

PUBLIC ACCOUNTS COMMITTEE

INQUIRY INTO CONTRACTS ENTERED INTO BETWEEN CONSOLIDATED CONSTRUCTIONS PTY LTD AND MAIN ROADS WA AND THE PUBLIC TRANSPORT AUTHORITY

**TRANSCRIPT OF EVIDENCE TAKEN
AT PERTH
ON WEDNESDAY, 2 JUNE 2004**

SESSION 2

Members

Mr J.B. D'Orazio (Chairman)
Mr M.G. House (Deputy Chairman)
Mr J.L. Bradshaw
Mr A.J. Dean
Ms J.A. Radisich

[10.15 am]

LYONS, MR ROBERT BENTLEY

Senior Civil Engineer, Consolidated Constructions Pty Ltd, examined:

BARNES, MR SIMON ROGER

Civil Engineer, Consolidated Constructions Pty Ltd, examined:

The CHAIRMAN: A committee hearing is a proceeding of the Parliament and it warrants the same respect the proceedings in the House itself demand. Even though you are not required to give evidence on oath, any deliberate misleading of the committee may be regarded as contempt of Parliament. Have you completed the "Details of Witness" form?

Mr Barnes: Yes.

Mr Lyons: Yes.

The CHAIRMAN: Do you understand the notes attached to it?

Mr Barnes: Yes.

Mr Lyons: Yes.

The CHAIRMAN: Did you receive and read the information for witnesses briefing sheet regarding giving evidence before the committee?

Mr Barnes: Yes.

Mr Lyons: Yes.

The CHAIRMAN: Can you give us the background of what you actually did for Consolidated Constructions Pty Ltd? We are inquiring into the Consolidated collapse and the Marble Bar road and the other jobs it had. Would you give us a bit of background of your involvement with Consolidated?

Mr Lyons: I joined Consolidated in August 1981, so I have been with it for 23 years. I started off with it as a project manager, and at the time of the Marble Bar project I was its senior civil engineer. I was responsible for all its civil engineering projects, basically, as the estimator, contract administrator and project manager for the civil works. I was also the manager responsible for its integrated management systems, the design implementation development, the quality management systems, occupational health management systems, environmental systems and risk management systems. I was the estimator for the Marble Bar project. I project-managed it with engineers, one being Simon Barnes and the other Vince Collova. I was off site and would regularly visit the project. I would carry out the off-site contract administration; that is, basically reviewing the invoices and preparing the payments to suppliers and subcontractors, monitoring the progress on site to make sure that we were following our procedures. I would organise the audits for the quality of health environmental systems, either by myself or with Sarah Appleton, who was one of my colleagues and whom I was training in our systems to do all the on-site audits for all our projects.

The CHAIRMAN: Simon, do you want to continue with your background and then we will ask questions?

Mr Barnes: In contrast to Bob, I was with Consolidated for a very short time. I started in the first week of October last year and went straight on to the Marble Bar job as the site manager, working under Vince Collova. I think he started as project manager. I worked on the Marble Bar job until the Christmas break and after that I went back to head office and worked in head office.

The CHAIRMAN: Maybe we will start with you, Simon, because you were on the road, and then we will get to Bob. From the evidence we have had to this point, the actual control of that site was not very flash, and the principal at Carr Civil has told us that the management of the site was deplorable and that he had to go there himself in the end to sort it out. You have been around these sorts of things. What would you say about what was happening on that job?

Mr Barnes: I would agree with the statement made by Mark Blayney. I got there part way through the project and when I got there Mark's site supervision was ordinary.

The CHAIRMAN: And the plant was sitting around not doing anything and that is why all the blowouts occurred, and they had things parked -

Mr Barnes: Yes, they had difficulties, mostly related to their planning and their use of plant.

Mr M.G. HOUSE: So where does the buck stop, Simon?

Mr Barnes: Well, it was a joint effort to get Carr working in the most efficient manner. Main Roads worked with us, we worked with Carr, everyone was working together up there to push the project along and get it finished.

The CHAIRMAN: Carr Civil was indicating that there was not very much input from Consolidated about control of this site. What would your comment be?

Mr Barnes: Vince and I certainly did as much as we could.

The CHAIRMAN: What about trying to resolve some of the problems of subcontractors who were not going to work because they were not getting paid? They were coming to you and Main Roads saying, "Guys, we're not getting paid". At one stage, one of the contractors took all the equipment and parked it up back in his yard.

Mr Barnes: The relationship between Carr and one of its subcontractors got so bad that I stepped in personally and Vince assisted. We actually wrote an agreement between the subcontractor and Carr. So we virtually mediated their disagreements, their disputes.

The CHAIRMAN: But then that contract was not adhered to.

Mr M.G. HOUSE: Simon, was that dispute between Mark Blayney and the contractor, or one of his supervisors and the contractor?

Mr Barnes: One of his subcontractors.

Mr M.G. HOUSE: A lot of evidence we have heard, as the Chairman said, indicates that this job was not well planned or well executed. They are the best words I can think of. I am just trying to get to the bottom of who is responsible for that. Mark Salt was the chief Main Roads guy on the job, you guys were administering it for Consolidated, and then Mark Blayney had guys there for Carr Civil.

Mr Barnes: That sounds correct.

Mr M.G. HOUSE: Was it a mixture of everybody, do you think? It just perhaps did not gel with their personality issues or something that meant it did not work, or -

Mr Barnes: I think Carr Civil's site supervisors probably did not have the experience necessary for a job of that size.

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The CHAIRMAN: As the principal contractor, would you not pull them up and say, "Guys, this has to change because it's just going to blow out"?

Mr Barnes: That went on continuously.

Mr Lyons: I went up a number of times in my capacity as the person with responsibility for the successful completion of this project. To step back a bit, when we awarded the contract to Carr and

worked with Carr on the estimate, I produced my own estimate and Carr produced its estimate. I compared them to ensure its pricing was correct. I emphasised at the beginning of the contract with Carr when we had a meeting with Mark Blayney and McNabb that we were coming into the hot Christmas period and that as the awarding of the project had been delayed after the tender period had expired, we were running into the cyclone season. Therefore, it was made clear to Carr that Mark Blayney was going to have to hit the ground straight away with all the equipment needed to get the job up and running. Basically, from our point of view, it was not an option to be considered to finish after 19 December. Whatever it took to finish that job had to be taken on board. That was agreed at the time.

When Carr started, we organised our side of things, which was the surveyors, the testing, the accommodation, our supervision and all the planning that went into kicking off the project quickly. I am sad to say that Carr Civil had a slow start. It did not arrive with the amount of equipment to kick off the job quickly. In my estimate, we probably lost four weeks of the program that we could not afford to lose at that early stage. It had a kick-on effect. Also, from my point of view, Carr's supervision was not up to the task of running the job. Mark Blayney himself was not on site often enough, and the supervisor he had was not up to the task, in my opinion, of running the job properly.

I went up on a number of occasions. I called Mark Blayney into a site meeting with Vince, Simon and Main Roads and laid it on the line. I said, "Look - your bloke here is not doing the day-to-day planning needed." We had an overall program that Mark Blayney had seen and had been involved in developing. We agreed it was achievable. From the start, his supervisor was not following the program that had been agreed to. We raised it on a number of occasions. Eventually, Mark Blayney had to get rid of this fellow and step in himself and take over the job. I feel that things started to go more smoothly at that point. We had to revise the program a number of times to try to address this loss of time because even in October, about six weeks down the track, I kept saying it was not an option to finish after Christmas. I said they had to do whatever was needed. Mark Blayney increased his resources, but still was not able to be there all the time. His supervisors were not up to the task. From our point of view, we did everything we could to facilitate his day-to-day planning of the work and long-term planning. We found water sources for him, which was his job. We found water sources as water was in short supply. We saved him work on side tracks, which he would have had to develop. We found existing haulage roads that he could use to save him time and effort in constructing side tracks. Main Roads was very supportive in all this. I do not think that it was a lack of planning or support on our part or on Main Roads' part that allowed this situation to develop.

The CHAIRMAN: That maybe so, but this company had been operating for only two years.

Mr Lyons: That is correct.

The CHAIRMAN: We found out this morning that it had very little working capital at the time you gave it the contract. It had no experience of doing a job of this size. However, you gave him a project in the middle of nowhere with enormous problems on the ground. You are the principal contractor.

Mr Lyons: I do not agree. I did not see enormous problems on the ground as far as the workability of the material was concerned. The location of the project had its own problems as far as logistics were concerned, but with the planning, which we do rather well, even if I say so myself, this job should have run fairly smoothly. I think the project as a whole could be considered to be quite successful. With the working relationship we had with Main Roads, no major technical issues had to be resolved.

Mr Barnes: Can I just say that this has got a little out of perspective? That job was a 19-week contract. I am sure it was going to, or did, finish within 23 weeks. That is not too bad. I think if it had not been for Consolidated falling over, Carr would have come through it all right and would

have been a lot better for the experience. Consolidated probably would have received R5 qualification - maybe; maybe not.

The CHAIRMAN: What is R5 qualification?

Mr Barnes: It is a Main Roads qualification to do roadworks of a certain level. To put it back into perspective, it was not a disaster by any means. For Carr, I think -

The CHAIRMAN: Mark Blayney from Carr Civil told us in his evidence that it was a disaster for him. Even if you had paid all the money, he was going to make a \$1 million loss on the project.

Mr Lyons: I cannot comment on that.

The CHAIRMAN: He told us in evidence that we heard in Karratha that in spite of the nature of the project, he would have lost \$1 million on the project.

Mr Barnes: Has that been verified? We asked him several times on site, "Are you going to be alright? Will you get through this project? Do we need to do anything drastic to help you?" He said that he was going to be okay and he would get through it.

Mr M.G. HOUSE: That is a good question, Simon, because he told us that he could not differentiate his costs from the Harding River Dam job that was going on at the same time. He had other jobs. He indicated that he was overlapping the expenses of all the jobs. The administrator this morning indicated that he found it difficult to differentiate the costs, too. Your question is valid. Nevertheless, this company lost a lot of money in a short time on a couple of jobs. It must have lost money somewhere.

The CHAIRMAN: The amount outstanding from Consolidated is about \$1.2 million or \$1.5 million, and Carr has debts of \$3 million. Somewhere it has lost money.

Mr Lyons: I cannot answer that. I do not know what his accounts are like. I know I certified a final payment to him of \$1.1 million or thereabouts that was due to be paid at the end of February.

The CHAIRMAN: I understand that, and we will get to that aspect.

[10.35 am]

Mr Lyons: I also know that at the time he was doing the Harding River job and that the contract administrator for that job, Steve Taylor, had contras against Carr amounting to, from memory - I could be wrong - about \$300 000-odd.

The CHAIRMAN: Yes, but it has said that it had \$600 000 in extras against it, so that is where some of the discussion occurred. I turn to your final payment. The contractors on site had not been paid, and there was obviously severe unrest among subcontractors. You say that you then made the final payment to them, based on the statutory declaration that he gave you that all the subcontractors had been paid.

Mr Lyons: The final payment to him, which I had certified ready for payment, was based on a statutory declaration that he sent me. He sent me a statutory declaration that said that he had paid all his subcontractors or had come to payment arrangements with them. I rang him and said, "What do you mean? What are these arrangements?" He said, "It relates to Stubbs contracting. We're a bit behind, but I need this payment and then I have agreed with them that I will bring them up to date when you pay me."

Mr M.G. HOUSE: Was it only KG Stubbs Earthmoving and Mining Contractors?

Mr Lyons: Only Stubbs was mentioned. I then had a call from Stubbs.

The CHAIRMAN: Yes, but all these other companies were also jumping up and down about not being paid.

Mr Lyons: They did not approach me.

Mr M.G. HOUSE: However, he had an arrangement with the bitumen contractors, for example, for them to not be paid until the end of the job - until the third spraying was done. Did he not tell you about that?

Mr Lyons: No.

The CHAIRMAN: And the concrete guy who had not been paid. Surely your guys on site would have known that the other subbies - forget about Stubbs - had not been paid, because they were screaming that one of the truck drivers from Geraldton was going to take his plant away.

Mr Barnes: There were certain rumblings before Christmas. As I have said, I was up there only until Christmas. After Christmas, it might have escalated.

Mr Lyons: We actually facilitated two payments to him in December through Main Roads assisting us. Because he was going to work over the Christmas break, we facilitated an initial payment and then a secondary payment for December to help him out. We knew in December that he was tight for cash and the job was hurting him. We did not know the extent. He said that he had been talking to his accountant and his accountant had said that he should be able to work his way through. However, we were doing everything we could to try to pay him as soon as we were paid by Main Roads in December and November. We paid him the five payments within, I believe, days of Main Roads paying us.

Mr M.G. HOUSE: Who is Mark Blayney's accountant? Can you recall?

Mr Lyons: I could not tell you offhand.

The CHAIRMAN: When you got the statutory declaration from Carr Civil that said -

Mr Lyons: I queried it.

The CHAIRMAN: You queried it, but you did not really query it that much. You queried it only for Stubbs, because obviously your people on site would have known that all these other people had not been paid.

Mr Lyons: I did not know that the other people had not been paid. I queried what he meant by the other arrangements that had been made and I was given to understand that that related to Kevin Stubbs. I knew that Kevin Stubbs was upset because he had not been paid. Kevin Stubbs had been in contact with me. Kevin Stubbs approached me and said that he had not been paid. I said to him that we had paid him for all the work up to December - this is in January. In fact, we paid him twice in December, so he had his money due as of 30 December. I said that he had another \$1 million coming, which was for the final but one payment, because there was another payment for the release of tension because he was running late. I said that I would let Stubbs know when Carr was being paid so that he would know that Carr had the money and then he could chase Carr for the money. Then I queried Stubbs about the agreement and said that Mark Blayney had told me that they had an agreement and that he had put that in a statutory declaration. He said, "No, we don't have an agreement." I said, "What do you mean? Why not?" I said that we had received nothing; he had talked to us about it but he had not put anything in writing. I followed that through and went back to Mark and said, "Stubbs tells me that you don't have an agreement. You haven't sent him anything." He said, "Yes, we have; we e-mailed it to him." I went back to Stubbs and said, "He says you've got an e-mail." He said no he had not, so I got a copy of the e-mail from Mark Blayney and then I discovered that the e-mail had gone to the wrong address. The e-mail address had been typed incorrectly, but it had not bounced. Normally when an e-mail goes to the wrong address, it bounces back. I asked him whether it bounced back and he said that it did not. I tried the same e-mail address and it did not bounce. I tried it on different versions and they all bounced except for that one. For some reason, there is a particular e-mail address that is incorrect but does not bounce.

Mr M.G. HOUSE: He might have two e-mail addresses. It is possible.

Mr Lyons: It is possible.

Mr M.G. HOUSE: He might have and he just did not open the second one, because his wife gave us that same address.

Mr Lyons: I gave him a copy of the bounced e-mail address and he said that it was not theirs. Mrs Stubbs said that it was not theirs. Having sorted that out, I went back to Stubbs and said, "He sent it to this address, it didn't bounce and I have checked it; it doesn't bounce." He assures me that he has tried to do the right thing. I have what he was going to send you. I do not have a copy of it with me, but you can follow that up.

Mr M.G. HOUSE: Was this discussion with his wife or with him?

Mr Lyons: With his wife.

The CHAIRMAN: That part of the contract is okay. Let me get back to the actual contract when you did the estimation for this job and you got Carr Civil. Did you use only Carr Civil, or did another contractor give you a price for this job?

Mr Lyons: No. We were looking at getting a number of prices, but part of my job with Consolidated is to try to increase our rating from an R4 prequalification to R5. My strategic thrust was to try to build up in house experienced engineers for roadworks, and we were looking at doing a deal with Carr. The reason for that was that at the time we were tendering, which was back in January or February 2003, Carr was working for us at Harding Dam. John Bell recommended Carr to me and said that it was doing a good job on site at the time. I called Carr and asked whether it had done any Main Roads jobs before. It had not, but it had done subdivision work and roadworks in the Burrup and it knew what it was doing. I said that I wanted to have a strategic alliance. Consolidated was building up strategic alliances with northern contractors as part of a long-term project to work in the Burrup, and also for our R5 rating with Main Roads. We decided to take on Carr. We would provide all the quality occupational health and environmental systems, which it lacked. We would provide the independent testing, which we could control, so that there was independent testing of its work. We would provide the survey and it would carry out the works.

[10.45 am]

The CHAIRMAN: What about the financial capacity to carry out the work? Did you check their stability? They had been operating only since July 2002, as we found out this morning. They had \$300 000 in working capital but you were doing a \$6 million project.

Mr Lyons: No, I did not check that. I spoke to our contract administrator on the job up at Harding Dam and I asked him his opinion. He told me at that time that they seemed to know what they were doing and they were working okay. In those circumstances, if they are performing well on one of our jobs I would have said it was okay for them to work on this job, especially as I had done my own estimate of the work and the cost of the job. Their estimate would have gelled reasonably well with mine.

The CHAIRMAN: How close was their estimate to your estimate?

Mr Lyons: About five per cent.

Mr M.G. HOUSE: How big a part did you have in the Harding River Dam project?

Mr Lyons: My only role -

Mr M.G. HOUSE: The company.

Mr Lyons: The Harding River project was working for O'Donnell Griffin as we had a joint venture with Decmil. So we provided a contract administrator to Decmil to do the contract administration for that job.

The CHAIRMAN: We have covered Carr Civil fairly well. Let us get to Consolidated itself. A number of creditors have said that Consolidated was not paying. Forget about Carr, which is another issue. Consolidated were not paying. The guy who had the caravan park basically threatened you if you did not pay. They were going to stop feeding your people.

Mr Lyons: Yes, that is correct.

The CHAIRMAN: There was a shop owner.

Mr Lyons: A shop owner? I was not aware of that.

The CHAIRMAN: Sorry, roadhouse owner.

Mr Lyons: Yes. The person supplying.

The CHAIRMAN: And also the caravan park when you did not pay for the accommodation. There was \$5 000 or something like that outstanding.

Mr Lyons: Was there?

The CHAIRMAN: Forty thousand dollars was outstanding.

Mr Lyons: At the end of the job?

The CHAIRMAN: Yes, at the end of the job.

Mr Lyons: To the roadhouse or the caravan park?

Mr M.G. HOUSE: I will have to check the exact figure with the caravan park but from memory it was \$42 000. The roadhouse was -

The CHAIRMAN: Ninety thousand dollars.

Mr Lyons: Ninety thousand? Okay. We had a little bit of trouble to start with in getting the invoices down to me to certify. The mail out of Marble Bar is not every day. It takes some time to get down.

Ms J.A. RADISICH: Did you always receive the originals?

Mr Lyons: I received the originals.

The CHAIRMAN: Okay. Even if you give the mail a week with a slow courier run, it will not explain why it was not paid seven months later. It started in July and was not paid by February. Although you paid a portion of that, it was only after they threatened you that they would not feed your people that day.

Mr Lyons: That is not -

Mr Barnes: I think the progress payments were up to date.

Mr Lyons: They were paid until the end of December, to the best of my knowledge. I certified all their payments. Our accounting system is broken into separate parts for subcontractor payments and supplier payments. I certify all the supplier payments promptly. That went into our system. If I got an invoice from the roadhouse, I would check that, note it down and then I would cost code it and send it off directly into the accounting system.

The CHAIRMAN: How long would it take to get out of the accounting system?

Mr Lyons: I would not know how long it takes. I do know that the accounting system then goes through a process in which the certified payments are logged, I believe, and then every fortnight we do a cheque run. Well, we were doing a cheque run every fortnight. That would then go to the directors for signing. At the time, the directors were not always in because we were having problems over east. Getting the cheques signed sometimes took several days, maybe even a week. It would then be up to Steven to release the cheques.

The CHAIRMAN: You have been involved with this company for a long time - Consolidated.

Mr Lyons: Yes, 23 years.

The CHAIRMAN: Would you say its financial stability -

Mr Lyons: The financial stability was, in my opinion over 23 years, very good. We used to be one of the best payers in Perth. We paid on time and ahead of time.

Mr M.G. HOUSE: Were you surprised when it went into administration? Was it a bit of a shock to you?

Mr Lyons: Yes.

Mr M.G. HOUSE: Did you not see it coming?

Mr Lyons: No, I did not see it coming.

Mr M.G. HOUSE: Did you not see it coming until the actual day it happened?

Mr Lyons: No. I saw some people wandering around a couple of days before we went into administration. They called us all together on the Friday. They had been wandering around for about four days beforehand.

The CHAIRMAN: What about the problems you were supposed to have on Christmas Island two years ago?

Mr Lyons: Sorry?

The CHAIRMAN: The project you did at Christmas Island when Consolidated was already in trouble. They said they did not think they had a problem.

Mr Lyons: It had been discussed at the executive level - well, the senior staff level. The jobs that we had in Sydney and David Jones were causing us cash-flow problems. The overall financial health of the company, although it was depleted, was that we were still net cash positive.

Mr M.G. HOUSE: This job was a bit out of the ordinary for your company, was it not? I mean you had done work for Main Roads with bridge building and on the Roe Highway. You were basically a construction company. To the best of my knowledge you had never done a job in rural areas, particularly in the Pilbara, Kimberley or anywhere like that.

Mr Lyons: Originally, we used to do a lot of this sort of work, then we went through a time when we had changes of the managing director. One in particular saw commercial building as more attractive than civil works. The civil side of the company was allowed to run down, which was against my better judgment, but there you go. We ticked over with about somewhere between \$5 million and \$10 million a year in turnover from civil works. In my time I personally have done quite a lot of road sealing for Main Roads; certainly a lot of bridges. We have done roadworks associated with bridges. That is the sort of work we targeted. There was a strong structural component as well as the roadworks component. We were trying at the time to get into straight earthworks contracts. The Kenwick job was a good kick-off for us because it had about \$10 million dollars worth of roadworks, I believe. The rest was structures. On the back of that we were looking to increase the amount of straight earthworks we did. We were certainly capable of managing that sort of work; there was no doubt about that.

[10.55 am]

The CHAIRMAN: You signed some stat decs to Main Roads. The last one said "to the best of my knowledge". What does that mean?

Mr Lyons: It means that I have done what I consider to be due diligence; I checked that the subcontractor payments for all the subcontractors had left the building.

The CHAIRMAN: How did you check that they had left the building?

Mr Lyons: By going to the girl who has a listing of all the cheques and when they are due. She ticks them off to show that they have left the building.

Mr M.G. HOUSE: Why do you think it was necessary to change the wording in the last statutory declaration?

Mr Lyons: I changed the wording in several ways. I changed the wording to give it a time frame to make it clear that the wording related to a particular time. In the last case it was up until 31 December. That made it clear to Main Roads that we had paid what we considered to be all our obligations to the subbies as of that date.

The CHAIRMAN: The job had not finished.

Mr Lyons: I had to do it every month.

Mr M.G. HOUSE: Did you receive legal advice about that?

Mr Lyons: No.

Mr M.G. HOUSE: I do not consider the document to be a statutory declaration; I do not believe it would stand up in court. However, I am not a legal person, so that might need to be qualified. Something must have triggered you to change the wording in what you thought was a statutory declaration. When signing a statutory declaration, it is like putting yourself on the line.

Mr Lyons: I am well aware of that.

Mr M.G. HOUSE: Something must have triggered you to do that. What was it?

Mr Lyons: I knew we were having cash-flow problems and I knew that our suppliers - not the subcontractors - had not been paid on time or had been paid late. My stat dec was not in relation to suppliers but to subcontractors. I was trying to make it clear to Main Roads that I had done my due diligence.

Mr M.G. HOUSE: You also just told the committee that you had no inkling and no warning bells went off to alert you that there was anything wrong with this company. Now you are saying that you -

Mr Lyons: It is not so much that. What I meant - or what I said - was that going into liquidation or administration was out of the blue. It was. I had no inkling that we were in that position.

Mr M.G. HOUSE: But you did feel that there were some money problems.

Mr Lyons: It was common knowledge among the staff because we had all been told that we were having cash-flow problems caused by the David Jones job and the Sydney job but we were assured that the court cases were in hand - at least the legal status of it was - so that within a short time frame - before the end of this year - we thought we would have won those court cases. We would still be hurting but we would then be over the hump.

The CHAIRMAN: You said you made sure the stat dec was just to ensure that the payments had left the building. The stat dec to Main Roads was supposedly from Consolidated Constructions to Main Roads saying that the payments had been made and therefore now, please pay us.

Mr Lyons: That is correct.

The CHAIRMAN: However, you are now telling the committee that that is not true at all.

Mr Lyons: It was true.

The CHAIRMAN: You just said to me that the payments had left the building. Because the payments had left the building does not necessarily mean that the payments had been made.

Mr M.G. HOUSE: The statutory declaration states -

Pursuant to clause 43(b) of the General Conditions of Contract, to the best of my knowledge that all subcontractors have been paid all monies due and payable to them in respect of work under the contract for works to the end of November 2003.

Mr Lyons: That is correct

Mr M.G. HOUSE: It does not say anything about cheques leaving the building; it says they have been paid. Because it says that the payments had been made, that means that you believed that they had received the money.

The CHAIRMAN: And that it had been cleared.

Mr Lyons: I understand what you are saying. I have no means of checking about that part of the cheque. I can check that I raised the invoice or payment form and that the cheque has been printed, signed and posted.

The CHAIRMAN: That is not what the contract with Main Roads is asking. I am not having a go at you personally. Consolidated Constructions had to give a commitment to Main Roads that these people would be paid, not that the cheque had left the building or that the cheques might have been paid to the best of your knowledge; it was Consolidated Constructions telling Main Roads that these people had been paid and therefore Main Roads now had to pay Consolidated.

Mr Lyons: I understand -

The CHAIRMAN: You did it for the first two stat decs. The first two stat decs said that the people had been paid - no ifs, buts or maybes. However, on the last one you wrote "to the best of my knowledge". Firstly, I am not sure that validates it and, secondly, it calls into question the whole process. Was Consolidated Constructions trading inappropriately at the time you signed that stat dec?

Mr Lyons: I believe it was trading solvently at the time.

The CHAIRMAN: Insolvent or solvently?

Mr Lyons: Solvently. I had no reason to believe we were not trading solvently. I know the company had cash-flow problems but our payments were being made.

The CHAIRMAN: Would it not have been more appropriate at the time if you were worried about giving a commitment that this has happened - and obviously you were worried by the words you have used about giving a commitment to Main Roads - that there are multiple directors who would have known what the position was to sign that stat dec -

Mr Lyons: Maybe I have a different viewpoint about what the term "subcontractors being paid" is. I understand that if they have money in the bank, they have been paid.

The CHAIRMAN: I could send somebody a cheque knowing full well that it will bounce tomorrow, but that does not mean that they have been paid.

Mr Lyons: To the best of my knowledge, none of the cheques I sent out for December has bounced; they have all been cashed.

Mr M.G. HOUSE: Did you talk to anybody at all before you inserted these words in this statutory declaration? I asked you whether you took legal advice and you said that you had not. Did any of the directors talk to you about changing the wording of the statutory declaration?

Mr Lyons: No.

Mr M.G. HOUSE: Did anybody?

Mr Lyons: They would have seen the stat dec, because all that goes -

Mr M.G. HOUSE: Did you change the wording solely on your own discretion without consulting anyone else?

Mr Lyons: Essentially that is correct.

Ms J.A. RADISICH: What do you mean by “essentially”?

Mr Lyons: It is correct, yes.

The CHAIRMAN: Did you discuss it at all with anybody else?

Mr Lyons: I did not think it was necessary at the time, to tell the truth.

Ms J.A. RADISICH: Monty has asked you this question already: what gave you the impetus to insert those first few words “to the best of my knowledge”?

Mr Lyons: There is nothing sinister in it.

Ms J.A. RADISICH: Had you written “to the best of my knowledge” in any other stat dec that you signed before this one?

Mr Lyons: Yes, the stat dec I signed in November.

The CHAIRMAN: Is it written in any other contract?

Mr Lyons: Any other contract?

The CHAIRMAN: Yes.

Mr Lyons: Main Roads is the only one for which I had to sign a statutory declaration.

The CHAIRMAN: Did you not do that for the stat dec for the Water Corporation? Did that not have the same requirement?

Mr Lyons: I did not sign anything for the Water Corporation.

The CHAIRMAN: According to this, you wrote the words “according to the best of my knowledge” in only one stat dec. We have three of them. It is written in the last one.

Mr Lyons: I believe there are two. There is one other one I believe.

Mr M.G. HOUSE: The stat decs you signed in November and December do not have those words written on them.

The CHAIRMAN: If you have another one, the committee would appreciate it if you would table it.

Mr M.G. HOUSE: You obviously took a fair amount of responsibility on your own shoulders to make those decisions rather than talk to the directors. That is interesting.

Mr Lyons: I have a stat dec dated 19 December and another dated 20 February.

The CHAIRMAN: Could we have the stat dec from 19 December?

Mr Lyons: The administrator has requested that any documents that the committee wants be requested through him. He has not authorised me to do that.

Mr M.G. HOUSE: That will be here in about two minutes.

The CHAIRMAN: Have you given the document of 19 December to the administrator? Does he have that document?

Mr Lyons: He would have that document. In the Sydney offices I went in and saw them and said I wanted to get a copy of it.

The CHAIRMAN: Why was that not given to the committee when it asked to be provided with documents?

Mr M.G. HOUSE: I want to get back to your evidence. I am interested that you took no advice, no direction and sought no legal advice about changing the stat dec. You have told us in evidence that you did not feel that there was anything that would have put this company into administration.

Mr Lyons: Correct.

Mr M.G. HOUSE: But then you said there had been some talk among employees that there were cash-flow problems and some issues. To the best of your knowledge, when did that discussion about the company having cash-flow problems arise? Can you remember approximately what date that would have been?

Mr Lyons: I do not have a date as such.

Mr M.G. HOUSE: Would it have been before the contract was awarded by Main Roads to Consolidated Constructions?

Mr Lyons: Yes.

Mr M.G. HOUSE: Well before?

Mr Lyons: I would have said early in April 2003, but I am only surmising.

Mr M.G. HOUSE: Let us be clear about this -

Mr Lyons: The fact that we had been late in making payments had been discussed between the staff and Steven Yovich. We were paying our subcontractors but they were being paid late. We were having temporary cash-flow problems caused by other jobs.

Mr M.G. HOUSE: Did you discuss the Marble Bar road job with Main Roads?

Mr Lyons: Yes.

[11.05 am]

Mr M.G. HOUSE: Did you raise that at any stage with it?

Mr Lyons: No.

Mr M.G. HOUSE: Did it raise the matter with you?

Mr Lyons: No, it did not.

Mr M.G. HOUSE: Did you not feel it necessary to say that it was dealing with a company that might have some cash-flow problems?

Mr Lyons: Not really. It is a funny question, well, no, it is not a funny question but -

The CHAIRMAN: You would not have a job if you said that to Main Roads Western Australia.

Mr Lyons: I think we might not have had a job. We were due, as part of our prequalification process, to give it certified accounts, which were due in February this year. I was involved in maintaining our prequalification process.

The CHAIRMAN: That was based on figures from the end of 2002-03.

Mr Lyons: That is all I had, yes.

The CHAIRMAN: This problem you are talking about arrived in April -

Mr Lyons: It did not arrive in April. I think it had been -

Mr M.G. HOUSE: He is talking about qualified accounts to the end of 2003, and we are talking about April 2003 when there were discussions -

The CHAIRMAN: But the figures were for 30 June 2002.

Mr Lyons: That is correct. We have to provide certified accounts to Main Roads as a normal course of events every two years, I believe.

The CHAIRMAN: But it would have been based on June. So, this problem occurred nine or 10 months later, it built up. There was no way Main Roads would have known about that because -

Mr Lyons: It was not a sudden cash-flow problem. It had manifested itself over a period. I believe it could have been handled better if we had kept our suppliers informed and said, "Bear with us, we have these jobs over east that are hurting us badly." However, for one reason or another we did not - I do not know the reason. Eventually, Steven found it necessary to speak to staff and explain to them that these jobs over east were hurting us temporarily, but our legal advice was that we were going to win.

The CHAIRMAN: With regard to the Marble Bar road, would you say that if it had been normal business and a good project, it would have given you a profitable outcome financially?

Mr Lyons: Yes, without a doubt.

The CHAIRMAN: If you had to work with Carr Civil Contracting Pty Ltd again, would you do it?

Mr Lyons: Yes, I would. I would insist on Mark Blayney running the project.

Mr M.G. HOUSE: You did not actually lose any money on this job. You got paid.

Mr Lyons: In the normal course of events, we would have made a profit on this job.

The CHAIRMAN: However, Carr Civil has not paid its contractors, and it has a problem. Would you work with it again? You are saying you would.

Mr Lyons: I see what you mean. In hindsight -

The CHAIRMAN: Some of its subcontractors would still work for it, so you are not alone.

Mr Lyons: What I am thinking is whether it would have survived once we had paid it fully what we owed for both jobs. The information that I had at the time - around February - is that it would have survived. The jobs would have stung it a bit, but it would have certainly learnt a lot and the next time it would be wiser. On that basis, I would use that company again. I happen to like Mark Blayney a lot, by the way. He had a lot to learn and he learnt a lot on that job. On that basis, we would take him on.

The CHAIRMAN: I understand that. When you tendered for this job, were you aware of the competition's tender prices?

Mr Lyons: Oh yes, that is common knowledge after the event.

The CHAIRMAN: So what was the difference between you, the lowest tenderer - Consolidated Constructions Pty Ltd - and the next lot?

Mr Lyons: I think it was about \$140 000.

The CHAIRMAN: So you were all in the ballpark. It was not as if the price were underquoted.

Mr Lyons: The price was not underquoted. It was a very keen price. We went in on a very keen margin. Our original margin was \$200 000. We would put a one per cent margin on Carr Civil's work, because I had been assured and it was proved to me that it had about a 10 per cent contingency margin built into its price. I thought that we would not gild the lily and that we would spread one per cent over that price and the remainder over our figures. That was a deliberate decision because we wanted to use this as a stepping stone to increasing our rating. We were quite happy to go in on a keen margin, and we would have been happy to break even on this job. The main thrust of this job was to finish with a good product for Main Roads, to do the job safely, to meet all its requirements and to especially finish on time.

The CHAIRMAN: Which would then give you access to other work.

Mr Lyons: Yes.

The CHAIRMAN: Thank you very much. We are running a bit late; we need to get to Parliament by 12 o'clock and we have one more hearing. Unless you have something important to tell us -

Mr Lyons: The only thing is that I have looked at Main Roads' systems and, as far as I can determine, being on the receiving end, its tendering process followed what I would have expected. The awarding of the project was delayed, but that was a funding issue -

Mr J.L. BRADSHAW: A funding issue for whom?

Mr Lyons: Obtaining funds to do the project.

The CHAIRMAN: The Government. It was the end of the financial year. It was July.

Mr J.L. BRADSHAW: So did the Government have trouble with the funds or Consolidated -

Mr Lyons: No, I am saying that the project may not have gone ahead if the funds had not been made available. The awarding of the project was delayed for several months until the Government could secure the funding. In hindsight, that would have meant that Carr Civil would have been paid, but Consolidated would still have gone bust.

The CHAIRMAN: Thank you very much for your evidence. If we need to speak to you again, we will contact you.

