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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE RUTH McCOLL AO
COMMISSIONER

PUBLIC HEARING

OPERATION KEPPEL

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 1 OCTOBER, 2020

AT 2.00PM

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

MR ROBERTSON: Mr Luong, one of the matters that was discussed on the telephone intercept that I played you just before lunch was regarding some Japanese interests. Do you remember hearing the reference to the Japanese?---Yes.

10 What was the relevance of Japanese interests to the SmartWest Sydney site?---I think Daryl referred me to a Japanese guy.

Sorry, say that again?---Daryl referred me to a Japanese guy and I went to his office and met him, only once.

Do you remember who the Japanese person was?---I can't remember now. It was a Japanese name.

20 Do you recall whether that person was a commercial person or was that person a government official?---I can't recall. It could be a consul, a general consul or something. It could be a chamber of commerce.

So you've got a recollection of the person being the Consul General of Japan?---Could be. I, I'm not - - -

Or at least some sort of consular official?---Could be. Or maybe chamber of commerce or something, someone.

30 But this particular individual you met and the meeting was arranged by Mr Maguire, is that right?---I think I rang, I, I think, I think it was either he arranged it or I rang and I turn up there.

But it was Mr Maguire who at least identified this individual as someone who might be spoken to, is that right?---Yes.

And so was that looking at an alternative purchaser for the SmartWest Sydney land in the event that the Country Garden proposal fell over, is that the idea?---I think at the time we were, when I met them, they were saying that they were interested in buying land in that area.

40 And so there was a discussion about the particular land, wasn't there? The particular SmartWest Sydney land, is that right?---I don't know whether it was a discussion (not transcribable) excuse me. I think the conversation is they are interested in land in that area, so this would be one of them, if we - - -

Weren't you and Daryl trying to find an alternative potential purchaser so as to put pressure on Country Garden to do the deal that you were seeking to negotiate with them?---I don't know whether that is to put pressure on

Country Garden. I think it was, I heard from Daryl that this person, that they are interested or they have someone who is interested or business people of Japan nation, Japanese nation are interested and asked me to sort of, "If you can ring this guy and arrange a meeting." I think I did arrange (not transcribable) and then there was a discussion on general thing and I think after that there was no further follow-up.

10 Well, do you agree that you and Mr Maguire had a strategy, during or about mid-September 2017, to try and present Japanese interests as a potential purchaser with a view to putting pressure on Country Garden to make a final decision and to sign up to the proposed sale of the SmartWest Sydney site? ---It could be, it could be. I, I think initially was to look at a fallback strategy.

A fallback strategy in the event that Country Garden falls over, is that right?---Yes. Yes. I think it was.

20 It was a bit more than a fallback strategy though, wasn't it, weren't you also trying to use that as a lever to try and encourage Country Garden to make a decision?---I don't think I told Country Garden about the Japanese part, to my best of my recollections. I think Tim can confirm that. I don't think I told Country Garden about Japanese part.

I'm going to play you another recording that might help you on this topic. This is 15 September, 2017.---Yep. Yep.

And it's telephone intercept 1769.---Yep.

30 Just to help you get your bearings, the one I played you just before lunch was 13 September, 2017. I'm now going to - - -?---Yeah. 13, now it's 15, yep, two days later.

And so two days later, an extract of a call from that date, 15 September, 2017, intercept 1769.

AUDIO RECORDING PLAYED

[2.06pm]

40 MR ROBERTSON: So, Mr Luong, do you agree that through that telephone call you and Mr Maguire are working together with the common goal of attempting to procure the sale of the SmartWest Sydney site, either from Country Garden or perhaps from Japanese interests?---Yes. I think he has introduced me to Japanese people, all right, and - - -

I'll let you give that explanation in a moment, but just focus on my question. Do you agree that, through that telephone conversation, you and Mr

Maguire were working together with a common goal of attempting to achieve the sale of the Sydney West site?---Yes.

Sorry, the SmartWest Sydney site. So it wasn't the case that with this sale you were just going on and doing some things, Mr Maguire were going on doing some things separately, you were working together with a view to achieving that common goal, you making some money, Mr Maguire making that money. Is that right?---Yes.

10 Is that a fair summary of the process - - -?---Yeah, you can - - -

- - - with a view of selling?---Yes, yes, you can say that, yeah, or, see, what - - -

And as part of that - - -?---What I normally do - - -

Just pause for a moment. As part of that, Mr Maguire was giving you suggestions on how you might proceed in relation to Country Garden. For example, he's giving you suggestions about what you might say to Country
20 Garden with a view to getting them over the line?---Yes.

Correct?---Yes.

And you took Mr Maguire's advice in relation to that and used that as a way of attempting - - -?---Yeah.

- - - to get Country Garden over the line.---Yeah.

30 Is that right?---(No Audible Reply)

And do you agree that - - -

THE COMMISSIONER: Sorry, Mr Luong, I didn't hear a response. You have to actually - - -?---Ah, yes.

- - - agree or - - -

40 MR ROBERTSON: I think there was a response but it was quite quiet. And I think you've agreed you considered that advice from Mr Maguire and you had communications with - - -?---Yes.

- - - Country Garden accordingly. You will now need to answer out aloud. ---Yes, yes.

And do you agree - - -?---And I couldn't remember that but now you show me obviously, yeah.

And do you agree that at least as at the middle of September 2017, noting that call was 15 September, there was still concern on Country Garden's part about getting the land rezoned?---Yes. I think we always - - -

That was a real concern.---We always think that is not possible because always at the end of the day they said, I think GT was very concerned about whether that can be a residential land, as I said earlier.

10 And rezoning, if it could be achieved, would assist in the process of getting someone to buy the site. Is that right?---Yeah, that's, rezoning, once you got the rezoning done, obviously that will, and actually it will be worth much more. But that, the price was based on the price of Ron Medich property. Was also a farmland at the time. I think it was a little bit less because Ron has a better position than this one. In that case should be much, much more less, but Louise wanted a much more higher price.

20 And so that created a bit of a benchmark, as it were, for negotiation on the SmartWest Sydney site. Is that right?---Yes, because Louise was basically demand Ron Medich price and then GT and all that say, no, basically, at the end of the day. I think somehow it was agreed on a lower price.

I'm now going to play you a further intercept another week or so afterwards, 21 September, 2017, number - - -

THE COMMISSIONER: Are you going to tender that last one, Mr Robertson?

30 MR ROBERTSON: I am. Thank you, Commissioner. I tender the excerpt from telephone intercept 1769 being 15 September, 2017 and the corresponding transcript.

THE COMMISSIONER: That will be Exhibit 227.

#EXH-227 – TRANSCRIPT AND AUDIO OF INTERCEPTED TELECOMMUNICATION SESSION 01769 DATED 15 SEPTEMBER 2017 – EXTRACT

40 MR ROBERTSON: Intercept 2068, 21 September, 2017.

AUDIO RECORDING PLAYED

[2.16pm]

MR ROBERTSON: My Luong, you referred to the Country Garden deal as having stalled at that point. Do you remember referring to that?---Yes.

And so is it right, then, that so far as you were concerned, by around about that point in time, 21 September, you were concerned that the deal looked like it had stalled and might not ultimately be achieved with Country Garden?---Yes. Country Garden have a practice, I mentioned the name of Johnson. Johnson is the guy before GT in the same position, I think he was sacked. They were in the market, everybody was concerned about the way Country Garden act. They move and then they stall and then, so they're wasting a lot of people's time, and that's why I said not a lot of people talk about Country Garden and they don't want to deal with them. And (not transcribable) also refer that (not transcribable) the same name as Johnson.

Did you do anything, or to your knowledge, did Mr Maguire do anything to try and make that deal be un-stalled?---I don't know whether he has done anything or not. Obviously why I asked him to speak to Tim, because he referred him to me because he wasting a lot of my time at the time.

So let's do it in parts, then. What, if anything, did you do to try and move the deal from being stalled, as it was on 21 September, 2017, to try and move the deal along? Did you do anything?---I can't recall to be honest.

Or had you pretty much given up by that point?---I, I, I can't recall. I think at the end of the day, I think I remember what Tim was saying that they have done the thing, they think this cannot be residential land and were not interested in west, west- - -

SmartWest Sydney?---Hmm?

SmartWest Sydney, is that what you were going to say?---Yeah, yep, yep. they are not interested in industrial land because what Tim can see, that can be industrial site rather than a residential site, I think from their research.

And what about Mr Maguire? To your knowledge did he do anything to try and move the deal along with Country Garden rather than it being stalled? ---I can't recall, sorry.

What about in relation to the roads issue that I referred to before? To your knowledge, did Mr Maguire do anything about the roads issue to try and move the deal along that had been stalled?---I heard, I, as I said, I heard from Louise that obviously Daryl was helping on the road.

Well, you heard from Daryl as well, didn't you?---Oh, oh, yeah. Later on, I, as I said earlier, I heard from both. But the first one mentioned, I think it was Louise first. But Louise was showing me all the plan at the time when I went to the office, I think.

So you're aware that Mr Maguire was attempting to deal with the road with a view to trying to get a sale from Country Garden or perhaps from someone

else, is that right?---To be honest for Country Garden, if it is not a residential land, doesn't matter whether they have road or not.

10 So you don't think the road was connected with Country Garden buying or not buying?---I don't think so. I think the main thing Country Garden concern – even at one stage, I think they were talking about, the, Tim was talking about there may be interest in industrial site because they have industrial site as well in China or somewhere. But I think at the end of the day, Tim was saying that, “Look, Country Garden is not in this sort of business of industrial.” I think in Australia, I don't think have done anything in Australian industrial. I think in China, I think they had, I think Tim was saying that.

Was there a discussion about maybe a mixed use of that particular site?
---Yes. Yes. There was a discussion about mixed use. I think even though then, I think Tim said doesn't work because mixed use, you don't have that sort of value. Because industrial site have lesser value than residential site and a higher risk.

20 But just to be clear, the roads issue that you and I have been discussing was, as you understood it, Mr Maguire attempting to deal with the roads issue to try and get the sale to Country Garden? Or was the roads issue nothing to do with Country Garden?---My, to my best of my recollections, I think even though before, I think I, I cannot say with a hundred per cent certainty, because I remember it was mentioned to me right before about a road issue when I went to – so they're talking about, because I didn't know that road at all, all right? The Northern Road you're talking about now. And then I was actually given a list of all the other owners, by Louise, in the area and then we looked at it and which one is (not transcribable) when you buy, to get
30 close to the road, get access to the road. So, for Country Garden, my understanding is, it, it is not residential land, even though they (not transcribable) around mixed use, I don't think the board has at last approve it mixed use. And they won't buy. They'll only buy residential land. I don't think they have bought any commercial land or industrial land in Australia.

So do you agree that after 21 September, 2017, which was the time of the last call that I played, you and Mr Maguire attempted to save the deal with Country Garden by trying to deal with the roads issue and the zoning issue?
40 I think by the sounds of it you're saying you don't agree with that, but I just want to be clear.---I can't recall. I mean, obviously those things have been discussed, okay? And I can't recall.

So as at 21 September, 2017, so far as you're concerned, has the deal fallen over and you've given up, or were you trying after that point, it had stalled, but did you try and restart the engine?---I can't, I can't recall, to be honest.

Let me try and help you this way. Can we play 3434, telephone intercept, 3 January, 2017?

THE COMMISSIONER: Are you going to - - -

MR ROBERTSON: And while that's coming up, I tender intercept 2068, extract, 21 September, 2017, and accompanying transcript.

THE COMMISSIONER: That'll be Exhibit 228.

10

**#EXH-228 – TRANSCRIPT AND AUDIO OF INTERCEPTED
TELECOMMUNICATION SESSION 2068 DATED 21 SEPTEMBER
2017 – EXTRACT**

THE COMMISSIONER: What was the date of the one you were about to play, please?

20 MR ROBERTSON: 3 November, 2017.

THE COMMISSIONER: Thank you.

MR ROBERTSON: And just to assist you, Mr Luong, we're now going a little bit further in time. The last one - - -?---What, what was the date?

3 November, 2017.---The, the one we heard before was?

Was 21 September, 2017.---Okay.

30

So we're jumping forward a month and a little bit more.---Okay. Yep. So we're three month, three weeks almost before?

A little bit more than that, so we're at – 21 September, 2017, is the last one that I've played you.---21st, and this is - - -

We're now going to jump to 3 November, so a little bit more than a month. ---Oh, this is 3 November, yeah, yep, yep, yep, yep, yep. Okay.

40 We'll play that one, please.

AUDIO RECORDING PLAYED

[2.27pm]

MR ROBERTSON: Now, Mr Luong, before I ask you about that telephone intercept, I'm going to play you another one that happened on the same day, but later that day. That's session number 3435, also on 3 November, 2017,

but this time at 6.48pm. The preceding one was at – a little bit earlier in the day.

THE COMMISSIONER: 18.45.

MR ROBERTSON: Thank you, Commissioner. So it's only about three minutes later or thereabouts.

10 **AUDIO RECORDING PLAYED** [2.29pm]

MR ROBERTSON: So, Mr Luong, do you agree that as at 3 January, 2017
- - -

THE COMMISSIONER: November.

THE WITNESS: November, yeah.

20 MR ROBERTSON: I'm so sorry, I'll start again. Do you agree that as at 3 November, 2017, you were still trying to save the deal with Country Garden?---Yes.

And part of saving the deal was to attempt to get rezoning. Correct?---I think it's not legally rezoning. I think this thing what they want to do is to make sure that can be rezoned to a certain degree because Tim come back with two reports saying that that is industrial land, they're not interested.

30 And so you were hoping that there would be a rezoning because then the deal would be done and you would make some money. Correct?---To me, whether is rezoned or not, it doesn't matter in a sense.

Well, your view, wasn't your view - - -?---Tim just wanted - - -

Just let me ask the question, please.---Yes, yes.

40 It was your view, wasn't it, on 3 November, 2017, that if it was zoned as a mixed development, then Country Garden would go ahead?---But I think that was Tim was telling me I think.

And that was consistent with your understanding as to what Country Garden's position would be. Correct?---But – yes, but I think later on they change it again, they said they're not interested in even though mixed. I think if my memory is correct.

But at least as at 3 November, 2017, as you understood the position, if rezoning occurred so as to permit mixed development, then Country Garden would go ahead. Correct?---I think at that time Tim was saying that and we

sort of like, if they know that can be a mixed, mixed development zone, right, then they will consider going ahead. I think at the end of the day they say no.

Well, not just they'll consider going ahead, "They will go ahead," is what you said to Mr Maguire on 3 November, 2017.---Yes, I think that's, that's probably what Tim told me.

10 And that was your understanding of the position at that point in time?
---Yeah, yeah, yeah.

So there was a link, at least as at 3 January, 2017 – 3 November, 2017, between rezoning and the prospect of the deal taking place with Country Garden. Is that right?---See, when they discussed this property with Country Garden - - -

Just answer my question first.

20 THE COMMISSIONER: Just listen to the question, Mr Luong, and answer the question, please.

MR ROBERTSON: At least as at 3 November, 2017, there was a link between rezoning to mixed development and the prospect of the deal with Country Garden Australia going ahead. Correct?---You can say that, but I think, I don't want you to take it out of context.

30 Well, we'll get to the context, but that's why I said specifically, as at 3 November, 2017 – we'll come to what happened after 3 November – but as at 3 November, 2017 there was a link between the zoning of this site and the prospect of the deal taking place. Is that right?---Yeah, like this.

And there was also a connection between what I've described as the roads issue and the deal taking place. Do you agree?---The road issue was never, never put as a selling thing.

So is the answer to my question no, then? So there was a link - - -?---I can't recall, I don't recall.

40 There was a link with the rezoning but not necessarily the road. Is that what you're saying?---I can't recall, but I know Louise always want to get the road done anyway.

In the first of the intercepts that I played for you for 3 November, 2017, there was a reference to Mr Maguire talking to you about the roads issue "offline." Do you remember hearing that, Mr Maguire telling that to you in the first intercept call?---I probably didn't hear properly, sorry.

Well, he said in effect, "I will talk to you about it offline." That was one of the thing he said on the first of 3 November.---Offline?

Offline.---So off the telephone.

Which sounds to me at least as being off telephone.---Oh, okay.

10 Do you recall whether you had a discussion with Mr Maguire offline, as in off telephone, in relation to that issue?---I might have, to be honest. We talk a lot offline. Sometime I meet him.

But you don't have a specific recollection of discussing that around 3 November?---I don't have a recollection. I mean all these things is I know he was helping Louise to do the road. That's all beforewith out public, before we even, I exist in this transaction. Maybe before.

But do you agree - - -?---But I remember Louise brought all this for me to have a look.

20 But do you agree that Mr Maguire, as you understood it, was attempting to progress the roads issue as part of assisting Ms Waterhouse in selling the land?---Could be.

Well, not just could be, it was yes. That was what he was trying to do to your knowledge. Correct?---Yeah, I think he was definitely helping Louise on the, on the road.

30 Helping on the road but with a view to selling the land. Is that right?---I don't know like with a view to selling the land, but he, even though I think before then he was helping Louise already, I think.

But with the view of assisting in making it more likely that the land could be sold. Do you agree?---Yes. On the, on the marketing side of it, yes. If you obviously have a road, it's easier to sell.

40 And that's obviously in your and Mr Maguire's mutual benefit, because if you get to sell the land, you'll get a commission and you'll share it with Mr Maguire. Correct?---I think when Tim look at the land at the time, I don't think they look at the road issue when I propose the land to them.

There was a - - -?---They might have looked at it later and all that when they do the due diligence.

There was a reference in one of the calls I've played to you to Campsie.
---Yes.

Do you remember a reference to Campsie? What was the reference to Campsie?---Okay. I think at the time Maguire was telling me Joe Alha, I think, he's a Lebanese guy, a very short guy. I met him.

He might be from the J Group. Does that ring a bell?---Yes, yes, yes, yes, J Group. And Joe got a lot of land in Campsie for sale and he want a very, very high price, and I think they had a few discussions and I told, and I told, I think I have told Daryl I think it was too high. I didn't work on it.

10 And so he was trying to introduce you to Mr Alha with a view of doing a deal, and if the deal was successful, he would get an introduction fee. Is that right?---I think so.

But the price was too high, you weren't interested and the deal didn't come off. Is that right?---Yeah. I think it's, I think it's way over, above the market.

I tender the last two, in fact I'll do them separately. I tender telephone intercept 3434, 3rd of November - - -?---I may have spoke of Joe to - - -

20

Just wait for one moment.---Yeah, sorry. Yeah.

3rd of November, 2017, 6.45pm and corresponding transcript.

THE COMMISSIONER: That will be Exhibit 229.

#EXH-229 – TRANSCRIPT AND AUDIO OF INTERCEPTED TELECOMMUNICATION SESSION 3434 DATED 3 NOVEMBER 2017

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MR ROBERTSON: And then I tender telephone intercept 3435, 3 November, 2017, 6.48pm and corresponding transcript.

THE COMMISSIONER: Exhibit 230.

#EXH-230 – TRANSCRIPT AND AUDIO OF INTERCEPTED TELECOMMUNICATION SESSION 3435 DATED 3 NOVEMBER 2017

40

MR ROBERTSON: Now play, please, 3560, 8th of November, 2017, an excerpt of that telephone intercept.

AUDIO RECORDING PLAYED

[2.37pm]

MR ROBERTSON: So again, Mr Luong, as at 8 November, 2017, your understanding is that Country Garden are still interested subject to rezoning?---Yes. I think they want to make sure it's a residential land, it's not a industrial land.

10 But remember the last telephone intercept, there was a reference to mixed use, and mixed use could be enough, as you understood it, for Country Garden. Is that right?---Yeah. I think Tim initially mentioned mixed use. I think at the end of the day the whole thing fall apart as Country Garden maintained the position they only want residential land.

But at least as at 8 November, 2017, as you understood it, rezoning to allow mixed use would be good enough for Country Garden. Is that right?---I think that's what Tim was mentioning.

20 And that was your understanding of what Country Garden's position was at that point in time. Is that right?---When was the last time we talk about mixed use?

3 November.---What is this?

8 November.---8. Oh, could be the same position. Could be the same position. I don't know. Because I think Tim was in Cairns, I think. He was in China and then he was in Cairns. Something like that.

30 I tender telephone intercept 3560, 8 November, 2017, and accompanying transcript.

THE COMMISSIONER: That will be Exhibit 231.

#EXH-231 – TRANSCRIPT AND AUDIO OF INTERCEPTED TELECOMMUNICATION SESSION 3560 DATED 8 NOVEMBER 2017 - EXTRACT

40 MR ROBERTSON: Now, after 8 November, 2017, the time of that call, to your knowledge did Mr Maguire take any other steps regarding what I've described as the roads issue?---I can't recall. I think, as I said he'd been helping Maguire, helping Louise for a long, long time.

And he kept you informed as to what he was doing in relation to that issue? ---I think so, yeah, yeah, from time to time he might have kept me informed, but to be honest, I'm losing interest at that time.

Well, you're still trying to keep the deal alive if you possibly can.
---I keep it, but obviously I, I'd keep it because you know it was referred by someone else. And - - -

But it's taking time.---Taking, yeah.

You've put a lot of time and effort into it, and you're concerned - - -?---And I can see that it's not coming to an end, to be honest.

10 You can see that there are impediments in the way to this particular deal.
---Yeah, I can see it. I can see that GT taking the same attitude as Johnson.

You're concerned about the zoning issue, correct?---No, I'm not concerned of whether the government keep rezoning. I'm not, that's not my concern. That is the concern Tim's got to have, and Country Garden got to have, whether they're going to get the rezoning or not. But at the end of the day, they need to do the rezoning, the master plan and all that.

20 But that's your concern as well, not because you care one way or the other, but you do care about the deal getting over the line.---No.

And if the deal gets over the line, you make money.---My concern is, whether this is industrial land at the end of the day or mixed use or - I basically, I cater to my client, or whether is a, something my clients want.

That was the point I was trying to make.---Whatever Tim, whatever Tim say, I'll go along with.

30 Whatever the client wants, you want to achieve, because - - -?---No, no, is not - - -

Whatever the purchaser wants, you want to achieve, because if the deal is done, you make your commission, correct?---No. But the client make, the purchasers make their ultimate decision, all right, as to what they want to buy. If they don't feel comfortable about the land, obviously they won't buy. And I think at the end of the day, they did, they had, they had, they felt uncomfortable about what can be done with this land.

40 I'm now going to play you a call from December of 2017.---Yes.
18 December, 2017. Intercept 4698.

AUDIO RECORDING PLAYED

[2.43pm]

MR ROBERTSON: We'll just keep that transcript on the screen. Do you see, Mr Luong, it says, "They're giving her a bit of value in her land"? Do you see that there?---Yes.

What did you understand that to be referring to?---Oh, my understanding, obviously we got a road, it's better. But don't take me wrong, I'm not the one pushing this angle. You can say that all push was done by Daryl, was helping, but I didn't ask Daryl, "You didn't get that road done, you get the rezoning," I never. All right? So I didn't push for all that.

10

You might not have pushed it - - -?---But obviously when you have the land, when you have the land with the access, obviously increase, increase the value of the land, and - - -

You might not have pushed it, but it was in your interest for the value of the land to increase, because you get a higher commission, is that right?---No. No, not really. My interest is a quicker sale. The longer they drag, the longer it's going to be. I don't care whether it's, if someone going to pay X amount of dollars and someone willing to accept, I get the deal done.

20

You want high value and you want it quick?---No, I want quick more than high value, because when you're trying to get rezoning orders done, it's going to take years and never get it done. I mean like for instance, if you look at Ron Medich land, was sold as rural land without rezoning.

There was a reference in that call to fixing Louise's problems for her. What did you understand - just have a look near the hand, I think. "I'm fixing that for her." Do you see that there, towards the very bottom of the page? ---That's Daryl saying it.

30

Daryl was saying that to you, but what did you understand him to be referring to when he is saying, "Fixing Louise's problems"?---Maybe fixing the road problem, because Louise always trying to get road access.

But also just have a look a little further up. See, you said also about including it in the plan. Do you see that there?---Yes.

What was your understanding of what Mr Maguire was saying about that? ---I'm not quite sure to be honest. So also about including in the plan.

40

I tender telephone intercept 4698 of December 2017 and accompanying transcript.

THE WITNESS: So is just-also about including the plan.

THE COMMISSIONER: That will be Exhibit 232.

**#EXH-232 – TRANSCRIPT AND AUDIO OF INTERCEPTED
TELECOMMUNICATION SESSION 4698 DATED 18 DECEMBER
2017 - EXTRACT**

MR ROBERTSON: I'm sorry, Mr Luong, what were you saying?---Sorry, sorry. I was just re-reading that. It was something including in the plan or something.

10 There was a reference to the plan, yes. What did you understand that to be?
---I don't know. Would that be the plan of the road plan?

It may well be. I'm asking what you understood it to mean at the time that you had that conversation.---I, I think that could be the road plan, I'm not quite sure. I know the government is going to have a road there and I know Louise didn't get any access.

20 So we're now almost at the end of December of 2017. Mr Maguire is saying he set up a meeting with what you described as the Sydney Planning Commission for the new year. What other steps did you take, if any, after that call on 18 December, 2017, with a view to getting this deal done for the SmartWest Sydney land?---I just can't recall to be honest.

By that point you were getting a bit fed up because it was taking a long time?---Well, you can see I was fed up.

30 But do you recall whether you took any further steps in relation to the matter or were you out of it by that point in time?---I, I don't know. I can't, I can't recall.

How did the proposed deal ultimately come to an end? I think I'm right in saying Country Garden didn't ultimately purchase that land, is that right?---I think, I remember Tim was saying, telling me they're only interested, at last, only interested in residential land. I think initially they said mixed use because they said Country Garden got a warehouse and all that in China. So they have both, but they haven't done it here.

40 And so do we take it from that that the zoning was quite important for Country Garden because it needed to have a residential-type zoning for it to be interested?---I think yes, it is, because Country Garden is only interested in residential land. With well-managed property, they offer very high price for that, because I think they have done their research, that can be a residential land. It's all, it's not under the flight path so the risk is less. This is one is right under the flight path.

Do you agree that as at April of 2018 – the last one I showed was 18 December, 2017 – but April 2018, you were still trying to procure this deal?---I can't remember.

In other words you were trying to sell the land?---Yeah. I could, I could have.

Do you remember having a dinner with Ms Waterhouse and Mr Maguire where you were further discussing trying to get this deal over the line?---I can't remember but I may have.

10 I'll just show you a photograph in the hope that that will jog your memory. It will come up on the screen in a second. Do you recognise where this photograph was taken?---Yeah. I know where that is.

Where is it?---Marigold, I think,

And so that's the same restaurant I think you referred to as the first meeting?---Yes, yes, yes. Yes, yes.

20 Just to assist you, this is a photograph that was taken in April of 2018. ---Yep.

And I take it you agree that the person sitting there with the bottle of sparkling water is you?---Yes, because I don't drink wine. I only drink water and juice.

Ms Waterhouse is to the right of the photograph, the left of you sitting down?---Yep, yep.

Mr Maguire on the right-hand side?---Yep.

30 Who is the gentleman on the left-hand side?---I can't recall to be honest. Who is this guy? Have you got a better photo from the front, see the face.

I'm not sure I necessarily do have one in the front. That's about the best photo I think I have of that gentleman.---I can't recall, yeah, who is this guy, to be honest.

40 Just pardon me for a moment. I'm seeing if I've got access to a better photograph. I don't think I do. In any event, at least based on that last photograph, you can't recall that particular individual?---I can't recall that particular individual. He cannot be a good friend. If good friend, you can see it now, even though, at least then I can, I know who it, who it is.

Does the name Wilson ring a bell at all?---What was the surname?

Was the name Chow, Benjamin Chow - - -?---That is not Benjamin Chow. I don't think that's Benjamin Chow because Benjamin is in his 70s.

We'll at least exclude that individual.---Because Benjamin, Ben - - -

Unless he took a youthful pill very quickly.---Yeah, Benjamin was, and I were sitting at the ECC and the CFA community organisation, so there's no way I cannot remember Benjamin.

Commissioner, I tender the photo that was on the screen, being a photograph of Mr Luong, Mr Waterhouse, Mr Maguire and another person, 30 April, 2018.

10 THE COMMISSIONER: That will be Exhibit 233.

**#EXH-233 – PHOTOGRAPH OF MAGUIRE, LUONG,
WATERHOUSE AND ANOTHER TAKEN ON 30 APRIL 2018**

MR ROBERTSON: But does that at least jog your memory that there was another meeting, probably around - - -?---There was another meeting - - -

20 - - - 2018 still trying to get the deal across the line if at all possible?---I don't know whether we're trying to speak the deal, I don't know, to be honest. I can't remember this guy completely.

But - - -?---Who introduced this guy to me, I don't know.

But you at least recall, around April of 2018, you're still trying to get the deal over the line with Mr Maguire if you possibly can?---Could be, could be, could be.

30 But ultimately the deal didn't eventuate. Is that right?---I even, I even can't recall when is Tim telling me it's off. I can't recall. I think they have a problem as well, because I think by November 2017 the Chinese Government already stop Country Garden sending money over. I think Country Garden Australia facing liquidity problem. That's what I heard from the industry. They are, I heard they (not transcribable) actually mortgage the land. They were paying cash at one stage. They're mortgaging.

40 And so there was a concern about Country Garden being able to invest or being able to, as it were, get their money out of the People's Republic of China. Is that right?---Yes, I think that was in, that was in November and that's what I heard. The actually sending a guy, a government official overlooking the shoulder of the chairman, that serious, at the time, someone in - - -

THE COMMISSIONER: The chairman of Country Garden?---Yes. That's what I heard, all right, from the, from the industry. But there was, a lot of major organisation in China was having that sort of same problem.

MR ROBERTSON: And so is it right to say that as at 2018 there were still some attempts to get the deal over the line, but at that point in time it became more difficult and more difficult, and in the end the deal didn't take place. Is that right?---Could be, yeah.

When is the last time you've had contact with Mr Maguire?---Oh, it was a few weeks ago.

10 And what was the circumstances of those, that contact?---I actually rang him. I said, you know, "How are you going with the COVID, how is COVID-19 affecting you?" We talk about before I receive the summons. After receive summons I didn't contact him at all. And then he was saying it's okay, he say he's working on a, some of the old house he had somewhere, a few hours' drive from where it is, I can't remember the name.

Possibly in Ivanhoe?---I can't remember. Because it's not my interest and I just listen and pass.

20 So is it right to say - - -?---All of my ear, one ear go to this ear.

Is it right to say you haven't had any discussions with Mr Maguire regarding this Commission's investigation into him?---On that phone call?

On any phone call. Have you ever discussed with Mr Maguire, has he ever called you up or have you ever called him up and said, "Look, this investigation that ICAC's" - - -?---Either he call me or call me, I ask him one day, I said, "How are you going, how is it affecting you?" And then he said to me, he said, "They ask me to come up for an interview or inquiry or something, four days or something," and then he said he want you guys to pay for legal costs and that sort of thing.

30 So just explain that to me.---I think one day he said to me, he said, (not transcribable) during the conversation I said, "How are you going, how is, how is your thing going?" Blah, blah, blah. And then he said, yeah, they want you, you guys, ICAC, want to talk to him and I think that it's just four days or something like that, few days, and then he said no, he wanted a lawyer or something, and then he said he wanted to make sure he got paid for it or whatever. Something along those lines.

40 But why was he raising that with you as you understood it?---I don't know. Oh, because I asked him. You know, as a friend I asked him, "How are you going and how's your case going?" Blah, blah, blah.

So what, Mr Maguire was saying, "Look, ICAC is investigating me and I've got to pay for lawyers and I've got to do things like that"?---No, no, he was saying that you guys ask him to attend inquiry for four days or something. Something like that, along those lines. And then he said he need a lawyer.

He need you guys to pay for the lawyer, whatever, please pay for lawyer before the (not transcribable). That's what, I think along those lines.

Did Mr Maguire give you any advice as to what you should say to this Commission?---I can't recall. I can't recall.

Well, did he give you any hints or tips or suggestions as to what you should say if you were asked questions by this Commission either in the hearing or by an investigator coming and speaking to you?---I can't recall exactly.

10

Did he suggest to you that you should do anything with any documents, emails, telephone records, other documents that might relate to Mr Maguire?---I think I kept a lot of those documents myself, email, as you probably can see and I think - - -

Did Mr - - -?---I think, yeah, I think he said that he delete all the WeChat messages.

20

So what did Mr Maguire say? Mr Maguire said delete the WeChat messages?---No. I think he did delete all the WeChat messages.

THE COMMISSIONER: I'm sorry I didn't catch that answer.---And then I think he, I think, I think there was, and then he sort of asked me to delete the WeChat messages.

MR ROBERTSON: So just to be clear. Are you saying Mr Maguire said to you during a call that - - -?---I think. I'm not quite sure.

30

- - - I just want to get it clear, that you should delete some WeChat messages?

MR HARRIS: I thought the word was "recent".

MR ROBERTSON: "Recent messages". I'm grateful to my friend.---What was it again?

Can you just repeat what you said before about the WeChat messages. I didn't quite catch it.

40

THE COMMISSIONER: Or "recent". There seems to be controversy as to whether it's "WeChat" or "recent" and it could be both, I suppose. ---WeChat. WeChat.

WeChat.

MR HARRIS: I'm sorry.

MR ROBERTSON: WeChat as in the communication software that many Chinese nationals and others use. So I'm sorry, but can you just repeat what, doing the best you can, what Mr Maguire said to you about WeChat messages?---I think it was just, I cannot, I cannot recall exactly what he said.

THE COMMISSIONER: Do your best.

10 MR ROBERTSON: You can say something like "he said these words" or "he said words to the following effect", and I thought I heard you say – but maybe I didn't hear it right – I thought I heard the word "delete" and I thought I heard the word "WeChat" but I may have misheard what you said.---Just I can't put exactly what he said.

No, I appreciate it was a little while ago. You won't be able to remember the exact words but tell us the gist or the intent or the message as you understood it, the message that Mr Maguire was trying to communicate as you understood it.---I think it was delete the, the WeChat messages. I think we have a lot of WeChat messages I think.

20

Delete the WeChat messages. Is that right?---I think so. Something like that.

Did you delete the WeChat messages?---I think I did.

THE COMMISSIONER: When was this conversation, Mr Luong?---I can't recall. I can't recall an exact date.

Well, was it a few weeks ago or a few years ago?---No, no, a long time ago, not a few weeks. I don't think so.

30

MR ROBERTSON: Let's try and - - -?---We never talk about this in the last few months. I don't think so.

Well, let's try and identify at least roughly when the time period was by reference to some other events. So you'll remember that you had an interview with Mr Grainger on 12 April, 2019, so April of last year.---Yes.

40 Was that conversation where Mr Maguire says delete the WeChat messages, did that happen before or after you had the interview with Mr Grainger?---I can't, I can't recall, to be honest. I remember, now this is 2020. I think it was 2018. I think I told Mr Grainger I was asked to, I was invited to go to his place for Christmas lunch or something, and I was asked, I think there was message and all that backward and forward, and I think I may have said I've been there, in my, in my (not transcribable) message. I think it's there I think and then - - -

So what sort of message is that, is that a WeChat message is it or - - -?
---No, I think it was phone call messages, and then I said I couldn't do it and I think that is one of the normal phone messages and I think I still have it, all right. And I need to look at (not transcribable) where I have to delete, I forgot about the whole thing, to be honest. And then I was, and then I remember Dolly Fu, one of our mutual friend was she. And then I don't want to go there myself, so I asked Dolly will you, well, do you want to go there, have a Christmas lunch and all that with Daryl. So - - -

10 THE COMMISSIONER: Was this a Christmas lunch - - -?---No, talking about 2018.

Yes, but was it in Wagga or - - -?---Wagga, yeah. I only went to Wagga once, all right, to his house. That was the first time went to his house. And I remember there was phone messages telling me what to do, how, how you get to his house, because I don't know Wagga well. And so I will stay, yes.

MR ROBERTSON: And are you saying that your best guess is that's around about the time that Mr Maguire said you should delete the WeChat messages?---I think that, maybe, maybe, I think maybe, yeah. I'm not quite sure.

And so as best you can, and it's difficult to work out an exact date, somewhere around Christmas in 2018.---Yeah.

So the year before last.---Because I, I remember he want me to go on a certain day. I said I can't go on a certain day. And then we went on another date and then he was very kind he was, (not transcribable). He said you can bring your swimming costume, you know, swimming wear, and you can stay overnight. We don't want to stay overnight. We just had the lunch and then pis, just go away.

And I take it that in 2017, in particular, you and Mr Maguire would communicate fairly regularly using WeChat, is that right?---Yeah, we have, we have. We have. We send messages and WeChat both.

And - - -?---Which depends on, depends on whatever we want to use. I mean, if he send a WeChat, I will reply WeChat. If he send a message, I will reply message.

40 And do you say - - -?---You cannot say someone say message WeChat you via message.

Do you say you've now deleted all of the WeChat messages?---I don't know. I'll have a look. I'll have a look. (not transcribable) if you don't mind, can I have a look?

Yes. Commissioner, I apply for a direction under section 35(2), Independent Commission Against Corruption Act, requiring the witness to produce his telephone.

THE COMMISSIONER: Mr Luong, I direct you, pursuant to section 35, or I require you, pursuant to section 35(2) of the Independent Commission Against Corruption Act, to produce your telephone to the Commission.

10 **PURSUANT TO SECTION 35(2) OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, THE WITNESS IS REQUIRED TO PRODUCE HIS TELEPHONE TO THE COMMISSION.**

THE COMMISSIONER: Mr Grainger, can you please take possession.

THE WITNESS: So what that mean, I cannot use the phone at all?

20 THE COMMISSIONER: No, you're required to give it to Mr Grainger now, please.

MR ROBERTSON: Just don't use your phone just for a moment. Just give it to Mr Grainger. And then I'll just ask you a few questions.

THE WITNESS: I need to give you the password.

MR ROBERTSON: I'll ask you that in just one moment.

30 THE COMMISSIONER: We won't ask you to tell it to the world, though, Mr Luong.

MR ROBERTSON: Yes. Don't say it out aloud because this is being live-streamed. So in terms of communications with Mr Maguire in 2017, around the time you're talking about, the SmartWest project and other things, I think you said WeChat was sometimes used and iMessage was sometimes used.---Yes.

40 The physical device you used for that purpose, is that the one that you've just given to Mr Maguire?---No, this is a new phone because my phone actually broken down.

And so - - -?---It's completely gone.

So you've got a new handset since that point in time?---Yes, I had a new, I have a (not transcribable) this handset was only this year, was bought this year, because my phone was, the screen was completely smashed.

THE COMMISSIONER: But was the data from your old phone transferred to this one when you - - -?---I, I think so. I think, I think so. I tried to do my best there. I think it, whatever you can see in there (not transcribable) some of the old data was there.

MR ROBERTSON: And I'm just going to get the associate to give you a piece of paper because I'm going to ask you what the PIN number is, but I'm not going to - I don't want you to say it out aloud.---Mmm.

10 THE COMMISSIONER: PIN number or password, whatever you use.

MR ROBERTSON: And before you finish with that, do you know what your iTunes backup password is?---I don't think I have iTunes backup.

And is there any password, is there any separate password, either separate password or PIN, for the WeChat app? Or if you - - -?---Yeah, you open it, it goes straight into the (not transcribable)

If you use that PIN number, you can go straight into the WeChat app?
20 ---Yeah, yeah, go straight in.

Sometimes there's an extra password on top of it.---No, I don't, I don't have it.

Commissioner, that's the examination. Obviously enough, there's some evidence now regarding some messages that may be of relevance to the investigation. There will need to be some logistical issues dealt with, with a view to minimising the period of time where the witness does not have access to his phone, but I'll need some technical advice and assistance in
30 relation to that matter.

THE COMMISSIONER: So, subject to Mr Harrowell and Mr Harris having any questions, do you wish to adjourn now for a while or return today or adjourn until tomorrow?

MR ROBERTSON: I think probably adjourn until tomorrow after any cross-examination or re-examination would be the appropriate course.

THE COMMISSIONER: Very well. Mr Harrowell, did you wish to ask Mr
40 Luong any questions?

MR HARROWELL: I won't be asking any questions, Commissioner.

THE COMMISSIONER: Thank you. Mr Harris, did you wish to - - -

MR HARRIS: It's unlikely. I would appreciate having an opportunity to have a talk to Mr Luong about that, but we did have the chance to talk at lunchtime and I think it's unlikely.

THE COMMISSIONER: Do you wish us to take a short adjournment, Mr Harris?

MR HARRIS: Yes. Yes. I could do that.

THE COMMISSIONER: We'll take a five-minute?

10 MR HARRIS: I'm sorry, Commissioner, I was under the impression that Mr Luong was to be recalled tomorrow. Did I - - -

THE COMMISSIONER: No. I don't believe so.

MR HARRIS: If I could have that short opportunity, I'd be very grateful, thank you.

20 THE COMMISSIONER: Very well. Mr Luong, your solicitor, Mr Harris, is going to have a word to you. We're just going to adjourn for five or 10 minutes to enable him to do so.---Yeah.

MR HARRIS: Thank you.

THE COMMISSIONER: And I'll adjourn.

MR HARRIS: Thank you.

SHORT ADJOURNMENT

[3.06pm]

30

MR HARRIS: Commissioner, thank you for that opportunity. I have no questions to put to Mr Luong.

THE COMMISSIONER: Very well. Thank you, Mr Harris. Mr Robertson, I gather the examinations of the phone will take at least until tomorrow sometime?

40 MR ROBERTSON: That's so. There's a process that will need to be gone through. That'll obviously be done as quickly as possible so that the witness is not without his phone for any longer than necessary, but there's some technical matters that need to be dealt with.

THE COMMISSIONER: Very well.

MR ROBERTSON: In the face of that, in my respectful submission, you wouldn't discharge the witness. I've finished in terms of questioning for today's purposes, but it's conceivable there will be some material on the phone in respect of which I might want to ask some further questions.

THE COMMISSIONER: Very well. Mr Luong, you heard that. So we've finished your examination for today, but you are not released from your summons. You may be required to appear during this public inquiry on another occasion. And in the meantime the Commission officers will be in touch, most probably through your solicitor, in relation to the return of your telephone.---Yep.

You may step down now.---Thank you. Thanks.

10

MR ROBERTSON: Commissioner, in terms of tomorrow, can I respectfully suggest - - -

THE COMMISSIONER: Please, Mr Luong, you may step down.---Oh, sorry.

Thank you very much.

20

THE WITNESS WITHDREW

[3.12pm]

MR ROBERTSON: In terms of tomorrow, can I respectfully suggest a 9.30am start? That will assist in some availability issues that some of the witnesses for tomorrow have. And I hope that tomorrow will not be a full day.

THE COMMISSIONER: Very well. We'll adjourn until 9.30 tomorrow morning.

30

AT 3.13PM THE MATTER WAS ADJOURNED ACCORDINGLY

[3.13pm]