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PUBLIC
HEARING

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE RUTH McCOLL AO
COMMISSIONER

PUBLIC HEARING

OPERATION KEPPEL

Reference: Operation E17/0144

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 12 OCTOBER, 2020

AT 1.45PM

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

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

<GLADYS BEREJIKLIAN, on former oath

[1.46pm]

THE COMMISSIONER: Ms Berejiklian, you continue to be bound by your oath.---Yes, thank you.

Yes Mr Robertson.

10 MR ROBERTSON: Ms Berejiklian, before the adjournment we got up to about November, 2017 in relation to what I might describe as the Waterhouse issue.---Ah hmm.

20 And do you remember we discussed a couple of the emails, including those that were sent to your direct email address. Do you recall whether after that point in time – in other words after 15 and 16 November, when you received the two emails – whether you had any further discussions with Mr Maguire regarding what I’ll call the Waterhouse issue, by which I mean Ms Waterhouse’s desire to either sell or develop her land near Badgerys Creek?---Not to my recollection. We may have but I don’t recall that at all, and I just remind you, Mr Robertson, that the government did not change its course.

Can I assist you this way, can we play 4309 which is the 4 December, 2017.

AUDIO RECORDING PLAYED

[1.47pm]

30 MR ROBERTSON: Do you recall this particular telephone call?---Not specifically, not to my recollection.

Again, there was a reference to William. Do you remember who William is?---I didn’t at that time, no.

Because we’ve heard at least a couple of references to Williams.---Yes.

40 And note that you don’t say to Mr Maguire, “Who’s William?” Are you sure you don’t have recollection as to who William is?---I did not have a recollection at all, no.

There was a reference to “our friend Louise”. I take it that you understood that to be a reference to Louise Waterhouse?---I assume I would have taken, I assume that yes.

And there’s a reference to the Sydney Planning Commission. Do you have any idea why Mr Maguire was referring to the Sydney Planning Commission - - -?---Not at that stage.

- - - by which he may well mean the Greater Sydney Commission?
---Obviously not at that stage but there's since been evidence that that could have related to in the last few days.

But are you saying, so far as you can recall, Mr Maguire didn't raise any particular issues with you concerning the, what he's called the Sydney Planning Commission and what might be called the General Sydney – sorry, the Greater Sydney Commission?---Not to my recollection.

10 Other than that call that I've played to you and the other things that you and I have discussed, do you recall having any other communications with Mr Maguire regarding what I've described as the Waterhouse issue?---Not to my recollection.

And is it right, though, that regardless of any communications of the kind that you and I have identified, is it the position that you didn't encourage any changes to be made, you didn't take any public official action and you didn't decline to take any public official action in relation to the matters that Mr Maguire was raising with you?---Can you just repeat that question again,
20 I'm sorry.

We've seen, by reference to a number of calls and things of that sort, Mr Maguire seems to have been raising with you his concerns about Ms Waterhouse's position.---Ah hmm.

You agree with that, I take it?---Ah hmm.

Did you take any steps in relation to any of those matters that Mr Maguire raised?---Not to my recollection.
30

And is it also the case that not only did you not take any positive steps, you also didn't decline to exercise any official function that you would otherwise have done by reason of Mr Maguire - - -?---What do you mean by decline?

Well, really what I'm saying, you didn't take it upon yourself, in light of what Mr Maguire was drawing to your attention, to make any changes, for example, in government policy?---Not to my recollection. Not to my
40 recollection.

You didn't give anything, to use Mr Maguire's term, "a tickle from the top"?---Not to my recollection.

And there wasn't some other thing that you were going to do but you decided not to do because of Mr Maguire drawing these matters to your attention?---Not to my recollection.

And that includes in relation to what Mr Maguire describes as the Sydney Planning Commission by which I think he means the Greater Sydney Commission. Is that right?---Not to my, yes.

I tender telephone intercept 4309, 4 December, 2017.

THE COMMISSIONER: That will be Exhibit 331.

10 **#EXH-331 – TRANSCRIPT AND AUDIO OF INTERCEPTED
TELECOMMUNICATION SESSION 4309 DATED 4 DECEMBER
2017 – EXTRACT**

MR ROBERTSON: Ms Berejiklian, do you know who Mr Joe Alha is?---I do subsequently, yes.

20 When you say you do subsequently, what do you mean by that?---Oh, I knew, I knew he had a friend called Joe and I'm now suggesting that that was Mr Joe Alha as was raised in the private hearing.

So you've known for some time that a person by the name of Joe is a friend of Mr Maguire. Is that right?---Yes.

And I think you might have been invited to Joe's fortieth birthday party. Does that ring a bell?---It does ring a bell and I remember declining.

30 What line of work was Joe in as you understood it as at 2017 and 2018?---I, I assumed he was in development.

What was the basis of that assumption?

THE COMMISSIONER: Property development?---Yes, yes.

MR ROBERTSON: What was the - - -?---Oh, because Mr Maguire had told me that was what he did.

40 Do you recall ever meeting Joe?---I may have very well met him at a party forum or some such event. I have no direct recollection but I may very well have met him at a party forum or other, other incidental meeting.

You'll be aware that there was evidence suggesting that Mr Alha, Mr Joe Alha had something in the nature of a general bump-in and meeting with you in your office on or about 15 November, 2017?---I'm aware that that was discussed.

You're aware of that evidence?---Yeah. I'm aware of the evidence, yes.

I'm doing this in parts. You're aware that there was evidence to that effect?---Yes, yeah.

Do you have a recollection of such a bump-in-type meeting?---I actually don't have a recollection.

No recollection at all?---I don't have a recollection, no.

10 Was it common for Mr Maguire to seek to take advantage of a general bump-in-type meeting of the kind that you and I discussed this morning?
---Not necessarily, no. No more or less than any other member of parliament.

So he would from time to time but in the spectrum of not doing it at all - - - ?---Other members of parliament.

20 - - - to trying to do it all the time Mr Maguire is somewhere in between, somewhere in the middle. Is that right?---Yeah, it was pretty much common, it was, it would be consistent with every other member of parliament. It wasn't more or less.

Did Mr Maguire, though, have any discussions with you regarding any help that Mr Maguire was providing to Mr Alha in relation to any development projects?---Not to my recollection.

But it's possible that he did I take it?---He could have but not to my recollection, yeah.

30 Let me help you this way.---Uh-huh.

We're going to move to 15 February, 2018, call 6356. We've moved a little bit forward in time. I've spent a lot of time on in particular September of 2017 but we're now moving forward in time to February of 2018.

AUDIO RECORDING PLAYED

[1.54pm]

40 MR ROBERTSON: Who was the friend with the polished head?---I actually said in there I didn't know who he was talking about.

There was a reference towards the start of the call to a potential meeting request from a Sunito S-u-n-i-t-o. Do you remember hearing that?---I've heard just now.

Who was Mr Sunito?---I don't know.

Do you have any idea why Mr Maguire would be drawing to your attention the possibility of a meeting or a request from Sunito?---No.

Was Sunito one of the developers – to your knowledge – that Mr Maguire was attempting to assist in relation to deals and the like?---No, he was not – not to my recollection. I don't know who that person is.

10 But you're aware, weren't you, that Mr Maguire would from time to time seek to assist developers in relation to their development projects. Is that right?---I did not know that assertion.

Well, you at least knew that in relation to Joe, you knew Joe was a developer. Is that right?---Well I, all I knew was that Joe and Mr Maguire were friends, I didn't know anything beyond that.

But did you at least know that Mr Maguire from time to time, would seek to assist Joe?---I can't confirm that I did know.

20 Joe was at least mentioned from time to time. Is that right?---In a capacity as a friend but I didn't know him beyond, I knew he was a property developer and I knew he was a friend of Mr Maguire's. I didn't know anything beyond that.

But are you saying, so far as you can recall, Mr Maguire didn't raise with you any issues that Joe was having from time to time in relation to development projects?---Not that I can recall.

30 And we then saw an example of a Sunito. I can indicate that there is some evidence before the Commission that suggests that Mr Maguire might have introduced Mr Sunito to Joe Alha in relation to a potential development project.---Right.

Is that news to you or did you have some - - -?---I would have no idea about that.

- - - knowledge or understanding in relation to that?---I don't have any recollection, I should say.

40 But you at least knew that one of Mr Maguire's outside business interests was things connected with property and property development. Is that right?---Well, yes, well obviously that was my assumption, yes.

Well, that was something of which you were aware in 2017 and 2018 - - -

MR MOSES: I think this question's already been asked, Commissioner, earlier today, quite a few times, a bit of repetitive questioning.

THE COMMISSIONER: Which question, Mr Moses?

MR MOSES: About awareness of the property development issues or interests concerning Mr Maguire and the relationships. This has already been asked and answered. This is repetitive questioning now.

THE COMMISSIONER: I think it's being asked in a different context, Mr Moses.

MR MOSES: But with all due respect, it's still the same proposition being put.

10

THE COMMISSIONER: Well, sometimes different context might revive memories.

MR MOSES: I just make the observation, Commissioner, thank you.

THE COMMISSIONER: Thank you, Mr Moses. Yes, Mr Robertson.

20

MR ROBERTSON: Ms Berejikian, you were aware, as at the time of the call I just played, namely 15 February, 2018, that Mr Maguire had business interests with people involved in the property development industry. Is that right?---Well, I knew he had business interests, yes.

Well, not just business interests generally but business interests with people in the property development industry. Is that right?---Yes, although I didn't have any detail of what that was.

Joe was one of those individuals, correct?---Well, I knew that they were friends, yes.

30

Yes. They were friends but they were friends – he was friends with someone in the property development industry. Is that right?---Yes, yes.

Were you aware of any other particular individuals that Mr Maguire had any business relationship with in the property development industry?--- Not to my recollection, but if you mention things to me – I don't remember them.

I asked you a little while about a potential bump-in meeting with Mr Alha and I think you might have checked your diary for - - -?---I did.

40

- - - that particular day. Is that right?---Yes, that's correct.

And that diary doesn't identify at least a scheduled meeting with Mr Alha. Is that right?---Correct.

But, as I think you and I have discussed before, that doesn't necessarily that a bump-in meeting - - -?---Correct.

- - - didn't happen. Is that right?---Correct.

And then in terms of a parliamentary sitting day, obviously, at different times of the day one might be more likely or less likely to have a bump-in-type meeting. For example, the prospects of getting a bump-in meeting during Question Time would be zero. Is that right?---Correct.

But at least towards the afternoon and perhaps evening, the prospect of a bump-in meeting might be increased. Is that right?---Well, I wouldn't say, I would use the word meeting. Bump-in would be more accurate to describe.
10 And on that particular day, Mr Robertson, when I asked my staff to provide my diary, it was also perhaps the most casual night of the year. It was the parliamentary press gallery Christmas party. So there would have been a lot of people coming in and out of the building, a lot of people moving, more than any other night.

And so it's possible, for example, that you had one or more bump-ins, perhaps immediately prior to that particular function?---It's possible, but I don't have a recollection.

20 I tender telephone intercept 6356, 15 February, 2018.

THE COMMISSIONER: Will be Exhibit 332.

**#EXH-332 – TRANSCRIPT AND AUDIO OF INTERCEPTED
TELECOMMUNICATION SESSION 6356 DATED 15 FEBRUARY
2018 – EXTRACT**

30 MR ROBERTSON: Commissioner, I'm now going to play a further telephone intercept. This particular intercept I think falls within a similar category to the one that I played this morning. Again, as part of the exercise of the Commission's functions, there's a balance to be drawn between ensuring that matters relevant to an investigation are exposed in public, but also not seeking to unduly affect the privacy and other interests of a witness. In the face of that, in my respectful submission it's appropriate to adopt the same procedure to what was adopted this morning. In other words, to at least in the first instance play the telephone intercept in private rather than in
40 public, because in my respectful submission on balance, at least in the first instance, the public interest in not causing undue embarrassment and the like is outweighed in respect of this particular call, as compared with the public interest in exposure of the matters relevant to this Commission's investigation. So my application is for a further private session of the public inquiry to be convened so that I can play a particular telephone intercept call.

THE COMMISSIONER: This is the intercept in relation to 14 February, 2018, is it?

MR ROBERTSON: That's so. Number 6348.

THE COMMISSIONER: Yes. Having regard to – sorry, Mr Moses, I should have asked you. I know you are not aware of the contents, but I take it you don't object to us going into private session?

MR MOSES: I have no objection to that course of action. I think I may be aware of that one, Commissioner. Thank you.

10

40 MR ROBERTSON: Commissioner, for the benefit of those who have been following on the livestream, can I indicate what's occurred in general terms in the private session? There was certain material that was the subject of some questioning and playing of a telephone intercept in private hearing. What I'm now going to do is proceed with the examination, and I apologise for the delay for anyone who's been following the live stream. Ms Berejikian, I'm going to play you a recording.---Ah hmm.

It's number 6348, starting at 24 minutes and 45 seconds, and then through to the end. And Commissioner, a couple of words will be muted during the

course of what's played during the speakers. But the witness has the benefit of the transcript that'll come up on the screen.

AUDIO RECORDING PLAYED

[2.48pm]

10 MR ROBERTSON: Ms Berejikian, is it fair to say that as at February of 2018, as you understood it, Mr Maguire was considering retiring from parliament but wanted to make sure that he had something to go to after parliament?---Look, that's my understanding but it doesn't appear apparent that he's definitive on what he's doing but clearly that's a consideration.

And you are making clear in that conversation that that was a matter for him to decide one way or the other?---Absolutely a matter for him and I would have responded accordingly.

20 But obviously something that may well affect you in that you were hoping, at least at that point in time, to be in a position to make your relationship with him public. Is that right?---Yes, and I hope I made it clear that was a matter for him and I would deal with it accordingly.

As part of him, "not going to nothing," as you understood it, he was seeking to do some deals and make some profit to put himself in a financial position so that he was not going to nothing. Is that right?---Well, my understanding is that well, my recollection is that he was seeking opportunities beyond politics.

30 One of the things he said was something like, "Country Garden has (expletive) fallen through." Do you know what he was referring to with - - - ?---I do not.

- - - the reference to Country Garden had fallen through?---I have no idea what that meant.

You were not aware as at February of 2018 any reason for Mr Maguire that Country Garden had something to do with his financial position?---I had no idea, no.

40 There's a reference to "Jimmy's, we've got his over the line," do you remember hearing that?---Well, you played it to me but I wouldn't have known what that meant.

And so is it right, that you didn't know as at February of 2018 what Mr Maguire was referring to when he was talking about Jimmy's – I withdraw that. "Jimmy's, we've got his over the line."---I have no recollection of what that meant.

Before his appearance before this Commission on 13 July, 2018, did Mr Maguire ever tell you that he'd received an offer of the kind that might permit him to retire from parliament, in other words an offer which would allow him to go to something post his parliamentary career?---Not to my recollection, Mr Robertson, but I don't, he may have mentioned things but I don't remember it and as a parliamentary secretary he would have been entitled to consider what he was doing beyond his retirement but I don't have any recollection of anything specific but I can't rule it out.

10 Let me try and help you this way and this should be hopefully be the last intercept I need to play you. 8502, 3 May, 2018. Could be the last, might be the second to last. This is very fun one you'd be happy to know.---Thank you.

Well, at least a brief excerpt.

AUDIO RECORDING PLAYED

[2.53pm]

20

MR ROBERTSON: Do you hear there Mr Maguire says "Jimmy's made me an offer," do you see that there?---Ah hmm.

Do you recall whether you were ever told by Mr Maguire as to an offer made by Jimmy?---I have no recollection what that means.

Did Mr Maguire ever tell you that he had been offered or was considering taking up a position within Jimmy's company, being United World Enterprises?---I have no recollection of that, Mr Robertson.

30

So is it right to say that at least before Mr Maguire attended before this Commission in July of 2018, you weren't aware of Mr Maguire having anything particular to go to, for example, a board position or a consultancy position or anything of that kind?---I have no recollection of that, Mr Robertson.

There may have been discussions in general terms but nothing that was concrete enough that sticks out in your mind, is that fair?---I have no recollection, yes.

40

No recollection both of that call but of any discussions of that kind?---I have no recollection of that, no.

Not just the call of any discussions of the kind that you - - -?---No recollection of any discussions, yes.

Can I catch up on some tenders, Commissioner.

THE COMMISSIONER: I was about to say, you haven't tendered the 14 February one yet.

MR ROBERTSON: I tender the excerpt of call 6348, 14 February, 2018.

THE COMMISSIONER: That will be Exhibit 333.

10 **#EXH-333 – TRANSCRIPT AND AUDIO OF INTERCEPTED
TELECOMMUNICATION SESSION 6348 DATED 14 FEBRUARY
2018 - EXTRACT**

MR ROBERTSON: And I tender the excerpt of the last call played, 8502, 3 May, 2018.

THE COMMISSIONER: Exhibit 334.

20 **#EXH-334 – TRANSCRIPT AND AUDIO OF INTERCEPTED
TELECOMMUNICATION SESSION 8502 DATED 3 MAY 2018 –
EXTRACT**

THE COMMISSIONER: Should I, without imperilling the private section of the day, this last part, should what was done there be marked for identification?

30 MR ROBERTSON: Yes, please, Commissioner.

THE COMMISSIONER: Very well. The tape which was played during the second private part of today's inquiry is MFI 10.

**#MFI-010 – TRANSCRIPT AND AUDIO OF INTERCEPTED
TELECOMMUNICATION SESSION 6348 DATED 14 FEBRUARY
2018 (PAGES 23 TO 28)**

40 MR ROBERTSON: Is it right to say that in relation to Mr Maguire's business activities, you proceeded in effect by way of assumption that Mr Maguire would comply with his obligations in relation to those matters? ---That was absolutely my assumption, Mr, Mr Robertson.

Nothing came to your knowledge that led you to question that assumption and ask for further enquiries to be made, is that fair?---And if it did, I would have, I would have taken action appropriately.

Have you ever exercised an official function or declined to exercise an official function because you thought by exercising that official function or declining to exercise that official function you might be able to assist Mr Maguire's personal interests or the interests of his associates?---Absolutely not.

That's the examination, Commissioner.

10 THE COMMISSIONER: Thank you, Mr Robertson. Mr Whittaker, I'm not really sure why you're here today. I don't mean that unkindly. But you represent Mr Alha, is there any - - -

MR WHITTAKER: No, there is nothing from me in relation to Mr Alha's position, Commissioner.

THE COMMISSIONER: So you have no questions to ask today?

MR WHITTAKER: No.

20 THE COMMISSIONER: Very well. Thank you. Mr Harrowell, do you have any questions?

MR HARROWELL: No questions, Commissioner.

THE COMMISSIONER: Mr Moses, do you wish to ask anything?

MR MOSES: No, Commissioner. Thank you, Commissioner.

30 THE COMMISSIONER: Very well. Shall I excuse Ms Berejikian?

MR ROBERTSON: Certainly for today. It's conceivable, although I think unlikely, in fact perhaps even highly unlikely, that Mr Maguire when he gives evidence might say something that might need me as a matter of fairness to give Ms Berejikian an opportunity to respond. So in the face of that, at least in the ordinary course, she wouldn't be discharged generally from her summons. But can I be quite clear, I'm not suggesting for a moment that I'll necessarily need to do that at all, and no inference ought be drawn by anyone in the event that you come to the view that she shouldn't immediately discharged from her summons to appear today.

40 MR MOSES: Commissioner, can I just be heard on that? Can I say that if the Commission does discharge Ms Berejikian from the summons today that I can give an undertaking to the Commission on her behalf that she will attend the Commission if required at short notice in order to deal with anything that you consider needs to be dealt with as a matter of fairness? So I can give that undertaking to you on her behalf.

THE COMMISSIONER: Mr Robertson, is there a reason why I shouldn't accept that undertaking? Other witnesses haven't fallen into quite the same category.

MR ROBERTSON: No, there's no reason you shouldn't accept that undertaking.

10 THE COMMISSIONER: Very well. Yes, thank you, Mr Moses. Ms Berejiklian, you're free to go today, and as you've heard, or as you will now hear, you're discharged from your summons, and Mr Moses has undertaken that you will return at short notice should you be further required.---Thank you.

You may step down.---Ah hmm.

And you may leave the Commission.---Thank you.

20 **THE WITNESS WITHDREW** **[2.58pm]**

THE COMMISSIONER: Thank you, Mr Moses.

MR MOSES: Thank you, Commissioner.

MR ROBERTSON: Can I then propose that the public inquiry adjourn until 10.00am tomorrow, with a view to proceeding with Ms Wang, and as I indicated this morning, I don't propose to - - -

30 THE COMMISSIONER: Mr Moses, just before you leave, there's one matter – just the door, please, Ms Read. You were going to ask Ms Berejiklian about the circumstances of the 13th - - -

MR ROBERTSON: Just pause for a moment, please, Commissioner.

THE COMMISSIONER: Sorry, about the other matter.

MR ROBERTSON: In my – just pardon me for a moment.

40 THE COMMISSIONER: Are we offline?

MR ROBERTSON: No.

THE COMMISSIONER: Do you wish me to adjourn for a minute?

MR ROBERTSON: So immediately I apply for a direction to be made under section 112 in relation to the aspect of the transcript where you, Commissioner, referred to “the other matter.”

THE COMMISSIONER: Yes, I make that direction about myself, I apologise.

**COMMISSIONER'S DIRECTION PURSUANT TO SECTION 112 OF
THE INDEPENDENT COMMISSION AGAINST CORRUPTION
ACT IN RELATION TO THE TRANSCRIPT**

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MR ROBERTSON: But in my submission, the public inquiry should be adjourned, needs to be adjourned until 10.00am tomorrow, and I'll proceed with Ms Wang, and then proceed with Mr Maguire on Wednesday, rather than on Tuesday.

THE COMMISSIONER: Very well.

MR ROBERTSON: So there are no other matters to be dealt with today in terms of the public inquiry.

20

THE COMMISSIONER: Very well, we'll adjourn the public inquiry.

SHORT ADJOURNMENT

[3.00pm]

