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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 TUESDAY 19 OCTOBER, 2021

AT 1.45PM

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

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Can I just indicate for the benefit of those who have been following along on the live stream, there was a difficulty with the audio before lunch for about three or four minutes or thereabouts. I'm told that the transcript of this morning's proceedings will be made available within fairly short order, so I don't propose to go back over any of the material in respect of which there was an audio problem, but of course what took place will be in the transcript that will be made available within fairly short order.

THE COMMISSIONER: Thank you, Mr Robertson.

MR ROBERTSON: Mr Doorn, before the luncheon adjournment I was asking about the speaking notes prepared for the benefit of Minister Ayres and I showed you the draft that appears to have been authorised with contents and accuracy endorsed by you. Can I go to Exhibit 393, which appears to be a different version of a similar document. Just zoom into the top-half of page 193 and you'll see the recommendations are the same but you see, for example, there's a heading called Summary and do you see the highlighted part?---Yeah.

It says, "Note, if asked, the Australian Clay Target Association has advised that the World Down-the-Line, DTL, Clay Target Championships in March 2018 will continue in Wagga Wagga even if the upgrade is not completed." Do you see that there?---I can, yes.

Now, does that assist with your recollection at all as to your knowledge at the time as to whether the 2018 event was, to use my phraseology, a nice to have or a must have?---No. Sorry, it doesn't. That's inferring that it didn't go ahead or that they didn't have that proposal.

Well, if you have a look at the note it seems to say "if asked", so if some Q and A is given, "the Australian Clay Target Association has advised that the World Down-the-Line Clay Championships in March 2018 will continue even if the upgrade is not completed." Do you see that?---I can, yep. No, I can't remember the specifics but I would, I'm inferring that, that it would, that they hadn't yet secured that event.

So at least so far as you can recall it sitting there now, your understanding at the time was that this was a must have in the sense that it was something that the Clay Target Association was seeking to build in order to secure the 2018 event as opposed to something that would just be nice to have for an event that was going to happen in any event?---Yeah. I mean I'm sure that

would have been a key factor as part of the business case that was, that that was part of the proposal that, an event like that.

But at least your recollection of your understanding at the time was that it was, to use my phraseology, a must have, it's something that we want in order to secure the event, build it and they will come, as opposed to they're coming anyway, let's build it?---Yeah. My understanding is the, the former version, that this was part of getting a large event to come.

10 So if I put it this way, it was a "build it and they will come" as opposed to "they are coming, let's build it"?---That's my understanding, yes.

Then just turn to the next page of this document. If you just have a look in bold, "Due to the urgency with the championships in March 2018, the submission and the business case have not been subject to any agency consultation or independent review." Do you see that there?---I do, yes.

20 But the sub-dot points, the ones in a black outline and white in the middle, those were the points that you were seeking to put forward and your agency was seeking to put forward to mitigate financial and delivery risk. Is that right?---No, no, that's correct, yeah. That's the sort of language that we would, that's consistent with what we would have said, yes. Well, it is what we said, sorry.

But you'll note that this document is a little different to the one that I showed you that appears to have been approved by you as having accurate contents.---Is this, sorry, my apologies. Is this, you're saying this document is changed in the version that's - - -

30 Well, let's go back to it so I can show you.---Yeah, please.

Let's go back to 392.---Maybe I, I lost it in the audio as well.

No, that's completely fine. I'm expecting you to remember something before lunch. So we'll go back to 392 which is a document that has a note that says, "Contents and accuracy endorsed by Mr Doorn." And so we'll go to the first page of Exhibit 392 first of all if we can. Zoom in to the top half of the page. So this is the covering email, "This has been cleared by Paul." ---Yes.

40 Do you remember I showed you that before lunch?---I do. Yes, I remember.

And if we then go two pages along note that it says, "Contents and accuracy endorsed by Paul Doorn." See that?---Yeah, I do, yeah.

And then if we go to the next page. This is the first document I showed you. Remember suggested speaking points/notes?---Yep.

And I draw your attention to the dot point towards the bottom of the page. We'll just scroll down a little bit. And so you'll see that one says, "ACTA's application was developed quickly and the submission of business case have not been subject to any agency consultation or independent review." See that there?---I do, yes.

And then you see three sub-dot points, black outline with white in the middle which appear to be the same as the other document I showed you as soon as we started after lunch.---Yes, no, I understand now, yes.

10

But if we go back to the preceding page and back to page 4 of the exhibit, page 119 from the original brief, just one page further on from that, please. Do you remember I showed you a highlighted box before.---Ah hmm.

And we don't see a highlighted box in - - -True.

- - - in this version.---Thank you for pointing that out. I didn't, didn't go to that.

20

And so it appears at least that from the version that you indicated was correct or at least there was a notation that you said indicated correct and accurate, et cetera, there appears to have been at least some changes to the speaking notes.---Correct.

If we go back to Exhibit 39 - - -

THE COMMISSIONER: Before we do that, Mr Robertson - - -

30

MR ROBERTSON: Yes. Please.

THE COMMISSIONER: - - - can I just ask Mr Doorn, there's a very faint watermark which appears to say "Draft" through this.---Yes, I can see that.

What's the reason for that when you all appear to have signed off on it within the agency?---Dare I say it's not, it might be technology but, usually, that would be removed once the chief executive's approved it, so, yeah. That, that's unusual.

40

MR ROBERTSON: Is it also unusual for speaking notes of this kind to be amended in the ministerial office level?---That's a difficult one for an answer because I think it's, they do go up as Word documents and, and we often don't get that feedback, we often don't see what's presented 'cause it's Cabinet in confidence and we don't often see that. And, again, I think it's more a style thing than an editing of content because the content's been approved by the bureaucracy, so to speak, but, so I don't, I wouldn't say it's, well, it's not custom and practice, that's for sure.

But isn't this a little bit more than just a change in style, because if we go back to Exhibit 393 – while that's coming up, presumably, at least from your standpoint as a public officer within the agency, the question of whether this was a "build it and they will come" as opposed to a "they are coming, let's build it", presumably that was a relevant consideration, at least from your perspective, as to whether funding should be provided. Would you agree with that?---No, no, I agree, no, I agree with you with that. And the point I was trying to make was I was just trying to say that it's not unusual for things to be edited but this, this, the, the change in that context would be unusual, yes.

So you agree, I think, we'll just go back one page in Exhibit 393. Go back one page of that exhibit. You would agree that the highlighted portion would, at least from your perspective, be a matter of significance in the question of whether or not the ACTA proposal should be funded or not? ---Correct. Yes.

And as I understand your evidence, it's not unusual insofar as you're aware for there to be things like stylistic changes to a speaking note that is prepared for a minister for a Cabinet meeting or committee of Cabinet meeting. Correct?---That is correct.

But is this right? It's at least unusual in your experience for a substantive change of the kind that we can see on the screen in highlight to be made between the agency's version and the minister's version?---Yes, so I would agree that's a, that is unusual 'cause that's a substantive change.

THE COMMISSIONER: (not transcribable) continue, I gather (not transcribable) singular problem.

MR ROBERTSON: Now, do you recall what ultimately happened in the ERC itself? I'm not suggesting you were there sitting in the room, but did you become aware of what decision the ERC ultimately made in relation to the submission prepared by the Office of Sport?---I think the only thing I'm aware of is, is that I think the local member announced it, but I can't remember the order of how that worked, I'm, I'm sorry.

Well, did it come to your knowledge what decision had been made in the Expenditure Review Committee noting that that was this process that was going on, preparing a submission for the Expenditure Review Committee to consider?---Look, I'm sure it would have but I apologise. I don't know the details or I don't recall the details.

Well, I think you said before the luncheon adjournment, as you understood it, something happened that changed effectively the agency who - - -?  
---Yeah.

- - - ended up having to take the running of the project. Have I got that right?---Yeah. I think Regional Development ended up taking forward the submission but I don't, I don't know the circumstances for that.

You can't recall as - - -?---No. No.

- - - the way in which that came about?---Yeah.

10 Is that right?---No, that's correct. I mean, unfortunately, at the same time this was happening is when I was leaving to, to transfer into my new role in January, as well. So I apologise about that, the lack of detail.

Well, let me try and assist this way. If we go to page 259 of volume 26.3. I'll show you an email that you appear to have sent on 19 December, 2016, noting that the ERC meeting in respect of which this submission apparently got a slot was 14 December, 2016.---Right.

20 THE COMMISSIONER: Should we need to be troubled by the fact that your camera seems to have frozen, Mr Robertson? I know you haven't but the camera does, certainly on my screen.

MR ROBERTSON: I'll ask for advice. I'm told, I think that I've unfrozen both virtually and - - -

THE COMMISSIONER: Well, you've vanished. Your real problem is you've vanished, Mr Robertson.

30 MR ROBERTSON: Hopefully not at least on the other screen. Sorry, page 259 of 26.3. We're just going to pause, Commissioner. Mr Doorn, if you can just have a look at the email on the screen with focus on the one at the bottom at the moment. It's an email from Mr Hall to Mr Miller and it says, "Hi mate. The proposal for Wagga Clay Targets went to ERC this week. It was determined that the business case had to be reviewed or redone, unclear which, by INSW." See that there?---Yes, I do.

That you understand to be a reference to Infrastructure NSW?---Yes, correct.

40 "So that it can qualify for funding from the Regional Growth – Tourism And Environment Fund." See that there?---I do, yes.

Now, the suggestion that the business case might have to be reviewed or redone wasn't something that came as any surprise to you, is that right? ---Oh, no, because we had raised our concerns with that, yeah, so - - -

You were of the view and your agency was of the view that the business case that was in play at that point in time wasn't of a sufficient quality to

support a funding proposal of the magnitude proposed by ACTA, is that right?---That is correct, yes.

And if we scan up the page a little bit, you'll see Mr Miller forwards it onto you and then if we go a bit further up, you then delegate that, it seems, to Mr Toohey. "Can you please package up for me all the information we have in relation to Wagga Clay Targets. MO has asked that we send this through to Jim Betts – see below." Do you see that?---Yes, I do. Yes.

10 And Mr Betts, at that point in time, was the Chief Executive Officer of Infrastructure NSW, is that right?---Yes, that is correct.

Now, does this assist your recollection in relation to the question I asked you a little while ago, about how it was as you recall it, that the Office of Sport, as I understood your evidence, effectively began to take a bit a back seat after the ERC meeting?---Yeah. I mean, I think, I'm, I'm drawing a bit of an inference here, but my recollection would be that because of the issues raised before by, the, the former person from Department of Premier and Cabinet, I think Infrastructure NSW was part of the DPC cluster at the time,  
20 so it was probably a decision made to take it across to Infrastructure NSW for them to do a test or to check the robustness of the business case.

But having had your memory refreshed with that, is that effectively what happened, as you recall it, you put the ERC submission before the ERC and one of the consequences of what the ERC decided was that it really became a Infrastructure NSW project or at least another agency project, rather than an Office of Sport project?---Yeah. That's certainly the, the outcome. I, I just, I'm, I'm not clear on did it actually sit and was there a recommendation from ERC. I don't know the answer to that.  
30

So at least the outcome, or the process might be different - - -?---Yeah, I, yeah, yeah. Yep.

At least the outcome was, this had started, in effect, started life as an Office of Sport project with the Minister for Sport putting the submission forward, but through some mechanism it ultimately ceased to be an Office of Sport project, is that right?---That's correct. Yeah, that's my understanding, yes.

Obviously enough, the Office of Sport having had at least some background,  
40 you're wanting Mr Toohey to package up all the information et cetera so that people can start with a running start, as it were?---Correct.

But your understanding was that one of, at least one of the consequences of the ERC process was that it ceased to be an Office of Sport project and instead became a matter for other agencies within government, is that right?---That is correct, yes.

I tender the email from Mr Doorn to Mr Toohey, 19 December, 2016, 8.35am, pages 259 and 260, volume 26.3.

THE COMMISSIONER: Exhibit 412.

**#EXH-412 – EMAIL FROM PAUL DOORN TO MICHAEL TOOHEY REGARDING WAGGA WAGGA CLAY TARGETS DATED 19 DECEMBER 2016 AT 8.35AM**

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MR ROBERTSON: And just while we're here, Mr Doorn, I will just quickly show you Exhibit 396, which is volume 26.4, page 106. While that's coming up, one of the consequences of the ERC's decision, as you understood it, was that it's no longer an Office of Sport project, it's another agency project, correct?---Correct, yes.

20 But you at least understood that the ERC to have supported the project in the sense of made a decision in favour of it being funded, is that right?---No, I don't, I, well, that's the bit I'm unsure about. I don't, I don't recall that part of the, your explanation there. I think certainly there was a discussion, I don't know if that happened outside of the ERC or within ERC, apologies.

Do you recall seeing the terms of the ERC decision itself?---I have a vague, a vague recollection, but I couldn't quite - - -

30 I take it that as an executive director in the Office of Sport you had access to eCabinet and therefore could have access to decisions of the ERC?---Yes and no. So not everyone had access to eCabinet, so it's come through Executive and Ministerial Services, and then depending on your level, you didn't always get to see, you would have to liaise through your Treasury or your Department of Premier and Cabinet colleague to get a copy of what was – yeah, but it's not something we downloaded, I don't think, directly to my computer.

But something like this that concerned the Office of Sport, you would have access through eCabinet to be able to view the ERC decision?---Yeah, yeah, we'd be able to get access, yes, correct.

40 It may be you'd have to get particular permission to view that document so that someone could press a button that in effect says, well, this is an Office of Sport issue, so therefore Mr Doorn can have a look at it, is that the idea? ---Yes, yes.

So if you just have a look at the document on the screen, we'll zoom into the bottom half. This is an email from you to Mr Betts of 19 December. And you'll see you refer to last week's ERC decision and to forward the matters on and the like. See in the second paragraph you say, "There are no

independent reviews/feedback from agencies, et cetera, on the proposal.”  
See that there?---Yes, okay.

And then you provide a summary. Just following that summary, just have a look at the second-to-last paragraph, at least the second-to-last full paragraph on the screen. “The 2018 World Championships are confirmed for the Wagga Wagga facility and are not subject to the development proceeding.” Do you see that there?---Oh, sorry, I was looking at the dot points.

10

Just towards the bottom of the page.---Okay, yes, I can see that.

So we take it from that, don’t we, that at least as at 19 December, 2016, you understood this proposal to be a “they will come, let’s build it” as opposed to a “build it and they will come”?---Yeah, that’s, that’s a development from the last one you said, where we thought it wasn’t yet confirmed, so it’s obviously been confirmed.

20

Well, I’m really trying to focus on what your understanding of the position was. I think you’re agreeing with me that at least as at 19 December, 2016, you knew that it was a “they’re coming, let’s build it” project, correct?  
---Yes.

Is that right?---I agree with you, that’s what, that’s how it’s written, yes.

But is it right that at least at some prior point in time you understood it to be what I’ve called a “build it and they will come” project?---That’s correct.

30

But are you able to assist as to when your state of mind changed from one to the other? Plainly enough it had changed by 19 December, given this email. Are you able to assist as to when that change took place?---Yeah, no, sorry, I’ve not done, not the specifics. Just trying to, yeah, no, unfortunately I can’t tell you the answer to that. I have no – what was the date? Just help me with the time frames. What was the date of the previous note where I said it was not yet confirmed?

I’m not sure the one you’re referring to.---There was a briefing note that said, the, the highlighted section.

40

Let me take you back to that.---Appreciate that, thank you.

Because you may have slightly misread that. It’s Exhibit 393.---Right.

I don’t want you to assume that you necessarily did or didn’t write that text.  
---Yeah.

I’ve shown you at least the first draft or an early draft of speaking notes that you appear to have approved as being accurate.---Ah hmm.

That was Exhibit 392. Just to give you the context, I'll just go back one page just so you can see - - -?---Sorry, my apologies. I've got the inference wrong.

So we'll just go back one – I just want to give you the context of this, just so you're not in any way misled.---Thank you.

10 This is an attachment, at least in the version that this Commission has, this is an attachment from a Mr Landrigan, L-a-n-d-r-i-g-a-n, who as the title indicates there was a policy adviser within Minister Ayres' office to various individuals including Mr Hall, the then chief of staff of Minister Ayres.  
---Yeah.

And you'll see next to attachments it says "ERC talking points". Can you see that?---I can, yes.

20 Then if we then go to the next page you'll see there's some commonality in text with the document that appears that you authorised.---Ah hmm.

Exhibit 392 document but not a complete overlap in text. Do you see that?  
---Yep, I can.

30 I don't want you to assume one way or another whether, from me at least, whether the highlighted text was you or anyone else. If you just have a look at that text so you're not in any way misled. It says, "Note, if asked, the Australian Clay Target Association has advised that the World Down-the-Line, DTL, Clay Target Championships in March 2018 will continue even if the upgrade is not completed." Do you see that?---Yeah, I can.

So at least as I read it, and I may have this wrong, but at least as I read it whoever wrote that is suggesting that it's "they're coming, let's build it", rather than a "build it and they will come".---Correct. And my apologies. That's - - -

Does that assist you with the - - -?---It does, yes.

40 Assist you with the timeline?---I got myself confused because I thought that said that it wasn't yet confirmed so - - -

Now, me having given you that context, does that assist you at all in recalling when your state of understanding changed from it being a "build it and they will come" as opposed to a "they are coming, let's build it"?---No, sadly, I'm sorry, it doesn't assist me.

You referred a little while ago to some kind of a public announcement in relation to the ACTA project.---Yes.

What were you referring to there?---I remember there being an announcement I think by the local MP that it had been, that funding had been granted or received or approved or something like that but I don't know if that was the case.

And when you say the local member, you mean Mr Maguire?---Maguire, yes.

10 When you say I don't know whether that was the case, what are you referring to there?---I, I just, because I distinctly remember being surprised that it was announced because, but then I was confused because at the same time whilst we had been involved in the project up until, the Infrastructure NSW project and then for it to be, I'm assuming, handed over and then there was an announcement came across I was just a bit, I was surprised that that was, that that did get funded so quickly.

Let me just try and assist you with some of the documents around this time. ---Thank you.

20 So page 257, volume 26.3. I'll show you an email of 15 December. So just to help you again with your bearings, what appears to be your version of the speaking notes 12 December, 2016, 2.17pm. The further version that had the highlighting in it appears to be 14 December, 2016.---Okay.

14 December, 2016 was also the date of the ERC meeting.---Ah hmm.

I'm now showing you 15 December, the next day.---Yes.

30 From Mr Toohey to you but have a look down the chain. An email from you to Mr Toohey, 9.56am.---Yep.

“Hi, Michael. I understand from Marc that the ERC submission for the ACTA project was supported in ERC but dependent on a business case with further detail and costings being submitted back to ERC.” Do you see that? ---I do, yes.

40 So does that refresh your recollection that you actually found out about at least the substance of the ERC decision within fairly short order, indeed the day after the ERC decision itself?---Yes. That's good.

But is it right that - - -?---I'm sort of somewhat relieved that it's dependent on the business case.

When you say you're relieved, why are you relieved?---Well, because effectively our argument has been that there needed to be a few more checks and balances and so, that the business case needed further detail and costings being submitted.

And so at least as you understood it in the second half of December 2016, it wasn't, as it were, money in the bag, money is definitely going. You having looked at this are relieved that you had concerns about the project and you're relieved that there were some conditions imposed, in particular the business case, to try and deal with those concerns. Is that right?---Yeah. I describe it as further checks and balances, which is good.

10 Well, is it a bit more than further checks and balances? Is this right, it's the kinds of checks and balances that you would ordinarily expect to be performed before any ERC submission - - -?---Yeah, I think the word "further" shouldn't have been used, yeah.

- - - before any ERC submission is even uploaded. Is that right?---Yeah, correct. So if I, you know, I think take out the word "further", the checks and balances will be in place, which would provide us with, you know, not that it was our project at that particular point anyway, but effectively that's I think one of the, the subtext of what we've been arguing the whole way along.

20 And can we just then go to Exhibit 395? I'm sorry, I should tender that first. I tender the email chain ending in an email from Mr Toohey to Mr Doorn, 15 December, 2016, 10.23am.

THE COMMISSIONER: That's Exhibit 413.

**#EXH-413 – EMAIL FROM MICHAEL TOOHEY TO PAUL DOORN  
REGARDING ERC SUBMISSION DATED 15 DECEMBER 2016 AT  
10.23AM**

30

MR ROBERTSON: I'm told the witness's screen just needs some technical assistance.

THE COMMISSIONER: Sorry Mr Doorn. It's like a domino effect.

40 MR ROBERTSON: I no longer seem to be frozen, which I'm happy about. I'm sorry about that, Mr Doorn. We're going to bring up Exhibit 395. I'm just going to pause, Commissioner, because one of the individual, one of the legal representatives attending remotely needs to be notionally admitted.

THE COMMISSIONER: I think he seems to have managed – I think he's been admitted.

MR ROBERTSON: Can we go to Exhibit 395, please? I'm going to show you the terms of the ERC's decision itself. Can we just zoom into the substantive text and you'll see there, Mr Doorn, Roman (i) is an approval of a resolution or part resolution that appears to be the same as that that

appeared in the ERC submission that I showed you a little earlier. Do you see that there in Roman (i)?---Yeah, yes.

Then there's another Roman (ii) referring to the fact that the grant in recommendation Roman (i) should be sourced from the Regional Growth – Environment and Tourism Fund. Do you see that there?---I do, yes.

But is also subject to the finalisation of a satisfactory business case. See that?---I do, yes.

10

“Noting this can be approved by the Treasurer, then Treasurer Berejiklian, following Infrastructure NSW’s assurance processes linked to the fund.” See that there?---I do, yes.

And see it should be kept at \$5.5 million et cetera. Do you see that?---I do.

20

And do you happen to know how that additional resolution or part of resolution for added to the ERC’s decision?---No. I’m, I’m assuming it’s part of the discussion at ERC, or whether it was advice from – so often what happens, well, not often, but what happens in this case is, you know, do you go, other agencies like DPC provide their commentary and so it’s not uncommon for them to want to attach or, or modify the recommendations in that process.

30

Do you at least have a recollection of seeing the text of this decision before I’m showing it to you as part of this investigation?---Oh, yeah. Apologies, but it’s a, it’s a vague recollection. It’s just, yeah, I do, I do remember that, that it was subject to, if you like. So it was approved but then subject to, but it’s the detail that I’m just refreshing my memory on.

Now, it is approved but subject to, but it’s an approval of something that at least at the bureaucratic level was something that was not supported, correct?---Yeah, it was not listed as a high priority, that’s for sure.

Well, it wasn’t just not listed as a high priority, it was a low priority, correct?---Ah hmm, correct.

40

In the new policy proposals in 2013 and 2014, it was at the bottom of the list, correct?---Correct.

It was something that wasn’t supported by the Wagga Wagga Council as part of the Future Needs of Sport Infrastructure study. Correct?---Correct.

It wasn’t supported by a business case of sufficient detail and quality as would justify, at least in your view as a public servant with experience in this area, that would support an expenditure of the order of 5.5 million as we can see in this decision. Correct?---Correct.

And at least one of the other concerns that you had is that there was an existing shooting facility in Greater Sydney which was of Olympic standard. Correct?---That is correct.

10 So in the face of all of those considerations, what, as you understood them, were the pros in favour of this Cabinet submission? You've identified quite a number of cons. And appreciating these are ultimately matters for the government, for the minister and Cabinet and to the extent relevant, the Expenditure Review Committee, but what, as you understood it, as the person at least partially responsible at an agency level as executive director, what were the pros in favour of this particular proposal?---I think because it was a regional initiative and I think the, the reason it went from being just a shooting facility, so as in shooting ranges, into a clubhouse, into offices, that there was an economic benefit potentially around how that clubhouse might be run. I, I thought in the business case somewhere it talked about, you know, conference facilities, so bringing more travellers to, to Wagga. There might have, might have been a, a pro in that space that they were arguing. And, ultimately, I think it was about regional and getting people to travel to regional New South Wales.

20

A pro in that space that "they" were arguing. Who's the they you're referring to there?---That, this is the ACTA proposal.

Not a factor that was of sufficient status, at least from your perspective as an executive director, as would support the project?---No. I think we've, the, the fact that, you know, we, we wanted to have a little bit more robustness around the numbers.

30

Well, it's a little bit more than just having robustness round the numbers, wasn't it? Based on the material that you had at this point in time, there wasn't a sufficient basis, at least as you saw it, to support the project at all? ---No, no. From a shooting facility perspective, we weren't experts on regional tourism and travel and things like that, but from a sporting facility perspective, there certainly wasn't enough benefit from our, from our, from what we would see.

40

As you understood it at the time, did you see this as what I might call a politically driven project?---Look, I think there was a lot of angst from, well, angst is probably the wrong word, a lot of push from the local MP but I didn't, you know, I didn't sort of see it as a political ploy. Like I said before, we didn't sort of talk politics and numbers and who, who's doing what and where, those, how those relationships, we, we didn't talk about those sorts of things in our meetings with the minister's office. What we talked about was what the impact and the benefit to sport would be, so, but there was certainly a lot of correspondence and, and I guess a push from the local MP.

Is it a project that, at least as you saw it, one that could be regarded as supported by what I'll call the underlying merits, as in the kinds of considerations that you and I have discussed today, ignoring what I'll call political considerations?---Can you say that again, sorry, for me?

If you focus just on what I'll call the underlying merits, things like the overall benefit to the state, considerations like not cannibalising in relation to other events, the kinds of things that you and I have been talking about so far today - - -?---Yeah.

10

- - - was it a project that, at least as you saw it, one that could be supported or at least had strong grounds for, based on those kinds of underlying considerations?---No. I think, I mean, our underlying issue is exactly the fact that we didn't think it, it stacked up and, which is why I think even in this particular submission, the document that's in front of me, they still had a whole host of steps that still had to be gone through before they got access to the funds.

20

So by reference to those kinds of considerations of what I called underlying merits, it was a project that, at least as you saw it, didn't stack up. Is that right?---That is correct, yeah.

So what explained, at least as you understood it, the fact that despite the fact it didn't stack up, it ultimately led to a decision to approve an expenditure of some \$5.5 million?---Look, that, that's hard for me to comment on because effectively, we were surprised that it did get funded but I don't know the rationale or the reasoning that sat with inside of government or the Cabinet for that process.

30

Was there any discussion with the minister's office as to the kinds of things that might be informing the apparent support of the minister's office in relation to the project?---No, just a, a connection to, you know, correspondence and a, and a pushing from the local MP.

40

Was there any indication raised at the minister's office level, for example, that, well, maybe it's a good idea to look after people interested in shooting given, for example, the level of political support or otherwise of the Shooters Party, or the Shooters, Fishers and Farmers Party?---Yeah, look, I think, you know, an observation from my perspective is the, it's an observation would be that the amount of money that goes into shooting is quite disproportionate to the amount of people involved in shooting, but other, other than that inference, it's, there was no discussion about that.

So are you saying that's a possible inference that you draw from your general knowledge as distinct from anyone raising it - - -?---Telling us, yeah.

- - - saying, look, we want a shooting facility for this particular what I'll call political reason?---That's correct.

You're aware, I take it, that Ms Berejiklian gave evidence before this Commission to the effect that she and Mr Maguire were in a close personal relationship from at least about the time of the 2015 election or slightly after or thereabouts?---I'm aware of that, yeah.

10 When did you first become aware of that matter?---I think when the media broke the story.

It was not something that you knew about - - -?---No.

- - - at the time at which you had some involvement in the ACTA project that you and I have discussed during the course of today?---No. I was genuinely very surprised when I read that in the news.

20 If that was something that you'd known about at the time of the events that you and I have discussed today, and in particular your involvement in the ACTA project, would have that had any impact on anything that you did?  
---Oh, most definitely. I mean, there are very clear rules in public sector land for, you know, involvement or not disclosing conflicts of interest. But we weren't, certainly I wasn't aware of anything, any relationship there.

So had you known about that in the parallel universe where you knew, rather than not knowing - - -?---Ah hmm.

30 - - - what steps, if any, would you have taken in relation to that information or what different steps would have you taken?---Oh, look, well, I think, if you, if that was a known factor, first thing you'd be doing is you'd be notifying your secretary, so that would be the head of your government agency. And then ultimately that would be then drawn to the attention of places, people, organisations like ICAC. But it'd be the secretary first and foremost.

Would you regard that bit of information, if you'd known about it, as something in the nature of a red flag?---Yeah, no, that's a good way to describe it.

40 That's the examination.

THE COMMISSIONER: Thanks, Mr Robertson. Mr Agius, do you wish to seek leave to ask Mr Doorn any questions?

MR AGIUS: No, we do not, Your Honour, Commissioner.

THE COMMISSIONER: Thanks, Mr Agius. Mr Harrowell, do you wish to seek leave to ask questions?

MR HARROWELL: No, Commissioner.

THE COMMISSIONER: Ms Callan, do you wish to seek leave to ask Mr Doorn any questions?

MS CALLAN: Yes, Commissioner.

THE COMMISSIONER: I grant you leave on the same basis as yesterday.

10

MS CALLAN: Yes, Commissioner. Thank you. Good afternoon. My name is Ms Callan. I appear on behalf of Ms Berejiklian. I just have a few questions, thank you, Mr Doorn. Before lunch you were asked about a form of ministerial briefing from about July 2016, which listed a number of projects recommended for funding, in the context of there being some excess budget at the end of the financial year. Do you recall that document?---I do, yes.

20

If you need to be shown a copy of the document, please just indicate. Do you recall you gave some evidence about formulating that briefing document in consultation with the minister's office?---I do, yes, yes.

And not sure if you recall, but within that document there looked to be a list of projects, all of which were blacked out aside from the ACTA grant. ---Yes, I remember the document.

30

Is it the case that all of the projects in that list were compiled in consultation with the minister's office?---That's a reasonable assumption, yeah, I'd have to say, yes. In, in dialogue with the minister's office.

That is not just the ACTA proposal.---No, but the other ones.

You gave some evidence, both before and after lunch, that you did not talk politics in your discussions with the minister's office, but you, for instance, indicated you spoke about the impact and benefit to sport.---Ah hmm.

40

Does that mean that if political factors were informing the minister's office, for instance, as to proposals the minister or the minister's office was urging be given further consideration, that those political factors were not conveyed to you?---That is correct.

And more specifically focusing on the ACTA grant, you gave some evidence before lunch by reference to some emails of 15 November, 2016, which was a date when there was some considerable urgency conveyed to your office in relation to formulating a submission to the ERC about that grant.---Ah hmm.

It's the case that you were not made aware by any of your discussions with the minister's office as to whether political factors might be informing that urgency?---No. It was, as I mentioned earlier, it was solely around, our incentive was solely around trying to get ready for a particular date but no other information other than that.

10 You were asked a series of questions just at the end of your examination in chief about what impact it might have had on you if you'd known about the close personal relationship that Ms Berejiklian had for a time with Mr Maguire. My note of your evidence is that you say that it had an impact definitely, the rules were clear about disclosing conflicts of interest and you were asked, if you had known, what steps would you have taken. You referred to notifying the secretary and perhaps drawing it to the attention of the ICAC.---Ah hmm.

Was that specific to this ACTA grant proposal or more as a general proposition?---No, as a general rule. Yep.

20 And when you say that bit of information is something in the nature of a red flag, it's your reaction that that, from your perspective, might warrant consideration?---True, yep.

Including as to whether in fact it gives rise to a conflict of interest or not?  
---Correct.

Those are my questions. Thank you, Commissioner.

30 THE COMMISSIONER: Thank you, Ms Callan. Mr Crawford-Fish, did you wish to seek leave to ask Mr Doorn any questions?

MR CRAWFORD-FISH: No, Commissioner.

THE COMMISSIONER: Thank you. Mr Robertson, do you have any questions?

40 MR ROBERTSON: There's nothing arising, save that I should indicate that if my learned friend, Ms Callan, was in any way disadvantaged by the fact that in Exhibit 408 certain parts of that document were redacted, then my submission would be she should be permitted to see the unredacted version. I doubt that it affects any of the questions that she asked, but I think in fairness, in light of the fact that that was one of the topic areas, if she does seek access to the unredacted version, then my submission would be that it would be appropriate that she be given that access.

THE COMMISSIONER: Yes. Do you wish to see the unredacted version, Ms Callan?

MS CALLAN: No. Your Honour, I'm grateful for Counsel Assisting considering fairness generally in respect of my client and my position. In this particular instance, I don't need to see that document.

THE COMMISSIONER: Thank you, Ms Callan. Mr Doorn, I release you from your summons this afternoon. Thank you for attending.---Thank you.

You may step down and leave the hearing room.

10

**THE WITNESS EXCUSED**

**[2.38pm]**

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Commissioner, as I foreshadowed at the commencement of today's proceedings, I propose to tender some further evidence concerning some additional matters relevant to persons that I am not, at least at the moment, proposing to call as witnesses. I'll say  
20 something a bit more about that in a moment, but in that context, can I have on the screen, please, volume 29.0, page 286? There's some documents and materials I'm going to tender in a moment that form part of the documents that are relevant to the matters that I've been raising with Mr Doorn today and Mr Toohey yesterday.

THE COMMISSIONER: Yes.

MR ROBERTSON: Go to volume 29.0, page 286. Page 286 of volume  
30 29.0. I'm going to show an email from a Yogi, Y-o-g-i, Savania, S-a-v-a-n-i-a to a Mr Milner from NSW Treasury.

THE COMMISSIONER: Dated?

MR ROBERTSON: Of 6 December, 2016. If we can just zoom into the top-half of the page, please. And Mr Savania says "FYI, Josh" referring to a chain of emails concerning the ERC submission the subject of evidence today and yesterday "the submission mentions a business case – could you try and get her hands on this from OOS" presumably being a reference to Office of Sport. Mr Savania then says "I spoke to Zach," Z-a-c-h, "re this.  
40 The Treasurer has requested this be brought forward and has indicated an inclination to support the proposal," the Treasurer at the relevant time being Treasurer Berejiklian. This Commission, in exercise of its powers under section 21 and 22 of the Independent Commission Against Corruption Act, issued a notice on 11 March, 2021 to Mr Savania, requiring Mr Savania to produce certain documents and answer certain questions concerning the email that I've now put on the screen. Can we go, please, to volume 29.0, page 281 - - -

THE COMMISSIONER: Do you wish to tender this before you - - -

MR ROBERTSON: I'll be tendering this email as part of the bundle.

THE COMMISSIONER: I see.

MR ROBERTSON: So the version I've just showed the Commission is an email provided by Mr Savania in response to the notice to attend and produce a statement of information and documents.

THE COMMISSIONER: Yes.

MR ROBERTSON: Page 281 of volume 29.0 is the first page of that notice, notice of 11 March, 2021. I'm showing the first page of that particular notice. Can we then please go to page 284. So, Commissioner, that required a response by 22 March, 2021. And what the Commission required if we zoom in on the top half of the page, what the Commission required under your hands, Commissioner, a written statement setting out Mr Savania's recollection of the conversation with Mr Bentley and any other events surrounding the same referenced in the email to which I've drawn attention, copy attached. And so the copy attached was the copy that I showed the Commission a moment ago. Can I then draw the Commissioner and others' attention to the statement produced by Mr Savania in response. If we go to page 295. 295 is the start of the statement. You'll see there, Commissioner, a statement by Yogi Savania in accordance with schedule 2. And Mr Savania sets out a recollection associated with the email and the surrounding circumstances. I'll draw attention on the next page to paragraph 12. Mr Savania says, "Given the time that has elapsed since the event," which appears to be a reference to the email or at least the conversation the subject of the email, "I do not have much of a recollection about the conversation I had with Mr Bentley or the exact time that I had the conversation. However, my statement to Mr Milner and my email would be reflective of that, of the conversation." There's then some further comments consistent with certain evidence that's already been received to the effect that the Treasurer is what Mr Savania describes here as the "custodian" of the ERC agenda.

As matters presently stand, I don't propose to call Mr Savania in the public inquiry but I indicate that if anyone considers they may be disadvantaged by that course, in particular, whether those who advise Ms Berejiklian or, indeed, any of the other parties with leave to appear consider that they would wish to cross-examine Mr Savania, that should be drawn to my attention and I'll reconsider whether Mr Savania should be called. But, in the meantime, I tender the notice to attend and produce a statement of information and documents issued to Mr Savania, as well as the response to that notice.

THE COMMISSIONER: Yes. Well, those documents will be Exhibit 414.

**#EXH-414 – SECTIONS 21 AND 22 NOTICE AND RESPONSE OF  
YOGI SAVANIA DATED 10 MARCH 2021 INCLUDING  
PRODUCED DOCUMENTS**

10 MR ROBERTSON: Commissioner, I apply for the direction that was made on 29 April, 2021, in relation to the compulsory examination of Mr Zach Bentley be lifted.

THE COMMISSIONER: Yes. That's a section 112 direction, I take it?

MR ROBERTSON: That's so.

THE COMMISSIONER: Yes. I lift the section 112 direction I made on 29 April, 2021, in relation to Mr Zach Bentley's compulsory examination.

20

**VARIATION OF SUPPRESSION ORDER: SECTION 112  
DIRECTION MADE ON 29 APRIL, 2021, IN RELATION TO MR  
ZACH BENTLEY'S COMPULSORY EXAMINATION IS LIFTED**

30 MR ROBERTSON: Commissioner, on 29 April, 2021, this Commission conducted a compulsory examination with Mr Zach Bentley. During the course of that examination certain questions were asked of him, including in relation to the email to which I've drawn attention. As matters presently stand I don't propose to call Mr Bentley in the public inquiry.

THE COMMISSIONER: Mr Robertson, just pause for a moment. Many of the screens have gone blue and I'm just concerned whether that might interrupt the feed, live feed.

MR ROBERTSON: Thank you, Commissioner. I'll just pause until I'm given advice about that. Just pardon me, Commissioner.

40 THE COMMISSIONER: Has everybody's screen been restored?

MALE SPEAKER: Yes.

MALE SPEAKER: Yes.

MR ROBERTSON: I'll just repeat what I began to say but I think it - - -

THE COMMISSIONER: Thank you, Mr Robertson.

MR ROBERTSON: I'm told it was picked up by the live stream, but in any event. On 29 April, 2021, the Commission conducted a compulsory examination with Mr Zach Bentley, during the course of which questions were asked concerning certain matters including in relation to the email to which I drew attention to a little while ago, namely an email of 6 December, 2016 referring to an apparent conversation between Mr Bentley and Mr Savania. Again, I don't propose to call Mr Bentley during the course of the public inquiry. Instead, what I propose to do is to tender the bulk of the transcript of the evidence of Mr Bentley during the course of that  
10 compulsory examination. There are some redactions in the version that I'll tender, which deal with matters that are not pertinent to the investigation or otherwise deal with personal matters and matters of that kind. Subject to those redactions, I tender the compulsory examination of transcript of Mr Zach Bentley in relation to his examination on 29 April, 2021, including a bundle of documents referred to in that compulsory examination.

THE COMMISSIONER: Yes. Mr Bentley's compulsory examination and those documents will be Exhibit 415.

20

**#EXH-415 – COMPULSORY EXAMINATION TRANSCRIPT OF ZACH BENTLEY OF 29 APRIL 2021 INCLUDING BUNDLE OF DOCUMENTS REFERRED TO**

MR ROBERTSON: Again, I make clear that in the event that anyone considers themselves to be disadvantaged by the fact that I don't propose to call Mr Bentley during the public inquiry, they should let me know and I will consider whether Mr Bentley should be called in the public inquiry.  
30

THE COMMISSIONER: Yes. Thank you.

MR ROBERTSON: Those are the only matters that I wish to raise today.

THE COMMISSIONER: Very well.

MR ROBERTSON: Tomorrow I will call Mr Blunden and Mr Baird. As I indicated before, I am hopeful of finishing both of those witnesses by lunchtime. I can't be absolutely sure but I am hoping to do so and then, as I  
40 submitted on Monday, my suggestion is the Commission sits at 9.30 on both Thursday and Friday because on both of those days there's a very heavy program of witnesses.

THE COMMISSIONER: Very well. I'll adjourn now until 10.00am tomorrow.

**AT 2.48PM THE MATTER WAS ADJOURNED ACCORDINGLY**  
**[2.48pm]**