with members regarding their availability.

5. Adjournment

The committee adjourned at 11.19 am, *sine die*.

Madeleine Dowd
Committee Clerk

Minutes no. 14

Thursday 30 September 2021
 Public Works Committee
 Via videoconference, 10.50 am

1. Members present

Mr Mookhey, *Chair*
 Mr Banasiak, *Deputy Chair*
 Ms Boyd
 Mr Farraway
 Mr Khan
 Mr Latham (participating)
 Mr Mallard
 Ms Moriarty (from 11.20 am)

2. Correspondence

The committee noted the following items of correspondence:

Sent:

- 29 July 2021 – Chair to Mr Tim Reardon, Secretary, Department of Premier & Cabinet, requesting an update on matters relating to the Office of Sport inquiry.
- 29 July 2021 – Chair to the Hon. Natalie Ward MLC, Minister for Sport, Multiculturalism, Seniors and Veterans, requesting a private briefing from the Office of Sport regarding matters relating to the inquiry.

Received:

- 13 August 2021, Mr Tim Reardon, Secretary, Department of Premier & Cabinet to the Chair, in response to the letter dated 29 July 2021, and noting that DPC is not conducting a review into matters related to the Office of Sport inquiry.
- 27 August 2021, Ms Helen Baston, Director, Equestrian NSW to the secretariat requesting an extension to the submission closing date due to challenges accessing documents in the Equestrian NSW office.

3. Inquiry into the granting of contract number OoS17/18-021 by the Office of Sport**3.1 Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1, 5-7, 9, 11-13, 20, 22, 25-28.

3.2 Name suppressed submissions

The committee noted that the following submissions were partially published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 10 and 14.

3.3 Partially confidential submissions

Resolved, on the motion of Mr Khan:

- That the committee authorise the publication of submission no. 17 with the exception of identifying information which is to remain confidential, as per the recommendation of the secretariat.
- That the committee invite rights of reply from the following named individuals, with individuals given a two week period in which to provide a response:
 - Mr Bruce Farrar (adversely named in submission nos. 2, 3, 8, 12, 15, 18, 21)
 - Ms Judith Fasher (adversely named in submission nos. 2, 12, 15, 18)
 - Ms Julie Farrell (adversely named in submission nos. 2, 3, 8)
 - Mr John Vallance (adversely named in submission nos. 3, 8, 15, 21)

- Ms Mary Seefried (adversely named in submission nos. 8, 15)
 - Mr Peter Dingwall (adversely named in submission nos. 2, 8, 12, 15, 18, 21)
 - Mr Stephen Dingwall (adversely named in submission nos. 2, 8, 12, 15, 18)
 - Ms Nicky Dingwall (adversely named in submission nos. 2, 8 , 18)
 - Ms Alex Townsend adversely (named in submission nos. 3, 8, 12, 15, 18, 21)
 - Mr Barrie Smith (adversely named in submission nos. 2, 3, 8, 12, 15, 18, 21)
 - Mr Shane Rose (adversely named in submission nos. 2, 15, 18)
 - Mr Stuart Tinney (adversely named in submission nos. 2, 15, 18)
 - O'Connor Marsden (adversely named in submission nos. 3, 8)
- That the above individuals be provided with copies of submission nos. 2, 3, 8, 12, 15, 18 and 21 with the exception of the information highlighted by the secretariat.
 - That the committee defer consideration of publication of submission nos. 2, 3, 8, 12, 15, 18 and 21 until after any rights of reply have been received.

3.4 Confidential submissions

Resolved, on the motion of Mr Khan: That the committee keep submission nos. 4, 16, 16a, 19, 23 and 24 confidential, as per the request of the author.

3.5 Private briefing from the Office of Sport

The committee received a private briefing from Ms Karen Jones, CEO, Office of Sport and Mr Feargus O'Connor, Executive Director, Office of Sport, regarding issues related to the inquiry.

3.6 Supplementary questions arising from the private briefing

The committee agreed that supplementary questions for the Office of Sport must be lodged with the secretariat within 7 days.

3.7 Further correspondence to the Office of Sport

Resolved, on the motion of Ms Moriarty: That the committee write to the Office of Sport to request that the 600 documents it provided to the NSW Independent Commission Against Corruption (ICAC) be provided to the committee, together with any other documents relevant to the inquiry.

3.8 Further correspondence to the Hon Natalie Ward MLC, Minister for Sport, Multiculturalism, Seniors and Veterans

Resolved, on the motion of Mr Banasiak: That the committee write to the Hon Natalie Ward MLC, Minister for Sport, Multiculturalism, Seniors and Veterans, forwarding the correspondence from Mr Tim Reardon, Secretary, Department of Premier and Cabinet dated 13 August 2021, and asking what further steps, if any, she intends to take in relation to this matter.

3.9 Correspondence to Wingecarribee Shire Council

Resolved, on the motion of Mr Banasiak: That the committee write to Wingecarribee Shire Council requesting that any documents relating to the removal of the surface from Wallaby Hill, including any necessary planning approvals or development consents, be provided to the committee.

4. Adjournment

The committee adjourned at 12.22 pm, *sine die*.

Madeleine Dowd
Committee Clerk

Minutes no. 15

Wednesday 10 November 2021
 Public Works Committee
 Via videoconference, 2.02 pm

1. Members present

Mr Mookhey, *Chair*
 Mr Banasiak, *Deputy Chair* (from 2.06 pm)
 Ms Boyd
 Mr Farraway
 Mr Khan
 Mr Latham (participating)
 Mr Mallard
 Ms Moriarty

2. Previous minutes

Resolved, on the motion of Mr Mallard: That draft minutes no. 14 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Sent:

- 5 October 2021 – Chair to the Hon Natalie Ward MLC, Minister for Sport, Multiculturalism, Seniors and Veterans, following up on correspondence received by Mr Tim Reardon, Secretary, Department of Premier and Cabinet, regarding a review of matters relating to the Office of Sport inquiry
- 5 October 2021 – Chair to Mr Viv May PSM, Interim Administrator, Wingecarribee Shire Council, requesting that any documents relating to the removal of the surface at Wallaby Hill be provided to the committee
- 7 October 2021 – Chair to Mr Bruce Farrar inviting a response to potential adverse comments made in submissions to the Office of Sport inquiry
- 7 October 2021 – Chair to Ms Judith Fasher inviting a response to potential adverse comments made in submissions to the Office of Sport inquiry
- 7 October 2021 – Chair to Ms Julie Farrell inviting a response to potential adverse comments made in submissions to the Office of Sport inquiry
- 7 October 2021 – Chair to Mr John Vallance inviting a response to potential adverse comments made in submissions to the Office of Sport inquiry
- 7 October 2021 – Chair to Ms Mary Seefried inviting a response to potential adverse comments made in submissions to the Office of Sport inquiry
- 7 October 2021 – Chair to Mr Peter Dingwall inviting a response to potential adverse comments made in submissions to the Office of Sport inquiry
- 7 October 2021 – Chair to Mr Stephen Dingwall inviting a response to potential adverse comments made in submissions to the Office of Sport inquiry
- 7 October 2021 – Chair to Ms Niki Dingwall inviting a response to potential adverse comments made in submissions to the Office of Sport inquiry
- 7 October 2021 – Chair to Ms Alex Townsend inviting a response to potential adverse comments made in submissions to the Office of Sport inquiry
- 7 October 2021 – Chair to Mr Barrie Smith inviting a response to potential adverse comments made in submissions to the Office of Sport inquiry
- 7 October 2021 – Chair to Mr Stuart Tinney inviting a response to potential adverse comments made in submissions to the Office of Sport inquiry

- 7 October 2021 – Chair to Mr Andrew Marsden, Partner, O'Connor Marsden, inviting a response to potential adverse comments made in submissions to the Office of Sport inquiry
- 11 October 2021 – Chair to Ms Karen Jones, CEO, Office of Sport, forwarding questions on notice and supplementary questions arising from the private briefing on 30 September 2021, and requesting certain documents.

Received:

- 10 October 2021 – Mr Bruce Farrar, CEO, Equestrian NSW, to the secretariat requesting an extension in time to respond to potential adverse mention made in submissions to the inquiry
- 10 October 2021 – Ms Mary Seefried to the secretariat in response to correspondence from the Chair regarding comments made in submissions to the Office of sport inquiry
- 12 October 2021 – Ms Julie Farrell to the secretariat in response to correspondence from the Chair regarding comments made in submissions to the Office of sport inquiry
- 19 October 2021 – Mr Barrie Smith to the secretariat in response to correspondence from the Chair regarding comments made in submissions to the Office of sport inquiry
- 21 October 2021 – Mr John Vallance to the secretariat in response to correspondence from the Chair regarding comments made in submissions to the Office of sport inquiry
- 21 October 2021 – Mr Andrew Marsden, Partner, O'Connor Marsden, to the secretariat in response to correspondence from the Chair regarding comments made in submissions to the Office of sport inquiry
- 21 October 2021 – Mr Peter Dingwall to the secretariat in response to correspondence from the Chair regarding comments made in submissions to the Office of sport inquiry
- 21 October 2021 – Ms Marissa Racomelara, Strategic Governance Executive, Wingecarribee Shire Council to the secretariat regarding the committee's request for documents relating to the removal of the surface at Wallaby Hill
- 25 October 2021 – Mr Nicholas Regener, Partner, Makison d'Apice Lawyers, on behalf of Ms Alexandra Townsend, to the secretariat in response to correspondence from the Chair regarding comments made in submissions to the Office of sport inquiry
- 29 October 2021 – Ms Holly Turner, Senior Associate, Hall & Wilcox, on behalf of Mr Bruce Farrar, to the secretariat in response to correspondence from the Chair regarding comments made in submissions to the Office of sport inquiry.

4. Inquiry into the granting of contract number OoS17/18-021 by the Office of Sport

4.1 Public submissions

Resolved, on the motion of Ms Boyd: That the committee authorise the publication of submission nos. 3, 12 and 26a.

4.2 Partially confidential submissions

Resolved, on the motion of Ms Moriarty: That the committee authorise the publication of submission nos. 2, 8, 15, 18 and 21 with the exception of sensitive or identifying information, or adverse mention regarding third parties which is outside the terms of reference, which is to remain confidential, as per the recommendation of the secretariat.

4.3 Written responses to potential adverse comments made in submission nos. 2, 3, 8, 12, 15, 18 and 21

Public responses to potential adverse comments

Resolved, on the motion of Mr Khan: That the committee authorise the publication of the written responses to adverse comments made in submission nos. 2, 3, 8, 12, 15, 18 and 21 from:

- Ms Mary Seefried
- Ms Julie Farrell
- Mr Barrie Smith
- Mr John Vallance

- Mr Andrew Marsden, Partner, on behalf of O'Connor Marsden
- Mr Peter Dingwall.

Resolved, on the motion of Mr Mallard: That hyperlinks to the written responses to adverse comments from Ms Mary Seefried, Ms Julie Farrell, Mr Barrie Smith, Mr John Vallance, Mr Andrew Marsden, Partner, on behalf of O'Connor Marsden and Mr Peter Dingwall, be included on the cover page of the relevant submissions, as per the below table:

Sub no.	Written responses to be hyperlinked on the sub cover page
2	<ul style="list-style-type: none"> • Ms Julie Farrell • Mr Peter Dingwall • Mr Barrie Smith
3	<ul style="list-style-type: none"> • Ms Julie Farrell • Mr John Vallance • Mr Barrie Smith • O'Connor Marsden
8	<ul style="list-style-type: none"> • Ms Julie Farrell • Mr John Vallance • Ms Mary Seefried • Mr Peter Dingwall • Mr Barrie Smith • O'Connor Marsden
12	<ul style="list-style-type: none"> • Mr Peter Dingwall • Mr Barrie Smith
15	<ul style="list-style-type: none"> • Mr John Vallance • Ms Mary Seefried • Mr Peter Dingwall • Mr Barrie Smith
18	<ul style="list-style-type: none"> • Mr Peter Dingwall • Mr Barrie Smith
21	<ul style="list-style-type: none"> • Mr John Vallance • Mr Peter Dingwall • Mr Barrie Smith

Confidential responses to potential adverse comments

Resolved, on the motion of Ms Boyd: That the committee keep the written response to adverse comments from Ms Alex Townsend and Mr Bruce Farrar confidential, as per the request of the authors.

4.4 Answers to questions on notice and supplementary questions

Resolved, on the motion of Ms Boyd:

- That the committee authorise the publication of answers to questions on notice and supplementary questions received from the Office of Sport arising from the private briefing on 29 September 2021
- That the Chair write to the Office of Sport requesting that they resubmit more responsive answers to the questions on notice and supplementary questions
- That the Chair write to the Hon Natalie Ward MLC, Minister for Sport, Multiculturalism, Seniors and Veterans, forwarding the answers to questions on notice and supplementary questions received from the Office of Sport, noting the committee appreciates her efforts in cooperating with this inquiry, and requesting assistance in ensuring more responsive answers are received by the committee.

4.5 Chairs draft witness list for public hearing

The committee considered the Chair's draft witness list, as circulated.

Mr Khan moved: That the draft witness list be amended by removing the Hon Geoff Lee MP, former Minister for Sport and the Hon Stuart Ayers MP, former Minister for Sport.

The committee divided.

Ayes: Mr Farraway, Mr Khan, Mr Mallard.

Noes: Ms Boyd, Mr Banasiak, Mr Mookhey, Ms Moriarty.

Question resolved in the negative.

Resolved, on the motion of Ms Moriarty: That the committee invite the witnesses identified in the Chair's witness list to appear at the hearing on 29 November 2021, and at an additional hearing day in February/March 2022, with the date to be canvassed.

5. Adjournment

The committee adjourned at 2.35 pm, *sine die*.

Madeleine Dowd
Committee Clerk

Minutes no. 16

Monday 29 November 2021

Public Works Committee

Macquarie Room, Parliament House, Sydney at 9.18 am

1. Members present

Mr Mookhey, *Chair*

Mr Farraway

Mr Khan

Mr Latham (participating)

Mr Mallard (via Webex)

Ms Moriarty

2. Apologies

Mr Banasiak, *Deputy Chair*

Ms Boyd

3. Previous minutes

Resolved, on the motion of Ms Moriarty: That draft minutes no. 15 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Sent:

- 16 November 2021 – Letter from the Chair to the Hon Natalie Ward MLC, Minister for Sport, Multiculturalism, Seniors and Veterans, regarding answers to questions on notice and supplementary questions provided by the Office of Sport
- 16 November 2021 – Letter from the Chair to Ms Karen Jones, CEO, Office of Sport, requesting they re-submit more responsive answers to questions on notice and supplementary questions.

Received:

- 12 November 2021 – Letter from the Hon Natalie Ward MLC, Minister for Sport, Multiculturalism, Seniors and Veterans, to the Chair, in response to correspondence from the Chair regarding a review of matters relating to the Office of Sport inquiry
- 16 November 2021 – Email from Ms Amanda Choularton, Senior Policy Advisor, Office of the Hon Stuart Ayers MP, to the secretariat declining the invitation to appear at a public hearing on 29 November 2021 for the Office of Sport inquiry
- 19 November 2021 – Email from Mr Feargus O'Connor, Executive Director, Office of Sport, to the secretariat, providing documents that were previously provided to the NSW Independent Commission Against Corruption, as requested by the committee, and seeking that they be kept confidential
- 23 November 2021 – Email from Mr Stephen Dingwall to the secretariat, declining the invitation to appear at a public hearing on 29 November 2021 for the Office of Sport inquiry
- 23 November 2021 – Letter from Ms Karen Jones, CEO, Office of Sport, to the Chair, in response to the request to re-submit answers to questions on notice and supplementary questions.

5. Inquiry into NSW light rail services**5.1 Terms of reference**

The committee noted the following terms of reference referred by the House on 17 November 2021:

Inquiry into NSW light rail services

That the Public Works Committee inquire into and report on NSW light rail services, and in particular:

- (a) their establishment and procurement, operation and maintenance,
- (b) the provision of alternative transport services, and
- (c) any other related matter.

5.2 Closing date for submissions

Resolved, on the motion of Mr Khan: That the closing date for submissions be 31 March 2022.

5.3 Stakeholder list

Resolved, on the motion of Ms Moriarty: That the secretariat email members with a list of stakeholders to be invited to make written submissions, and that members have two days from the email being circulated to nominate additional stakeholders.

5.4 Online questionnaire

Resolved, on the motion of Mr Khan: That the committee use an online questionnaire to capture individuals' views, and that the draft questions be circulated to the committee for comment, with a meeting on request from any committee member if there is disagreement on the questions.

Resolved, on the motion of Mr Khan: That the committee not accept pro formas.

5.5 Questionnaire report

Resolved, on the motion of Mr Khan: That the secretariat prepare a summary report of responses to the online questionnaire for publication on the website and use in the report, and that:

- only responses from NSW participants will be analysed in the report
- the committee authorises the secretariat to publish the questionnaire report on the inquiry website unless any member raises an objection to publication via email
- individual responses be kept confidential on tabling.

5.6 Hearing dates

Resolved, on the motion of Mr Farraway: That the timeline for hearings be considered by the committee following the receipt of submissions. Further, that hearing dates be determined by the Chair after consultation with members regarding their availability.

6. Inquiry into the granting of contract number OoS17/18-021 by the Office of Sport

6.1 Additional documents provided by the Office of Sport

The committee noted that the Office of Sport have made available the 600 documents provided to the NSW Independent Commission Against Corruption (ICAC), as requested by the committee, and have requested that these documents be kept confidential to the committee.

Resolved, on the motion of Mr Khan: That the 600 documents provided by the Office of Sport, which were previously provided to the ICAC, be kept confidential until they are reconsidered by the committee.

6.2 Deputy Chair

The Chair called for nominations for Deputy Chair for the duration of the public hearing on 29 November 2021.

Mr Khan moved: That Ms Moriarty be elected Deputy Chair for the duration of the public hearing on 29 November 2021.

There being no further nominations, the Chair declared Ms Moriarty elected Deputy Chair for the duration of the public hearing on 29 November 2021.

6.3 Public hearing

Witnesses were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witnesses were sworn and examined:

- Ms Karen Jones, Chief Executive, Office of Sport
- Mr Feargus O'Connor, Executive Director, Office of Sport

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Matt Miller, Former Chief Executive, Office of Sport

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Bruce Farrar, CEO, Equestrian NSW
- Professor Brad Frankum, Chair, Equestrian NSW
- Ms Helen Batson, Board Member, Equestrian NSW

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Barrie Smith, Barrie Smith Motorsport

Mr Smith tendered the following document:

- Letter from Mr Wolfgang Otto, Chief Executive Officer, OTTO Sport International, regarding the analysis of the footing and sand used in the SIEC arenas, dated 12 January 2018

The evidence concluded and the witness withdrew.

The hearing concluded at 3.00 pm.

6.4 Tendered documents

Resolved, on the motion of Mr Khan: That the committee accept and publish the following document tendered during the public hearing:

- Letter from Mr Wolfgang Otto, Chief Executive Officer, OTTO Sport International, regarding the analysis of the footing and sand used in the SIEC arenas, dated 12 January 2018, tendered by Mr Barrie Smith.

6.5 Publication of the video recording of the hearing

Resolved, on the motion of Ms Moriarty: That the committee authorise the publication of the video recording of the hearing on 29 November 2021.

6.6 Further witness at the next hearing

Resolved, on the motion of Ms Moriarty: That Mr Darren Crumpler, Former Director, Olympic Sport Venues, Office of Sport, be added to the witness list for the second public hearing in March 2022.

6.7 Request for documents

Resolved, on the motion of Ms Moriarty: That the committee write to the Office of Sport to request the following documents be provided on a confidential basis:

- The invitation to tender for the relevant contract
- Responses to tender for the relevant contract
- Tender evaluation report.

6.8 Further correspondence to Wingecarribee Shire Council

Resolved, on the motion of Ms Moriarty: That the committee write to Wingecarribee Shire Council asking if a development consent was required for the storage of material in stockpiles at the Wallaby Hill property, or for the removal of the material from the Wallaby Hill property on trucks.

7. Adjournment

The committee adjourned at 3.13 pm, *sine die*.

Madeleine Dowd
Committee Clerk

Minutes no. 17

Thursday 17 March 2022
Public Works Committee
Macquarie Room, Parliament House, Sydney at 9.04 am

1. Members present

Mr Mookhey, *Chair* (until 12.36 pm)
Ms Moriarty
Mr Amato
Ms Boyd
Mr Mallard (from 9.13 am)
Mr Latham (participating from 9.10 am)

2. Apologies

Mr Banasiak, *Deputy Chair*
Ms Boyd

Mr Poulos

3. Change of membership

The committee noted the following membership changes:

- The Hon Wes Fang MLC replaced the Hon Trevor Khan MLC as a substantive member of the committee from 25 January 2022 to 1 March 2022
- The Hon Lou Amato MLC replaced the Hon Wes Fang MLC as a substantive member of the committee from 1 March 2022
- The Hon Taylor Martin MLC replaced the Hon Sam Farraway MLC as a substantive member of the committee from 25 January 2022 to 1 March 2022
- The Hon Peter Poulos MLC replaced the Hon Taylor Martin MLC as a substantive member of the committee from 1 March 2022.

4. Previous minutes

Resolved, on the motion of Ms Moriarty: That draft minutes no. 16 be confirmed.

5. Correspondence

The committee noted the following items of correspondence:

Sent:

- 9 February 2022 – Letter from Chair to Ms Karen Jones, CEO, Office of Sport, requesting a number of additional documents be provided to the committee on a confidential basis
- 9 February 2022 – Letter from the Chair to Mr Viv May PSM, Interim Administrator, Wingecarribee Shire Council regarding information relating to the Office of Sport inquiry

Received:

- 9 March 2022 – Email from Ms Julie Farrell to the secretariat declining an invitation to appear at a public hearing on 17 March 2022 for the Office of Sport inquiry
- 9 March 2022 – Email from Mr Andrew Marsden, Partner, O'Connor Marsden & Associates, declining an invitation to appear at a public hearing on 17 March 2022 for the Office of Sport inquiry and offering to answer written questions from the committee
- 9 March 2022 – Email from Ms Marissa Raccomelara, Strategic Governance Executive, Wingecarribee Shire Council, in response to correspondence relating to the Office of Sport inquiry
- 10 March 2022 – Email from Mr Darren Crumpler, Former Director, Olympic Sport Venues, Office of Sport, declining an invitation to appear at a public hearing on 17 March 2022 for the Office of Sport inquiry.

6. Inquiry into the granting of contract number OoS17/18-021 by the Office of Sport

6.1 Answers to questions on notice

Resolved, on the motion of Mr Amato: That the following answers to questions on notice be published on the inquiry webpage:

- answers to questions on notice from Mr Barrie Smith – received 8 February 2022
- answers to questions on notice from Ms Karen Jones and Mr Feargus O'Connor – received 11 February 2022.

6.2 Reporting timeline

Resolved, on the motion of Mr Amato: That the report deliberative be held on 8 September 2022 and that the committee table its report by 15 September 2022.

6.3 Request to be accompanied by a legal adviser

Resolved, on the motion of Ms Moriarty: Mr Nicholas Regener, Partner, Makinson d'Apice Lawyers, be permitted to accompany his client, Ms Alexandra Townsend, during her evidence at the public hearing on 17 March 2022.

6.4 Deputy Chair

The Chair called for nominations for Deputy Chair for the duration of the public hearing on 17 March 2022.

Mr Amato moved: That Ms Moriarty be elected Deputy Chair for the duration of the public hearing on 17 March 2022.

There being no further nominations, the Chair declared Ms Moriarty elected Deputy Chair for the duration of the public hearing on 17 March 2022.

6.5 Public hearing

Witnesses were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings and other matters.

The following witness was sworn and examined:

- Ms Alexandra Townsend, Board member, Equestrian NSW

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Lou Verwey, Director, Capricorn (Australia) Pty Ltd (via videoconference).

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr John Vallance, Individual who provided technical advice regarding tender
- Ms Mary Seefried, Individual who provided technical advice regarding arena (via videoconference)

The evidence concluded and the witnesses withdrew.

The Hon Geoff Lee MP, Former Minister for Sport, was admitted (via videoconference).

The Chair noted that members of Parliament swear an oath to their office, and therefore do not need to be sworn prior to giving evidence before a committee.

Minister Lee tendered the following document:

- Correspondence from The Hon. Dr Geoff Lee MP to Ms Maggie Dawkins regarding the surface at the Sydney International Equestrian Centre dated 11 February 2021

The evidence concluded and the witness withdrew.

6.6 Additional right of reply correspondence

Resolved, on the motion of Mr Amato: That the committee write to the following stakeholders to offer them the right of reply to potentially adverse mention made during the public hearing on 17 March 2022:

- Office of Sport
- Mr Bruce Farrar
- Mr Barrie Smith
- Mr Matt Miller

The Chair left the meeting.

6.7 Resumption of public hearing

The following witness was admitted, sworn and examined:

- Mr Peter Dingwall, Former President, Equestrian NSW

The evidence concluded and the witness withdrew.

The hearing concluded at 1.10 pm.

6.8 Tendered documents

Resolved, on the motion of Mr Mallard: That the committee accept and publish the following document tendered during the public hearing:

- Correspondence from The Hon. Dr Geoff Lee MP to Ms Maggie Dawkins regarding the surface at the Sydney International Equestrian Centre dated 11 February 2021

7. Adjournment

The committee adjourned at 1.10 pm, *sine die*.

Madeleine Dowd
Committee Clerk

Minutes no. 18

Thursday 8 September 2022
Public Works Committee
Room 1136, Parliament House, Sydney at 10.08 am

1. Members present

Mr Mookhey, *Chair*
Mr Latham (substituting for Mr Banasiak)
Ms Moriarty (via Webex)
Mrs MacDonald (substituting for Mr Amato)
Mr Poulos

2. Apologies

Ms Boyd
Mr Mallard

3. Previous minutes

Resolved, on the motion of Ms Moriarty: That draft minutes no. 17 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Sent:

- 18 March 2022 – Letter from Chair to Mr Bruce Farrar, CEO, Equestrian NSW, inviting a response to potential adverse comments made during a public hearing on 17 March 2022 for the Office of Sport inquiry
- 18 March 2022 – Letter from Chair to Ms Karen Jones, CEO, Office of Sport, inviting a response to potential adverse comments made during a public hearing on 17 March 2022 for the Office of Sport inquiry
- 18 March 2022 – Letter from Chair to Mr Matt Miller, Former CEO, Office of Sport, inviting a response to potential adverse comments made during a public hearing on 17 March 2022 for the Office of Sport inquiry

Received:

- 24 March 2022 – Email from Mrs Maggie Dawkins to the secretariat regarding comments made by the Hon Geoff Lee MP, Former Minister for Sport, at a public hearing in 17 March 2022
- 8 April 2022 – Letter from Mr Barrie Smith to the secretariat in response to correspondence from the Chair regarding comments made during a public hearing on 17 March 2022 for the Office of Sport inquiry
- 14 April 2022 – Letter from Mr Bruce Farrar to the secretariat in response to correspondence from the Chair regarding comments made during a public hearing on 17 March 2022 for the Office of Sport inquiry
- 11 April 2022 – Letter from Ms Karen Jones, CEO, Office of Sport, to the secretariat in response to correspondence from the Chair regarding comments made during a public hearing on 17 March 2022 for the Office of Sport inquiry
- 19 April 2022 – Letter from Mr Peter Dingwall to the secretariat responding to comments made during a public hearing on 17 March 2022 for the Office of Sport inquiry.

5. Inquiry into the granting of contract number OoS17/18-021 by the Office of Sport**5.1 Answers to questions on notice**

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Mr Lou Verwey, Capricorn, received on 21 April 2022
- answers to questions on notice from Mr John Vallance, received on 21 April 2022.

5.2 Response to right of reply correspondence

The committee noted that, as agreed by email on 27 July 2022, the following responses to comments made during the public hearing on 27 March 2022 were published on the inquiry webpage:

- Mr Barrie Smith, received 8 April 2022
- Mr Bruce Farrar, received 14 April 2022
- Ms Karen Jones, CEO, Office of Sport, received 11 April 2022
- Mr Peter Dingwall, received 19 April 2022.

5.3 Consideration of Chair's draft report

The Chair submitted his draft report, entitled Granting of contract number OoS17/18-021 by the Office of Sport, which, having been previously circulated, was taken as being read.

Discussion ensued.

Resolved, on the motion of Mr Latham: That:

- the committee defer the adoption of the report
- the Chair, in conjunction with the secretariat, revise the Chair's draft report to reflect the additional findings and recommendations discussed during the meeting
- the committee meet on Wednesday 21 September 2022 at 1.30 pm to deliberate on the revised Chair's draft report.

Resolved, on the motion of Mr Latham: That the report be tabled on Wednesday 28 September 2022.

6. Adjournment

The committee adjourned at 10.36 am until 1.30 pm, Wednesday 21 September 2022, report deliberative (Office of Sport), Room 1254.

Madeleine Dowd
Committee Clerk

Draft minutes no. 19

Wednesday 21 September 2022

Public Works Committee

Room 1234, Parliament House, Sydney at 1.42 pm

1. Members present

Mr Mookhey, *Chair*

Mr Amato

Mr Latham (substituting for Mr Banasiak)

Mr Mallard

Ms Moriarty

Mr Poulos

2. Previous minutes

Resolved, on the motion of Ms Moriarty: That draft minutes no. 18 be confirmed.

3. Inquiry into the granting of contract number OoS17/18-021 by the Office of Sport

3.1 Consideration of Chair's draft report

The Chair submitted his draft report, entitled Granting of contract number OoS17/18-021 by the Office of Sport, which, having been previously circulated, was taken as being read.

Mr Mallard moved: That:

a) Finding 4 be amended by omitting after 'contract number OoS17/18-02' the following words:

'as set out below:

- Mr Farrar, on behalf of Equestrian NSW, sought funding from the NSW Government for the Sydney International Equestrian Centre upgrade
- Mr Farrar discussed the upgrade with Mr Barrie Smith prior to the contract being awarded
- Mr Farrar included Ebb and Flow technology in the Equestrian NSW funding request, knowing that this requirement would heavily favour Barrie Smith Motorsport
- Mr Farrar was a member of the Technical Advisory Committee set up to provide expert advice on the tender. The Technical Advisory Committee ultimately recommended Barrie Smith Motorsport despite this not being the initial recommendation of the Tender Evaluation Panel.'

b) Finding 5 be amended by omitting after 'contract number OoS17/18-02' the following words:

'specifically by:

- failing to include in the terms of reference for the O'Connor Marsden probity review the use of the second-hand material from Wallaby Hill at the Sydney International Equestrian Centre
- failing to investigate the potential conflict of interest relating to Ms Alexandra Townsend, and her involvement with Equestrian NSW and Barrie Smith Motorsport
- failing to investigate the potential financial benefit received by Ms Alexandra Townsend as a result of the second-hand material from Wallaby Hill being used at Sydney International Equestrian Centre
- failing to be transparent about the emerging issues relating to the contamination of the upgraded surface at the Sydney International Equestrian Centre.'

c) Finding 7 be amended by omitting after 'expenditure of public funds' the following words:

'by not seeking to terminate its contract with Barrie Smith Motorsport following the installation of the second-hand material from Wallaby Hill at the Sydney International Equestrian Centre.'

This failure led to questions about the quality of the surface and an ongoing lack of confidence in the facility amongst some in the equestrian community.'

Question put.

The committee divided.

Ayes: Mr Amato, Mr Mallard, Mr Poulos.

Noes: Mr Latham, Mr Mookhey, Ms Moriarty.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Resolved, on the motion of Mr Latham: That Finding 4 be amended by inserting ', which recommended Capricorn Australia. Barrie Smith Motorsport was ranked second with the most expensive tender. The views of the Technical Advisory Committee helped Barrie Smith Motorsport win the tender' after 'despite this not being the initial recommendation of the Tender Evaluation Panel'.

Resolved, on the motion of Mr Latham: That the following new finding be inserted after Finding 7:

'Finding X'

That the Office of Sport was misled by Mr Barrie Smith about the availability of his product, using the excuse of dock delays to pursue the low-cost option of transferring used materials from a failed arena at Wallaby Hill (saving himself and OTTO Sport money). In evidence to the inquiry, Mr Smith was asked (by the Chair) if it was always his intention to source the materials from Ms Alexandra Townsend's property, to which he replied 'Certainly' and then changed his answer to 'No'. The committee found Mr Smith to be an unconvincing witness.'

Resolved, on the motion of Mr Latham: That the following new paragraph be inserted after paragraph 1.31:

'The Goetech Report dated 19 January 2018 found 'that it is not possible to remove all fabric material' from the surface [FOOTNOTE: Submission 28, Office of Sport, p 59]. Therefore, Barrie Smith Motorsport was requested and attempted rectification of the site, to remove all the contaminated material. This was not possible due to the scale and nature of the problem. SIEC staff then conducted 'emu parades' across the arena to try to remove the foreign mat particles. As late as June 2020 the Office of Sport advised Barrie Smith Motorsport that the presence of the particles 'may increase the likelihood of injury to an equine or human user of the indoor arena and, as such, are considered a hazardous material; and their presence has resulted in the Contractor not supplying materials which are free from defects and fit for purpose for a facility that must meet international competition standard' [FOOTNOTE: Submission 28, Office of Sport, p 77]. The Office of Sport deemed 'the presence of foreign mat particles a Defect' [FOOTNOTE: Submission 28, Office of Sport, p 78.] and required Barrie Smith Motorsport 'to make good such Defect at its cost' [FOOTNOTE: Submission 28, Office of Sport, p 77.] At no time was the contract cancelled.'

Resolved, on the motion of Mr Latham: That paragraph 2.33 be amended by inserting the following new dot point at the end: 'Stephen Dingwall was performing contractual work for OTTO Sport and Barrie Smith Motorsport'. [FOOTNOTE: Evidence, Mr Barrie Smith, Barrie Smith Motorsport, 29 November 2021, p 60.]

Resolved, on the motion of Mr Latham: That paragraph 2.51 be amended by inserting 'overseas. The committee was unable to establish if this was known in advance and if Mr Hoberg was a viable participant in the process' after 'While Mr Hoberg initially indicated he would assist with the provision of technical advice during the tender process, he ultimately was unavailable due to other commitments'.

Resolved, on the motion of Mr Latham: That:

- a) paragraph 3.30 be omitted: 'When this evidence was put to Ms Townsend, she told the committee that she was unaware that the stockpiled surface was being removed from her property and sent to SIEC. Rather, she stated that after she informed OTTO Sport that the surface was not draining correctly, she did not have oversight of the specifics of what was to be done with the removed

material. When explaining this, Ms Townsend stated that: 'I do not know who arranged. I was not part of that arrangement. It was OTTO Sport—Germany's. They said to me, "We're taking it off. We're going to stockpile it. We'll get you a new one." After that, it was of no consequence to me as to who was taking it where and when.' [FOOTNOTE: Evidence, Ms Alexandra Townsend, Board Member, Equestrian NSW, 17 March 2022, p 9.]'

- b) the following new paragraphs be inserted instead:

"The committee heard that there had been substantial construction activity at Wallaby Hill following the installation of the new arena. This included the arena material being dug up once faults had been identified with its performance, stockpiled and then removed to SIEC by at least eight trucks.

Ms Townsend told the committee that she had paid for the Wallaby Hill surface material, giving rise to a suggestion at law that she owned it. Despite this, Ms Townsend stated that she was unaware of who took the stockpiled surface away from her multi-million-dollar equestrian property, which was protected by security gates. [FOOTNOTE: Evidence, Ms Alexandra Townsend, Board Member, Equestrian NSW, 17 March 2022, p 8-9.]

Ms Townsend denied recalling the events leading up to the removal of the surface and stated that after she informed OTTO Sport that the surface was not draining correctly, she did not have oversight of the specifics of what was to be done with the removed material. When explaining this, Ms Townsend said that: 'I do not know who arranged. I was not part of that arrangement. It was OTTO Sport—Germany's. They said to me, "We're taking it off. We're going to stockpile it. We'll get you a new one." After that, it was of no consequence to me as to who was taking it where and when.' [FOOTNOTE: Evidence, Ms Alexandra Townsend, Board Member, Equestrian NSW, 17 March 2022, p 9.]'

Resolved, on the motion of Mr Latham: That paragraph 3.31 be amended by inserting 'at no cost to her' after 'to assist her in removing the surface from Wallaby Hill'.

Mr Mallard moved: That Recommendation 1 be omitted:

"That the NSW Independent Commission Against Corruption give consideration to reopening its investigation of the granting of contract number OoS17/18-02, with specific reference to the use of second-hand material from Wallaby Hill at the Sydney International Equestrian Centre.'

Question put.

The committee divided.

Ayes: Mr Amato, Mr Mallard, Mr Poulos.

Noes: Mr Latham, Mr Mookhey, Ms Moriarty.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Resolved, on the motion of Ms Moriarty: That:

- a) The draft report as amended be the report of the committee and that the committee present the report to the House;
- b) The transcripts of evidence, submissions, tabled documents, answers to questions on notice, answers to supplementary questions and correspondence relating to the inquiry be tabled in the House with the report;
- c) Upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- d) Upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice, answers to supplementary questions and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;

- e) The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- f) The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- g) Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- h) The report be tabled out of session on Wednesday 28 September.

4. Adjournment

The committee adjourned at 2.07 pm, *sine die*.

Madeleine Dowd
Committee Clerk

