

KEPPELPUB02066
20/10/2021

KEPPEL
pp 02066-02105

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE RUTH McCOLL AO
COMMISSIONER

PUBLIC HEARING

OPERATION KEPPEL

Reference: Operation E17/0144

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 20 OCTOBER, 2021

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.

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: I call Michael Bruce Baird.

THE COMMISSIONER: Mr Baird, do you wish to take an oath or make an affirmation?

MR BAIRD: An oath, please, Commissioner.

THE COMMISSIONER: Mr Boulten, have you informed Mr Baird of his rights and obligations as a witness?

MR BOULTEN: I have, Commissioner, yes. He does seek a declaration under section 38, please.

10 THE COMMISSIONER: Mr Baird, will you listen very carefully as I explain the declaration I'm about to make. As a witness, you must answer all questions truthfully and produce any item described in your summons or required by me to be produced. You may object to answering a question or producing an item. The effect of any objection is that although you must still answer the question or produce the item, your answer or the item produced cannot be used against you in any civil proceedings or, subject to two exceptions, in any criminal or disciplinary proceedings. The first exception is that this protection does not prevent your evidence from being used against you in a prosecution for an offence under the Independent
20 Commission Against Corruption Act, including an offence of giving false or misleading evidence, for which the penalty can be imprisonment for up to five years. The second exception only applies to New South Wales public officials, and I don't understand you to be one. I can make a declaration that all answers given by you and all items produced by you will be regarded as having been given or produced on objection. This means you do not have to object with respect to each answer or the production of each item. I'll now make that declaration.

30 Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by him during the course of his evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for him to make objection in respect of any particular answer given or document or thing produced.

40 **DIRECTION AS TO OBJECTIONS BY WITNESS: PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY HIM DURING THE COURSE OF HIS EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION AND THERE IS NO NEED FOR HIM TO MAKE OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: Do you understand that, Mr Baird?---I do. Thank you, Commissioner.

Thank you. Yes, Mr Robertson.

MR ROBERTSON: Can you state your full name, please?---Michael Bruce Baird.

10 You were the Premier of this state from 17 April, 2014, to 23 January, 2017?---Yes.

Whilst you were Premier, Gladys Berejiklian was the Treasurer of this state. Is that right?---Yes.

Mr Nigel Blunden was your Director of Strategy within your office as Premier. Is that right?---Yes.

20 You might just need to get a little bit closer to the microphone on your right-hand side. See the microphone on your right-hand side?---Yeah.

So if you could just point your mouth in the general direction of that microphone, it will pick it up for everyone. Thank you for that.---No problem.

Before you were Premier, you were Treasurer of this state. Is that right? ---Yes.

30 You were the Member for Manly from 24 March, 2007, to 23 January, 2017?---Yes.

And you're now the Chief Executive Officer of HammondCare?---Yes.

While you were a minister, you were a member of certain Cabinet committees. Is that right?---Yes.

And that included, from time to time, the Expenditure Review Committee of Cabinet. Is that right?---Yes.

40 I take it that as Premier, you had an expectation of your ministers that they would declare any conflict of interest that they had in relation to any agenda items being considered by Cabinet or a committee of Cabinet?---Yes.

During your time as Premier, is this right, there was a standing agenda item at the commencement of each meeting of Cabinet or a committee of Cabinet for the declaration of interests?---Yes, yes, that's certainly my understanding. I'm, I'm not sure whether it was there for the entire period but it, it was there and certainly that was the convention.

So in your time as Premier, there was at least a convention that at the start of a meeting, any declaration of interest would be called for. Is that right?

---Yes. Yes.

While you were Premier, the chair of the Expenditure Review Committee was the Treasurer. Is that right?---Yes.

And in that capacity, the Treasurer was principally responsible for setting the agenda for Expenditure Review Committee meetings. Is that right?

10 ---Yes.

I take it obviously enough that as Premier, though, if you wanted a matter added to an ERC agenda, in the ordinary course that would take place?---Of course.

Are you aware that this Commission is investigating grant funding that was promised and/or awarded to the Australian Clay Target Association in 2016-2017?---Yes.

20 When did you first become aware that the Australian Clay Target Association was seeking funding from the NSW Government?---Well, certainly, you know, my recollection was around that ERC committee. It could have been earlier but I think that's, that's where I've got the clearest recollection.

And so you have a recollection of becoming aware in connection with your role as a member of the Expenditure Review Committee of a proposal for funding in relation ACTA, is that right?---Yes. That's right.

30 So as Premier you were member of the Expenditure Review Committee, is that right?---Yes.

But in terms of the day-to-day responsibilities as chair, those were the responsibility of the Treasurer of the day, is that right?---That's right.

Is this right, your first recollection of any request for grant funding and the like was through your role as a member of the Expenditure Review Committee rather than in some other place or some other way?---That's certainly my recollection.

40

I'll just draw one thing to your attention before I ask you about the Expenditure Review Committee. If we go to page 205 of volume 26.1. I'm just going to put a document up on the screen for you, Mr Baird, mainly just in passing. I'm going to show you an article from The Daily Advertiser newspaper from Wagga Wagga, 13 November, 2016.---Ah hmm.

Page 203, I should say, of volume 26.1. Now, I'm just showing you the headline. This is a print from a web version, 13 November, 2016. Do you see that there towards the bottom of the screen, Mr Baird?---Yep.

And a heading "Wagga will bid to host the Invictus Games' clay target shooting event." Do you see that there?---Ah hmm.

10 And if we then just turn to the next page, please, and we see a picture of Mr Maguire and others, Mr Maguire holding a clay target and a gentleman on his left with a facility to shoot the said target. But if you just have a look at the text, do you see there's a quote there? We might just zoom in a little bit.---Ah hmm.

"I spoke to the Premier, who told me to go hard," and I'll jump over some words, "and was excited by the prospect of the event being held here." Do you see that there?---Ah hmm.

20 Does that ring a bell at all, Mr Maguire attempting to raise with you a bid to host the Invictus Games and some suggestion by you that Mr Maguire might wish to go hard?---I mean, certainly I, I don't recall the exact discussion. I remember the Invictus Games but I'm certainly not aware of that being part of, an event in Wagga but it, you know, it could well have been. I mean, if the concept was "There's an event and we want to bid for it," you know, I imagine that I would have been supportive.

So it's possible that Mr Maguire had a chat to you, perhaps in a corridor of Parliament House or something along those lines to raise this particular matter?---Very possible.

30 But this doesn't jog a particular recollection of any previous understanding or recollection of what I'm going to call today the ACTA proposal at any time before it coming to your knowledge in the context of you being a member of the Expenditure Review Committee, is that right?---Yep. Certainly that I'm aware.

Commissioner, I tender an article from The Daily Advertiser, 13 November, 2016, entitled "Wagga will bid to host the Invictus Games' clay target shooting event," page 203 and 204 of volume 26.1.

40 THE COMMISSIONER: Exhibit 421.

#EXH-421 – ARTICLE FROM NEWSLOCAL TITLED "WAGGA WILL BID TO HOST THE INVICTUS GAMES' CLAY TARGET SHOOTING EVENT' DATED 13 NOVEMBER 2016

MR ROBERTSON: And so what's your recollection of becoming aware of what I'll call today the ACTA proposal in connection with your role as a member of the Expenditure Review Committee?---From my recollection it was in the lead-up to the committee and, you know, often you would have a few days before, you would read the papers, you know, from the ERC. Obviously I'd been on ERC for six years, but towards the end of the year, you get to a position where there's kind of multiple priorities and, you know, obviously, in your rhythm you may well have just looked at it the day or two before, so I can't remember the exact sequence of dates but certainly the advice and the minutes, from my recollection, is when I first became aware which, you know, was, you know, a day or two, I think, before the actual committee.

So your best recollection is your first, at least any detailed knowledge of what I'm calling the ACTA proposal was in connection with receiving the papers for a forthcoming Expenditure Review Committee meeting. Is that right?---That's right.

And just in terms of understanding the kinds of materials that are available to you by way of papers as Premier, I take it you have access to the submission that's been made to the Expenditure Review Committee itself. Is that right?---Yes.

In terms of advice at a departmental or agency level, in the time that you were Premier what advice of that kind, if any, did you have access to? Presumably, for example, you would have advice from your department, the Department of Premier and Cabinet. Is that right?---Yes.

What about Treasury advice?---Yes, and, and, and Treasury advice. So you'd often, I'd often look at both of those plus advice from your own staff.

And so is there in a sense at least two categories of material in terms of papers, you'll have the formal material in the sense of the ERC submission itself and the supporting material?---Ah hmm.

That's one source of material that you'll have access to by way of preparation for ERC meetings. Is that right?---Yes, yep.

But also, at least in the ordinary course you would have at least some advice from your office as to individual projects or proposals or agenda items at least going before the Expenditure Review Committee?---Yes, that's right.

Now, on the departmental advice side - - -?---Ah hmm.

Or department and agency side, do you recall what advice, if any, you were given in relation to the, what I'm describing as the ACTA project?---I mean I cannot recall their specific advice but my stance very much would be that they were against, probably DPC and Treasury, on the basis of the, the

economics and the costing, you know, I think would have been the primary focus. That would have been my reflection.

THE COMMISSIONER: Mr Baird, could I ask you to keep your voice up please. You're just - - -?---Oh, is it. Sorry. It's the first time I've been told that actually.

MR ROBERTSON: The reason for that adverse view I think you said for the economics and the costing, is that what you said?---Yeah.

10

What do you mean by that?---Yeah. I mean I think that the work hasn't been completed in terms of finalised costings and there was a business case of sorts but I think in the advice it was clear that this was insufficient and, and more needed to be done.

20

And was that a usual or unusual course of affairs at least in the time that you were Premier, in other words, having a ERC submission put forward that doesn't have the kind of detail that you're now referring to?---It would, it would vary. I, I think it's, I can't recall a specific instance but I'm sure there could have been, there could have been others.

But at least, is this right, at least your expectation as Premier was at least in the ordinary course that kind of more detailed work of the kind that you just identified would be done before any matter finds its way before a committee of Cabinet like the ERC or indeed any other committee of Cabinet or the Cabinet itself?---Yeah. Ideally, yes.

30

There may well be exceptions because of the exigencies of the particular case.---Yeah.

But at least as a general proposition that would be your expectation as Premier. Is that right?---Yep.

If we can go, please, to page 252 of volume 26.3. I'm going to show you one of the papers that was available to you now that you've noted the availability of advice. I'll show you the Treasury advice first.---Ah hmm.

40

And you'll see at the top "Development of sporting infrastructure at the Australian Clay Target Association facility in Wagga Wagga." See that there?---Ah hmm.

And if we then just zoom in to underneath the heading Recommendations and Actions. See it says, "Not support the recommendation and submission as a net benefit to the state has not been adequately demonstrated."
---Ah hmm.

Do you see that there?---Ah hmm.

And that's consistent with your recollection of what happened at the time, namely, that Treasury was not supportive of the particular proposal. Is that right?---Ah hmm. Ah hmm.

And then I should draw to your attention the in effect fall-back position from the Treasury, which says there, "Should a grant be supported, it should be funded from within the cluster and include conditions identified in the submission." Do you see that there?---Right. Yes.

10 And then there's a series of conditions that are there identified. Do you see that there?---Ah hmm.

Now, just while we're talking about clusters. In the time that you were Premier, is this right, the various departments and agencies of government were organised into a series of clusters?---That's right.

For example, there was a Premier and Cabinet Cluster for example?
---Ah hmm.

20 And obviously enough you, as Premier, were the cluster minister in relation to that cluster, correct?---Yep.

But within a cluster there's a series of departments and agencies which may have a separate portfolio minister to the cluster minister, is that right?
---That's right, yes.

And so what, at least as you understood it, this was suggesting is that in the event that this proposal was going to be supported, what, Treasury was suggesting it should be funded from within the relevant cluster, including –
30 have a look at (a) – funding being offset within the cluster. Do you see that there?---Yep. I can see that.

But that's consistent with your recollection of the advice being provided by Treasury at the time, is that right?---That's right. I mean, the other sort of part I think, that Restart NSW was kind of under pressure in terms of allocations, so that may well have been another reason. But I absolutely accept what's, what's put there.

40 When you say "under pressure", what do you mean by that?---Oh, just in terms of the amount available, you know, for, for funding.

So Restart NSW was a special fund that was set up to receive money from what's sometimes colloquially referred to as asset recycling, is that right?
---Yes.

For example, the lease of the electricity assets, sometimes referred to the poles and wires, correct?---Yes, that's right.

And that indeed was a signature piece of your government, the setting up of the Restart NSW Fund, is that right?---That's right.

In setting up the Restart NSW Fund, there were special rules established as to the circumstances in which money could be paid out of the fund, correct?---Ah hmm. Ah hmm.

That included that money couldn't be paid out of the fund unless it received a recommendation from the body called Infrastructure NSW, correct?
10 ---Ah hmm. That's right.

And so to get money out of Restart NSW, one requires at least two things, is this right? Firstly, a recommendation from Infrastructure NSW, correct?
---Yep.

But also an ultimate sign-off from the Treasurer of the day. Is that right?
---Yes.

And so are you drawing attention to the fact that one of the things that may
20 have been influencing the consideration of the time of this advice was, I think you said, the pressure on Restart NSW, and therefore with a view to, instead of getting money out of Restart NSW or another fund, trying to find some funding offsets to be able to fund a grant of this kind?---Yeah, that, that could well be part of the, the reason. I mean, the, the other part, as a general rule, was trying to encourage sort of agencies and departments to offset new priorities with taking old priorities off. So there's a discipline about actually, you know, within sort of clusters and agencies, you know, at a first port of call, rather than sort of accessing other funds, finding a,
30 prioritise a way to deliver it.

Because I take it, in your experience, there is always more proposals for projects than money available to fund the said things?---Yeah, yeah. I mean, there was, I can't remember how many I looked at, but there's, you know, hundreds and hundreds. Maybe thousands. But, yes, there was - - -

So perhaps what I said was an understatement.---Yes.

And so at least as Premier, one of the things you sought to achieve is, at least as a, I think you said, first port of call, try and find money by way of
40 offsets from other grant programs or other funding sources that might be available to either a particular cluster or to the government more generally?
---That's right.

I should then show you page 254, which is advice from your then department, the Department of Premier and Cabinet.---Ah hmm.

Zoom in to the top half. Now, there the DPC recommendation, Department of Premier and Cabinet's recommendation, is support the recommendation,

and it says “provided funding conditions are met”. Do you see that there?
---Ah hmm.

And if you then have a look at the reasons that are identified in this note, one says, “Funding is time critical and is not available within current agency resources.” Do you see that there?---Yep.

10 Do you have any recollection of any discussion at the time in relation to the ACTA project as to the reasons why it might be thought that funding was time critical?---No. No, I don’t. Are you saying with DPC or anyone or - - -

With anyone within government.---Yeah. Not, not really, other than the advice I got from my adviser, the, kind of spoke to that a bit. But, no, I certainly wasn’t aware, you know, of, of time pressures or - - -

Which adviser are you now referring to?---Mr Blunden.

20 And so you had some indication from Mr Blunden as to what was said to be the time criticality of this particular project, is that right?---Yep.

And what was your understanding based on that advice as to the asserted time criticality?---Well, no, I think what, what I was aware is that there was a, a push to get it on the agenda. There was a request to maybe delay it to enable the work to be done. So in terms of why it had to, you know, outside of this advice, which I would have reflected on, you know, there was, there was nothing else I was aware of.

30 In terms of the advice from your adviser Mr Blunden, is that advice that you received orally or in writing or both?---Both.

If we go, please, to Exhibit 420 - - -

THE COMMISSIONER: Do you wish to tender these documents first, Mr Robertson?

MR ROBERTSON: Yes, Commissioner.

40 THE COMMISSIONER: 26.3, 252 and 254.

MR ROBERTSON: Yes. They form part of a single document. I might come back to that tender if I can because I just need to check whether the whole of that document has already been tendered in some other different form.

THE COMMISSIONER: Very well.

MR ROBERTSON: In the meantime, we'll go to Exhibit 420. Volume 26.12, page 293. If you zoom in to the top half of the page. And do you see there a document titled Wagga Clay Target Shooting – in fact, can we take that off the screen, please? Just pardon me for a moment, Commissioner. If we can have up on the screen the version that I tendered of Exhibit 420. If you zoom in to the top half of the page. Can you see there, Mr Baird, Wagga Clay Target Shooting (Nigel)?---Yeah. Yeah.

10 I take it Mr Blunden was one to give you frank and fearless advice?---Yes.

And do you recall receiving this particular written advice from Mr Blunden?---Yes, I do. Yeah.

And I take it that Mr Blunden, at least as you understood it, didn't think that the ACTA proposal was a particularly good proposal in terms of the merits of it?---I think that's a fair reflection.

20 If you have a look at the third dot point, do you see it says "business case claims the new facility will generate". Do you see that one there?---Mmm.

And just have a look at the sub dot points, the ones in hollow squares, "Increased tourism accounts for 97 per cent of the forecast benefits so it's suss. The business case has not been subject to any independent review. There's no feasibility study. The capital costs haven't been market tested. Costs, revenue and demand are based on the Clay Shooters and Wagga Council numbers," et cetera. Do you see all of that?---Yeah.

30 Now, are they concerns that you also had in relation to what I've called the ACTA proposal?---Yes, I mean, I, I think it's clear from the advice, which would certainly be my view that there was still some work to do in relation to determine, you know, the merits or otherwise of this proposal. You know, you can see, you can see some there but certainly that would have been consistent.

So is this right? At least your view going into the meeting was that that kind of work ought be done before there's a commitment from government?---Yeah. Certainly before there was a final decision.

40 Before there's a final decision or before it even gets before the ERC at all? ---Look, I think, obviously, the preference would be that this was done beforehand.

If we then go a little bit further down the page, you'll see Mr Blunden advises, "They should go away, test the assumptions, verify the business case and then come back when it's solid." Do you see that there?---Mmm.

Was that also your view at the time?---Yes, I mean, that's, that's ultimately the position that I took to the meeting.

And then if you have a look in parentheses in the next line in italics, “This was suggested and was taken off the agenda but Daryl fired up and Gladys put it on.” Do you see that there?---Yes.

Now, did you have any understanding or knowledge, other than from Mr Blunden, as to circumstances in which this particular item was added to or subtracted from the ERC agenda?---No. I obviously wasn’t aware.

10 So that’s a matter, the agenda items at least during your premiership, was a matter that was dealt with within the Treasurer’s officer rather than your office, correct?---That’s right. But, but as you said, I mean, obviously the Premier could put something on – I mean, any minister could put something on the agenda, who was a member of the ERC. But ultimately, so ultimately designed and coordinated by the Treasurer, yes.

Or any minister could at least request that it goes on the agenda?---Correct. Yes, correct.

20 Someone who was not a member of the ERC could request but not require it be put on the agenda, is that right?---Correct, yep.

The Treasurer could put something on or take something off the agenda, is that right?---That’s right.

The Premier could put something on or take it off the agenda, correct?
---Correct.

30 In relation to other members of the ERC, they would also be in a position of request, is that right, they could request for it to be on the agenda but it would ultimately be a matter for the Treasurer or the Premier to decide whether it goes on or is taken off the agenda, is that right?---Yes.

I take it, though, that as a matter of practice, at least in the ordinary course, if a member of the ERC wanted something on the agenda, everything else being equal, then the Treasurer or the Premier would ordinarily defer to that view, at least in the time that you were either Premier or Treasurer, is that right?---Yeah. I mean, the, the Treasurer certainly works collaboratively with every minister across government and understands the priorities and
40 the, sort of, the personal timings in terms of funding, applications that might need to come forward and, yeah, ultimately the Treasurer would, through that collaboration, you know, deliver an agenda.

But in terms in whose gift is the agenda, it’s in the gift principally of the Treasurer, although the Premier can intervene if the Premier thinks fit, is that right?---Yes.

At least in your time as Premier and as Treasurer, is that right?---Yes.
That's right.

But in relation to this particular matter, the one of the ACTA proposal, is it right that you didn't have any involvement in the agenda item getting either on the agenda or being taken off or anything of that kind?---Yes.

You didn't intervene to say, "Put this on the agenda," correct?---No.

10 You didn't intervene to say, "Don't put it on the agenda" because of the kinds of concerns that you and I have already discussed, is that right?---No.

Is this right, you in effect deferred to your Treasurer that despite the fact that you've got some concerns, the Treasurer gets to set the agenda, and to the extent that you've got concerns, you'll raise it in the meeting as opposed to avoid them even being discussed at all the ERC meeting themselves, is that right?---That's right. And, you know, obviously timing and pressures mean that sometimes, you know, in fact regularly in terms of ERC agendas there wasn't an opportunity to discuss beforehand. I mean, that's the ERC, it's
20 the, the preparation, the reading and then the debate and discussion takes place. Clearly, at time, across various submissions, you would have that discussion and many members of the committee may well have that discussion, but as a, as a general practice, you know, most of the, the critical discussion was done, you know, openly within an ERC committee.

And was that the case with this particular item as well?---Yep.

Did you have any discussions with any of your ministerial colleagues about this item in advance of the ERC meeting or was it at least so far as you can recall within the ERC room itself, as it were?---Yeah. I don't, I, I, certainly
30 don't recall any discussions with any other member of the ERC, ERC committee prior to obviously the actual meeting.

But you do recall having a discussion about this item in the ERC meeting room itself, is that right?---I do, yeah.

And you were present, obviously enough if you recall it, during the course of those discussions, is that right?---Yes. I mean, I, I can't recall the, the specifics of the discussions but I can recall sort of my sentiment and, yeah,
40 it taking place.

And Ms Berejiklian was present during the course of that discussion as well in the ERC meetings, is that right?---Yes, yes.

I take it that she was there throughout the discussion and didn't declare any conflict, is that right?---That's right.

If you have a look in the parentheses comment, “But Daryl fired up and Gladys put it back on.” Do you see that there?---Yes.

Other than what Mr Blunden is telling you in this note, did you have any knowledge of either Daryl firing up or Gladys putting it back on?---No.

10 We talked a little while ago about the collaborative nature of, for example, the ERC. I take it that even as Premier, and therefore the senior minister, the support or otherwise of a senior minister like a Treasurer to an item before the ERC would be likely to be regarded as significant in your assessment as to whether to support a particular agenda item, is that right? ---Sorry, can you, can you repeat that, Mr Robertson, sorry.

I can. Focusing on ERC meetings where the chair, at least on a day-to-day basis, is the Treasurer of the day. I’ve got that right so far haven’t I?---Yes, yep.

20 The support or otherwise of the Treasurer of a particular agenda item was at least in your mind a significant factor as Premier as to whether that particular item should receive your support or not your support - - -? ---Yeah, undoubtedly.

- - - in the ERC committee. Is that right?---Undoubtedly.

30 And is this right, that might particularly be the case in relation to items that are in, for example, the single digit millions? In this case we’re talking about a \$5.5 million grant where you might in effect go, “Well, the Treasurer supports this so we’ll let it through.” There’s no reason to do anything otherwise as opposed to, for example, maybe something in the millions of dollars where you might want to be looking at it a little bit more closely?---Look, my hope, Mr Robertson, that every single proposal that came to me got the due attention it deserved. Yes, as a principle, that would have given me great comfort, but I certainly saw my obligation for every single Cabinet paper that was put before me that I read it in detail, and I didn’t just rely on the advice I was given, I actually looked at it myself.

So factors that would influence your consideration would obviously enough be departmental advice for example. Correct?---Ah hmm. Ah hmm.

40 Advice from those within your ministerial office. Correct?---Yes.

But also obviously enough the support or otherwise of your ministerial colleagues. Correct?---Yes.

Can we then put that document back on the screen, please, 420, and can we scan down towards the bottom of the page, please. So this is Mr Blunden’s recommendation, “Oppose. Gladys and Ayres wants it.” Do you see that there?---Ah hmm.

Now, other than Mr Blunden telling you that Gladys and Ayres wants it, did you have any indication, at least outside the ERC committee meeting, so before the ERC committee meeting itself, as to the view of Ms Berejiklian?
---No.

And in relation to the view of Mr Ayres, Minister Ayres, I mean I take it you inferred that Minister Ayres supported it because he was the proponent minister. Correct?---Yes.

10

But other than that, and what Mr Blunden is telling you by way of advice and no doubt the material that you have from departmental papers, did you have any other indication from Mr Ayres either directly or indirectly as to his support or otherwise for this particular proposal?---No. For both I, I can't recall any discussions about it.

If you look at the next sentence, "No doubt they're done" – I think he means "they've done" – "a sweetheart deal with Daryl." Do you see that there?
---Ah hmm.

20

What do you understand Mr Blunden to be saying when he says to you, "No doubt they've done a sweetheart deal with Daryl"?---Look, I wouldn't have reflected on it beyond I think the context that, you know, Daryl was someone that relentlessly pursued his own agenda and obviously this is part of that, so the context would have been he's obviously advocated very strongly, wants to get it done, needs to get it done and, you know, both support it in that.

30

But what's the deal, at least as you understood it?---Yeah, I, I can't sort of really reflect on what that would have represented, but it is my best kind of recollection looking at it, it would have been that he wanted it and, and they were going to deliver it. That was the deal.

40

But why is the fact that Mr Maguire wants something a factor of any significance in your assessment of a particular proposal as Premier? I mean, obviously you want to keep as many people as happy as possible but there's more than one electorate. There's many electorates and no doubt many members of parliament who would like projects in their electorate. What was the relevance, at least as you saw it, of the fact that Mr Maguire was in the background as it were or was pushing this particular proposal?---I mean I think my sort of office had a strong view, you know, about Daryl and his approach and, you know, obviously I think it's just a reflection on that. And, yes, you're right. Ultimately every member of parliament is interested in, in projects or opportunities in their electorate. That's, that's part of the role. But, you know, Mr Maguire was relentless in that pursuit. In terms of the decision, you're right. The decision comes back to the advice and reflection on the broad proposal itself, not necessarily that. Obviously understanding

MPs' views is helpful but, you know, multiple projects had strong MPs' views in terms of their support.

THE COMMISSIONER: Mr Baird, doesn't "sweetheart deal" imply some sort of quid pro quo?---Well, I mean, it could, Commissioner. But I think that's, you know, my interpretation of it.

10 Even if only of a political nature.---Well, yeah, I, I can't really reflect on it beyond, beyond what I did. You know, I, I certainly would have not reflected that there was any deal in the concept of the deal. You know, my, my reflection would have been that they've supported Daryl's relentless pursuit of this particular project, and that's, that's the way I would have interpreted it.

MR ROBERTSON: You said a moment ago, Mr Baird, that your office had a strong view about Daryl and his approach. Have I got that right?---Yes.

20 What was that strong view?---Well, I mean, obviously that relentless pursuit of his own agenda. You know, at times he was certainly aggressive and, you know, I think at times abusive to members of staff, to public servants and MPs.

And when you say a strong view, it was a strongly adverse view, I take it from what you've just said?---Yeah, certainly it wasn't conduct that I supported.

30 And looking back at the document on the screen. I've been saying "sweetheart deal", it's actually written as "sweatheart deal". I presume it means "sweetheart deal". But "This goes against all the principles of sound economic management." You see that there?---Yes.

Does that reflect your view as well at the time, that this particular proposal went against all of the principles of sound economic management?---I, I think to approve it at that point, yes. You know, there was significant work that hadn't been done that needed to be done.

40 And is this right, at least in your view, that that significant work was work of the kind that should have occurred before the matter even got before Cabinet or a committee of Cabinet?---I mean, ideally, yes.

You then see Mr Blunden makes some critical comments of other decisions of the ERC.---Ah hmm.

We've blacked out the particular ones that he's referred to.---Ah hmm.

But see after, in the second-to-last line where the black box finishes, "So have the discussion and see where it goes." Do you see that there?---Ah hmm. Ah hmm.

And so did you understand this recommendation to be let's oppose it at the level of substance, but I'm not suggesting to you or Mr Blunden's not suggesting to you that you intervene as Premier so as to take it, in effect, off the ERC agenda. Is that what you understood that recommendation to be?
---No, I, I would have said that, if you look at the point above the recommendation, they should go away, test the assumptions, verify the business case and then come back when it's solid. It's opposed, the expectation is that wouldn't be supported. You know, that's the, that's the way I'd interpret that. So the concept is if we go away and do the first part, well, that's fine, I don't expect that to happen because, as he said, it's opposed. So have the discussion and see where it goes. Or if you got to that first point, then there's obviously an opportunity to support, in principle, that, to come back when, when that work's done.

But the discussion you're referring to now, is that a discussion within the ERC or is that, in effect, what Mr Blunden is suggesting towards the top of what you can see on the screen, go away, test the assumptions and then go to the ERC?---Yeah, I, I mean, obviously the preference is it's done before, but if not, you know, is there an opportunity through the discussion to deal with the former point.

Further discussion in the ERC itself?---In the ERC itself, yeah.

And so just so I'm clear on this.---Yeah.

As you understood the recommendation, opposed means in effect oppose on the merits. It doesn't look like a good proposal, therefore shouldn't be approved within the ERC. Is that right?---I, I would say oppose on what is presented.

So oppose the Cabinet submission in the form in which its presented, is that right?---Ah hmm. Ah hmm.

Don't exercise your power as Premier to completely take it off the agenda, by which I mean the ERC agenda.---Yeah.

But let's have the discussion within the ERC meeting itself and see where it goes. Is that right?---Yeah.

And then you'll see a further comment in the final sentence there?---Mmm.

Now, that recommendation, did you ultimately take the course suggested by Mr Blunden?---Yes. So my, my sense, and, you know, there's obviously broad context, I mean, you'll have advice from Treasury and DPC at times that would take a, a different position than you take and then there's a whole range of consequence. But in this consequence, I supported what was needed and that was to go away, do more work. I mean, to give the context,

you know, and, you know, forgive me for not recalling everything but there's, there's certain elements that, that I can, Mr Robertson, and the costings, I know that there was very preliminary costings down in terms of actually the construction, you know, that, that's something in a, in a, in a business case you need, you know? The World Clay Target Championship, I wasn't even aware if that was an event, let alone whether it was something we had a chance of winning. And then you take that further, what economic benefit that delivered more broadly. They're the sort of things that I thought needed to be done in the business case, you know, and that was discussed,
10 you know, certainly words to that effect or in that way, sort of at the ERC.

And just to be clear, the event that you're now referring to, was the proposed funding from ACTA, as you understood it, a must-have, by which I mean we need this funding in order to secure this event, or was it as you understood it, a nice-to-have, in the sense that this event is going to happen, in any event, but it would be good to have a good facility here when the event takes place?---No, I, I know, I, I seem to recall that it would be very helpful in securing, you know, so there's a precursor, but, again, I wasn't even sure whether there was such an event and, and let alone the, the
20 economic benefit of it or whether we had a chance of securing it. So, I mean, they're the kind of fundamental things that I pushed into in terms of reflecting on the advice I had, you know, what I'd seen and read, and obviously the participation in the discussion.

So I take it from what you just said the status of that particular event, whether it was, to use my phraseology, the money was a must-have or a nice-to-have, that was at least a significant factor in your mind as to what process should be adopted by the ERC and by the government, more generally?---Yeah, because I mean our, the government would constantly
30 look for opportunities to support regional New South Wales. If there is a World Championship event of substance that had material economic benefit, you know, that is something that we'd consider seriously. But, you know, what we needed to see was the, the facts and, and the details and actually the analysis that supported that.

Now, in the ERC meeting itself, is this right, you opposed the ACTA proposal being approved at least without the further detailed work of the kind that you and I have been discussing taking place. Is that right?---Yeah. I, I think I was happy to approve it in principle or subject to, you know, this,
40 this work actually being done, so - - -

In the meeting itself, did Ms Berejiklian, as you recall it, simply play the role of a passive chair and leave it to Minister Ayres to put forward the proposal or did she give an indication as to whether she supported or perhaps did not support the particular agenda item, being the ACTA proposal?---Look, I, I, I can't recall any untoward discussion from any proponent. You know, to me, the, the discussion that I can reflect on was,

you know, I, I put, you know, my concerns and what I thought was needed and that was endorsed by the, by the committee.

But is this right, as you understood the position from the ERC meeting itself, this project or this proposal was one that had the support of Treasurer Berejiklian?---That, I mean, that, that was my understanding. I mean, and, ultimately, all members, you know, of, of the committee through the process of the, the additional work being done.

- 10 But it wasn't just a case of Ms Berejiklian as chair of the committee, simply going along, as it were, with the proposal of Mr Ayres. It was, at least as you recall from the discussion, something that she supported positively rather than, in effect, acquiescing to others' views?---Yeah. And nothing stands out in, in terms of the discussion or being unusual in, in her support.

Well, unusual or not, I'm just trying to understand whether Ms Berejiklian's position as you understood it was simply as a, what I called a neutral chair
- - -?---Yes.

- 20 - - - this is the agenda item, Minister Ayres putting it forward, I don't really care one way or another, I'll go with the flow, as it were, or whether it was a position of support for the particular proposal, at least as you recall it?---
Yeah, no, I think, I mean, I think there, there was a general support, yes, you know, from, from all members and - - -

General support – sorry to interrupt. General support from all members of the Expenditure Review Committee including Ms Berejiklian, is that right?
---Yes.

- 30 Can we go, please, to page 255 of volume 26.3? I'm going to show you the form of the decision itself.---Ah hmm.

Can we just zoom into Roman (i)? I'll show you two parts of this decision. So there's an approval of the expenditure that's made subject to certain things, including confirmation of ACTA cost estimates, development of project delivery plan et cetera. Do you see that there?---Ah hmm, ah hmm.

- 40 And if we zoom down a little bit further though, at Roman (ii), "Approve that the grant at recommendation 1 should be sourced from the Regional Growth – Environment and Tourism Fund." Do you see that there?---Ah
hmm.

Now, that's a fund that forms part of the Restart NSW Fund, is that right?
---That's, that's right, I think that's right. It's just a subset, a subset of the Restart, yeah, that's right.

And so it follows from that, that it being part of the Restart NSW Fund, it's subject to the procedural conditions of the kind that you and I have already

discussed, Infrastructure NSW and Treasurer approval, correct?---Yes, that's right. Yes.

And then you see (b), "Subject to the finalisation of a satisfactory business case." See that there?---Ah hmm.

"Noting this can be approved by the Treasurer," then Treasurer Berejiklian, "following Infrastructure NSW's assurance processes linked to the fund." See that there?---Yes.

10

And then see, "Should be kept at \$5.5 million, with the risks associated with project cost to be carried by the ACTA." See that there?---Yes.

Do you have any recollection as to how Roman (ii) came about? And let me just give you some context in relation to Roman (ii). The Cabinet submission itself, or the ERC submission itself put forward by Minister Ayres had the text that we can see here in Roman (i) but didn't have the text in Roman (ii). With that background in mind, do you have any recollection as to how Roman (ii) managed to find itself into the decision, for example - - -?---Not, not in relation to the business case. You're saying part 2A, is what you're saying?

20

2A for example, yes.---2A. Yeah, so, so 2A, no, I, what it could be, was I think, as part of that Regional Growth Fund, there was a broad allocation that was given as part of the overall funding. So you had Restart and then, you know, this was a subset thereof. So it, it could be connected into that but I, you know, as in it would be a project that could qualify for that rather than the, the broad funding, but I'm not sure of, you know, the specifics on how, on how that got - - -

30

Do you recall whether during the course of the meeting anyone explained the time criticality or otherwise of this particular proposal, as in really the must-have or the nice-to-have issue I discussed before?---Yeah, yeah. I don't, I, you know, I don't recall that being, you know, an issue that, that I focused on, or that seemed critical in terms of what I had seen.

Well, as at the time of the ERC meeting on 14 December, 2016, were you aware that the 2018 World Down the Line Championship event had in fact already been secured by the Australia Clay Target Association, by which I mean the event was going to happen in any event?---Well, obviously I wasn't, no.

40

And indeed, that was inconsistent with your understanding at the time – is this right, your understanding at the time was that this was a must-have, this money needs to be spent with a view to securing that event, as distinct from the event's going to happen anyway but let's have a nice facility there when it happens?---Yeah. Well, I think, you know, my previous evidence kind of talks to that. My understanding was it was required to give us an

opportunity but, you know, I wasn't aware of the event or the benefit that that would bring, let alone, as you're articulating, that it may well have been secured.

So you see from this decision, ultimately it gets a form of approval from the ERC, approved the expenditure, albeit there's conditions identified in A, B and C and also part of Roman (ii).---Ah hmm

10 What, as you recall it, were the reasons supportive of approving the Cabinet submission or at least approving the recommendation that we can see on the screen? So we saw from Mr Blunden, Mr Blunden was obviously very negative of the Cabinet submission. He identified a series of reasons why it should be opposed. It ultimately gets approved, albeit in a form subject to conditions. What, at least as you understood it, fit within the pro column supportive of it making this, of approving the Cabinet submission in one form or another?---Well, I, I think I've gone through that, Mr Robertson. My sense that the government would look at opportunities in regional New South Wales. There are a range of requirements regionally, just as there are in an inner-city context. If there were opportunities for World
20 Championship style events or significant facilities, as we've gone through, we should look at that closer. You know, so, so taking a broad context that this was going to support a local community and a World Championship style event, but importantly, the, the work was done. So from my point of view, if the concerns were overcome, I was happy with the broad principle, absolutely. And these concerns, as you can see, I mean, the cost estimates need to be determined, a project delivery plan put in place. You know, there's requirements on the operator in terms of maintenance and operational costs. The business case. Look at all of those things, they need to be presented back. And, you know, in the workings of government that,
30 to me, is actually doing our job. You make sure that you do that sort of work before you allocate public funds. And in principle, it sounds, you know, clearly the proposal had merit in terms of a regional initiative, but, you know, all this work needed to be done.

When you say "clearly the proposal had merit", you mean merit in what sense? What was the merit?---Well, the, the context of a regional facility that, by its nature, gave an opportunity for a significant event and, you know, delivered cost-benefit ratios that, that were strong.

40 So the potential merit, as you saw it, was the possibility of being able to win an event in Wagga Wagga, a world event in Wagga Wagga, which may then have the flow-on effects that may happen in relation to an event of that kind, is that right?---That's right.

In an ideal world, things like a satisfactory business case and the like would have been done, at least from your perspective, before the matter even got before the Expenditure Review Committee, is that right?---Yes. Yes.

But your concerns regarding those matters, is this right, were sufficiently assuaged by having conditions of the kind that we can see on the screen, that in effect required the kind of work that, in an ideal world, should have happened at the front end of the process, in any event get done at the, in effect, back end of the process. Is that right?---Yes.

10 Was a pro factor, at least so far as you were concerned, the desire to deal with any political damage that arose by reason of the loss of the Orange by-election in November of 2016?---I think, you know, I mean, at, at that time there'd been - - -

I might just ask you to pause. I'm so sorry.---That's all right.

Because I want to check that there's been no technical issue.

THE COMMISSIONER: I don't think so, Mr Robertson.

10 MR ROBERTSON: I paused because those who assist the Commission with the live stream, I saw a name relevant to them, so I'll just wait for people to - I'm told that's fine.---Okay.

THE COMMISSIONER: I think we should ban people trying to enter after the hearing's commenced.

MR ROBERTSON: I'm not sure that that was an external person. I think it was one that was assisting the Commission, but I may be mistaken about that. I'm sorry, Mr Baird, for that distraction.---That's okay.

30 The joys of doing something, a public inquiry, in hybrid form. I was asking you before about any effect or consequence of the loss of the Orange by-election in the middle of November to any consideration of this particular proposal.---Look, I mean, at that time there were a couple of issues that had impacted regionally, so, you know, I certainly think that could be part of the consideration. But more broadly, you know, for me, each single proposal needs to be considered on, on the merit. And so that's the way I'd articulate it. But, you know, I do understand regionally, you know, it was a challenge at that point in time for the government.

40 But was that a factor at least in your mind in the pro column in relation to this particular proposal or was the, was in the pro column effectively the let's try and win a world event, subject to a satisfactory business case et cetera, but let's try and win a world event which may then have a positive consequence to the (not transcribable) - - -?---Yeah. I think that's a fair reflection. I mean anything that was positive in, in a regional context I would have been supportive of clearly on the basis of the work being done and the benefit being clear.

You're aware, I take it, that Ms Berejiklian gave evidence before this Commission to the effect that she was in a close personal relationship with Mr Maguire from at least about the time of the 2015 election or slightly after or thereabouts?---Yeah, well, I saw those revelations last year.

When did you first become aware that Ms Berejiklian was in a close personal relationship with Mr Maguire?---When it was revealed here just around a year ago.

10 So was that something that came as some surprise or perhaps shock to you finding out that information?---I think incredulous.

Incredulous, is that what you said?---Yeah.

Had you known about that relationship at the time that you were Premier and that she was Treasurer, would have that affected anything that you did as Premier?---Look, I think, certainly I think it should have been disclosed.

20 Why?---Well, the concept of executing a public function in the context of potential private interests, I think in terms of good practice that should have been disclosed.

When you say "disclosed", disclosed to who?---Well, you know, myself as the Premier.

Would it have affected anything that you did or perhaps didn't do in relation to the ACTA project that you and I have discussed today?---Yes, I think, I certainly think there would have been actions taken.

30 And what actions would those have been, appreciating I'm asking you to put yourself in a parallel universe?---Yeah. Well, it's a hypothetical but I, I think there's probably two contexts. I mean it would depend on when and how it was disclosed. So if it was disclosed and had been known for some time, I think in terms of the decision-making process you certainly take into account the capacity to actually manage that potential conflict of interest. You could have had the Treasurer sort of at the meeting but maybe not participate in the discussion, and certainly, you know, my reflection on that would be the capacity, you know, would she have had the capacity to manage the conflict of interest. You know, given my view of her integrity and commitment to public service and public interests, I think that could
40 have been managed. But if it was revealed at the meeting, I think the Treasurer should have been excluded.

So it's at least a matter that you would expect to have been advised about as Premier. Correct?---Yes.

And is this right, it's a matter that you consider may have been capable of being managed, depending obviously all on the circumstances, or you may

have taken the view as Premier that Ms Berejiklian should be excluded from the meeting concerning the ACTA project. Is that right?---Yeah. I mean they're the options. And again, I think what I'm trying to articulate, it would depend on the timing of that disclosure.

10 Would it at least affect the – that information, would that affect the level of scrutiny that you would perform or would expect others to perform in relation to projects relevant to the electorate of Wagga Wagga?---Look, I, I mean, I think, you know, clearly that's an additional piece of information that would ensure that every member who was considering it was aware of that.

20 So you'd want to make sure that there could be no suggestion rightly or wrongly that the putting forward of the proposal or support from it was affected by that potential conflict, I think was the term that you used, or at least that potential interest. Is that right?---Yeah. But as I said I think, I think it could have been managed but, you know, obviously, you know both on a personal capacity for the Treasurer but, you know, from a committee point of view, but obviously they're not disclosed, they were unable to do that.

That's the examination.

THE COMMISSIONER: Thank you, Mr Robertson. Ms Edwards, do you seek leave to ask Mr Baird any questions?

MS EDWARDS: No, Commissioner.

30 THE COMMISSIONER: Mr Agius, do you seek leave to ask Mr Baird any questions?

MR AGIUS: No, Commissioner.

THE COMMISSIONER: Thank you. Ms Callan, do you seek leave to ask Mr Baird any questions?

MS CALLAN: Yes, Commissioner.

40 THE COMMISSIONER: The usual conditions.

MS CALLAN: Yes. Mr Baird, my name is Callan. I appear on behalf of Ms Berejiklian in this public hearing. Can you hear me?---I can, yep.

While you were Premier and Ms Berejiklian was Treasurer, did you work closely with her?---Very closely.

Would you have dealt with her virtually every day through one means of communication or another?---Pretty much.

And over the period of time between when you entered parliament and you became Premier, did you similarly have almost daily dealings with Ms Berejiklian?---Yes.

So over that time you were in parliament, I take it you would have had many opportunities to observe the way she engaged with other members of parliament?---Yes.

10 How she engaged with members of the government ?---Yes.

You were in a position to observe the decisions she made and the way in which she made those decisions?---Yes.

Including, for instance, the factors that she took into account?---Ah hmm.

Sorry, I think for the transcript - - -?---Oh, yes. Sorry.

20 You observed over the years the extent to which she was receptive to ideas or proposals, for instance, from other members of the government?---Yes.

And it's the case, isn't it, that you observed her keen eye to the political implications of the government's decisions?---Yes.

In that regard, and I'll come back to it in a moment, do you recall observing concerns that she voiced, along with other colleagues, towards the end of 2016 when the National Party lost the Orange seat at the by-election?---Yes.

30 And those concerns reflected a – sorry, I withdraw that. That concern was about the Liberal Party losing the support of the regional electorate, would that be a fair way of describing it?---Yes.

MR ROBERTSON: So my friend's not under any misapprehension, it was a Nationals member who lost the electorate of Orange.

MS CALLAN: Yes.

THE COMMISSIONER: It's a Coalition, Mr Robertson.

40 MS CALLAN: Yes.

MR ROBERTSON: Quite. No, I think my friend referred to Liberal, but perhaps I misunderstood her question.

THE COMMISSIONER: I think she meant to refer to Liberal. Is that my understanding, Ms Callan?

MS CALLAN: My reference was to the Nationals losing the seat but to the Liberals being, that being a matter of concern for the Liberal Party.

MR ROBERTSON: I apologise if I intervened too quickly. I apologise to my friend.

THE COMMISSIONER: I'm not sure if you interrupted before Mr Baird got a chance to answer the question, Mr Robertson.

10 MR ROBERTSON: Whoever I interrupted, I apologise.

THE COMMISSIONER: Can you repeat the question, Ms Callan.

THE WITNESS: Well, there was, there were concerns in terms of regional New South Wales, the government's support in regional New South Wales. I think that's the sentiment.

MS CALLAN: Yes. And at that point in time, do you recall that, at least in some quarters, it was interpreted as a backlash by the regional electorate
20 against the Coalition government?---Yes.

Including a backlash against certain policy positions which had been taken by the government in relation to greyhounds.---Yes.

And a backlash against the steps which had been taken to amalgamate certain local councils.---Yes.

There was a real concern at the time – that is, towards the end of 2016 – within the Coalition of the need to address a perception that the Coalition
30 was out of touch with regional voters. Would you accept that?---Yes. I didn't, I mean, I didn't believe it but, yes, I understood the perception.

Indeed. And, to be clear, those were concerns that were conveyed to you. It's a different matter whether you accepted that there was a proper basis for them?---No, no. I, I, look, I understood the concerns, yes.

And it's the case, isn't it, Mr Baird, that you understood that those concerns were legitimate considerations in the decisions the government was making at the time?---Yeah, I, I think that's, that's right. I mean, you know, there's
40 a whole range of things government can do. You can kind of reconnect, you can listen, I mean, there's a whole range of things but more broadly, yes, there was an understanding that we'd certainly lost some support regionally.

Can I just come to a couple of matters in relation to the ERC before dealing with, again, in a very confined way, aspects of your evidence to do with this ACTA grant?---Yes.

Just to be clear, in relation to the ERC, aside from the Treasurer and Premier, when you were Premier, how many other members were there on the ERC?---How many members?

Yes.---I can't remember the exact number, maybe five?

10 And in terms of your observations of Ms Berejiklian as Treasurer and chair of the ERC, was it your observation that she would generally ensure that matters were placed on the agenda and papers circulated in an orderly fashion?---Yes.

20 You spoke about, in answer to some questions of Counsel Assisting, about your practice as Premier in the sense of not intervening to block a matter from going onto the agenda, rather preferring to let it be the subject of discussion in that forum at the ERC meeting?---I, I mean, yes, no, I could have, I mean, I, that's not to say that I wouldn't engage on agenda items or if there was something that I may well have thought needed more work or time or there was, you know, a whole range of issues, but, as a general practice, no, it was, it was kind of obviously the, the Treasurer to run.

20 But the sense I got from the way in which you described your approach to the ERC was a desire for that to be a forum which promoted a collaborative discussion.---Yes. Yes.

30 And to that end, subject to matters not being ready for proper consideration, your approach was for matters to be placed on the agenda and whether you were supportive of them or not, so as to allow the discussion to take place? ---Yeah. And, and there were, kind of, other examples more broadly, in the context that, you know, Cabinet might, you know, have a, an initial kind of thinking on a particular issue but it, it might take, you know, weeks or months to kind of get to the final position. So you might, you'd certainly have a discussion, get some views, do some further work and, and kind of bring it back so then, yes.

To your observation as Treasurer and chair of the ERC, did Ms Berejiklian take a similar approach to the way in which items went onto the agenda of the ERC?---Yes. Yes.

40 That is, to your observation, she didn't act as some form of gatekeeper in relation to that agenda, for instance, only permitting items onto the agenda that, for instance, she supported?---No. That's, that's, that's correct.

She, again having regard to the orderly conduct of business of the ERC, performed her role as chair, amongst other things, by considering items that ought go on the agenda and then letting it be a matter for discussion of the whole of the committee?---Yes. Yeah, very much so. I mean, there were obviously many times that the Treasurer did not support what was on the agenda.

THE COMMISSIONER: I take it you're referring to Ms Berejiklian in that last answer, are you, Mr Baird?---No, I'm speaking as a former Treasurer, yes.

So Treasurers generally did not always support everything on the agenda? ---Well, yeah. There's, there's, there's often robust discussions on all types of agenda items, so, yes, and not always supported by the Treasurer.

10 Thank you.

MS CALLAN: And Ms Berejiklian was no exception, to your observation?---Correct.

To your observation, during your time in parliament, on occasion did members of the government make announcements, for instance, about grants before they'd even gotten to the ERC?---I, I would say yes. I can't, I can't remember exact examples but I think as, as an example, yes, and obviously not always appreciated by ministers or Treasurers.

20

And similarly, to your observation, were there occasions that perhaps shortly after an ERC decision had been made, for instance, to support or to fund a grant, but on particular conditions, that that might be the subject of enthusiastic announcement by the local member involved?---I, well, I take it there were conditions linked to the funding that would be appropriate.

That it would be appropriate to recognise the conditions in any announcement that's made by the local member?---Well, depending on the specific example.

30

Yes. The evidence you gave to Counsel Assisting in relation to the Expenditure Review Committee, I sensed included your experience that towards the end of the year items considered by the ERC sometimes happened in a more rushed or within tighter time frames?---Yes. No, certainly in the, I mean, the, the last couple of ERC meetings were always reasonably chaotic in terms of agenda items, trying to get things on, and, you know, that was because the end of the year meant that ERC probably wasn't meeting until February or March the next year, so there were sort of various proposals. So, you know, a year-end process, not unusual for, you know, other organisations was, was certainly reflected in relation to agendas and items that needed to be seen. So, so certainly nothing, you know, in, in all my experience, that was a pretty regular feature of the, the year end.

40

Putting to one side the time of year it was occurring, it's the case, isn't it, Mr Baird, that the government would do things in a rushed or hurried fashion if, for instance, the political climate warranted that to occur?---Yes.

And for instance, that would include decisions to spend money if, again, the political climate or other considerations warranted a decision to be made in rushed circumstances, that is potentially outside the usual ERC processes?

---Yeah. It was, it's a, it's a reality of government but that, at the same time, you know, you can certainly have truncated timelines but that doesn't mean you don't do the work.

10 Yes.---You know, so you've got to do the work, but certainly moving and being agile on circumstances, events and timelines, it's a, it's a reality of government.

But that might mean, for instance, Mr Baird, that a decision or an announcement made by the government, with an observation that this was going to be the subject of appropriate analysis by way of a business case or otherwise? That is, it was conditional on such analysis occurring after the general proposal was announced?---I, so, so, so I'm clear, so are you saying it would be okay to announce it before the business case was done or is that
- or - - -

20 On occasion that that has happened, that the government has announced a new proposal - - -?---Right. And they've, they've made it clear that it is subject to those, that additional work or - - -

Yes.---Right. That's, yeah, that's not unreasonable, yeah.

30 In terms of the array of funding proposals that came before you for consideration when you were on the ERC, would it be fair to consider it's likely that those proposals would have affected virtually all the different electorates of New South Wales one way or another?---Yes.

And self-evidently, the electorates were held by the range of political parties and independent members of the day?---Yes.

40 Is that a factor, at least when you sat on the ERC, that is who held the seat or whether it was a marginal seat, sometimes taken into account in the ERC's decisions or consideration about whether to go forward with a proposal?---Look, I, I mean, certainly my strong sense was, you know, it didn't matter, you know, what the seat was. You know, what mattered was merits to the, the project. And, you know, that's why we set up Infrastructure NSW, and Infrastructure NSW and the allocation of money thereof was to put in a priority of infrastructure across the whole state. You know, my observation before coming into politics, there was, you know, decades where infrastructure was promised and never delivered and where infrastructure was done, you know, on the basis of what is needed to win seats. You know, my sense, and the government certainly subscribed to it, that good policy is good politics. And, and I certainly think that infrastructure and the delivery thereof was something that required an uplift in rigour, which, which I believe was put in place. You know, so that's the,

the broad context. Undoubtedly, you know, as part of that decision there's economic consideration but there's also political and, you know, and there are political circumstances at the time. But at the core, the rigour around sort of allocation of funding was something that I think we put in place.

10 In relation to the, this particular clay target facility proposal that came up for your consideration in the ERC, the written advice that was provided to you by Mr Blunden – and for the record it's Exhibit 420. You were taken to that document, including the recommendation to oppose the proposal, which was accompanied by a note that Gladys and Mr – that is, Ms Berejiklian – and Mr Ayres want it, and a reference to them having done a, quote, “sweetheart deal with Daryl”. In addressing that part of the document, you spoke of Mr Maguire sometimes, as someone who relentlessly pursued his own agenda. It's the case, isn't it, that Mr Maguire, along with one or two other Coalition MPs, was factionally unaligned? Do you recall - - -?---That, that he was factionally unaligned?

Yes.---Yes.

20 And was it your observation that that meant that when he, as you put it, relentlessly pursued his own agenda, he may have had more success than others because he was factionally unaligned? So his support one way or another across the factions was of value?---That in no way would have entered my thinking.

There's then reference in Mr Blunden's recommendation, quote, “At the very least, let's target our marginal seats, not one of our safest.” Do you see that?---Yes.

30 Is that a reflection of the political reality or political considerations that were considered as part of the assessment about whether to support a particular proposal or not?---I, I mean, certainly that's, that, that's his reflection.

Yes.---That's come as part of the advice.

He was employed as a, to advise you in respect of matters of political strategy, wasn't he?---Ah hmm.

40 THE COMMISSIONER: You have to - - -

MS CALLAN: Yes.

THE WITNESS: Sorry, oh, sorry, Commissioner. Sorry.

THE COMMISSIONER: We just want to - - -

THE WITNESS: Yes.

THE COMMISSIONER: Thank you.

THE WITNESS: Yes.

MS CALLAN: Does it surprise you that he makes reference to this consideration as to marginal seats in a document at this point in time, of this nature?---Look, it's, I mean, it's, it's probably not surprising. But I think, as you can see, well, as you've heard me kind of give evidence, it, it's certainly not a dominant part of my thinking.

If, noting that this proposal was in respect of the Wagga Wagga electorate, if that seat was considered to be at risk of being lost by the Liberal Party, who held it at the time, would you have expected that information to have had bearing on – sorry – to have been reflected in Mr Blunden's advice?---I mean, potentially. I mean, potentially. But, you know, I mean my strong sense is, you know, electorates are aware of that sort of approach and quite cynical about it. So, you know, my hope is it wasn't something that, you know, we, we did on an ongoing basis. I mean, I certainly, you know, certainly wouldn't support that.

Insofar as Mr Blunden suggests that Ms Berejiklian and Mr Ayres supported the proposal, do you recall turning your mind to or discussing with them their reasons?---I can't, I can't remember personal discussions. As I said, I, you know, I think, you know, from my recollection that it was at the committee and, and views were given and I cannot recall the specifics around the individual contributions, but as I said to, to Mr Robertson, you know, I think there was a broad support to doing the work, you know, that, that we articulated and, and had come back and, you know, part of the reasons of supporting the proposal, I've, I've outlined in terms of regional New South Wales and the opportunities there.

Just in that regard and in relation to the evidence you gave, doing the best you could as to your recollection of the discussion within the ERC, is this the position, you, to the best you can recall, observed that Ms Berejiklian supported the proposal?---Supported the proposal in terms of doing the additional work?

Yes.---Yes.

And that she, along with her support for the proposal, along with the other members of the ERC was on the basis that that additional work had been done?---Yes, yes.

And that was a position that you – sorry. You recall putting forward your concerns, that is the reasons why that additional work was important?---Yes.

And in response to that, the other members, including Ms Berejiklian, indicated an approach which was supportive of that?---Yes. I, I, I recall that, that supportive segment.

When you entered parliament, Mr Maguire had been a member for Wagga since 1999. With what frequency did you deal with him up to the point in time that you ceased as Premier in 2017?---As in how often did I talk to him?

10 Yes, yes.---Look, you know, a, a number of times a year, probably.

Did the frequency with which you spoke to him change as you assumed the position as Treasurer and then as Premier?---I, I certainly think so as Premier.

In July 2018 when ICAC was conducting a hearing, amongst other things, in relation to conduct by Mr Maguire, was that the first time you became aware of any improper conduct by him?---Yes.

20 Prior to that, was he – did you consider he was generally regarded with respect within the party room?---No, I think there were concerns.

Prior to July 2018, to your observation, was Mr Maguire treated as a form of go-to person in relation to regional issues?---I mean, certainly we only had a few regional seats in terms of the Liberal Party, so, so certainly his, his voice regionally would have been influential in the, from the party, yes.

30 Is it the case, Mr Baird, that during your time in parliament, you formed friendships, sometimes what you would describe as close friendships with certain of your parliamentary colleagues?---Yes.

Was Ms Berejiklian amongst those people?---Very much so.

And Mr Stokes?---Yes.

And were the friendships, for instance, that you formed with Ms Berejiklian and Mr Stokes ones that you hoped or expected would endure beyond your time in parliament?---Yes.

40 In the time that you considered grants and proposals that came up through the ERC, it's likely that one or more of those grants or proposals would have been in, for instance, Ms Berejiklian's seat at Willoughby or Mr Stokes' seat at Pittwater?---Yes.

Did you regard the strength of your friendships with either of them as meaning that you were in a position of conflict in terms of considering those grants?---No.

Did you consider that that friendship meant that you approached your decision with any partiality or bias?---No. I mean, I think, you know, like, like anything, you know, friendships, but you consider proposals that are before you.

I think in your evidence earlier to Counsel Assisting, you described that you were incredulous when you heard last year that Ms Berejiklian had been in a close personal relationship with Mr Maguire from about 2015.---Mmm.

10

Does that bespeak the fact that you had no idea that they were in such a relationship?---No idea.

It's the case, isn't it, that neither Ms Berejiklian or Mr Maguire had ever done anything to give you reason to think that they were in a relationship? ---That's correct.

20

To your observation, Ms Berejiklian did not treat Mr Maguire any differently to the way she treated any of her other parliamentary colleagues?---Correct.

She did not in her conduct or decision-making, to your observation, act in a partial or biased way in relation to any matters concerning Mr Maguire or the seat of Wagga?---No.

Thank you for your time, Mr Baird. Thank you, Commissioner.

30

MR ROBERTSON: Commissioner, before you call for any, in effect, re-examination, can I raise one - - -

THE COMMISSIONER: There are two more people to go, Mr Robertson.

MR ROBERTSON: I'm so sorry.

THE COMMISSIONER: I think I forgot to ask Mr Harrowell if he wished to seek leave to ask Mr Baird - - -

MR HARROWELL: No, no, Commissioner.

40

THE COMMISSIONER: And Mr Boulten, do you wish to seek leave to ask Mr Baird any questions?

MR BOULTEN: No, thank you.

THE COMMISSIONER: Mr Robertson.

MR ROBERTSON: I'm sorry for jumping the gun, as it were. In answer to, and this is a submission to you, Commissioner, in answer to a question

my learned friend Ms Callan asked. There was an answer that said something like, “I think there were concerns.”

THE COMMISSIONER: Yes, I heard that.

MR ROBERTSON: I want to ask Mr Baird regarding that matter but I, as it were, don't know the answer to that question and what I don't presently know is whether that falls within or without the existing scope of this Commission's investigation. In my respectful submission, the appropriate course is for the Commission to decide to hold a very brief private session of the public inquiry so I can explore that matter with Mr Baird, is I don't want to address that in public without knowing, in effect, the scope of that matter because that creates a risk of having adverse consequences to Mr Maguire, in particular, if the matter is broader than what the existing scope and purpose allegations. That's probably for abundant caution on my part, but our respectful submission is that the Commission would decide pursuant to section 31(9) to hold part of the inquiry in public on the grounds that it is in the public - - -

20 THE COMMISSIONER: In private?

MR ROBERTSON: Sorry. Part of the public inquiry in private on the basis that it's in the public interest for me to first explore that matter with Mr Baird in private and then with a view to making a decision as to whether that matter is the subject of communication in public in terms of who is permitted to be in the either actual or virtual hearing room. I wouldn't suggest that any of those individuals with leave to appear should be excluded, in other words, those who are presently in the physical room or who are otherwise joining through the Teams session can continue to join but in terms of the public more generally - - -

THE COMMISSIONER: The public stream should be shut down?

MR ROBERTSON: The public stream should be shut down and you should - - -

THE COMMISSIONER: Can that be done without us all having to - - -

MR ROBERTSON: I think the answer to that question is yes. I can see some nodding.

THE COMMISSIONER: Very well.

MR ROBERTSON: So as a matter of procedure, our submission is that you would decide to hold part of the public inquiry in private. Pursuant to section 31(9), you would make a consequential direction under section 112 of the Independent Commission Against Corruption Act suppressing that evidence for the time being and subject to further order being made, and you

would make a direction under section 31A as to the persons who can be present, restricted to those who are physically present in the hearing room at the moment or who are virtually present by way of the Team session.

10 THE COMMISSIONER: All right. Pursuant to section 31(9) of the Independent Commission Against Corruption Act, I determine that it is in the public interest that the next part of the inquiry be held in private in relation to Mr Baird's response to one of Ms Callan's questions concerning prior concerns about Mr Maguire. To that end, and also being satisfied that it's in the public interest to do so, necessary and desirable to do so in the public interest, I direct pursuant to section 112 of the Independent Commission Against Corruption Act that any evidence given by Mr Baird during this private session of the public inquiry, the contents of any exhibits tendered or any documents shown to him, and the fact of the actual evidence given during the private inquiry shall not be published or otherwise communicated to anyone except by Commission officers for statutory purposes or pursuant to further order of the Commission.

20 **SUPPRESSION ORDER: BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE TO DO SO IN THE PUBLIC INTEREST, I DIRECT PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT THAT ANY EVIDENCE GIVEN BY MR BAIRD DURING THIS PRIVATE SESSION OF THE PUBLIC INQUIRY, THE CONTENTS OF ANY EXHIBITS TENDERED OR ANY DOCUMENTS SHOWN TO HIM, AND THE FACT OF THE ACTUAL EVIDENCE GIVEN DURING THE PRIVATE INQUIRY SHALL NOT BE PUBLISHED OR OTHERWISE COMMUNICATED TO ANYONE EXCEPT BY**
30 **COMMISSION OFFICERS FOR STATUTORY PURPOSES OR PURSUANT TO FURTHER ORDER OF THE COMMISSION.**

THE COMMISSIONER: However, I note that for the purposes of this stage, for this private inquiry, all those present within the hearing room now may remain, as too can those who have joined on AVL.

40 MR ROBERTSON: Through the, we'll call it through the Microsoft Teams session might be the most convenient way to describe it.

THE COMMISSIONER: Through the Microsoft Teams session. Are they all the orders you wished me to make, Mr Robertson?

MR ROBERTSON: Yes, Commissioner, but I need to just wait for an indication as to the ceasing of the public stream.

THE COMMISSIONER: Do you understand, Mr Baird? We're just going to go into a private inquiry just for - - -?---A couple of questions, yeah.

Yes.---Yep, that's fine.

10

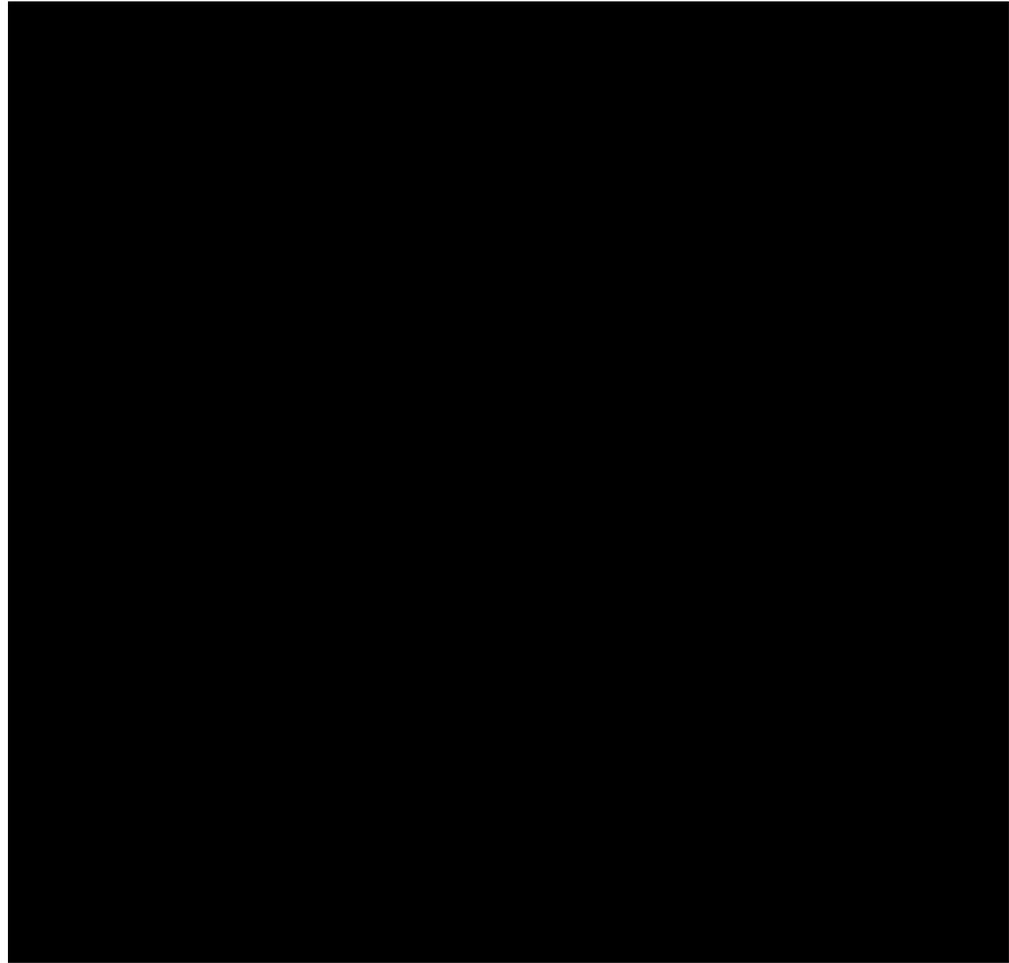
20

30

40

10

20



30

MR ROBERTSON: Now, I'm told the public stream has now recommenced, Commissioner.

THE COMMISSIONER: Very well. You can continue your questions, Mr Robertson.

40

MR ROBERTSON: Yes, Commissioner. During the course of the private segment in the public inquiry, I asked a question of Mr Baird. I'm now proposing to ask in substance the same question that I asked during the course of the private matter. Mr Baird, my friend Ms Callan asked you a question during her questioning and you gave an answer something along the lines of "I think that there were concerns in the party room." Do you remember giving an answer along those lines?---Yes.

And that was a reference to potential concerns regarding Mr Maguire, is that right?---Yes.

Can you just identify in general terms what the nature of those concerns were in the party room to which you were referring in response to Ms Callan's question?---Yeah. I mean, that was in relation to his behaviours and approach and engagement. So I think there was a general concern in the

party room about, you know, collaborating or kind of engaging with the member.

And so you gave some evidence in response to one of the questions that I asked earlier today about Mr Maguire being, in effect, a difficult person with staffers and things of that kind. Is that the general nature of the concerns in the party room that you're referring to?---Yes.

10 And those concerns that you recall aren't concerns about corruption or probity or things of that kind, is that right?---No. Yes.

And so at least prior to July of 2018, when Mr Maguire gave evidence before this Commission, the kinds of concerns that you're identifying, at least in the time that you were Premier, weren't concerns, at least as you recall it, of the probity or corruption kind, they were more in the nature of behaviour, attitude, things of that kind. Would that be a fair summary? ---That's right, yep.

20 Thank you, Commissioner.

THE COMMISSIONER: Thank you, Mr Robertson. Thank you for attending today, Mr Baird. You're released from your summons and you may step down.---Thanks, Commissioner.

THE WITNESS EXCUSED

[3.25pm]

30 MR ROBERTSON: Commissioner, can I deal with a tender in relation to Mr Blunden's evidence? You recall that I showed Mr Blunden an aspect of his compulsory examination transcript, pages 2578 to 2581. I tender a redacted version of that transcript, well, the transcript excerpt.

THE COMMISSIONER: Yes. That will be Exhibit 422.

#EXH-422 – COMPULSORY EXAMINATION TRANSCRIPT OF NIGEL BLUNDEN OF 28 APRIL 2021

40 MR ROBERTSON: And then I'm not going to immediately tender the Department of Premier of Cabinet advice to which I took Mr Baird because I want to make sure personally that the document from which that comes has been redacted in accordance with the ruling that you made on the first day of this further public inquiry.

THE COMMISSIONER: Very well.

MR ROBERTSON: Those are the only matters from my perspective. I propose to call Mr Hanger at 9.30am tomorrow.

THE COMMISSIONER: Very well. The public inquiry is adjourned until 9.30am tomorrow.

AT 3.26PM THE MATTER WAS ADJOURNED ACCORDINGLY
[3.26pm]

10