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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE RUTH McCOLL AO
COMMISSIONER

PUBLIC HEARING

OPERATION KEPPEL

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 21 OCTOBER, 2021

AT 9.30AM

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

THE COMMISSIONER: Yes, Mr Robertson.

10 MR ROBERTSON: Commissioner, shortly I'll call Mr Chris Hanger. I expect today to be quite a full day of evidence, then also tomorrow, as I have already indicated, I expect that to be quite a full day of evidence as well. The witness list, or at least the draft witness list for next week, will be uploaded during the course of the morning. Can I indicate that that's quite a full and perhaps an ambitious program. I will do my utmost to complete that program of evidence during the course of next week, but I did want to indicate at this relatively early stage that there is a serious prospect that the public inquiry will need to spill into the following week. I will obviously seek to avoid that, but plainly enough, including for the purpose of ensuring that Ms Berejikian and Mr Maguire have a full opportunity to test the evidence in this public inquiry, I can see a serious prospect of having to spill over into the following week. I will give some further updates as the program of evidence continues but I thought I should give that indication as an early stage.

20 THE COMMISSIONER: Thank you, Mr Robertson.

30 MR ROBERTSON: One other matter of housekeeping. Yesterday I showed Mr Baird a number of documents in relation to papers that were available to him in connection with the Expenditure Review Committee meeting, the subject of some questioning of him. I didn't tender those documents on that occasion. As I indicated to you, I wanted to check to ensure that it had been redacted in accordance with your ruling. That's now occurred. I first started to refer Mr Baird to those documents at page 2073 of the transcript, line 34, and I now tender as a bundle, a bundle of Expenditure Review Committee papers, which is volume 26.3, pages 203 to 254, redacted in accordance with your ruling, Commissioner, announced on the first day of the Public Inquiry.

THE COMMISSIONER: Yes. Those will be Exhibit 423

**#EXH-423 – AGENDA EXPENDITURE REVIEW AND CABINET
SUBMISSION DATED 14 DECEMBER 2016**

40 MR ROBERTSON: I call Chris Hanger.

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

MR HANGER: An affirmation, please.

THE COMMISSIONER: Thank you. Please listen to the hearing officer.

THE COMMISSIONER: Mr Carr, have you explained to Mr Hanger his rights and obligations as a witness?

MR CARR: I have, Commissioner. We also seek a section 38 direction.

10 THE COMMISSIONER: Thank you. Mr Hanger, will you listen very carefully to the explanation I'm about to give you before I make that declaration?---Ah hmm.

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 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 understand that you are a New South Wales public official. Evidence given by a New South Wales public official may be used in disciplinary proceedings against the public official if the Commission makes a finding that the public official engaged in or attempted to engage in corrupt conduct. I can make a declaration that all the answers given by you and all items produced by you will be regarded as having been given or produced on objection. This means you don't have to object with respect to each answer or the production of each item. I will now make that declaration. 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 this witness during the course of their evidence at this public inquiry are to be regarded as having been given or produced on objection, and there is no need for them 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 THIS WITNESS DURING THE COURSE OF THEIR EVIDENCE AT THIS PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN GIVEN OR PRODUCED ON OBJECTION, AND THERE IS NO NEED FOR THEM TO MAKE

**OBJECTION IN RESPECT OF ANY PARTICULAR ANSWER
GIVEN OR DOCUMENT OR THING PRODUCED.**

THE COMMISSIONER: Do you understand that, Mr Hanger?---I do.

Thank you. Yes, Mr Robertson.

10 MR ROBERTSON: Can you state your full name, please, sir?---Christopher
Luke Hanger.

You are presently a deputy secretary within the Department of Regional
NSW. Is that right?---That's correct.

You're presently responsible for public works, advisory and regional
development?---Yes.

You report to Mr Gary Barnes?---Yes.

20 Mr Barnes is presently the secretary of the Department of Regional NSW.
Is that right?---Yes.

The relevant minister, the Minister for Regional Affairs, is the Deputy
Premier, Mr Toole. Is that right?---Regional Development, I think it is, but
Minister Toole, yes.

I'm so sorry. Minister for Regional Development is what I meant to say, as
the minister for the Department of Regional NSW. Correct?---That's
correct.

30 Before Mr Toole was the relevant minister, the relevant minister was
Deputy Premier Barilaro. Is that right?---That's correct.

The Department of Regional NSW has been its own department since about
April of 2020. Is that right?---Yes.

Not only is it its own department, it's also its own cluster in the sense that
there is a cluster called the Regional NSW Cluster. Is that right?---Yes.

40 In terms of clusters, is this right? The government of New South Wales in
terms of its departments and agencies are organised in a series of
overarching clusters. Is that right?---Yes.

I think there might be nine clusters at the moment or at least something like
that.---Mmm.

But each department or agency of government falls within one or other of
those clusters. Is that right?---Yes.

Each of the clusters has a cluster minister?---Yes.

The cluster minister at the moment is the Deputy Premier insofar as that relates to the Department of Regional NSW. Is that right?---Yes.

But, from time to time, there'll be portfolio ministers for an agency within a cluster that may well be a different minister to the cluster minister. Is that right?---Yes.

10

So there are sometimes circumstances where a particular agency will have a portfolio minister but also a cluster minister. Is that right?---Yes.

The portfolio minister, I take it, is the principal source of reporting and instructions in that kind of a scenario. Is that right?---Yes.

Although the cluster minister will at least have some involvement in relation to matters falling within the cluster. Have I got that right?---Yes.

20

Before the Department of Regional NSW was its own department and before Regional NSW was its own cluster, you were an Executive Director in the Regions, Industry, Agricultural And Resources Group in the Department of Planning, Industry and Environment. Is that right?---That's correct. That's - - -

That's an incredible mouthful. In that capacity, at least immediately before you were in the Department of NSW, you were an Executive Director of Regional Infrastructure And Programs. Is that right?---Yes.

30

And before that I think you were within the Regional New South Wales Group within the Department of Premier and Cabinet. Do I have that right?---Yes.

And before that I think you were in the Department of Industry. Is that right?---Yes.

Director of Funding and Infrastructure for a period?---Yes.

40

And a Director of the Office of Regional Development for a period?---Yes.

Now, in each of those roles, I've just sought to summarise, you've had a particular focus in relation to regional affairs. Is that right?---Yeah, regional development I'd call it, but, yes.

And when we say "regional development", there's been a substantial part of your exercise associated with regional infrastructure. Is that right?---That's correct, yes.

And so I take it that in light of that history, as I've just sought to summarise, you've had quite a significant level of experience in government procurement of infrastructure?---Yes.

With a particular focus on the procurement of regional infrastructure?

---That's correct, yes.

You have degrees in political science and law from the ANU?---Yes.

10 And I think before you worked in State Government, you also had a stint in Commonwealth Government. Is that right?---That's correct.

You're aware, Mr Hanger, that this Commission is investigating grant funding that was promised and or awarded to the Australian Clay Target Association in 2016, 2017. Are you aware of that?---Yes.

When did you first become aware that the Australian Clay Target Association was seeking or had been awarded funding from NSW Government?---Late in 2016, probably December, or early 2017.

20

And can you just explain the circumstances in which you became aware that grant funding had been promised or awarded to the Australian Clay Target Association during or around the period you've just identified?---There was an ERC decision in late 2016. I was notified, I think, first by Infrastructure NSW that that decision had awarded \$5.5 million to, I'll call them ACTA, to ACTA, subject to some conditions and one of those conditions was the development of a business case and the, the sort of requirement to support the development of a business case was identified as through Regional NSW.

30

You referred a minute ago to the ERC. Is that a reference to the Expenditure Review Committee of Cabinet?---Yes, it is.

Did you have any involvement in the lead-up to the Expenditure Review Committee decision or was your involvement, at least insofar as you can recall it, something that only happened after the Expenditure Review Committee decision to which you referred?---Yep. Best of my recollection I didn't have any awareness until after the decision.

40 And so at some point in time after the decision itself you were advised of the fact that the decision had been made. Is that right?---That's correct.

And you, or at least your group was asked for assistance in relation to that particular decision. Is that right?---That's correct.

With a particular focus on the condition associated with the business case. ---That's correct, yes.

Now, why, as you understood it, was that directed to the particular group in which you were working as opposed to being dealt with in some other part of government, for example, the Office of Sport?---The funding source that was identified as part of the, the sort of commitment of funding was the Regional Growth – Environment and Tourism Fund. That was a fund that my group was working with Infrastructure NSW who, the agency that oversee the Restart Fund of which the Regional Growth – Environment and Tourism Fund is a funding program. My group was working with Infrastructure NSW in regards to that. ACTA is, is a project based regionally. I’m not sure why we were identified but those would be the reasons I would expect that may have been the case.

So let’s just unpack that a little bit. At the time of the Expenditure Review Committee decision to which you have just referred, you were a Director of Funding and Infrastructure in the Department of Industry. Is that right? ---That’s correct.

And then can we go, please, to Exhibit 395 which is Expenditure Review Committee decision itself. Exhibit 395. The other reference volume 26.3 at page 255. Now, I’m showing Mr Hanger a copy of an Expenditure Review Committee decision 14 December, 2016. On the larger screen in front of you you should hopefully be able to see it.---Not yet.

May I approach, Commissioner?

THE COMMISSIONER: Yes.

MR ROBERTSON: Back to COVID times.---Do I need to, oh.

THE COMMISSIONER: Can you see it now, Mr Hanger?---Yes.

MR ROBERTSON: When all else fails press the on button, Commissioner. Do you now see a Expenditure Review Committee decision 14 December, 2016?---Yes.

Can we zoom in to the bottom half of that page, please, and we’ll just stop there. So do you see there it’s got a Roman (i) and a Roman (ii). Roman (i) is “approved expenditure of \$5.5 million in 2016/2017 to the Office of Sport”. Do you see that there?---Yes.

Now, you didn’t have anything to do with the Office of Sport or at least you weren’t in that office at the relevant time. Is that right?---No. That’s correct. Yes, I wasn’t.

But if we then look at Roman (ii) (a), “it should be sourced from the Regional Growth – Environment and Tourism Fund”. Do you see that there?---Yes.

And that's with the fund to which you made some reference a little while ago. Is that right?---Yes.

And I think you said that formed part of Restart NSW. Is that right?
---That's correct.

Now, Restart NSW is a special fund within the NSW Government which holds money from, amongst other things, what's sometimes referred to as "asset recycling". Is that right?---Yes.

10

Including what is sometimes colloquially referred to as "the poles and wires money".---Yes.

The lease of the electricity assets in New South Wales.---That's correct.

The Regional Growth – Environment and Tourism Fund was in effect a sub-fund or a part of Restart NSW. Is that right?---Yes.

20

Did any particular minister, as you understood it as at December of 2016 and moving into 2017, have any particular ministerial responsibility in relation to that fund?---The Regional Growth – Environment and Tourism Fund?

Yes.---As Infrastructure NSW is the overarching agency responsible for Restart funds, that fund falls within the Restart Fund. Restart is the responsibility of the Treasurer.

30

And so just to unpack that, is this right, one of the requirements before any money can be paid out of the Restart NSW Fund is a recommendation from Infrastructure NSW, is that right?---That's correct.

At least as a matter of practice, a recommendation won't be made, at least as you understand it, from Infrastructure NSW unless there's some analysis, indicating a benefit-to-cost ratio of 1 or more than 1?---That's correct.

In other words, some analysis suggesting that the benefits to the state will be equal to or more than the costs to the state in relation to a particular proposal, is that right?---Yes.

40

But the person ultimately responsible for the fund, at least at the ministerial level, is the Treasurer, is that right?---Yes.

As at the time of the ERC decision of December 2016, the Treasurer was Ms Berejiklian, correct?---Yes.

But ultimately when she became Premier, Minister Perrottet became the Treasurer, is that right?---Yes.

Now, given that that particular fund, as you've just explained, was in effect under the superintendence of Infrastructure NSW and the Treasurer, why were you having anything to do with it, noting that you weren't in Treasury, you were in the Department of Industry?---As I've indicated, the connection I believe for why Regional NSW would be involved is our work with Infrastructure NSW on the Regional Growth – Environment and Tourism Fund.

10 And so is this right, your agency at that point in time was providing assistance and support, in effect, to Infrastructure NSW in relation to that particular fund forming part of Restart NSW?---That's correct.

As at December 2016, who was the relevant minister for your agency, that being a part of the Department of Industry at that point in time?---Um - - -

20 And I appreciate this is something that changes on fairly regular occasions. ---Yes, we have been through a number of machinery of government changes, but I would have, I believe it was the Deputy Premier in regards to Regional Development.

And when you say the Deputy Premier, you mean the former Deputy Premier, Mr Barilaro, is that right?---Barilaro, yes, that's correct.

Was this at least right, to the extent that you were involved in assisting in the procuring of a business case and the like of the kind that appears to be contemplated by the ERC decision that we can see on the screen, your principal reporting at a ministerial level was with Deputy Premier Barilaro's office, is that right?---That's correct, yes.

30 And so looking then again at Roman (ii), you've referred there to the particular fund. You can see (b) "is subject to the finalisation of a satisfactory business case, noting that this can be approved by the Treasurer following Infrastructure NSW assurance processes linked to the fund". Do you see that there?---Yes.

40 And so do we take it from what you've explained so far that your understanding of the reference to the Infrastructure NSW assurance processes is a reference to obtaining the recommendation from Infrastructure NSW?---Yes.

But to get the recommendation, what one requires in particular is an analysis indicating a benefit-to-cost ratio of 1 or more than 1?---The business case and that analysis, yes.

The Regional Growth – Environment and Tourism Fund, as you understand it, is that what I might call a competitive fund in the sense that there's a fund of money, there's an application process, you put in an application, there's an assessment, and whatever are assessed to be the most worthy projects of

those that have applied get the funding and everyone else misses out? Or is it more in the nature of a particular pot of money that the agency or perhaps the relevant minister from time to time will say, well, I want to allocate it to this or to some other project? Or is it some combination of the two?---A combination with the predominance of competitive streams of activity. So there are other allocations directly from that fund, but the majority of that funding has gone through competitive grounds based programs.

10 And when you say competitive grounds based programs, I take it you mean that that's in accordance with a, at least to some degree, formalised application process that has published criteria?---Yes, there'll be program guidelines for each of the streams of work underneath the RGETF.

So at least in general terms, opportunity for the public at large to make applications, published criteria, consideration of applications by reference to that criteria, and then ultimately decision-making by reference to that criteria?---Yes.

20 I take it that in your experience, in relation to those competitive kinds of funding programs, one either always or at least almost always receives applications for more money than what is actually available?---Yes.

And I take it from that that that means, in the real world, there will often be relatively worthy projects, they're not bad projects, but relatively worthy projects that might miss out, not necessarily because they're bad projects but maybe because they're not as good as other projects that might be assessed as part of a competitive process?---That's correct, yeah.

30 That's just the reality of the fact that there's only finite money available within government.---That's correct, yes.

But are you saying that at least in the RGETF, the Regional Growth – Environment and Tourism Fund, at least some money from that fund, in your experience, has been reserved and perhaps allocated and perhaps paid out of the fund without going through a competitive process of the kind that you and I have just discussed?---Yes.

40 But that's relatively unusual. The vast bulk is through a competitive process of the kind that you and I have just discussed, is that right?---Yes.

And so just understanding, by reference to this ERC decision, your role and your agency's role. Do we understand your evidence to be that that was focused on really Roman (ii) (b), the finalisation of a satisfactory business case, approval by the Treasurer of the day, and attempting to satisfy Infrastructure NSW assurance processes linked to the fund?---Yeah. In, in particular the development of a business case, the other stages in there, the approval by the Treasurer and the INSW assurance processes, Infrastructure NSW, would undertake.

But to even get to that point one requires a satisfactory business case because an aspect of Infrastructure NSW assurance processes is to be satisfied that there's a business case that supports a BCR and that there's a BCR, benefit-to-cost ratio, of 1 or more than 1?---That's correct.

10 But is this right, that was essentially your role or at least your agency's role in what I'm calling the ACTA project, is seeing whether Roman (ii) paragraph (b) on the screen, the finalisation of satisfactory business case, et cetera, could be achieved?---That's correct, yes.

20 As you understand it, when the existence of this decision was first drawn to your attention, was the position, as you understood it, in effect, ACTA's already got the money, there's a few i's to be dotted and t's to be crossed, but it's essentially got the money, subject to simply going through some formal processes, or was it more in the nature of there may well be an expenditure of money but we don't know whether a business case is ultimately going to stack up?---More, more in the former, that the grant was approved subject to, to those conditions.

And what led you to the understanding of the former category, appreciating that they're not necessarily entirely bright-line categories?---So the expenditure has been approved.

And not just approved by, for example, a bureaucrat but approved by a committee of Cabinet?---That's correct.

30 So I take it that, at least as you understand it, when the ERC decision was first drawn to your attention, it was apparent to you that the proposal had at least some level of political support?---Yes, it has a Cabinet decision, which is significant support.

So is this right, it's significant from your perspective as a senior public servant that a particular grant program has received a form of formal approval from Cabinet, or in this case say committee of Cabinet?---Yes.

40 THE COMMISSIONER: But by the same token, Mr Hanger, the condition in subparagraph (b) of Roman (ii), the satisfactory business case, that wasn't a matter of just going through the motions, was it?---It's not, it's not just going through the motions but the funding has been approved. For instance, it has not been reserved, which would be a different way of describing what was occurring.

MR ROBERTSON: Can you just explain that distinction you've just drawn between something being approved and something being reserved?---So, a funding reservation would have held 5.5 million out of that fund for the project and then ideally a decision would have been made to then allocate or approve that funding.

And so a reservation, in that sense, in effect ensures that money from a particular fund can't be spent on something else. Is that right?---Yeah.

I take it that when money is reserved, it may become unreserved. It might not ultimately be allocated or spent. Is that right?---That's correct. Yes.

10 And is that the essence of the distinction you're drawing, a reservation on the one hand is hold the money so it can't be spent on something else, as distinct from an approval, which is a positive indication that the government wishes to fund a particular project?---Yes. Yeah. I, I would take this as a, a positive indication that the government wanted this, this project supported. There obviously are conditions that needed to be met, but it's more than a reservation to allow that further work to occur.

20 So does it follow from what you've just said that you would have seen your role differently had the decision that we can see on the screen not indicated an approval of expenditure but rather indicated a reservation and then, in effect, a direction to put together a satisfactory business case and things of that kind?---So the, the work would still be the same insofar as there's clearly government interest in this project and a requirement for a business case to be, to be developed, but the wording in the, in the decision is that the funding expenditure has been approved, not reserved.

30 But back to my previous question, is the fact that it's identified as being approved rather than reserved, whilst one might still have to work on a business case and things of that kind, would that nomenclature, would that use of language affect anything that you would have done or that your agency would have done pursuant to the decision?---The, the intent is clear, so - - -

Well, can I perhaps put it this way. The fact that it's an approval of expenditure rather than, for example, a reservation, alternatively, something even weaker, a we don't really know but get a business case together and we'll have a look at it - - -?---Yeah.

- - - would that at least affect the priority and attention that the particular grant program might be given within an agency in your experience?---Yes.

40 You might still have to do the same kinds of things, look at a business case and the like, but the priority or attention that it might be given may be affected by the inferred level of support at the political level. Is that fair? ---Yes. Yeah.

Now, do you recall how this particular decision, the one that I've put on the screen, first came to your attention?---As I indicated, I, I think I became aware of it late in 2016, so after the decision was made or, or potentially

early 2017 and was notified, I, I believe, by Infrastructure NSW, when they became aware of the decision.

But, to be clear, before the decision itself, you didn't know anything about this project and didn't have any involvement in the process that led to the decision that is on the screen at the moment?---I, I've got no recollection of this project before that decision.

10 To try and get some timing around this, can we go please to page 166 of volume 26.4. I'm going to show you an email chain from early in 2017. And we'll start if we can, page 116, volume 26.4 and we'll start by zooming in in the bottom half of the page, please. No, page 166. I think that's 116. Page 166 of volume 26.4. If we can zoom in to the bottom half of the page first. Email chains, we have to start at the bottom and go up. I'm here showing you an email from Ms O'Dwyer to a Ms Jane Spring.---Mmm.

20 O'Dwyer is O'D-w-y-e-r. Referring to a call from Mr Toohey of NSW Sport. Have a look at the third paragraph. Do you see there, it says, "It appears that the funding is not," bold/underlined, "confirmed."---Yes.

And next paragraph, the government is "interested in funding the project, though the bureaucracy does not support the project". You see that there? ---Yes.

30 Now, is that consistent with your understanding, at least at the time, as in January 2017, that the bureaucracy did not support the ACTA project?---I hadn't seen the project before but it, it appeared from the conversation that Margaret's had with Michael Toohey that the bureaucracy – I'm assuming it's the Office of Sport in that sense – didn't support the project.

So it at least became known to you in early 2017 that the Office of Sport didn't support this particular project, is that right?---That's what that email would indicate, yes.

But I take it from what you said before that, as you understood it, although the Office of Sport didn't support the project, the project had a high level of political support because it was the subject of a very senior decision by a very senior body of this state.---That's correct.

40 If we then scan – in fact, just have a look at the final paragraph of Ms O'Dwyer's email. See that it says "so the press relating to this project is premature". Do you see that there?---Yes.

Do you have any recollection as to what that was a reference to?---That's, I'm assuming, a reference to a media release by Daryl Maguire, the local MP, early in 2017.

So I'll just show you what I think is that document, Exhibit 397, please. And then we'll come back to this document in a moment. And while that's coming up, Commissioner, I tender the email chain ending with an email from Mr Hanger to Ms O'Dwyer, 10 January, 2017, page 166-167, volume 26.4.

THE COMMISSIONER: Exhibit 424.

10 **#EXH-424 – EMAIL FROM CHRIS HANGER TO MARGARET O'DWYER REGARDING CONTACT AT NSW DEPT OF SPORT - INFO ON FUNDING FOR WAGGA CONFERENCE CENTRE DATED 10 JANUARY 2017 5.10PM**

MR ROBERTSON: I'll come back to Exhibit 424, but in the meantime go to Exhibit 397. And we'll just turn to the next page of that exhibit. Do you see there a press release dated 2 January, 2017?---Yes.

20 Is that the press release from Mr Maguire to which you made reference before?---Yes, I, I think that'll be what Margaret O'Dwyer is referring to.

And do you see there it says, "Member for Wagga Wagga, Daryl Maguire, MP, today announced \$5.5 million in NSW Government funding for the Australian Clay Target Association headquarters, located in East Wagga Wagga." Do you see that there?---Yes.

30 And if you just cast your eye down that document, do you agree with me that there's no reference to any conditions of the kind that you and I have already discussed by reference to the Expenditure Review Committee decision, 14 December, 2016?---Mmm, that's correct.

So would you agree that insofar as Mr Maguire is announcing \$5.5 million in funding is going to be spent, it doesn't tell the full story, at least so far as you understood it, namely that the \$5.5 million was subject to certain conditions?---That's correct.

40 But in the practical real world as a public servant, does a press release of this kind cause one to add perhaps further priority or attention to a particular project, noting that someone within government has made an announcement as to the funding but without indicating the conditions?---Yes. Yeah. It makes, makes our job more challenging.

Is it a little bit more than just more challenging? Does it add to the priority and attention that, as a practical matter, needs to be – or at least as a matter of practice would be adopted to a project of this kind, because we see that there's high-level political support, ERC decision, and further the public's

being told about the project but hasn't been told about the conditions?
---That's correct, yes.

In a practical matter, that puts pressure, at least in your experience, on the agency representatives who are asked, in this case, to do something like get a satisfactory business case together.---Yes.

10 If we go back to Exhibit 424. And we'll now focus on the top half of the page. I've shown you the email exchange between Ms Spring and Ms O'Dwyer. Then at the top of the page you see your email to Ms O'Dwyer and copied to Ms Spring of Department of Industry and Ms Davis of Infrastructure NSW. Do you see that there, Mr Hanger?---Yes.

And so you say, "Thanks, Margaret – that's correct, funding was not confirmed and is subject to business case development and review." Do you see that there?---Yes.

20 And so that was even to summarise, perhaps in a few less words than what you and I have been discussing, as to the status as you understood it by reference to the Expenditure Review Committee decision.---Yep.

You then say, "I've also copied Jenny Davis from INSW as she is aware of the project and so she knows NSW support are engaging with DOI on this." Do you see that there?---Yes.

I take it DOI is Department of Infrastructure?---Industry.

Of Industry. I'm so sorry. Department of Industry.---Yes.

30 And so just to understand the different roles there, the Office of Sport was the original proponent ministry or proponent agency that led to the ERC decision. Is that right?---That's correct, yes.

40 But is this essentially right, their role at least on a day-to-day basis, at least as you saw it, came to an end on the making of the ERC decision because the ERC decision identified the RGETF, Regional Growth – Environment and Tourism Fund, as the funding source for the particular project?---Yes, although you'll, you'll note in the decision that the grant is going to be from the Office of Sport.

Or perhaps to the Office of Sport I think you might have said.---Or to the Office of Sport and then from the Office of Sport to ACTA.

So at least in relation to the day-to-day mechanics of trying to get a satisfactory business case together, that wasn't a matter for the Office of Sport to deal with as you understood it, even though they were the proponent agency. Is that right?---That's correct.

Obviously enough they had some of the background so there would have had to have been a handover kind of process to others. Correct?---Yes, and that's probably the conversation between Margaret O'Dwyer and Michael Toohey.

And so in terms of the mechanics of attempting to procure a satisfactory business case, the Department of Industry – of which you were a member at the time – was taking the running. Is that right?---Yes.

10 But that was with a view to providing satisfactory documentation to Infrastructure NSW with a view to seeing whether or not they would provide a recommendation. Correct?---Yes.

And if there was a recommendation then it would be open to the Treasurer to authorise the payment out of funds from Restart NSW.---Yes.

Have I got that right in terms of the different pieces of the puzzle as it were or the different agencies being involved in - - -?---Yes.

20 - - - in effect implementing the ERC decision?---Yes.

I've got that right. Now, if we can then go, please, to page 1 of volume 26.11. We'll go to 16 January, 2017. Volume 26.11, page 1. Now, again we've got an email chain. We'll start at the top of this email chain in this case and we'll then go down. So zoom in the top half of the page, please. Do you see there an email from Mr Barnes to you 16 January, 2017, 9.39am?---Yes.

30 And Mr Barnes says, "Need to inject yourself into this one." Do you see that there?---Yes.

Let's just scroll down a little bit to see what this one seems to be. So if we go to the email at the bottom of the page first. We'll go to the next page actually so I can show you the full email chain. Now, you're not party to all of these emails although it seems that Mr Barnes ultimately forwards them to you. Zoom in the bottom half of the page, please. 13 January, Ms Spring, Executive Director Regional Development Department of Industry, sends an email to Ms Clarke and Mr Barnes, "Touching base regarding the clay target facility proposal. Understand from my colleagues in Sport that
40 the DP's Office has agreed we will take the lead in supporting the development of this proposal." Do you see that there?---Yes.

DP, I take it, is public service speak for Deputy Premier.---That's correct.

And so that's a reference, at least as you understood it, to Deputy Premier Barilaro's office.---Yes.

And so that seemed to be part of the story as to how your agency ultimately took the lead in relation to the ACTA proposal.---Ah hmm.

Do you agree with that?---Yes.

Another very important part of the story, of course, is the fact that the funding source as identified in the ERC decision was the RGETF, Regional Growth – Environment and Tourism Fund?---Yes.

10 And that was a fund I think you said before that the agency in which you worked played a role in supporting Infrastructure NSW in terms of the day-to-day administration?---That’s correct, yes.

And I take it Infrastructure NSW, at least at this point in time, wasn’t a large department or agency with a large amount of staff to be doing things like procuring business cases and performing analyses and things of that kind, is that right?---They weren’t a large agency, that’s correct. Having worked on secondment over there, they do have the ability to do that but they’re not a large agency. The person who was running RGETF, Jenny Davis, she was
20 almost a team of only one or two. So, that observation about needing support is correct in that regard.

You said they’ve got the capacity to do this, what was the “this” that you’re referring to?---So Infrastructure NSW, at that time, could have procured a business case. Jenny Davis, in her role running RGETF, she was under resourced but the whole agency I wouldn’t have said was under resourced at that point.

30 So at least in relation to the RGETF, at least as you saw it, there was unlikely to be sufficient resources. Perhaps there’s sufficient capacity but not sufficient resources to do things like procure a business case and perform a business-to-cost ratio analysis?---So, the, the work around RGETF, the reason Infrastructure NSW was working with Regional NSW is we obviously bring a, a regional perspective and then had the capacity to deal with the anticipated competitive rounds and high volume of assessment. So, it’s - - -

40 If we focus in particular – well, we’ll do that in parts. In relation to something like the RGETF, one would anticipate receiving, at least in relation to the competitive aspect of the RGETF, quite a number of applications?---That’s correct, yes.

And that carries with it a significant administrative burden in asking for applications, publishing criteria, assessing them, things of that kind, is that right?---That’s correct, yes.

That wasn’t something that Infrastructure NSW was involved in the day-to-day mechanics of, is that right? In the sense of asking for applications,

assessing things by reference to the published criteria and things of that kind?---No. That, that was supported through Regional NSW.

What Infrastructure NSW was principally concerned with is ensuring that there was some analysis that indicated a benefit-to-cost ratio of 1 or more than 1, is that right?---Yes. And that projects obviously meet other criteria for the funds that are being applied for. So that economic assessment is one of four criteria that are used for, in, in terms of, sort of, one of the thresholds, it absolutely is that benefit-cost-ratio above 1.

10

That's at least a key aspect of, as you understand it, Infrastructure NSW's assurance processes in relation to any money coming out of the Restart NSW Fund?---Yep, yep.

But obviously enough there's additional criteria that applied to a fund like the Regional Growth – Environment and Tourism Fund, including presumably that the money's got something to do with a regional area and has something to do with the environment or tourism?---Yes. And is affordable, is deliverable and shows strategic alignment.

20

But in terms of Infrastructure NSW's role in relation to those matters, at least in relation to the RGETF, are they performing on a blank sheet of paper, as it were, all those kinds of analyses or as a practical matter, is that being dealt with by the Department of Industry or another department and then being presented in effect for checking or assurance at the Infrastructure NSW level?---Yeah. It's, it's the second, the bulk of the work is done by Department of Industry/Regional NSW and that's then reviewed by Infrastructure NSW.

30

So in terms of procuring a satisfactory business case, and in identifying a business-to-cost ratio of 1 or more than 1, the legwork, as it were, and the analysis work, as it were, at least insofar as it was relevant to the RGETF, wouldn't be performed, in your experience, within Infrastructure NSW, rather it would be performed by the relevant agency and then put forward for Infrastructure NSW's consideration and recommendation, is that right?

40

---So, the business case development for most of the RGETF programs would be done by project proponents. That would then be sort of assessed by Regional NSW and then reviewed by Infrastructure NSW. In regards to an individual project, Infrastructure NSW could do that but you're, you're right in the assessment that Jenny Davis, who was running that fund, did not have a lot of capacity to be able to do that. We were already working very closely with Jenny in regards to the design of the fund. So my team had more resources, had people on the ground in Wagga, including Margaret, to be able to, to deliver that work probably more effectively than Infrastructure NSW, just from a resourcing perspective, but I don't, don't assert that Infrastructure NSW could not have procured a business case. It was really a resourcing question.

And so just to understand a distinction between two matters that you've raised, a business case, on the one hand, and a benefit-to-cost ratio analysis on the other hand, those are two related but different concepts. Is that right?---That's correct.

A business case is something that would ordinarily be prepared by the proponent, which would seek to identify, amongst other things, the costs of the proposal and the benefits to the state of that proposal. Is that right?
---That's correct.

10

In the ordinary course, such a business case would be procured and paid for by the proponent rather than by government. Is that right?---Yeah.

THE COMMISSIONER: You have to answer - - -?---Yes. Sorry.

Thank you, Mr Hanger.

MR ROBERTSON: In the case of the ACTA project, though, the satisfactory business case that was the subject of the ERC decision, was that, and I appreciate I'm jumping a little bit ahead here but was that something that was procured and paid for by the proponent of the project, by ACTA, or was that procured or paid for by someone else?---So the department engaged a firm to develop a business case.

20

When you say "the department", you mean the Department of Industry. Is that right?---The Department of Industry, yes.

30

So why in relation to this particular project was that procured by the department as distinct from procured by the proponent in the ordinary course?---So there was an ERC decision that indicated an appropriate business case needed to be developed, and through the decision that was, we've, we've already talked through, the requirement for further work on the business case that had been prepared by ACTA was needed and the department procured that additional work to make that assessment.

So is this right? As you understand the ERC's decision, that carried with it, in effect, a direction that the relevant agency, in this case, the Department of Industry, should procure at the Department of Industry's cost, a satisfactory business case?---Yes.

40

Now, I think you drew attention to the fact that there was already a business case of some kind in existence as at the time of the Expenditure Review Committee decision. Is that right?---Yes.

I take it that, as you understood it, at least insofar as the Expenditure Review Committee was concerned, that was not a satisfactory business case because the decision, in effect, said we must procure or the funding is subject to the obtaining of a satisfactory business case?---That's correct.

Do you happen to know whether the original business case, what I'll call the unsatisfactory business case, whether that was procured and paid for by the ACTA in the standard way that you've identified or whether it was paid for or perhaps procured by someone else?---I'm unaware of who procured that but I assume it would have been ACTA.

But that was something that happened before your involvement in the project. Is that right?---Yes.

10

So it may well have been paid for by government. You wouldn't know, one way or the other. Is that right?---No, I'm not aware.

THE COMMISSIONER: So, as I understand your evidence, Mr Hanger, the effect of what the Department of Industry did was to go back to the firm, to engage the firm which had prepared the unsatisfactory business case with a view to it producing a satisfactory business case as the ERC decision required?---Yes.

20 MR ROBERTSON: But to understand that, that was to procure from that organisation a business case but not necessarily a business-to-cost ratio analysis. Is that right?---That's correct.

And so is this effectively right? A business case, at least as you see it, provides the inputs, at least if it's a satisfactory one, it provides the inputs for a business-to-cost ratio analysis - - -?---Benefit-to-cost ratio, yeah, yeah, yeah, yeah, yeah.

30 Benefit-to-cost ratio analysis – I'm sorry. But not the output, in the sense of identifying what the answer to the question what is the benefit-to-cost ratio?---Yeah, so some proponents will prepare their own benefit-to-cost ratios as part of that activity. We have generally found that they don't meet – and this is similar with business cases – the requirements of NSW Treasury. And so that, that does need to be sort of assessed independent of what's prepared by, generally, consultants.

And is this right, there are experts within government in turning the inputs from a business case into an output in the form of a benefit-to-cost ratio? ---Yes.

40

There's a group, for example, in the Treasury who have special expertise in analyses of that kind?---Yes.

And then I think at least at this point in time there's also a separate unit, I think in the Department of Industry, called the IAU, I think. Is that right? ---The Investment Appraisal Unit, yes.

Now, I take it that those individuals are experts in performing benefit-to-cost ratio analyses, in effect crunching the numbers?---Ah hmm.

That may be a little bit unfair, it's more than crunching the numbers, but at least turning the inputs into an output, is that right?---Yes, yes.

10 I take it that in the Department of Industry, as at December 2016 or into 2017, the two units to which we've just drawn attention – the IAU and the experts within Treasury – didn't have special expertise, for example, in clay target shooting?---No, I doubt that.

Or tourism in Wagga Wagga?---They probably would be able to look at tourism benefits. So they're economists. I'm not an economist. Their skill set is in being able to undertake cost-benefit analysis that meets Treasury's requirements. That's a specific skill set. I can't really comment on whether they would say that they've got that capability or, or not, but tourism as a, as a broad sort of engine industry in New South Wales and an ability to be able to assess that, I think that would be within their capability.

20 So at least on some of those high-level concepts of potential tourism benefits and flow-on effects and things of that kind, that's day-to-day bread-and-butter type work for those who perform benefit-to-cost ratio analyses, at least as you understand it, is that right?---Yeah, the - - -

But I take it that in terms of the nitty-gritty of the particular proposal, they don't necessarily have expertise in the benefits of a clubhouse or a Clay Target Association or, for that matter, specialised expertise in relation to the business activities of a proponent of some other proposal that might be put forward?---I think - - -

30 It would depend on the circumstances, of course.---Yeah, it'll depend on the circumstances, but the way in which they perform that cost-benefit analysis needs to be compliant with the Treasury guidelines around that process. So if that analysis is undertaken and Treasury reviews it and it's not compliant, then it won't be accepted as an appropriate analysis of the inputs.

40 But really what I'm drawing attention to here, tell me if this is right, the reason why a business case is ordinarily prepared by a proponent but the benefit-to-cost ratio analysis is ordinarily performed – or at least re-performed or checked – by what I might call the Treasury boffins or the IAU unit is that the proponent is an expert in their own business, or at least their own organisation, whereas the Treasury boffins and the IAU are experts in taking the inputs from a business case and analysing them in terms of outputs for a benefit-to-cost ratio. Have I got that right?---That's, that's a good, a good summary.

And does it follow from that, at least in your experience, that at least to some degree a benefit-to-cost ratio output, at least the quality of that

number, is likely to be affected by the quality of the inputs to that number, those inputs being in the business case?---That's correct, yes.

And so that's one of the reasons why it's important to have a satisfactory rather than an unsatisfactory business case. If you've got an unsatisfactory business case with poor quality inputs, you either can't produce any output or, if you produce an output, it might be an unreliable output, is that right? ---That's correct, yes.

10 And that was, in a sense, what you were drawing attention to before, where sometimes proponents have a go, as it were, in coming up with a BCR, but I think you were saying, in your experience, they might come up with a great number but not necessarily a number that is analysed with the level of rigour that's required by the Treasury guidelines. Have I got that right?---That's right. And it's fair to say a lot of proponents, their core skill set is not, is not the development of business cases. So - - -

20 Or in particular not a skill set in preparing benefit-to-cost ratios?---That either. So, you're right, they're two separate things. Business cases can be poor, benefit-cost-ratios can be poor. Often the business cases themselves fail to capture particularly the benefits well enough because the organisation's presenting and that's, that is not their core business, so they've done a lot work to try and improve that.

30 But at least in the ordinary course, it's expected, in your experience, for the proponents to procure that work, perhaps with the assistance of external consultants, at least in the ordinary course the government doesn't give out money to produce a document to advise the government as to whether or not it should spend more money?---In the vast majority of cases that's correct. I would note, there are some programs where, because of the inability of organisations to produce business cases, we do provide support for them to do that, but the vast majority of cases we would expect a proponent to prepare a business case.

40 When you say support to do that, do you mean actually procuring or do you mean support in the sense of assistance in saying, look, make sure you capture all the benefits, have you considered this, have you considered that?---So we won't procure it but, for instance, one of the regional programs, Resources for Regions, provides funding to council so that they can engage people to prepare robust business cases that are then assessed by the department. But the inability of the councils to prepare those business cases means it's very difficult to assess the projects they're putting forward. So, we support them to make sure they've got strong business cases.

So you won't ordinarily procure it, but in the case of the ACTA project, your agency did procure a business case, is that right?---Yes.

The reason for the different treatment or different approach on this occasion

was the fact that, as you understood it, the ERC had in effect directed the relevant agency to do that through the ERC decision that you and I discussed a little bit earlier today?---That's correct.

If you have a look back again on the screen, I think I've shown you that email, but if we then move to the preceding page, we'll start at the bottom. So here's an email from Ms Clarke. She was, at that point in time, deputy chief of staff and Cabinet director in the office of Deputy Premier Barilaro. She says, "Hi Jane, happy New Year, and I hope you had a good break.
10 Thanks for letting me know. It would be good to catch up next week and I can introduce you to Peter Minucos," M-i-n-u-c-o-s, "who has recently joined our office." Do you see that there?---Yes.

"Peter will be looking after the regional development/regional infrastructure space." See that?---Yes.

If we then just go up the page, you'll see a response that's copied into Mr Barnes, but then we go back to your email of the – I withdraw that – Mr Barnes' email to you of 16 January, 2017, "Need to inject yourself into this
20 one." See that there?---That's, yes.

So do we take it from that that at least as at 16 January, 2017, Mr Barnes has effectively delegated to you the supervising of the running of the ACTA project on behalf of the Department of Industry?---Yes.

I tender the email on the screen, email chain ending with an email from Mr Barnes to Mr Hanger, 16 January, 2017, pages 1 and 2, volume 26.11.

30 THE COMMISSIONER: Exhibit 425.

**#EXH-425 – EMAIL FROM GARY BARNES TO CHRIS HANGER
REGARDING MEETING - AUSTRALIAN CLAY TARGET ASSOC.
FACILITY DATED 16 JANUARY 2017 AT 9:39AM**

MR ROBERTSON: Now, you saw in that last email chain the reference to a Mr Minucos. You saw that there?---Yes.

40 Did Mr Minucos end up playing any particular role in what I've been describing as the ACTA project?---Yes. As indicated in the email, he was the key contact. He, he was heavily involved in the, the development of, of that project, in particular the advice back to, back to the consultants, GHD, in regards to an addendum to the original business case.

When you say "the original business case" you're referring to what I've called the unsatisfactory business case that had to be turned into a satisfactory business case as a condition of the ERC's decision?---Yes.

And so are you saying Mr Minucos in effect provided assistance to the consultant that was engaged to prepare the unsatisfactory business case to turn it from unsatisfactory to satisfactory?---That's correct, yes.

And Mr Minucos as you understood it was working in Deputy Premier Barilaro's office. Is that right?---Yes.

10 He wasn't within the Department of Industry for example?---No. He was an adviser in the Deputy Premier's Office.

He was a political adviser as distinct from a member of a government department or agency.---That's correct.

Is it unusual to have someone in a ministerial office being involved in procuring a business case or an addendum to a business case?---It's peculiar for them to be involved in sort of advice around that in the way that Mr Minucos did.

20 Well, is this right, ordinarily the process of procuring a satisfactory business case from an unsatisfactory business case or providing any advice to a consultant regarding that matter would happen at the departmental or agency level rather than at the political staffer level?---That's correct.

So why, as you understood, in this particular case was Mr Minucos getting involved in a matter of that kind?---I'm unsure why he was getting involved.

30 Was Mr Minucos the person that you principally had contact with in the Deputy Premier's Office in relation to what I've described as the ACTA project?---Yes.

So he in effect became your ministerial, at least your main ministerial contact concerning this project.---This project, yes.

Would you agree that at least as a matter of ordinary practice, the kinds of advice and input Mr Minucos gave in relation to attempting to procure a satisfactory business case would be performed at the agency or departmental level rather than at the political level?---Yes.

40 Would you regard it as inappropriate that advice of that kind was being provided at the political level, at the political adviser level rather than the agency level?---Yep.

MS CALLAN: I object. The term "inappropriate" is vague, and in my submission I'm not sure where Counsel Assisting is going with this in terms of the relevance for the purposes of this inquiry or how this witness's opinion about appropriateness can bear on that.

MR ROBERTSON: I press the question.

THE COMMISSIONER: Yes.

MR ROBERTSON: And I'll follow it up following whatever answer is given.

THE COMMISSIONER: Yes, I'll allow the question.

10 MR ROBERTSON: As a long-time public servant with responsibility for procurement of infrastructure, would you regard it as inappropriate that there was the kind of advice that you and I have just been discussing provided at the political level rather than at the agency or departmental level?---We'd expect if the political adviser has insights or observations around a business case, that that would go back to the department and the department would engage directly with the consultant so - - -

20 Because, is this right, although it was apparent to you that this proposal had political support, something that you could glean from the fact that it was being dealt with at the almost highest level of government - - -?---Ah hmm.

- - - not quite at the Cabinet level but a committee of Cabinet level - - -?
---Yes.

- - - constituted by very senior ministers, including the Premier and the Treasurer, that at least the decision was not giving a direction that, well, all you need to do is go through the motions. At least as you saw the conditions, you were seeking to see whether a satisfactory business case and satisfactory BCR, 1 or more than 1, could be procured?---Yes.

30 It wasn't just a rubberstamping exercise, at least as you saw it. It was an exercise of attempting to see whether those conditions could be met.
---That's correct, yes.

40 And so is that the kinds of considerations that feed into you answering my question about appropriateness or inappropriateness, that you would be desirous of attempting to avoid any suggestion that there was political pressure on obtaining the answer to the critical BCR question or at least the preparation of a satisfactory business case?---That's correct.

Did you or to your knowledge Mr Barnes give any indication to the minister's office, Deputy Premier Barilaro's office or perhaps to the Deputy Premier himself, as to the agency's views as to the appropriateness or otherwise of Mr Minucos' involvement in the process of attempting to procure a satisfactory business case?---Yeah. We indicated that it, it wasn't where we thought the political advisers should be providing it, where or how they should be providing advice.

When you say “we”, does that mean you or Mr Barnes or both?---Mr Barnes.

So were you aware that Mr Barnes communicated that through to the Deputy Premier’s Office. Is that right?---Yes.

Do you happen to know who within the Deputy Premier’s Office?---It could have been either Laura Clarke or potentially the chief of staff, Fiona Dewar.

10 Dewar is spelt D-e-w-a-r. Is that right?---That’s correct.

Now, in terms of the process in moving from an unsatisfactory business case to a satisfactory business case, you’ve explained that Mr Minucos had at least some role in that but did you and your agency have any role in that exercise?---So we would have been working with, with GHD in regards to the development of the business case and then in regards to the benefit-cost ratio assessment, that was done by the Investment Appraisal Unit, but my team had carriage of the development of the business case by GHD or overseeing the development of the business case by GHD.

20

And so just to understand the process there, presumably there’s at least two steps involved in what you and I have been discussing. First, attempt to turn the unsatisfactory business case into a satisfactory business case. Correct? ---That’s correct.

And then provide that to the IAU for turning the inputs from the business case into outputs in terms of a business-to-cost ratio?---Benefit-cost ratio.

30 Benefit-to-cost ratio. I’m so sorry.---No, that’s all right.

I’m doing my best to distinguish between business cases and benefit-to-cost ratio and they’ve elided a couple of times. I’ll say BCR.---Yeah.

Can we go then in that context, please, to page 255 of volume 26.5. I’m going to show you an email you sent to Ms Davis of Infrastructure NSW on 19 April, 2017. So you’ll see here you’re saying to Ms Davis, “Stuart’s team finished this late last week and I’ve been flat out so I haven’t had a chance to send through.” Do you see that there?---Yes.

40 And you’re referring to Stuart. Stuart was an individual within the IAU? ---That’s correct, yes.

You say, “I have also sent this to Peter Minucos in DPO as he was asking.” See that?---Yes.

DPO was public service speak for the Deputy Premier’s Office. Is that right?---Yes.

And so do we take it from that that Mr Minucos was showing at least to you a degree of priority or attention in relation to this particular project?---Yes.

He was asking for updates from time to time and things of that kind?---Yes.

Now, if you have a look at where it says attachments, attachment says, “Wagga Clay Target Association CBA final.” See that there?---Yes.

10 And I’ll just show you the first page of the document, so you can see it. Just go to the next page, please, page 256. Do you see there a document’s that headed Australian Clay Target Association Facility Cost-Benefit Analysis? Do you see that there?---Yes.

And so we’re now in 19 April, 2017, you’ve been injected into this matter by Mr Barnes on 16 January, 2017. Between those two events, I take it that steps were taken to attempt to turn the unsatisfactory business case into a satisfactory business case. Is that right?---Yes.

20 And the output of that exercise was what was sent for analysis by the IAU. Is that right?---That’s correct, yeah.

Now, do you recall what that outcome of this analysis was in terms of a BCR in the document that you’re sending to Ms Davis, 19 April, 2017? ---I think the outcome is a benefit-to-cost ratio of 0.88.

30 And we’ll go to page 260. You’ve passed the memory test. I’ll show you the table. 0.88. While that’s coming up, that means that at least according to that analysis, the benefits to the state of spending this money are less than the costs of doing so, is that right?---That’s correct, yes.

And that means as a practical matter, is this right, that money is not – at least at that point in time – available from the RGETF, because one of the requirements for money coming out of the RGETF, like any fund forming part of Restart NSW, is demonstration of a BCR of 1 or more than 1? ---That’s right.

Commissioner, I tender the email from Mr Hanger to Ms Davis, 19 April, 2017, 3.05pm, including the attachment thereto, page 255, volume 26.5.

40 THE COMMISSIONER: Exhibit 426.

#EXH-426 – EMAIL FROM CHRIS HANGER TO JENNY DAVIS REGARDING WAGGA CLAY TARGET ASSOCIATION COST BENEFIT ANALYSIS INCLUDING ATTACHMENT DATED 19 APRIL 2017 AT 3:05PM

MR ROBERTSON: So does that mean that's the end of the story? A business case has had further work done, it's been sent to the IAU. The IAU says less than 1. You've said you don't get the money out of RGETF, at least in the real world, if it's less than 1. Does that mean the ACTA project hits a dead end? Or were further steps then taken in relation to the project?---Further, further steps were then taken in regards to the business case for the project.

10 Who decided that further steps should be taken in circumstances where, at least in round one, the analysis suggested that the cost to the state would be greater than the benefits to be procured?---So my engagement was with the Deputy Premier's Office, and it was communicated sort of to me via them that we needed to revisit that business case.

Who was it who gave you that direction or indication?---It would have been, Peter Minucos would have been my key contact there.

20 And so do we take it from that that, as you understood it, the Deputy Premier's Office was quite desirous of getting this project off the ground, as it were? Is that, at least as you understood it, where this project was being pushed forward in the sense of let's have another look to see if we can get the BCR over the line?---My understanding at that time was that the interest was out of the Premier's Office, that the Deputy Premier's Office was my key engagement at a political level around this, but it was clear to us that we needed to look at that business case again, and that's, that's ultimately what's happened.

30 But how was it apparent to you, or I think you said clear to you, that that ultimate interest or direction or priority or emphasis was coming out of the Premier's Office, rather than the office in respect of which you had the principal contact, being the Deputy Premier's Office?---Yeah, a range of conversations at that time indicated that the Premier and the Premier's Office were particularly interested in this particular project. The way in which it had come forward and the speed at which we needed to procure the business case following that ERC decision all indicated to us strong interest out of that office in regards to the project.

40 And that particular interest, or strong interest, was being communicated to you by who? Who were the individuals? I take it from what you said you're referring to people, you're referring to political advisers or at least people within the office of the Deputy Premier, Deputy Premier Barilaro. ---In his office, predominantly it would have been Peter Minucos who was the adviser we were dealing with. I also worked very closely with Gary Barnes, who was the deputy secretary. And in our conversations about the progress of this project, it was clear once that initial or, sorry, let's call it the updated business case and the benefit-to-cost ratio of 0.88 was communicated, that we needed to go back and do further work on the business case, and that was done.

So is this right, it was made clear to you, as you understood it, by Mr Minucos and by Mr Barnes that there was, I think you said, particular interest from the Premier's Office?---That's correct.

That wasn't communicated to you directly from the Premier's Office, it was communicated to you indirectly through your secretary and through Mr Minucos of the Deputy Premier's Office, is that right?---Yeah, Mr Barnes was a deputy secretary but that's correct.

10

A deputy secretary at that point?---Yes, yeah.

Your now secretary?---My now secretary, yes.

Who at that point in time was a deputy secretary, is that right?---That's correct, yes.

20

Was there communication of that kind given to you by Deputy Premier Barilaro himself or was it only from staffers within his office, so far as you can recall?---Only from staffers.

Now, I take it that that indication of what I think you called particular interest is something that further added to what you and I have already discussed as to your understanding of the political support, or at least the support at the political level for this particular project, correct?---Yes.

30

So before any indication of that kind, you've already got an indication of political support from the fact that a \$5.5 million grant has had the attention of the Expenditure Review Committee of Cabinet, correct?---Yes.

One of the powerful bodies in the state, second perhaps only to the Cabinet itself, correct?---Yes.

You've got the media release or the press release from Mr Maguire where the world has been told that this is going to be funded but without indicating the conditions, correct?---Yes.

40

It's also been communicated to you via the Deputy Premier's Office that this is a project in respect of which the Premier's Office is particularly interested, correct?---Yes.

Did you understand that, from your communication with the Deputy Premier's Office, to be just a particular interest of particular advisers within the Premier's Office or did you understand it to be a particular interest of the Premier herself?---Oh, I understood it to be interest of the Premier herself.

How did you understand it to be, or what was the basis for your understanding that there was interest from the Premier herself?---That the, the way in which this was brought to my attention as a priority project to me indicated that this wasn't just casual interest from an adviser in the Premier's office.

10 So in your experience as someone who's had involvement in infrastructure projects in this state for a long period of time, no doubt – not no doubt, in fact, in circumstances where there are different Premiers, different ministers and others, the kind of attention, is this right, the kind of attention that this project engendered was one that must have had to have had, at least as you saw it, significant support at the political level rather than merely, for example, at a ministerial-staffer level. Is that right?---Yes.

Can we go in that context, please, to page 131, volume 26.6? I'll show you an email now of 9 May, it's an email chain but ending 9 May, 2017, if we zoom into the top-half of the page first, please. See there an email from you to Mr Webster and Mr Akopyan?---Yes.

20 Have I pronounced Mr Akopyan's name roughly correctly?---Yes. That's a good - - -

Approximation?---A good approximation, yes.

Now, that surname is A-k-o-p-y-a-n. The Stewart that's referred to is the same Stewart that we saw on a previous email from you, is that right?
---That's correct, yes.

30 Those two individuals, Mr Webster and Mr Akopyan were both individuals within the IAU at that point in time, is that right?---Yes.

Then if you have a look at the text of this email you say, "DPO asked GHD to review and update the Wagga Wagga Clay Shooting business plan to include more of the expected benefits of the conference centre. Do you see that there?---Yes.

40 Now, are you, in effect, making a point there that this was a request that was done within the Deputy Premier's office rather than at the agency level?
---Yes.

In the ordinary course, I think you agree, any requests of that kind would go, at the agency level rather than at the ministerial-staffer level, is that right?
---Yes. Generally if there was, in a, in a minister's office sort of questions or concerns about a business case, that would be communicated back to the department and we would then, sort of, work through with a consultant to assess what those concerns were.

I take it at least in part with a view to avoiding any suggestion that there was political interference in the preparation of the business case leading to a BCR. Is that right?---That's correct, yes.

So one of the considerations underlying why you said a little while ago that, at least from your perspective and the agency's perspective, it was inappropriate for Mr Minucos to get involved directly with the external consultant.---Yes.

10 In terms of the process leading from the business case that procured a BCR of less than 1 to what in your email is attached as a revised business case - - -?---Ah hmm.

- - - was that something that the department, it's now the Department of Premier and Cabinet you'll see. You've been by this point in time, to use the lingo, you've been mugged. There's been a machinery of government change such that you're in Department of Premier and Cabinet rather than Department of Industry. But that process between those two dates, 19 April, 2017 and this email 9 May, 2017, is that something that was dealt with
20 wholly within government at the ministerial office level or was that something that your agency or you had some involvement in?---The best of my recollection is the majority of what occurred between those two dates generated from the intervention Peter Minucos made in regards to further work required on the business case. There may well have been engagement by GHD with, with my staff locally in, in regards to the additional work that was required but the genesis of why that sort of further work was done was following Peter Minucos's intervention.

30 So is this right, at least the leadership of the process of turning the business case that procured a BCR of less than 1 to a further draft of a business case that was run by Mr Minucos as you saw it or at least based on your understanding?---His intervention was that what caused that further revision of the business case.

But it may well have been to effect that further revision, or to get that further revision in place there may have needed to be some inputs and information which may have come from the departmental or agency level. Is that what you're seeking to explain?---That's, yes. As, as the consultant needed to do further work they'd obviously go to a range of parties to get
40 the additional evidence and data required. That may well have included contacting sort of my staff regionally.

But in terms of suggesting what amendments might be made and things of that kind, that as you understood it was dealt with wholly and solely within the Deputy Premier's Office, particularly Mr Minucos, rather than being dealt with at the agency or departmental level in the ordinary way?---Yes.

And I might just by way of an example, if we go to the next page, page 132. This is of the email chain that's on the screen. If we go to the bottom of page 132. Do you see there an email from Mr Minucos to Mr Hall of GHD?
---Yes.

10 Now, this wasn't copied to you, although it seems to be in the email chain that ultimately finds its way to you, but do you see there that there's a number of suggestions made such as, see the dot points, narrative with a reference to numbers before and after, articulate why this is because of the facilities, et cetera, et cetera. Do you see all of that there?---Yes.

Now, in terms of comments of that kind, suggestions as to how things might be formatted, what benefits might be able to be identified and the like, I take it that in the ordinary course if there were any suggestions of that kind to be made, they would be made at an agency level rather than a ministerial office level?---That's correct, yes.

20 In this particular case in relation to ACTA, at least so far as you're aware, that kind of process did not take place – suggestion of amendments and considerations and the like – did not take place at the agency level. Correct?
---That's right.

Although there may have been some agency input in the sense of doing things like providing data that might ultimately be picked up as part of suggestions that might arise by reason of Mr Minucos's intervention. Is that right?---That's correct, yes.

30 Commissioner, I tender the email chain ending in the email from Mr Hanger to Mr Webster, 9 May, 2017, 8.34am, including the attachment thereto.

THE COMMISSIONER: Exhibit 427.

#EXH-427 – EMAIL FROM CHRIS HANGER TO STEWART WEBSTER, ALEKSANDER AKOPYAN, GARY BARNES AND MARGARET O'DWYER REGARDING UPDATED WAGGA WAGGA CLAY SHOOTING CTA BUSINESS PLAN DATED 9 MAY 2017 8.34AM WITH ATTACHMENTS

40 MR ROBERTSON: And we'll keep that on the screen and go back to your email at the top, so the top of page 131. And so the gist of your email is asking IAU to review the revised and updated business plan that has been revised and updated following Mr Minucos's intervention, is that right?
---That's correct, yes.

And if you look at the second paragraph, you're saying, "Can you please assess this updated business plan and advise if the project will provide an economic benefit to New South Wales?" See that there?---Yes.

Was an analysis of this updated business plan ultimately performed by the Investment Appraisal Unit?---Yes.

And what was the result of that analysis?---That updated analysis achieved a positive benefit-to-cost ratio, 1.1.

10

We'll go, please, to page 1 of volume 26.7. And just before that comes up, so is this right, we're now at the point where you now have a document from the Investment Appraisal Unit that is then in a form that could be provided to Infrastructure NSW because it showed a benefit-to-cost ratio of more than 1, is that right?---That's correct.

If you sent the previous version on to Infrastructure NSW with the request for recommendation, you know they'd come back and say no because the document you're giving them was a BCR of less than 1.---That's correct.

20

Now, if we just zoom in to that document, this is an email from you to Mr Betts, 1 June, 2017, 8.50am. Do you see that there?---Yes.

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

And if you have a look at the text, you are writing to seek Infrastructure NSW review and consideration of two projects. Don't worry about the second of the two but at least one of the projects is the ACTA project, is that right?---That's correct, yes.

30

Just pardon me for a moment, Commissioner and Mr Hanger.

THE COMMISSIONER: Would it be convenient to take the morning tea adjournment now, Mr Robertson?

MR ROBERTSON: Yes, it would, thank you, Commissioner.

THE COMMISSIONER: We started at 9.30. So, Mr Hanger, we'll take a 15-minute adjournment for morning tea, so if you return at 11.15, please. ---Thank you.

40

SHORT ADJOURNMENT

[10.59am]

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: If we go back, please, to volume 26.7, page 1. This is the email of 1 June, 2017, to which I took you, Mr Hanger, briefly before that adjournment. If you just have a look in the attachments, you'll see the last of the attachments ACTA CBA Addendum Final. Do you see that one there?---Yes.

10 And then there's also a reference to further letters and other attachments, including in relation to other projects. But I want to draw your attention, in particular, to the attachment that starts at page 62 of volume 26.7. And we'll zoom in to the first substantive paragraph, please. In fact, before we do that, if we just go to the next – I'm sorry, to page 63. I'll just show you that you're the signatory of this letter. See how you're signing off there as Executive Director, Regional NSW, Department of Premier and Cabinet. See that there?---Yes.

You see one of the attachments, ACTA CBA Addendum Final that I was referring to before?---Yes.

20 And is this right, this was the addendum to the original unsatisfactory business case that was procured including through the assistance of Mr Minucos?---That's correct.

If we then go to the preceding page, please? And just zoom in on the first dot point, Australian Clay Target Association. Do you see that there? ---Yes.

30 So you then say to Mr Betts, "The Department's Investment Appraisal Unit, IAU, has assessed the updated business case provided by ACTA for the development of a large clubhouse/conference facility and associated infrastructure at their existing site in Wagga Wagga following a request by the Premier." Do you see that there?---Yes.

Now, in terms of the request that you're referring to in your letter, how did that request come about?---So it's my understanding that there was communication between the Premier's Office and, and the Deputy Premier's Office in regards to the, the intervention that would have occurred or occurred between Mr Minucos and the consultants for the updated business case.

40 That's an understanding that you have, based on what?---General conversations at the time - - -

General conversations with who?---Mr Minucos, Mr Barnes. I, I was clearly of the impression that the Premier's Office and the Premier wanted that business case revisited.

So is this right, in discussions that you had with either or both of Mr Minucos and Mr Barnes, it was made clear to you, at least as you

understood it, that the Premier wanted a updated business case to be prepared and assessed by the Investment Appraisal Unit?---Yeah. Or that further work needed to be done on the business case. The initial work that achieved the benefit-cost-ratio of 0.88 obviously did not meet the RGETF requirements and further work was needed.

And so the request that you're referring to, the request that you understood had been made, is that a request to do further work between the 0.88 version and the more than 1 version, is that right?---Yes.

10

And so just to understand the chronology, the ERC decision in effect contemplated there was an unsatisfactory business case and that there should be an attempt to procure a satisfactory business case, correct?---Yes.

You took that as, in effect, an instruction to get further work done to attempt to procure a satisfactory business case, correct?---That's correct.

That work was done, or at least some work on that topic was done and it was assessed as not meeting the magic mark of 1.0 or more than 1.0, correct?---Yes.

20

As you understood it, a request was made after that first round of assessment that showed a BCR of less than 1 to do further work to see if that less than 1 could become a 1 or more than 1, correct?---That's correct.

As you understood it, that request was a request made by the Premier herself, correct?---Yes.

30

As you understood it, it was a request that was communicated – was her request communicated by her office, the Premier's Office to the Deputy Premier's Office and then to you, is that right?---Yeah.

Obviously enough it wasn't a request made directly to you by the Premier, correct?---That's correct.

Or directly to you by anyone in the Premier's Office, correct?---That's correct.

40

But it came to your knowledge, at least as you understood it, through your communications with either or both of Mr Minucos and Mr Barnes, is that right?---Yes.

I tender the email from Mr Hanger to Mr Betts that starts on page 1 of volume 26.7 and the version that I tender will be one that is redacted to remove reference to the second of the two projects to which reference was made on the screen.

THE COMMISSIONER: I think there are a number on the second page as well, Mr Robertson.

MR ROBERTSON: References to - - -

THE COMMISSIONER: Other projects on the second page of the letter. They will be - - -

10 MR ROBERTSON: Yes. So the redacted version only includes reference to the Australian Clay Target Association and not to any other projects being referred to.

THE COMMISSIONER: Very well. That will be Exhibit 428.

**#EXH-428 – LETTER TO JIM BETTS FROM CHRIS HANGER
COPYING IN GARY BARNES AND JENNY DAVIS REGARDING
REGIONAL GROWTH ENVIRONMENT & TOURISM FUND
DATED 1 JUNE 2017**

20

MR ROBERTSON: If we just zoom into the italicised paragraph, please. See it says, “Can INSW review the attached ACTA CBA addendum final records attached, and if INSW believes that the project meets the criteria for RGETF, recommend the project to the Treasurer for a funding allocation of \$5.5 million from the RGETF.” Do you see that there?---Yes.

30 And so, is this right, this is in effect a request that INSW performed their assurance processes of the kind that were contemplated by the ERC decision that you and I discussed towards the very start of the examination?---That’s correct.

We’ve done the business case exercise, we have a BCR of more than 1 over to Infrastructure NSW for a recommendation or not, and then over to the Treasurer, now Treasurer Perrottet, to give the funding allocation, is that right?---That’s, that’s correct.

And so having sent hit letter to Mr - - -

40 THE COMMISSIONER: Just before we move on, is there any particular reason “allocation” is underlined, Mr Hanger?---As compared to a reservation.

So Infrastructure NSW could also have somehow made a decision to reserve rather than allocate the funds?---So, make a recommendation to reserve. So there’s, I think further down in this letter, the Velocity Park project is referred to as a reservation.

Thank you.

MR ROBERTSON: So we'll just go to the next page to see that. Mr Hanger, do you see at the top of the second page the word "reservation" being underlined?---Yes.

And so you're underlining to draw the distinction between allocation on the one hand and reservation on the other?---That's correct.

10 And those two concepts were the concepts that you explained towards the start of the examination today. Is that right?---That's correct, yes.

THE COMMISSIONER: So that was a classification which the bureaucrats could make as well as the political decision-makers is it?---So it's a distinction between funding that is being held to enable further work to occur. In this case that's in regards to the Velocity Park project. Whereas an allocation is for the commitment, the actual execution of funding towards a project.

20 The actual drawdown.---Actual drawdown.

MR ROBERTSON: So this letter having gone in to Mr Betts at Infrastructure NSW, is that then the end of your agency's role? Or did you or, to your knowledge, others within your agency continue to do any work in relation to the ACTA project?---From here the project was contracted and managed by Infrastructure NSW so to the best of my knowledge this is, this is where our involvement ceases.

30 Or you're at least aware, aren't you, that this letter ultimately resulted in a recommendation being made by Infrastructure NSW?---Yes.

And ultimately an approval or direction was given by the Treasurer in relation to the money. Is that right?---Yes.

But are you saying in terms of the mechanics of in effect drawing down the money, funding agreements and matters of that kind, that's not a matter that was dealt with within your agency?---That's correct.

40 And so subject to some of the mechanical things and perhaps some information as to what happened following your letter of 1 June, 2017, that's essentially the end of your role in the ACTA project. Is that right? ---That's correct.

I'll just ask you about one thing, though. If we go to Exhibit 400, volume 26.8, page 3. This is 8 July, 2017. This is an email from Ms Davis of Infrastructure NSW to various recipients including you. Zoom in to the top half of the page, please. In fact before we do that, just towards the bottom of the page do you see an email that starts, "Could you provide any more

information on the competitive process run to fix the cost of the facilities in Wagga Wagga?" Do you see that there?---Yes.

And "This was a condition precedent set by ERC to any Restart funding being approved." Do you see that there?---Yes.

Are you aware as to what competitive process was run to fix the cost of the facilities?---No.

10 In relation to the question of competition more generally, do you recall you said earlier today that at least for most funds out of the RGETF there's a competitive process in the sense that there are published guidelines, one puts in an application.---Ah hmm.

Applications are assessed by reference to project guidelines and at least the idea is the best projects get the money.---Ah hmm.

20 I think you said there are at least some examples where it doesn't adopt a competitive process of that kind but money has still flowed from the RGETF. Have I got that right?---That's correct, yep.

Which category did this one fall in? Was it the subject of a competitive process of the kind that you and I discussed this morning and that I've just summarised or was it in the second and more unusual category?---So this, this project was in that second category. It wasn't in the competitive round.

Now, if you then have a look at the email at the top of the page. Ms Davis - - -?---So just - - -

30 I'm so sorry.---Oh, in regards to the competitive process to fix the cost of the facilities, that is in regards to I understand tendering for construction costs of the facilities rather than a reference to a competitive grants based program.

You're drawing attention to the fact that the competitive process being referred to in the email at the bottom of the page is a competitive process of a different kind to the make applications - - -?---Yes.

40 - - - assess them, in effect rank them process that you and I have discussed. Is that right?---Yes.

So this competitive process being referred to in the email on the bottom of the page, at least as you understood it, was a competitive process effectively at the contractor level to - - -?---Yes.

- - - try and fix the cost of building the project as distinct from the question as to whether ACTA is an equally or more deserving recipient of funds than,

for example, a facility in say Albury or somewhere else in regional New South Wales?---That's correct, yes.

So then looking at the email towards the top of the page, Ms Davis expresses the view, "This project is unusual. The ERC minute approved it before we ever heard of it, subject to conditions including an unconditional recommendation." See that there?---Yes.

10 Would you agree with that assessment of Ms Davis that this project was dealt with in an unusual way?---Yes.

And then just to close out in relation to Infrastructure NSW, can we go please to page 362 of volume 26.9. Now, do you see there, it's been described as an Infrastructure NSW briefing note?---Yes.

And do you see the memorandum and the memorandum, the purpose says "to approve the allocation of \$5.5 million in funds".---Yes.

20 And was this briefing note or at least the approval drawn to your attention or once you sent your letter out of 1 June or was that just the end of your involvement?---I probably have seen this subsequently but once, once I wrote to, to Jim Betts, that was basically the end of my involvement in the project.

30 So can we go to page 73 of volume 26.7. So your letter to Mr Betts was 1 June, 2017. I'm going to show you a briefing note that looks similar to the one that I've just identified to you. This is, if you look at the email, 5 June, 2017. And if we then go to the next page, you'll there see a briefing note dated 2 June, 2017. Do you see that there?---Yes.

And the recommendation there is a recommendation that the Treasurer approve the Restart NSW Fund allocation of \$5.5 million to the Office of Sport for development of infrastructure in Wagga Wagga by the Australian Clay Target Association. Do you see that there?---Yes.

40 And so the date of that is 2 June, 2017. Your letter was 1 June, 2017. As you understand the procedure at Infrastructure NSW level, and noting that short period of time between the 1st and the 2nd, is their role, at least as you understand it, to perform, in effect, a further analysis or is their role to, in effect, to check the analysis that has already been performed at the agency level to make sure that it looks like it's done the kinds of things that Infrastructure NSW would expect to be done?---So they would generally check what other agencies have, have done.

Rather than conducting their own analysis from scratch, as it were?---Yeah, yeah, like, they, they need to have confidence in the work, that it meets the requirements of, in this case, the, the Restart Fund.

But they might have that confidence by being satisfied that, for example, the IAU has performed an analysis as distinct from re-performing that analysis itself?---That's correct.

I tender the email from Mr Betts to various individuals, 5 June, 2017, page 73, volume 26.7, including the attached briefing note dated 2 June, 2017.

THE COMMISSIONER: That will be Exhibit 429.

10

#EXH-429 – EMAIL FROM JIM BETTS TO NIGEL FREITAS REGARDING INFRASTRUCTURE NSW BRIEFING NOTE: DATED 5 JUNE 2017 10.00 AM INCLUDING EMAIL ATTACHMENT - BRIEFING NOTE DATED 2 JUNE 2017

MR ROBERTSON: And then I tender the further recommendation which is in volume 26.9.

20 THE COMMISSIONER: Page 362.

MR ROBERTSON: I'm grateful, Commissioner. I'm just checking whether it's got a covering email. Yes, it does. The email from Mr Betts to various individuals, 9 August, 2017, including attachment dated 2 August, 2017, page 361 and following, volume 26.9.

THE COMMISSIONER: That will be Exhibit 430.

30 **#EXH-430 – EMAIL FROM JIM BETTS TO NIGEL FREITAS AND ANTHONY MCFARLANE DATED 9 AUGUST 2017 11:37AM INCLUDING ATTACHMENT - BRIEFING NOTE WITH FURTHER RECOMMENDATION**

MR ROBERTSON: Mr Hanger, you're aware that another matter that this Commission is investigating is grant funding that was promised and/or awarded to the Riverina Conservatorium of Music in Wagga Wagga?---Yes.

40 Did you have any involvement in taking steps with a view to establishing the Riverina Conservatorium of Music on a site at 1 Simmons Street in Wagga Wagga?---Yes.

What's your first recollection of having any involvement in steps associated with that matter?---There's two, two parts to, to that particular project. The first element of that came to my attention in sort of late 2017, early 2018, in regards to work, work that had been done by DPC resulting from an

unsolicited proposal submitted by the conservatorium to assist them to move from their site at Charles Sturt University.

So as you understood it, the Riverina Conservatorium of Music had engaged the unsolicited proposals process with a view to obtaining government assistance to move from their then existing site up to a new site - - -?
---That's correct.

10 - - - within Wagga Wagga, at that 1 Simmons Street site?---That's correct.

And do I take it from what you've just said, you didn't have any involvement in the unsolicited proposal aspect of the proposal by what I'll call the RCM?---Not, not in the assessment of it.

So by the time that you got involved, the unsolicited proposal had, what, been rejected, had it?---It had, yes, the proposal didn't meet the requirements.

20 But what was it that led you to be involved? That having been rejected, what did it have to do with you?---So subsequent to the proposal not meeting the requirements of an unsolicited proposal, it was recommended to the RCM that they work with Regional NSW to see if there are other ways of being able to identify and support their move from that Charles Sturt University site.

Can we go, please, to page 116 of volume 31.0, just to put some dates around what you've just described.

30 THE COMMISSIONER: Mr Robertson, is that screen the public screening room? If it is, it's not communicating the full picture.

MR ROBERTSON: It's not the public screen. That's the screen for those in this room and joining remotely, but I'll just make some inquiries as to whether there's any difficulties at that end or indeed in the public end. I'm told it's fine, Commissioner.

THE COMMISSIONER: Thank you.

40 MR ROBERTSON: Volume 31.0, page 116. I'm showing you an email from Executive Director State Economy Branch - - -

THE COMMISSIONER: You're showing Mr Hanger a letter?

MR ROBERTSON: I'm showing Mr Hanger a letter. I'm not sure what I said, if I said something else.

THE COMMISSIONER: An email.

MR ROBERTSON: I'm showing Mr Hanger a letter from Mr Myers, page 116, volume 31.0. From Executive Director State Economy Branch to Dr Wallace of the Riverina Conservatorium of Music. And you'll see there that it says, in the second paragraph, "I appreciate you taking the time and effort to make a submission on the unsolicited proposals process. Unfortunately the submission has not met the very high requirements put in place under the unsolicited proposals guide for submission and assessment." See that there?---Yes.

10 If you then have a look at the last paragraph, it says, "Mr Chris Hanger, Acting Executive Director, will contact you shortly to discuss a range of potential funding opportunities." See that there?---Yes.

So that's dated July of 2017. Do we take it from that that sometime around July of 2017, perhaps in the days leading up to 7 July, 2017, you were told about the unsolicited proposal and it was suggested that you might become a point of contact in relation to the proposal?---Yes.

20 Do you recall how that was brought to your attention?---I believe Mr Myers would have reached out to me. We were both in DPC, sorry, Department of Premier and Cabinet, at that point. As is the case with a range of projects that are, sort of, unsuccessful through funding paths, including unsolicited proposals, you do try and find ways of supporting applicants to look at other funding opportunities, and that's what's occurred here.

30 Now, in general terms, what was the nature of the proposal that was there proposed by Riverina Conservatorium of Music? What were they seeking, what money were they seeking, or what was the proposal they were seeking to obtain government support for?---So, they were looking to sort of acquire, as you can see outlined there, I don't believe I actually saw the full unsolicited proposal, but if it is the proposal that we have seen subsequently, it's to build new premises essentially on 1 Simmons Street, including teaching facilities and a conservatorium, sorry, a recital hall.

So at 1 Simmons Street there is an existing government building, is that right?---Yes.

40 And that building was formerly operated by the relevant transport authority at the relevant time, I think the Roads and Transport Authority or one of its predecessors or successors, is that right?---That's correct.

And was the proposal, at least as you understood it, simply "We want some help to move in" or was it also some building projects associated with the existing building or perhaps a new building?---To the best of my understanding, the unsolicited proposal was to assist with the movement of the RCM from Charles Sturt to that 1 Simmons Street site.

So in effect a, what, a like-for-like type change or - - -?---That's correct.

Was that always the proposal in the time that you were involved with the, what I'll call the RCM project, simply a like-for-like type move, or was there any other additional elements to it?---No. So the, the, the like-for-like move we'll call stage 1. There is a subsequent stage, stage 2, of the RCM project which looks at the construction of a recital hall.

10 So stage 1 is, in effect, "Let's move from the existing site to a new site" and stage 2 is, is this right, "Let's build a new building that has a recital hall in it"?---That's correct.

I take it there is no existing recital hall in a building that was used for a transport organisation?---No.

And so the suggestion, in effect, was "Let's use the existing building for things like rehearsal spaces and things of that kind." Have I got that right? ---That's correct.

20 Stage 2 is "Let's build a new building that could be a recital hall"?---That's correct.

So Mr Myers having suggested that Dr Wallace might get in contact with you, do you recall whether Dr Wallace or anyone else within or associated with the Riverina Conservatorium took up that opportunity?---I'm trying to recollect back to late 2017. We may have been in contact with them following that rejection of the unsolicited proposal process.

30 May have been in contact or - - -?---Yeah. I'm, I'm fairly sure we would have reached out and started engaging with the RCM. The exact dates of that, I'm not sure.

But at least in 2017 or perhaps moving into 2018, what involvement or assistance was being provided by your agency in relation to the RCM project?---So we would have been talking with them about options for funding to assist with that move from 1 Simmons, from the Charles Sturt University site to 1 Simmons Street.

40 Now, at this point in time you're now in the Department of Premier and Cabinet, is that right?---That's correct.

And in relation to a matter of this kind, who was your relevant minister? ---That would have been the Deputy Premier, Minister Barilaro.

In relation to the RCM project, do you recall ever giving any advice, either directly or indirectly, to the Premier? When I say indirectly, I mean, for example, through your secretary, Mr Barnes.---We may have provided updates. I don't, I don't recall specifically providing an update about this project.

10 In terms of what I'll call stage 1, move the existing facility to a new facility, what was the gist of the unsolicited proposal as you understood it in terms of how that's facilitated? Is that some kind of a commercial rental arrangement for a government building, is it a gift to the building, to the RCM or is it in some other fashion?---So, basically, they were, I believe, in the unsolicited proposal looking for a gift of the building. In, as has eventuated, the work that we have done to support the movement of the RCM from Charles Sturt University to 1 Simmons Street is on the basis that the building is retained in government ownership and they move essentially with, from their current facility to a like for like facility at 1 Simmons Street.

Go to page 162 of volume - - -

THE COMMISSIONER: Do you want to tender that letter, Mr Robertson?

20 MR ROBERTSON: Yes, please, Commissioner. I tender the document on the screen, letter dated 7 July, 2017, page 116, volume 31.0.

THE COMMISSIONER: Exhibit 431.

#EXH-431 – LETTER FROM PAUL MYERS TO DR ANDREW WALLACE DATED 7 JULY 2017

30 MR ROBERTSON: If you can go, please, to page 162 of volume 31.0. I'm going to show you what's described as a briefing for deputy secretary but the responsible action officer is identified as being you. So if you have a look at the top of the page, do you see "Briefing for Deputy Secretary"? Do you see that there?---Yes.

And then heading "Letter to Dr Andrew R. Wallace, Chair, Riverina Conservatorium of Music." Do you see that there?---Yes.

40 This is a document that appears to be in a template of a kind that you would provide briefings within the Department of Premier and Cabinet?---That's correct.

And you see in the analysis, "The RCM submitted an unsolicited proposal regarding the acquisition of 1 Simmons Street, Wagga Wagga. After a thorough assessment, a decision has been made that the proposal should not be further considered under the unsolicited proposals framework." See that there?---Yes.

“However, the Regional NSW group will work with RCM, Government Property NSW and Charles Sturt University with a view to establishing the RCM on the Simmons Street site.” See that there?---Yes.

And then if you have a look at the list of attachments, you see there’s a reference to a letter to Dr Wallace and then there’s an attachment to the unsolicited proposal itself. Do you see that there?---Yes.

10 And so, in effect, is what your – sorry, I withdraw that. If you look towards the bottom of the page where it says “responsible action officer Chris Hanger”, do we infer from that that you were either the draft person of this document or at least the person who approved the drafting of it?---Yes.

But if you have a look a little bit further up, it says “DPC final approver” it says, “Never submitted, Gary Barnes, Deputy Secretary.” Do you see that there?---Yes.

20 What does that mean, “never submitted”? Does that mean never submitted to Mr Barnes or - - -?---No. It’s possibly that it was never approved. I’m, I’m, I’m unsure where, because that’s a, a briefing essentially from me to Gary, whether that briefing may have just not been approved within the system.

And so there’s an electronic document system that keeps track of the status of documents, including briefings. Is that right?---That’s correct.

30 And so are you drawing attention to the fact that it might simply have not been, a box might not have been ticked, in effect, to say that it had been approved in any particular fashion?---That’s correct.

THE COMMISSIONER: Does that mean it wasn’t submitted to Mr Barnes or it wasn’t submitted beyond Mr Barnes to somewhere else?---No. The, the letter was sent out to RCM so it would have, this brief would have gone to Mr Barnes, and my understanding is it was then actioned, but within the document management system, that may not have been recorded as such.

40 MR ROBERTSON: Let me try and assist you this way. If we go to page 166. I’ll come back to the tender of the document in a moment, Commissioner.

THE COMMISSIONER: 166?

MR ROBERTSON: 166 of volume 31.0. I’m going to show you a letter which may be the letter to which you’re just referring Mr Barnes. So we’ll jump to the second page of that letter so I can show you the signatory, Gary Barnes, Deputy Secretary, Regional NSW. Do you see that there?---Yes.

So at this point in time you're an executive director within Regional NSW which is a group within the Department of Premier and Cabinet. Correct?
---That's correct.

The relevant moggging, to use the lingo, that has happened since is that there is now a separate department called the Department of Regional NSW. Correct?---That's correct.

10 You're a deputy secretary within that department and Mr Barnes is the secretary of that department. Correct?---That's correct.

And if we then go back to the preceding - - -

THE COMMISSIONER: I just notice here, Mr Hanger, this is copied not only to yourself but to Mr Maguire.---Yes.

20 Do you know how that came about?---I, I understand that sort of the genesis of these letters were representations either directly from the, the RCM or potentially via Mr Maguire.

MR ROBERTSON: So at least the source or a source or at least perhaps a proponent of what I'll call the RCM project was as you understood it Mr Maguire?---Yes.

And that's why he's been copied to that particular letter. Is that right?
---Yes.

30 If you go back to the preceding page, you'll see in the second paragraph Mr Barnes is indicating that, in the last sentence of the second paragraph, that his team has been asked to work with the RCM and board with a view of establishing the RCM on the Simmons Street site. Do you see that there?---Yes.

It says "asked". Asked by who?---I am assuming that would have been in this case the, the Premier's Office.

The Premier's Office or the Premier herself?---It, it may have been the Premier herself.

40 Let me assist you this way. We'll go to page 163. In fact before we do that. That letter that I've just shown you, do you agree that that appears to be the letter that you prepared in draft for Mr Barnes the subject of the briefing that I showed you a moment ago?---Yes.

Commissioner, I tender firstly the document entitled Briefing for the Deputy Secretary letter to Dr Andrew R. Wallace Chair, Riverina Conservatorium of Music, page 162, volume 31.0.

THE COMMISSIONER: That will be Exhibit 432.

#EXH-432 – BRIEFING TO THE DEPUTY SECRETARY - LETTER TO DR ANDREW WALLACE

10 MR ROBERTSON: And then next I tender the letter from Mr Barnes to Dr Wallace, copied to Mr Maguire and Mr Hanger.

THE COMMISSIONER: That will be Exhibit 433.

#EXH-433 – LETTER FROM GARY BARNES TO DR ANDREW WALLACE COPYING CHRIS HANGER AND DARYL MAGUIRE

20 MR ROBERTSON: And that's pages 166 and 167 of volume 31.0. If we go, please, to page 163. See there a document entitled, on the top left-hand corner, Briefing for the Premier?---Yes.

THE COMMISSIONER: It's a pink.

MR ROBERTSON: Do you see that it's on a pink background or appears to be on pink paper?---Yes.

30 Is there any significance in the fact that it's on pink paper rather than white, yellow, green or turquoise?---It would indicate this has gone to the Premier directly so - - -

And so in public service language there is such a thing as a ministerial pink. Is that right?---It's actually not a term I would use but, yes, I understand it is used elsewhere.

At least some people in the public service, as you understand it, use the term "ministerial pink"?---Yes,.

40 And that represents the fact that it is a briefing directly to the minister rather than, for example, a briefing within an agency like the one we saw a little while ago?---That's correct.

And so you'll see here the issue in the box is described as "Letter to Daryl Maguire regarding the Riverina Conservatorium of Music unsolicited proposal to acquire 1 Simmons Street, Wagga Wagga." Do you see that there?---Yes.

And so is this right, this is advice that is coming from the relevant agency, Regional NSW, which at that point in time is an agency sitting within the Department of Premier and Cabinet, as to what course the Department of Premier and Cabinet should take in relation to the RCM unsolicited proposal?---That's correct.

Or at least what should happen, having regard to the fact the unsolicited proposal has been rejected.---Yes.

10 And so if you go to the fourth dot point under the heading Purpose, you see this one starts, "It is further proposed that"?---Yes.

So "It's further proposed that the site continue to be owned by government." And so pausing there, do we take it from that that the advice that's coming to the Premier from the agency level is that the idea of simply giving the site to the RCM – as I think you said was proposed, as you understood it, from the unsolicited proposal – is not a good idea, is not what is being recommended. But instead, have a look how it goes on to say, "Initial parameters for work to be undertaken will include establishment of a facility and rental regime which allows for similar functionality (like for like) that the RCM enjoys at its current premises." You see that there?---Yes.

20 And so do we take it from that that the advice of the agency was to say don't just give them the site but work with them to be put in a position of having a like-for-like facility at the 1 Simmons Street site?---That's correct.

30 Is this a recommendation that, in effect, the funding necessarily for that be approved? Or is it more in the nature of let's do some initial parameters for work to be undertaking, with a view to, with an objective of achieving that like-for-like premises in the new premises?---Yeah, so this, this isn't seeking the approval for the funding. This is sort of advising a course of action to then look at how, if that is supported, that transition of the RCM from CSU to 1 Simmons Street could occur.

40 So this isn't a proposal for a reservation and allocation, a promise or anything like that. This is a suggestion that Ms Berejiklian should tell Mr Maguire that one of her agencies, or at least one of the groups within her department, should do some work with a view to achieving – or possibly not achieving, depending on what happens – the particular outcome, is that right?---That's correct.

THE COMMISSIONER: Why was this going to the Premier, Mr Hanger? This time, as I understand it, your minister, if I can call it that, was the Deputy Premier, Mr Barilaro.---That's correct. I understand either Mr Maguire or the conservatorium may have written directly to the Premier.

MR ROBERTSON: It's not unusual, in your experience, that people might write directly, for example, to the Premier or possibly to the wrong minister,

and the minister simply refers the communication to the appropriate minister or other part within government?---Yep, that occurs frequently. Well, that, that does occur, yes.

10 Is it right that the – I withdraw that. Your portfolio minister at the relevant time – as in the portfolio minister for Regional NSW – was the Minister for Regional NSW?---So I would describe it as the portfolio minister was the Premier. The sort of agency minister was the – or, sorry, the cluster minister was the Premier. If you were going to describe it as the portfolio minister, then, yes, that’s the Deputy Premier.

So going back to the language that you and I were using towards the start of the examination, where you and I talked about the nine clusters within government.---Yes, yep.

20 At least nine at the moment. I think there might have been eight at this point in time, the ninth being Department of Regional NSW. The cluster minister, obviously enough, within the Department of Premier and Cabinet was the Premier, correct?---Correct.

But the portfolio minister, using that language in the way that we used it this morning, was the Minister for Regional NSW.---That’s correct.

So why, in the face of that, was this communication going from the Premier to Mr Maguire, rather than from the portfolio minister?---I’m not sure, but it was obviously crafted as a response directly back into the Premier and the Premier’s Office.

30 So if you then have a look at the final dot point, or may even be a dark square point, underneath the heading Purpose, you’ll see there it says, “The Deputy Secretary Regional NSW has a similar letter to Dr Wallace as chair to coordinate the initial phase of activity involving multiple agencies, which will be sent after the letter to the MP has been settled.” Do you see that there?---Yes.

Do you agree that appears to be a reference to the letter that I’ve shown you that Mr Barnes sent to Dr Wallace, copied to Mr Maguire and to you?
---Yes.

40 A little while ago you said that one aspect of the proposal by RCM was the building of a recital hall at the 1 Simmons Street site.---Yes.

I take it that by this briefing for the Premier, you weren’t suggesting, or as you understood it, no one else within Regional NSW was suggesting that immediate work should be done with a view to constructing such a recital hall?---That’s correct.

This is only about a like-for-like facility, we're not building new things, we're moving from one premises to another?---That's correct.

Now, obviously the new premises, or the quote/unquote new premises, used to be for the purposes of transport, not for music, and therefore some money would need to be spend in order to bring it up to that standard, that like-for-like standard, correct?---That's right, yes.

10 But you weren't suggesting, and to your understanding, no one else within the agency was suggesting to the Premier that she should be approving now or promising or reserving or allocating anything in relation to the recital hall that you referred to before?---That's correct.

In effect the suggestion is tell Dr Wallace we're going to work with you with a view to, with the objective of a like-for-like premises. Correct? ---Yes.

20 But we're not yet reserving, allocating, promising or anything else that money will actually flow. Have I got that right?---That's correct.

I'll then show you what appears to be the letter sent in response to that briefing note. If we go to the next page, please, page 164. Now, do you see there a letter on Ms Berejiklian's letterhead addressed to Mr Maguire? ---Yes.

And I take it you'd agree with me that the text of this is quite similar, or at least there's a significant overlap of the text of the letter that I showed you before from Mr Barnes to Dr Wallace with a copy to Mr Maguire?---Yes.

30 And if you focus in particular on the last sentence of the second paragraph, see there it says, "Accordingly I have asked DPC to work with the RCM board with a view to establishing the RCM on the Simmons Street site." See that there?---Yes.

So does it follow from that that it was Ms Berejiklian herself who asked Regional NSW to work with the RCM Board with a view to establishing the RCM on the Simmons Street site?---Yes.

40 You would agree with me that this letter doesn't given any indication or suggestion that any recital hall would be built or even that any work would be done with a view to building such a recital hall for the purposes of the RCM at the 1 Simmons Street site?---Yep. No, that's correct.

I tender, Commissioner, the briefing for Premier, page 164, volume 31.0, public inquiry brief.

THE COMMISSIONER: That will be Exhibit 434.

**#EXH-434 – BRIEFING FOR THE PREMIER - RIVERINA
CONSERVATORIUM OF MUSIC LETTER TO DARYL MAGUIRE**

MR ROBERTSON: And I tender the letter from Ms Berejiklian to Mr Maguire, 29 January, 2018, page 164, volume 31.0.

THE COMMISSIONER: Exhibit 435.

10

**#EXH-435 – LETTER FROM GLADYS BEREJIKLIAN TO DARYL
MAGUIRE DATED 29 JANUARY 2018**

MR ROBERTSON: Go, please, to volume 31.0, page 170. Just before that comes up, do you have any recollection as to whether that letter to Mr Maguire led to any public statement or other indication from either Mr Maguire or anyone else within government concerning the RCM project?---I think there was a media release or there was media associated with announcing that movement.

20

Can we go, please, to page 170, volume 31.0? Zoom into the top half of the page. Do you see there a press release from Mr Maguire, 16 February, 2018?---Yes.

30

It says, “Daryl Maguire MP, Member for Wagga Wagga, alongside Riverina Conservatorium of Music (RCM) Board Chairman Dr Andrew Wallace and RCM Director Hamish Tait, today announce that the RCM has secured a permanent new home at 1 Simmons Street, Wagga Wagga.”---Yes.

Does that accurately describe the position, at least as you understood it, as at 16 February, 2018?---No.

No in what way?---The RCM had not, not secured that site at 1 Simmons Street.

40

All they had secured, to use that term, was in effect a direction or a request from the Premier that your agency would do certain work with a view to achieving a particular objective, is that right?---Yes. Yes.

If you then jump two paragraphs down, Mr Maguire is quoted as saying, “The building will be redeveloped to house a world-class music recital space.” Do you see that there?---Yes.

At that point in time, had there been any, at least as you understood it, any indication from government, at least from the executive part of government,

that the building, as in the 1 Simmons Street building, would be redeveloped to house a world-class music recital space?---No.

I take it that what you described before I think as stage 2, that was a proposal for if not a world-class music recital space, at least a significant recital space in a new building?---That's correct.

10 But is this right, at this point in time, at least so far as you were concerned, there hadn't been any promise, agreement, commitment, allocation, reservation or anything else with respect to a world-class music recital space or indeed any new building holding a recital space?---That's correct.

I tender press release from Mr Maguire, 16 February, 2018, page 170, volume 31.0.

THE COMMISSIONER: Exhibit 436.

20 **#EXH-436 – PRESS RELEASE OF DARYL MAGUIRE - NEW HOME FOR THE RIVERINA CONSERVATORIUM OF MUSIC DATED 16 FEBRUARY 2018**

MR ROBERTSON: Now, Ms Berejiklian having requested you and your agency to take further steps with a view to achieving that like-for-like option, what steps did you then take or, to your knowledge, your agency then take in accordance with or by way of implementation of that request? ---We then engaged with Property NSW, who oversee the site at 1 Simmons Street, to start the work about understanding what would be required if the
30 move of RCM from Charles Sturt University to 1 Simmons Street was to occur.

And what did those inquiries or steps ultimately lead to, if anything?---So the, the move is underway. As we speak, the refurbishment of that building is occurring.

40 I'll take you to a few more detailed steps. You've been requested to take certain steps with a view to achieving the like-for-like and the new facility. You've then engaged with Property NSW in relation to that issue. What then next happens in terms of any decision-making or other steps of that kind with a view to achieving that like-for-like option?---So business cases and project delivery plans to look at what would be required for that move would be developed, and then there would need to be a process of seeking approval for funding for that to occur.

As we saw from the briefing note to the Premier, the idea of simply giving the building to the Riverina Conservatorium of Music, either directly or in

some other indirect fashion, that was not the recommended course so far as your agency was concerned, is that right?---That's correct.

The idea was to keep the facility in government hands but allow the Riverina Conservatorium to be in the building as a tenant. Is that the idea?
---Yes.

10 But with someone presumably paying for the capital works that would be necessary to turn a transport facility into a music conservatorium, is that right?---Yes.

And so how did those steps come about as to how the mechanics of that intention were, as it were, flowed through the systems of government? Presumably the building, as at the time that you got involved, wasn't owned by or, in effect, controlled by the Department of Premier and Cabinet.
---That's correct.

20 It was instead, what, under the control of Property NSW. Is that what you're saying?---Yes.

And so part of the engagement that was necessary was an engagement within Property NSW?---That's correct.

And so was the idea to keep the property in Property NSW's hands or was there some idea of transferring it, for example, to some other agency?---So there was consideration of whether Create NSW may take the property. Ultimately, that's not eventuated.

30 And is this all being dealt with at an agency-to-agency level or is this a matter like the ACTA matter that we discussed earlier today that's also being dealt with at a Cabinet level or at a Cabinet committee level, at least so far as you can recall?---So, to the best of my recollection, the work about understanding what might be required was happening at an officer level, so not a - - -

The understanding of what was required at an officer level, in effect, a departmental level?---Departmental level, yes.

40 But what about in terms of actually making decisions once that detailed work has been performed?---So once the detailed work had been performed, the project to move RCM from Charles Sturt University to 1 Simmons Street was funded as part of the 2018/19 budget process.

And when you say "funded as part of" that budget process, was that through the ordinary budget processes sometimes referred to as the new policy proposals process?---I'm not sure exactly how it worked through, but there was an allocation made to Property NSW to undertake those works.

Were you involved in preparing any submissions to Cabinet or a committee of Cabinet with a view to giving effect to the kinds of things that you're now referring to?---I didn't, I don't recollect having any involvement in the Cabinet drafting for, for that particular project. There may from Properties, Property NSW, there may have been liaison around this particular project but the lead would have been Property NSW.

10 And if the lead was Property NSW, at least in your experience preparing things like Cabinet submissions or submissions to a commission of Cabinet would ordinarily be at least spearheaded by that organisation – sorry, by that part within government. Is that right?---Yeah. Yeah.

20 But at least in terms of the mechanics in relation to what you and I have described as stage 1, 'cause I understand what you're saying. One aspect of it was to transfer, in effect, the ownership of the property from, at least considered to be moved, the ownership of the property from Property NSW to another government agency, like Create NSW?---I understand there was consideration of that. That's ultimately not what, what, not what has occurred. So that was one consideration but that, in effect, fell by the wayside but the matter that remained was the idea that there would be, in

effect, a lease to the Riverina Conservatorium of Music. Is that right? ---Yes, and capital works required obviously to enable them to move to that facility.

30 And is that a lease on, in effect, a peppercorn rent or is that a commercial rent that then needs to be paid?---So in Property NSW buildings, the expectation is that it will be at a market rate and a commercial rate.

But the Riverina Conservatorium is a relatively small, non-profit organisation, is that right, as you understand it?---Yes.

40 So how is it in a position to pay a commercial rent for the premises?---That, that is still being worked through, part of what was considered or was going to be considered in the business case. Looking at stage 2 looks at the viability, the commercial viability of how the RCM would be able to support stage 1 and have a peppercorn lease out at Charles Sturt University. The expectation is that they would pay commercial rates. That's the starting point of how Property NSW manages their facilities. We need to work through what occurs when they move in to that facility.

So the building work to create a like-for-like facility is going on I think as we speak. Is that right?---Now. Yes.

The expectation at least as between Property NSW, at least from Property NSW's perspective is that a commercial rate of rent is to be paid. Is that right?---That's correct.

As a matter of policy, as you understand it at least, that's the Property NSW policy that government assets should be rented at a commercial rate, not at a in effect peppercorn rate. Is that right?---Yes, that's the starting point.

But are you saying that the arrangements as to how that commercial rent is actually going to be paid haven't yet been worked through the system?
---That's correct.

- 10 Even though as we speak there's something being turned into a facility that could be used for music purposes or as a conservatorium as distinct from transport or for other government services?---That's right.

THE COMMISSIONER: So, Mr Hanger, at the time the move to the 1 Simmons Street site was mooted, it was a vacant and hitherto used RMS facility, was it not?---That's correct, yes

Owned and/or controlled by Property NSW.---I understand so, yes.

- 20 And in the ordinary course would the government have either identified another government agency which might use the premises or sell the premises?---I, I'm not within Property NSW but I, they would look to make best use of the assets that they, they have. So if they could have put other agencies in there, I'm sure they would have considered that, but it was a vacant facility at that time. They do have a program that looks at whether vacant facilities, vacant government facilities can be used for community purposes and it's essentially that, that's the lens through which this project has been considered.

- 30 That lens includes being looked at through the, as I've understood your recent evidence, through the necessity that there be a commercial return on the premises.---If it's for community purposes, then that would be more challenging. It's probably best to get evidence directly from Property NSW.

But as you understand it at the moment, the question whether or not the Conservatorium pays a commercial rent or has a benefit of these premises at a peppercorn rate has not been resolved?---That's correct.

- 40 MR ROBERTSON: Is that the structure of how it works or is it more in the nature that, at least as between Property NSW and its tenant, there's an expectation to pay a commercial rent, but whether or not there is some other funding source that puts the organisation in funds to pay the commercial rent is another question altogether?---Yeah. Funding is provided to the Conservatorium from the Department of Education.

And so one possibility, but which by the sounds of it hasn't yet been worked through, is that the Department of Education or perhaps some other agency within government might put the RCM in funds in order to pay a

commercial rate of rent to Property NSW. Is that right?---That's, that's one of the options, yes.

It hasn't been worked through yet - - -?---That's correct.

- - - at the moment although the building work itself of stage 1 is presently in operation. Is that right?---That's correct.

10 Building work for stage 2, the recital hall, is not presently in operation. Is that right?---That's correct.

In the timeline that we've got to so far, including by reference to communications in 2018, stage 1 was the subject of an indication of support for a like-for-like facility. I take it that it ultimately went further than simply support in the sense of doing work with a view to achieving that facility but ultimately government approval of some kind to actually spend the money given that that's what's happening now.---That's correct.

20 So is this right, the status as you understand it in relation to stage 1 is that the property will remain owned by Property NSW. Is that right?---Yes.

The government will spend the money on turning a transport facility to a conservatorium. Correct?---Yes.

There'll be an expectation of payment of a commercial rate of rent. Correct?---Yes.

30 But how that is actually paid, where the money comes from to pay that commercial rate of rent to Property NSW is a matter, is still to be worked through. Is that right?---That's correct.

Now, what about stage 2, was there ever any announcement, reservation, allocation, promise or anything else in relation to stage 2 as you understand it?---Prior to the by-election in Wagga in 2018, there was an announcement in regards to \$20 million for stage 2.

40 So prior to it becoming necessary for a by-election in the electorate of Wagga Wagga, there was as you understood it no announcement, reservation, promise, allocation or anything else in relation to stage 2, is that right?---That's correct.

An announcement from the government was made during the course of the by-election occasioned on the resignation of Mr Maguire, is that right?---That's correct.

Did you have any involvement in the, in effect, lead-up to the announcement that you've there referred to, the announcement of funding in

relation to stage 2?---We prepared a letter for the Deputy Premier to send to the Treasurer to advise him of a reservation of funding for stage 2.

And the direction to perform that, or the request to prepare communications of that kind, came from where?---It was communicated through the Deputy Premier's Office but we understood it was because the Premier was travelling down to the region.

10 Down to the region, you mean the region of Wagga Wagga during the course of the by-election campaign?---That's correct, yes.

So during the course of the by-election campaign, you received a direction to draft, what was it, draft correspondence for the Deputy Premier, is that right?---That's correct.

That was Deputy Premier Barilaro at that point in time, is that right?---Yes.

20 And that was correspondence to what effect or to what end?---To reserve \$20 million within the Regional Communities Development Fund.

Now, to be clear about – you use the word “reserved.” That's reserved in the sense of reserved so it can't be spent on anything else, is that right? ---That's correct.

That's different to approved or allocated such as what we saw in relation to the ACTA proposal earlier today?---That's correct.

30 The particular fund that you there just identified, is that a Restart NSW Fund or a non-Restart NSW Fund?---It's a non-Restart Fund.

And does it follow from that, that it is not essential – in the same way as in Restart NSW – for funding of that kind to satisfy a BCR of 1 or more than 1?---That's correct.

Do you agree that at least as a matter of good practice, one would want a business case and a BCR analysis of a kind preferably that shows a BCR of 1 or more than 1?---Yeah, it's always good for projects to show more benefits than costs.

40 For the perhaps obvious reason that when the state spends money, one wants to get a benefit at least equal to the amount of money that's being spent, is that right?---That's correct.

But this particular one wasn't an approval or allocation of the kind that we saw in relation to ACTA, it was in the nature of a reservation only so it couldn't be spent on anything else, is that right?---That's correct.

We discussed this morning in relation to ACTA the concept of competitive grant processes, one where there's an established criteria, application forms, ranking projects et cetera. The fund that you just identified, is that a fund that has a competitive process of the kind you and I have discussed today?
---Yes.

10 Is that the case for all of the money within that particular fund or is this one like the RGETF, where most of the time the money is subject to those kinds of competitive processes but from time to time there may be a reservation or allocation without going through those kinds of competitive processes?
---So, Regional Communities Development Fund was a competitive process and the conservatorium submitted an application for that, that program and that, and that was, that was assessed as part of that process.

And what was the result of that assessment?---Insufficient information was provided. So it was not able, it was unsuccessful through that process.

20 So at least on what I call the first attempt, there was an unsuccessful application for funding through the RCDF?---That's correct.

But that happened, I take it, after the Wagga Wagga by-election?---That's correct.

Going back, though, to the time period of the Wagga Wagga by-election, I think you were saying your agency's involvement was in getting \$20 million reserved from that fund, is that right?---Yes.

30 And can we go, please, to page 238 of volume 31.0, just to get some timing around this? Just to help you with your bearings, on 13 July, 2018, Mr Maguire was before this Commission in Operation Dasha.---Ah hmm.

And gave certain evidence. Ultimately, Mr Maguire resigned, leading to a necessity for a by-election. My note is that he announced his resignation on 21 July, 2018, although it didn't come into effect until 3 August, 2018. If you have a look towards the bottom of the page, just zoom in to the bottom of the page, see there an email from a Berge, B-e-r-g-e, Okosdinossian, O-k-o-s-d-i-n-o-s-s-i-a-n?---Yes.

40 Mr Okosdinossian was a policy adviser at that point in time in the office of Premier Berejiklian, is that right?---That's correct.

And then if you have a look at the third paragraph, the one that starts, at least the third substantive paragraph that starts with the word "Chris"?
---Yes.

See that there? Now, this is an email that's copied to you but it seems to have been sent to, amongst other people, Chris as in Chris Hanger.---Ah hmm.

“Could you please provide me with options in relation to a funding stream that we can pursue over the coming days?” You see that there?---Yes.

10 Do you recall having any involvement in attempting to identify a funding stream that could be pursued over the coming days?---So that would have been the Regional Communities Development Fund. It, at that point the government was also launching a range of other regional programs through the Regional Growth Fund. The Regional Communities Development Fund is one of those. There may also have been a Regional Cultural Fund.

Was the Regional Communities Development Fund, the RCDF, a fund that was in effect up and running at that point in time with established criteria and timelines and things of that kind? Or was it more in the what I might call the planning stage?---I was, I’d need to recollect the opening times for the program. I’m going to say it was more in the planning phase. That program, from the best of my recollections, opened later in 2018.

20 But at least the concept of the fund was, obviously enough, in existence by the time of the Wagga Wagga by-election period, by which I mean the period between Mr Maguire’s resignation and the by-election itself? ---That’s correct.

And so is this right, you have a recollection of being involved in the process of attempting to find options in relation to a funding stream that could be pursued in relation to stage 2 of the RCM project?---That’s correct.

30 And I should just draw your attention to the context here. The previous paragraph, the second substantive paragraph. “Leon and James, could I ask for the full scope of works that will be undertaken as part of stage 1, \$10 million approved by ERC, and what – if any – that would cover for stage 2 (recital hall planning).” Do you see that there?---Yes.

So is that consistent with your recollection that stage 1 had already been the subject of certain approvals by the Expenditure Review Committee of Cabinet in relation to the RCM project, is that right?---Yes.

40 Stage 2 had not been the subject of any approval of that kind as at 16 August, 2018. Is that right?---That’s correct.

But what you, Mr Hanger, were in effect being asked to do is identify a potential funding stream so as to permit an announcement to be made, in effect a funding announcement to be made, during the course of the by-election period for the electorate of Wagga Wagga?---Yes.

THE COMMISSIONER: And is that what you understood Mr Okosdinossian to be referring to in the last paragraph on that page, Mr Hanger, so as to be in a position to make relevant arrangements for the

Premier by early next week?---Yes. As I indicated in an earlier answer, the correspondence between the Deputy Premier and, and the Treasurer was in anticipation of that travel.

And in anticipation of the Premier making an announcement of the reservation?---To enable that to occur. We obviously didn't know whether the announcement would be made. The announcement was obviously subsequently made but, yes, in anticipation of that travel.

10 MR ROBERTSON: For context, if you just have a look towards the bottom of the page, Mr Okosdinossian says, "As we're all aware, time frames are tight. So could I please ask that we get the ball rolling ASAP so as to be in a position to make relevant arrangements for the Premier by early next week." Do you see that there?---Yes.

So is this right, that's consistent with your recollection that there was a time pressure put on the request made of you by Premier Berejiklian's office with a view to being in a position to allow Ms Berejiklian to make an announcement, if so advised, as to this \$20 million for the recital hall?

20 ---That's correct.

I think you said ultimately an announcement was made during the Wagga Wagga by-election. Is that right?---Yes.

Do you happen to know who made the announcement?---If I recollect, it was Minister Harwin.

So in the event, not Ms Berejiklian but Minister Harwin. Is that right?---I, I, I think so. I'm fairly sure it was Minister Harwin.

30

Commissioner, I won't immediately tender that email. I'll come back to that separately. So as at 16 August, 2018, at least, Mr Hanger and perhaps your agency more generally, is asked to provide options in relation to a funding stream and I take it from what you've said that you ultimately did or at least the agency ultimately did identify a funding stream, namely, the Regional Communities Development Fund. Is that right?---That's correct.

Now, that particular fund, who at a ministerial level is responsible for that fund on a day-to-day basis?---The Deputy Premier.

40

And is that why when you're referring to a letter to be written, the letter was to be written by the Deputy Premier as opposed to, for example, the cluster minister, being the Premier?---Yes.

So, in effect, that was a letter from what I might call portfolio minister in this context just to the Premier or to someone else, as well?---The Treasurer.

Why to the Treasurer?---The fund as it was being sort of anticipated in regards to its establishment was going to have projects approved by the Expenditure Review Committee.

Sorry. Can you just repeat the end of that last answer?---So the fund as it was envisaged to be established was going to be, the projects through that fund were going to be reviewed and approved by the Expenditure Review Committee.

10 But why did that mean that the Treasurer had to have any immediate involvement at that stage as opposed to through the ERC process?---I, I, I think out of courtesy in regards to projects coming through, the Deputy Premier wanted to notify the Treasurer and the Premier.

And perhaps putting it colloquially, the Treasurer holds the purse strings and so it's appropriate that if there's to be a reservation, that the Treasurer, in effect, signs off on it?---Yes.

20 And can we go, please, to page 58 of volume 31.4. Now moving to 22 August, 2018. So this is an email from you to a series of individuals, a couple of days after the previous email, which was 16 August. If we zoom in towards the bottom, you see 22 August, 2018, 8.34am?---Yes.

And you say, "A quick update on this project following my meeting with the Premier's Office yesterday afternoon." Do you see that there?---Yes.

30 Do you recall who it was within the Premier's Office you had a meeting with concerning this matter, which appears to be Wagga Conservatorium funding for recital hall stage 2?---That would have been Berge. To the best of my recollection, it would have been Berge.

And then you see "The Premier is keen to announce this Friday that \$20.5 million has been reserved for the recital hall component of stage 2 of the Wagga Wagga Conservatorium project." See that there?---Yes.

"I have advised the PO that this announcement can be facilitated through a reservation from the Regional Communities Development Fund, which opened for project nominations this week." See that there?---Yes.

40 Does that assist with your recollection as to one of the previous questions I asked, namely with the status of that fund, it was in a sense a work in progress but the ability to make project nominations was in place by about the middle or perhaps a little bit later in August of 2018?---That's correct.

And then third dot point, "The PO will work with the DPO." And pausing there, does that translate to "The Premier's Office will work with the Deputy Premier's Office," correct?---Yes.

“So this project is nominated for that fund by the DP.” That’s a reference to the Deputy Premier?---Yes.

Which would be Premier Barilaro?---Yes.

“The Premier’s adviser leading this work and the DPCOS.” I take it that’s chief of staff?---Yes.

10 “Have discussed the project late yesterday.” See that there?---Yes.

When you refer to the Premier’s adviser leading this work, is that Mr Okosdinossian?---To the best of my recollection, yes.

And the DPCOS, that was Ms Dewar at that point in time, is that right?
---Yes, yep.

10 D-e-w-a-r. You say, “Have discussed the project late yesterday.” And then you go on to say, “I advised the PO that I would work with agencies to try and quantify the likely ongoing costs for NSW Government (above the
20 \$20.5 million initial capital costs) to maintain the recital hall and also options for ownership/management.” See that there?---Yes.

And so just to understand that, the \$20 million was to build the building rather than necessarily the operational or maintenance associated with the building, is that right?---That’s correct.

THE COMMISSIONER: 20.5, in fact, Mr - - -

30 MR ROBERTSON: Yes, 20.5, I’m grateful, Commissioner. So, to keep the lights on you need money, to keep the building in appropriate condition you need money as well, is that right?---That’s correct.

But that’s not covered for in the, at least, estimate of \$20.5 million at that point in time, is that right?---No, it’s not.

Can we then go – and I won’t tender all of these emails immediately now, Commissioner. I’ll probably do them as a bundle a little bit later. Go to page 63.

40 THE COMMISSIONER: Volume?

MR ROBERTSON: In Volume 31.4. Now, this is an email chain so I’m going to have to take us to page 64 first and then move upwards. Let’s zoom in towards the bottom of the page. See there it says, “As requested, attached is a draft letter from the DP to the Treasurer summarising the proposal for the DP to submit an application for up to \$20.5 million from the Regional Community Development Fund, the recital hall component of

stage 2 of the Riverina Conservatorium of Music project.” See that there?
---Yes.

The letter notes that, “Any funding allocation” and then in bold “allocation will be subject to cost and scope finalisation as well as approval by ERC.” See that there?---Yes.

10 And so your suggestion at least is that there be a reservation and not an allocation, correct?---That’s correct.

That allows the executive government to make a by-election announcement of a reservation, correct?---Yes.

That doesn’t mean that the money is necessarily going to flow and stage 2 is necessarily going to happen, is that right?---That’s correct.

But at least provides something that could be the subject of an announcement by the executive government, is that right?---Yes.

20 If we then go a bit further up the page, there’s some toing and froing about the paragraphs, the details of which don’t particularly matter, but if we go back to page 63 and zoom in towards the bottom of the page. “Morning all. Latest on this one, PO/DPO asked us to draft up a letter from the DP to Treasury to reserve funding” et cetera. And then you see a response back from Property saying that it was moving at pace. Sorry, I think I interrupted you.---Oh, was there a question or - - -

No.---No.

30 Drawing your attention to that context.---Ah hmm.

And then you see that Mr Walker comes back and says, “Moving at pace.” Do you see that there?---Yes.

I take it you agree that this was a matter that was moving at pace during the course of the Wagga Wagga by-election campaign.---Yes.

40 And if we then scroll up a little bit further just to see the last one in the chain. I’ll draw your attention to the final sentence. The letter does note the government commitment includes “recurrent grant funding to cover the annual cost of occupying and maintaining the new conservatorium for stage 1”. Do you see that there?---Yes.

Was that the position, as you understood it, at this point in time, July of – sorry, I withdraw that. I’ve jumped ahead in the chronology. I meant to stop at August 2018. You can ignore that last question with respect to July 2019. Can we go, please, to page 66 where I’ll show you the draft letter. And this would appear to be the draft letter that either you prepared or at

least you had prepared with a view to reserving the money for the Riverina Conservatorium project.---Yes.

And we just turn the page you'll see that there's a place there for signing by the Treasurer. See that there?---Yes.

At that point in time at least it says it's copied to the Premier. You see that underneath the draft.---Yes.

10 Now, is that how it ultimately played out in the final version or did the letter, as Mr Barilaro sent, seek the approval of both the Treasurer and the Premier?---I believe it sought the approval of both.

In that context can we go to volume 31.0, page 244. So what I showed you before was a fairly detailed letter. Can I just show you this letter. Now, it's been blacked out on the one on your screen, but in the original version there's a signature above Treasurer Perrottet's signature block.---Yes.

20 Do you see there it says, "As per the ERC's terms of reference, the Premier and I have agreed to a reservation of up to \$20 million from the recently announced Regional Community and Development Fund for the project, subject to certain matters including a final business case being approved by ERC." Do you see that there?---Yes.

Is that consistent with your understanding of the position at the time, namely that the Premier and Treasurer had agreed to a reservation of funding subject to the conditions there identified?---Yes.

30 So although this letter – I withdraw that. This letter is on the Premier's letterhead. You can see that.---Yes.

Although this doesn't appear to be signed directly by the Premier, at least as you understood the position, both the Premier and the Treasurer had agreed to that reservation.---That's correct.

Do you recall how it came to your knowledge that the Premier had agreed to the reservation, that is Premier Berejiklian?---No, but the, the letter refers explicitly to the agreement.

40 Commissioner, I tender the letter on the screen, letter from Premier Berejiklian and Treasurer Perrottet to Deputy Premier Barilaro, page 244, volume 31.0.

THE COMMISSIONER: Exhibit 437.

**#EXH-437 – LETTER FROM PREMIER GLADYS BEREJIKLIAN
AND TREASURER DOMINIC PERROTTET TO DEPUTY
PREMIER JOHN BARILARO DATED 23 AUGUST 2018**

MR ROBERTSON: Commissioner, although that's not dated it appears that the actual date is 23 August, 2018. Can we then go to the next page of the bundle, page - - -

10 THE COMMISSIONER: When you say "it appears that" why do we understand that, Mr Robertson? It refers to correspondence of that date.

MR ROBERTSON: It does. I'll deal with it this way.

THE COMMISSIONER: You might have to just do it a bit more longhand.

MR ROBERTSON: I will. I'll come back to the 23rd date by doing it this way. If we go to page 245. I'll show you a media release or at least the text of a media release. And you'll see in the second paragraph a reference to an
20 announcement by Minister Harwin?---Yes.

That's consistent with your recollection that it was ultimately Minister Harwin who made the announcement rather than the Premier?---Yes.

But if you just have a look at the first paragraph, it says, "The NSW Government has committed an additional \$20 million for the construction of a purpose-built recital hall." See that there?---Yes.

30 If you were drafting this document, would you describe it as a commitment?---I'd describe it as a reservation.

And reservation in the sense that you and I have discussed, money has been reserved so it can't be spent on other things, but not a formal allocation or an approval to actually spend the money. Is that right?---That's correct.

And so, at least in one sense, it's a commitment in the sense of an election commitment and an assertion by the government, at least as you read it, that money would be spent but for the purposes of government, at the agency level at least, it had the status of a reservation only and nothing more. Is
40 that right?---That's correct.

In fairness to Mr Harwin, I should draw particular attention to final paragraph because this media release does make clear or at least the text of it does make clear that it "will be made available subject to the full project scope and costings for the recital hall being finalised". See that there?
---Yes.

I tender media release dated 24 August, 2018, page 245, volume 31.0.

THE COMMISSIONER: Exhibit 438.

**#EXH-438 – MEDIA RELEASE - NSW GOVERNMENT INVESTING
\$20 MILLION IN MUSICIANS OF TOMORROW DATED 24
AUGUST 2018**

10 MR ROBERTSON: Now, Mr Hanger, it's consistent with your
recollection, I take it, that the announcement itself was made on Friday, the
24th of August, 2018, being the date that we can see on this page?---Yes.

And if we go back to the preceding page, page 244, you see there a
reference to correspondence of 23 August, 2018?---Yes.

I take it you'd agree with me that although this letter isn't dated, it must be
that it was a letter of either 23 or 24 August?---That's correct.

20 Commissioner, I note the time. I'm about to move on to another topic. I
would respectfully suggest to take the luncheon adjournment now rather
than doing that topic in part.

THE COMMISSIONER: Very well. Mr Hanger, we're going to take an
adjournment for lunch for an hour, so if you return, please, at a quarter to
2.00.---Thank you, Commissioner.

We'll now adjourn.

30 MR ROBERTSON: I should indicate for the benefit of those following
along that we've moved a little bit quicker than I apprehended. I would
hope to be finished on time. I was a little bit concerned on previous days
that we might need to sit a little late but at least at the moment, I would
expect an on time or slightly early finish.

THE COMMISSIONER: Thank you, Mr Robertson. We'll now adjourn.

LUNCHEON ADJOURNMENT

[12.47pm]