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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 FRIDAY 22 OCTOBER, 2021

AT 9.30AM

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

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

THE COMMISSIONER: Please be seated, Mr Ayres. Yes, Mr Robertson.

MR ROBERTSON: Commissioner, in a moment I'll call Mr Stuart Ayres. When the examination of Mr Ayres is completed, I'll call Mr Gary Barnes, Secretary of the Department of Regional NSW. I expect it to be a fairly full day of evidence today and there's a serious risk of not being able to be completed with Mr Barnes, but the witness list that's been published for next week indicates that I'll recall Mr Barnes next week in the event that I don't finish his examination today.

10

THE COMMISSIONER: Yes. Thank you, Mr Robertson.

MR ROBERTSON: I call Stuart Ayres.

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

MR AYRES: An oath, thank you, Commissioner.

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

MR ARNOTT: I have, Commissioner. He does seek a declaration under section 38.

10 THE COMMISSIONER: Thank you, Mr Arnott. Mr Ayres, before I make
the declaration to which Mr Arnott referred, I'm going to explain it to you,
so can you listen very carefully to what I am now about to tell you. 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
20 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. 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 answers given by you and all items produced by you will
30 be regarded as having been given or produced on objection. This means
you do not have to object with respect to each answer or the production of
each item. I 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 him during the course of his evidence at this public
inquiry are to be regarded as having been given or produced on objection
and there is no need for him to make objection in respect of any particular
answer given or document or thing produced.

40

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

ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR THING PRODUCED.

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

Thank you. Yes, Mr Robertson.

10 MR ROBERTSON: Can you state your full name, please, sir?---Stuart Laurence Ayres.

You are presently the Minister for Jobs, Investment, Tourism and Western Sydney. Is that right?---And Trade and Industry.

You anticipated my next question. So in addition to that portfolio area, you're also the Minister for Industry and Trade, is that right?---That's correct.

20 You were the Minister for Sport from the 23rd of April, 2014, until your appointment as the Minister for Jobs, Investment, Tourism and Western Sydney, is that right?---That's correct.

I think the title, when you were first appointed, might have been Minister for Sport and Recreation, but at the very least you had the Sport portfolio between about 2014 and 2019, is that right?---That's correct.

You have been the Member for Penrith since the 19th of June, 2010? ---That's also correct.

30 Now, when you were first elected, Mr Daryl Maguire was the Opposition Whip, is that right?---That's correct.

And then ultimately on the election of the Coalition to government, he became the Government Whip, is that right?---That's also correct.

You're aware that this Commission is investigating grant funding that was promised and/or awarded to the Australian Clay Target Association? ---I'm aware.

40 When did you first become aware that the Australian Clay Target Association was seeking funding from the NSW Government?---I recall receiving some correspondence from Mr Maguire as, through his role as the local member, asking for funding for that project in the early day, well, I'll say months of my time as the Minister for Sport.

So you became Minister for Sport from April of 2014, is that right?---Yep.

And so you're saying within a relatively short period of being appointed to that ministry, you had some representations from Mr Maguire?---Oh, it was, it was a while ago, so I just remember it being sort of the earlier time of my, my role as the Sports Minister.

10 That was representations in relation to what? So grant funding in relation to the Australian Clay Target Association but for the purposes of what?---I don't recall all of the information that was in that early-stage correspondence, but I don't think there was much change over the course of this project being on my radar, that they were looking to expand the facility to do a function centre, improve some amenities, I think access to, or the road access points, and I think there was some upgrades to some of the technical shooting equipment.

So what you've just described as this project, are you saying, in effect, that during your time as Sports Minister, it was a project that in respect of which representations were being made to you from time to time over a, what, a many-year period?---Yep.

20 Starting within the very early times of you becoming a minister with responsibility for sport.---Yep.

And to try and help you with some timing around that, could we go, please, to page 82 of volume 26.0. This might be the first representation to which you drew attention a little moment ago. Do you see there a letter on Mr Maguire's letterhead, 9 July, 2014?---Yes.

30 And if we then zoom into the substantive text, if you have a look at the second paragraph, do you see there "The ACTA aim is to build an international-standard clay target capable of holding events in the ISSF discipline, which are included at the Olympic and Commonwealth Games." Do you see that there?---I do. Just reading the rest of the letter.

If you have a look, in particular, at the second-to-last paragraph as well when you do that, you'll see a reference to the cost of the proposed project, which is comprised of equipment costs of \$375,000 and construction and implementation costs of \$825,000.---Yep.

40 Does that appear to be the first representation from Mr Maguire that you referred to a moment ago?---This wasn't the letter I was recalling, but this may well have been the first correspondence that he'd sent.

The letter that you were recalling, that was a letter concerning what?---I don't remember this level of detail. I think it was a more, a general request for funding. And I, my recollection is more focused on the function centre component.

I tender the letter on the screen, letter from Mr Maguire to Mr Ayres, 9 July, 2014, page 82, volume 26.0.

THE COMMISSIONER: Exhibit 440.

#EXH-440 – EXH-440 LETTER FROM DARYL MAGUIRE TO MINISTER STUART AYRES DATED 9 JULY 2014

10

MR ROBERTSON: Mr Ayres, do you have a recollection now, though, having seen that letter, of the representation from Mr Maguire of July of 2014?---I don't really recall that correspondence in any detail at all.

20

At least you've got a recollection of Mr Maguire making approaches to you on multiple occasions in relation to money for the Clay Target Association, is that right?---Yeah, I remember a piece of correspondence that we wrote back to Mr Maguire, indicating that he'd, he'd, I think he had asked one of my predecessors in the role. From memory, I remember a piece of correspondence that might have referred to Graham Annesley, who was a predecessor.

But are you agreeing with me that Mr Maguire, over an extended period, made multiple representations to you as the Minister for Sport in relation to attempting to get grant funding to the Australian Clay Target Association? ---Yes, that's correct.

30

MR ROBERTSON: At least some of those representations were in writing, like the one we saw on the screen, correct?---Yes.

I take it there were also oral communications as well in the sense of perhaps seeing you in the corridors of Parliament House or elsewhere trying to make representations to you with a view to getting grant funding for the Australian Clay Target Association?---Yeah. There was almost always incidental contact between ministers and members, particularly projects that they've written to – I don't recall those specifically but I think it would have almost certainly happened.

40

Well, certainly incidental contact of the kind you're referring to happens from time to time or perhaps even more regularly than that, but do you agree that you had at least some communications of that kind with Mr Maguire in relation to the Australian Clay Target Association specifically?---Yeah, I don't recall those specifically but I'm almost certain they would have happened.

It at least stands to reason, based on your experience with Mr Maguire, that he was someone who would not miss an opportunity to, as it were, bundle you up in the corridor and say "Have you looked at this, have you looked at

that, have you looked at that?”---That’s true. That’s also true for almost every MP in the parliament.

Does Mr Maguire stick out on your mind as someone who is particularly pestiferous in relation to matters of that kind or was he simply one of a class of people in a similar category?---I think he would be described in my mind as one of a class of people in a similar category, to use that turn of phrase. Might be more at the, the forward end of that, particularly around his own projects, but by no means out of the ordinary. Plenty of members are
10 assertive in representations of their communities.

Now, I showed you a representation of July of 2014 which seemed to be focused on international-standard clay target capable of holding events in the ISSF discipline. Do you recall responding to Mr Maguire either orally or in writing or perhaps in some other way in response to that representation?---No, I don’t have any recollection of what that, what my response to that would have been.

Let me try and assist this way. Counsel Assisting we go to - - -
20

THE COMMISSIONER: Mr Robertson, I don’t know – if both my screen and that screen have frozen. I don’t know if that’s affecting the public feed but it’s probably going to affect your ability to bring that document up.

MR ROBERTSON: I’ll just pause for a moment.

THE COMMISSIONER: On my screen at least.

MR ROBERTSON: We’ll try it this way, can we attempt to put on the
30 screen page 84 of volume 26.0.

THE COMMISSIONER: It’s revived itself.

MR ROBERTSON: And we’ll - - -

THE COMMISSIONER: Can you see - - -?---Yeah, we’re moving again,

MR ROBERTSON: Can you see there, Mr Ayres, a letter on your
40 letterhead then as Minister for Sport and Recreation?---Yep.

And if we zoom into the substance of the letter, please. You there say, “I am writing a response to your representations of 9 July, 2014, on behalf of the Australian Clay Target Association.” See that there?---Yep.

And for your assistance, that’s the same day as the letter that I showed you a moment ago. Can you focus on, well, first the second paragraph and then I’ll take you to the third. The second one, “In 2012 a request was submitted

to NSW Treasury for 2013-2014 recurrent funding for the project.” Do you see that there?---Yep.

In 2012 you weren’t the Minister for Sport, is that right?---That’s correct.

But is that consistent with the recollection that you had a moment ago that there was some proposal put to a predecessor minister that had been rejected?---Yeah, that’s consistent with that I was calling.

10 And do you see there it refers to 2013-2014 recurrent funding. Do you see that there?---Yes.

Do you understand that to be a reference to recurrent funding in the sense of what can sometimes colloquially be referred to as a budget bid that goes through the process, which may then be the subject of a budget announcement by the Treasurer, or not depending on how it fares through the budget processes?---Yes. This looks like it’s referring to a submission that was made to Treasury as part of the budget process. But it may have come from the Office of Sport, it may have come from the minister. I, I, I can’t actually tell from this letter.

20 But is this right, in your experience, at least as a matter of ordinary practice, from year to year, departments and agencies in government are invited, as part of the budget process to put forward possible new policy proposals? ---Yes, that’s standard practice.

And so the standard practice involves each department agency in government putting together a series of, in effect, bids or suggestions as to particular projects or other programs that might be funded through the ordinary budget processes, is that right?---Yeah, that’s correct.

30 That’s a process that occurs over many months in the lead-up to the budget process itself, is that right?---Yep.

For a particular financial year, putting together or at least starting the process of putting together new policy proposals will happen in the preceding calendar year to the year in which the budget is introduced to parliament. Is that right?---In a formal setting. Some projects may be on departments’ radar on their, on their books for, for a long period of time, but, yeah. The bulk of that work would be done in the, in the months preceding the, the budget.

40 Well, at least in terms of new policy proposals, appreciating that obviously enough some projects will be over many years and there may have already been reservations or announcements and things of that kind, at least in relation to new policy proposals, is it right that at least in the ordinary course, putting forward a list of new policy proposals is an approach that ordinarily takes many months?---It does take months. The point I was

making earlier was that there may be projects that are new policy proposals that are rejected in the budget process but will be presented again the following year and the year after and the year after if that's what a minister so desires.

10 And so in relation to the new policy proposals themselves, though, is this right? They will ordinarily involve agencies and departments identifying a ranked list of projects and submitting them through the budget processes in particular to Treasury?---The departments will formulate projects or budget submissions, they don't always have to be projects. They can be programs. That will be presented to Treasury for submission into the budget. But the ultimate decision around what projects go forward for budget submission belongs with the minister.

So the ultimate decision as to which ones get put forward and the ranking of them is a matter for the minister. Correct?---That's correct.

20 As a matter of practice, ordinarily the minister would want input on that list from her or his agency. Correct?---Yeah, I would think most ministers would consider that.

I take it that in your experience it is always the case or at least almost always the case that the number of new policy proposals put forward in the budget process is larger than the numbers that are ultimately the subject of an announcement by the Treasurer as part of the appropriations legislation? ---Yes, there's always more demands on funds than funds available.

30 There's always more good projects and programs than can be funded with the available funds within government in your experience. Is that right? ---Yes.

40 And that's accounted for, in part of the new policy proposals process, is this right, in that before the list goes from the minister to Treasury, it's not simply putting together, say, 50 projects or whatever number they might be, but they will ordinarily be put forward as a ranked series of projects. Is that right?---So the department, well, some departments, I think every department is slightly different but some departments will start that engagement directly with Treasury. Ministers might be more heavily involved in that. Some ministers may not enter that process until, till later. There's often a bit of to-and-fro and feedback with Treasury around, you know, the direction the budget is taking. You'd look to shape that, shape your submission and your projects. And you would also, I don't, I don't agree with the principle that they're, they're ranked in the, in a sort of linear order because it may be dependent on what happens with, what happens with advice that comes from both the Treasurer or the Treasury. You might start with a series of projects that you have a high priority for, but based on what you, what information you collect through the course of that budget

preparation, that will allow you to determine what you, what you would prosecute more forcefully.

It will often be an iterative process that occurs over many months. Is that right?---Iterative's a good word. Yeah.

10 And whilst there might not be linear ranking in the way that you've identified, there's certainly, is this right, a form of internal competition in the sense of all ministers know that not all of their new policy proposals are going to get up and one of the things that are sought to be done during the Treasury process, is it to identify the priorities, at least so far as the minister is concerned. Is that right?---Yeah, I think that would be considered pretty normal practice.

20 And if we go back up on the screen, page 84 of volume 26.0. So I was drawing your attention before to the second paragraph. And just so we understand that, what it looks like happened, is this right, at least as you understood it, that one of your predecessors put forward a request for funding in the 2013/2014 budget year but it was not part of the Treasurer's budget announcement for that year. Is that right?---That's how I would interpret that, yes.

That's one of the things that you're informing or at least confirming to Mr Maguire. Is that right?---Yes. Yeah.

30 Then have a look at the next paragraph. "As you may be aware, I have recently initiated a study which seeks to receive feedback in relation to where grassroots facilities in New South Wales could be improved." Do you see that there?---Yes.

Do you recall what the name of that study was?---Future Needs Of Sport Infrastructure.

Sometimes referred to by the perhaps unfortunate acronym FNOSI, is that right?---Yes. Not an acronym I often used. I preferred to call it Future Needs of Sport, perhaps because I didn't like FNOSI.

40 Now, the Future Needs of Sport Initiative was one that sought to receive feedback from sporting organisations and also from local councils as to priorities in relation to sport in relation to their sport and in relation to their local council area, is that right?---Yeah, that's correct. So we didn't, at the time, have a rich set of projects or a data set from which we could consider how we might formulate future budget submissions, so we established or I established the Future Needs of Sport Infrastructure, which was an ongoing document. We wanted to achieve what I described as a dual-track assessment, where we asked councils what their sporting infrastructure priorities were, and we also asked individual sporting associations. Often those two things are not in alignment, and so being able to understand what

council saw as their priority, what individual sports saw as their priority gave us a wider or richer set of data points from which we might be able to consider future submissions.

10 And so was part of that to attempt to put the government in a position where it had data that would assist the government in deciding which projects or programs should be preferred over others?---Not, not necessarily. It was more designed at being able to identify where councils and sports saw their priorities, because a lot of these projects would not have had a normal, a funding source available to them. There wouldn't have been a grant program that would have been large enough to fund most of them. This was very much a process for us to be able to identify where sporting infrastructure was, was in demand, and then use that to shape future budget submissions.

And so presumably in the Sport portfolio, like elsewhere, there's always or at least always, always more worthy projects and programs that could potentially be funded than money available, correct?---Yes.

20 And was part of the Future Needs of Sport Infrastructure Initiative aimed at ensuring the government's got data that might inform it as to what programs or projects might be supported within the Sport portfolio?---It was definitely one of the considerations.

One of the bits of data that might influence it, it might not determine the question.---That's correct. Yep.

That's still for the agency and the minister.---Yep.

30 But at least some information that might make those kinds of decisions informed by a little bit more data and a little bit more rigour. Is that right? ---That's correct.

Do you recall whether the ACTA proposal, what I'll describe today as the ACTA proposal, was one that was identified or considered as part of the Future Needs of Sport Infrastructure process?---No, I don't.

40 Do you, in particular, recall whether the Wagga Wagga Council identified funding for ACTA or the ACTA proposal, the ACTA project, as you understood it, as a priority from its perspective?---No, I don't. But I would assume that it wouldn't have appeared on the council submissions to FNOSI because it wasn't a council-owned project. Most councils submitted funding requests for assets that they owned.

But presumably you were asking the local council to identify what the priorities were for their local area, is that right?---That's correct. But my experience with councils is that they prioritise their own assets.

So at least as a matter of practice or experience, perhaps, the local councils were prioritising getting money for their own facilities, rather than facilities owned by others, is that what you're saying?---That's correct. And it's also the reason why we ran the second track with engagement with, with sports, or allowed sports to submit directly. Because - - -

10 So in effect you had two sets of data from which an assessment might be made to provide data to deal with the kinds of, not necessarily ranking but prioritisation issues that you and I have discussed this morning?---Yeah, that's correct.

I tender the letter from Mr Ayres to Mr Maguire, 27 August, 2014.

THE COMMISSIONER: Exhibit 441.

#EXH-441 – LETTER FROM MINISTER STUART AYRES TO DARYL MAGUIRE DATED 27 AUGUST 2014

20

MR ROBERTSON: Was that 441, Commissioner?

THE COMMISSIONER: Yes.

MR ROBERTSON: So is this right, as at 28 August, 2014, the status of what we'll call today the ACTA project, so any funding for ACTA, was that there'd been a previous what I'll call budget bid put forward by a predecessor to you as Minister for Sport, and you, in response to Mr Maguire's representations of 9 July, 2014, have referred to that history, as it were, and at least at that point haven't agreed or otherwise with his representations. Is that a correct understanding of the state of play at least as you now recall it?---Yeah. Based on that correspondence I've seen, yeah.

30

Now, what's your next recollection after that as to any proposals in relation to ACTA, the Australian Clay Target Association, in terms of funding and the like?---Daryl does write to me again, I'm not quite sure of the dates, and he also does write, these may be separate letters or the same letter, I can't, can't recall exactly, but they also make a, they provide with some of their correspondence a, a proposal, a more in-depth proposal around what they would like to do at their facility.

40

So is this soon after the 2014 correspondence that we referred to, or is it a little bit of time after that?---I, I genuinely can't recall the, the time between. It was a while ago now.

Well, let me try and assist this way. Exhibit 405, volume 26.0, page 146. I'll show you a document to see if this is the one you're now referring to. Page 146, volume 26.0, also Exhibit 405. See there a letter from Mr

Maguire to you, 27 January, 2016? The date's on the bottom of the page.
---Yeah. I was just reading the letter.

See there, "I have received the attached correspondence from Mr Tony Turner, National Executive Office of the Australian Clay Target Association Incorporated, seeking funding for the ACTA ISSF facilities and also new clubhouse and office complex." Do you see that there?---Yes.

10 He also says, "I have also approached the Treasurer." See that there?---Yes.

As at January 2016, Ms Berejiklian was the Treasurer, is that right?---Yes.

Is this the letter that you were referring to before?---Yes. I think this is the letter.

So, this is a further representation now in 2016, this time quite specifically referring to the ISSF facilities but also a new clubhouse and office complex?---Yes.

20 Do you happen to know why Mr Maguire was approaching not just the, what might be referred to as the portfolio minister at that point, the Minister for Sport and also the Minister for Trade Tourism and Major Events, but also approaching the Treasurer?---I would have thought that was a pretty standard activity for local members who had projects that they were advocating for in their community. I don't know the nature of how he approached her but we've discussed it could have been incidental contact in the parliament without knowing exactly what he's referring to there, but I would think it would be pretty normal for Treasurers to receive
30 advocating for in their communities.

What was your understanding of what Mr Maguire was asking you to do, or at least requesting you to do, or lobbying you to do in response to this letter?---I think he's, he's looking to have this project re-evaluated and he's, I think this, there's a, an attachment that obviously goes with this letter and I think that might be the document that I was referring to where they put together a proposal.

40 I'll just show you that document to see if it's the one that you're referring to. If we go to page 148. This is part of the attachment to the letter to you. Do you see there a document entitled World Championships 2018 National Ground Development?---Yes.

Is that the document you were referring to a moment ago?---Yep, that is it.

So is this right, you've got a recollection of Mr Maguire making representations to you, seeking funding for, amongst other things, facilities and a new clubhouse and office complex for the Australian Clay Target

Association supported by a document referred to as World Championships 2018 National Ground Development?---That, that's correct. And I think the, this document relates to the upgrades that they wanted to undertake to support an event that they were, I can't remember if they were hoping to or had already secured for 2018.

10 Well, do you recall what your understanding was at the time, by which I mean about January or February of 2016, as to whether what was being proposed is funding with a view to winning an event, what seems to be described to you as the World Championship 2018, or whether it was simply let's build a facility such that the event that has already been secured has a good facility in place when that event takes place?---I can't remember exactly what the state of play was at this particular point in time about whether they were, whether the event was contingent on funding, but these guys were looking to expand the quality of their facilities, and definitely having that facility available for when this event took place would have been beneficial to them.

20 So you said at that, is this right, at that point in time you weren't sure whether the new facility was what I'll call a nice-to-have, in the sense that the event's going to happen anyway but I'll be nice to have a nice facility when the event takes place, as opposed to a must-have, where we think that we need it in order to get the facility? Is that right?---Yeah, I don't recall what the bidding arrangements were for this particular event at the time.

30 Now, you might not have known about it at the time. Did you later learn which of those two categories this project fit within, whether this funding was for a must-have or a nice-to-have?---Yes, when we take this project forward to Cabinet, that event is already secured.

So is this right, at the time that consideration was given by Cabinet or a committee of Cabinet as to whether to fund the Australian Clay Target Association to build facilities of the kind that we see in Mr Maguire's letter, it was known to you that the 2018 event had already been secured, is that right?---Yeah, that's, yes, that's my recollection.

40 I take it you would agree that the securing or not of that event would be a significant factor of relevance as to whether to fund this particular project? ---Absolutely.

Now, by reference to a previous letter, which has been marked Exhibit 441, you and I had a quick discussion about the Future Needs of Sport Infrastructure study.---Mmm.

Do you happen to know whether there was any analysis of this proposal – by which I mean the ACTA proposal – for the facilities, including new clubhouse and office complex, in connection with that Future Needs of

Sport study?---I, I don't recall that. There, this Future Needs of Sport had hundreds, if not thousands, of projects on it.

Do you happen to know that when the original proposal from the Australian Clay Target Association for funding, the one that you told Mr Maguire about that had been rejected through the budget processes through a predecessor minister, where that particular proposal fit in any ranking or prioritisation through the previous budget processes?---No, I don't recall where, where that ranked.

10

Could have been at the top, could have been at the bottom, could have been anywhere in between. You're not sure, is that right?---Yeah, I - - -

You didn't know at the time and you don't know now?---No.

So that letter I just showed you was 27 January, 2016. Do you recall what your response, if any, was to Mr Maguire's representations of 27 January, 2016?---I think I wrote to him again, indicating that we didn't have a funding source available for this project.

20

Let's go, please, to page 174 of volume 26.0, which was Exhibit 407. And do you see there a letter from you to Mr Maguire, 14 March, 2016? Do you see that there?---Yes.

So I'm asking you that way just to make sure it's actually coming up on the screen.---Yeah, no, it's on the screen, yes.

30

And if you have a look, in particular, at the second paragraph to start with, "I understand that stages 1 and 2 of the project have been completed and stage 3 has been estimated to cost around \$6.1 million, with ACTA committing \$1.2 million towards the project." Do you see that there?---Oh, yep.

40

So do we take it from that that, as at March of 2016, you understood that what ACTA was in effect seeking was money as part of a so-called stage 3 to build, amongst other things, the conference-style facility the subject of Mr Maguire's letter to you of January of 2016?---Yes, this letter is in response to the document that we were just looking at. That was the proposal for the function facility, along with, I think some of those other elements that I was discussing earlier. I remember the entry road being one of them, and I think some of the shooting technical, like, the traps to fire the clay target, if I was to use that sort of language, I think that was included in, in this project. They may have been included in 1 and 2, I can't exactly recall.

But, in effect, at least as you understood it in March of 2016, what was being sought was funding of something like \$4.9 million being the difference between the estimated cost of \$6.1 million and the \$1.2 million

that ACTA itself was proposing to put forward. Is that right?---Yes, that's how I interpret this letter, as well.

And then the effect of your response is to say, well, there's no funding relevantly available. Correct?---Yeah, this is saying that we don't have a funding source inside the Office of Sport budget that would, that was large enough to deal with this project.

10 And if you have a look at the paragraph that starts "As advised previously" do you see that there?---Yeah. I can see that.

That's a reference, is it, to the previous correspondence we've seen where you draw attention to the attempt for funding through a predecessor minister which was knocked back as part of the budget process. Is that right?
---Yeah, I can see that, and that's, that's how I, that's what that does.

20 And I take it that if you look at the next paragraph, see where it says, "Sport and Recreation receives many requests for assistance from across NSW through a diverse range of projects and programs. Unfortunately, it's not possible to meet all requests for assistance." Do you see that there?---Yeah.

That's another statement in the sense of what you and I have already discussed this morning, namely that there is always or almost always many requests for assistance, perhaps for very worth projects, but always or almost always not enough money to go around in relation to the various proposals that might be made?---That's correct. I think the, what this piece of correspondence is saying is that this project isn't necessarily a bad project but I don't have a funding pool available to fund it.

30 Similarly, this project might not necessarily be a bad project but there's also projects that might not necessarily be bad projects that are not possible to meet because there's only so much money to go around. Is that right?
---Yes.

40 That's one of the reasons why, for example, in the new policy proposals process, one attempts to prioritise in some way the projects not because the minister thinks that the one at the bottom of the list is a terrible project necessarily but there are higher priorities for the minister or perhaps ultimately for the government on a particular occasion?---Yes.

So 14 March, 2016, representation made, representation, in effect, rejected, insufficient funds available. What's your next recollection of any involvement in what I've been calling today the ACTA proposal?---Daryl may well write to me again. I can't remember exactly. But I know that I visit, I visit this site, I think it is towards the middle of this year. It, it was 2016. It's hard to remember all the years in order but I think I, I visit the site and talk to them about what their proposals are. I also hear from them about the championship event that they're looking to host in 2018. It's

possible that there's correspondence, as well, in between, from, from that letter we just saw on the screen to when I visit the site again, I, I can't recall that correspondence exactly, if - - -

Well, I'll try and assist this way. Page 175, volume 26.0. So the last letter I showed you was 14 March, 2016, in effect saying no money available. 10 days later, Mr Maguire is back to you noting that the correspondence has been received but requesting a meeting. Do you see that there?---Yes.

10 And if you just have a look at the date at the bottom, 24 March, 2016 is the date of that document. Do you see that there?---Yeah.

So does it look like this letter may well have precipitated the attendance at the site on your part? Is that how we draw this together?---I think the, so I would consider this a reasonably standard course of activity from a local MP. If you're knocked back by a minister, put some sort of local representative or another person in to be an advocate for the project. The, this type of correspondence would have definitely made me think about where there was an opportunity to, to meet this organisation. I, I would have
20 been thinking about that.

But why would you only do that on a request for a meeting? Why wouldn't you instead, in response to the January communication, seek to set up a meeting of that kind on your initiative?---I think you're just managing time. You've got lots of members. The advocacy of members plays an important role in the way you conduct your business, the projects that are put before ministers. They're there to be local representatives, so if they're advocating for it, it's definitely going to influence the way a minister allocates their time.

30 Is that part of the story, which we'll come to in a little bit more detail in a moment in relation to the ACTA proposal, that Mr Maguire was quite a vociferous advocate in relation to this particular proposal? And is that part of the story as to why you seem to have had some significant involvement in at least dealing with Mr Maguire's representations and requests and the like?---Well, I think ministers will always have involvement with representations to ministers. The very, or you might get email correspondence between staff, but I think the advocacy of Daryl Maguire here is pretty consistent with other members of parliament.

40 I tender the letter from Mr Maguire to Mr Ayres, 24 March, 2016, page 175, volume 26.0.

THE COMMISSIONER: Exhibit 442.

**#EXH-442 – LETTER FROM DARYL MAGUIRE TO MINISTER
STUART AYRES DATED 24 MARCH 2016**

MR ROBERTSON: So we're now towards the middle of 2016. You referred before to visiting the site and I think having a discussion with representatives of the Australian Clay Target Association. Is that right?
---Yes.

Who organised - - -?---Sorry, were you trying to show me a document?

10 No, not yet.---Okay, sorry.

Who organised that particular visit, do you recall?---I think I was visiting Wagga to make announcements for other funding grants. I think from memory we might have, we might have funded a toilet block at a local golf course. That's the nature of the job as the Sports Minister in New South Wales.

20 Sounds like an unenjoyable thing to open, but anyway.---Indeed. The local community infrastructure comes in all shapes and sizes and does all different things. And I think I also visited, I might have been visiting a local sport and rec centre. We have a number of them around the state and there's one in, down in that Wagga region.

But who organised that particular visit? Was that something that was done on the initiative or suggestion of Mr Maguire or was that done in some other fashion?---No, I think it would have been done just through the general course of being able to move around the state. We, we would have been trying to get to a number of different electorates, talk to local members. Where we had projects that were being funded or announced, you would
30 obviously try and line, line up with those types of things so that you could meet local community members, and you would also then have that opportunity to talk to local sporting organisations or visit projects that members were advocating for.

So after that, what's your next recollection of involvement in the ACTA proposal or project?---Oh, well, I, I think consistent with my earlier answer, I remember visiting a site. I, I don't recall any correspondence or engagement before that.

40 THE COMMISSIONER: Mr Ayres, is there some sort of convention when you enter another member of parliament's electorate, you at least let them know you're coming?---Yes. Yep.

And when you visited the ACTA site, did Mr Maguire accompany you?
---Yes.

MR ROBERTSON: And, sorry, what was your next recollection of involvement in the ACTA proposal or project?---I, I remember visiting the

site. I, I don't recall whether there's any interaction or correspondence with, with my office between what we just saw and that. There may well have been, but I just don't recall it.

10 But then after that visit, what happens next in the story?---The, I thought the project had a lot of merit. They had a World Championship event coming up in 2018. They were the National Association for Clay Target Shooting, it was located in a regional location. For a shooting facility, they were in a good location. They were in an industrial estate area. I think they had a good, from memory, they had a good relationship with their neighbour, which was good for both noise and safety. So from a regional shooting location perspective, they were a, they were a good, a good, well-run organisation and I was quite predisposed particularly to the clubhouse concept. I thought that it was in line with the discussions that we'd been having around the state with sporting organisations, particularly state and national bodies, or even working with councils around ways in which sports could become more financially resilient, allow them to utilise their assets for wider or more multipurpose uses, and where that could generate some revenue for an association or a club, that would reduce the need for that club
20 to draw down on the taxpayer's purse, whether that be at a local council level or a state level or even a federal level.

So are you saying that one of the merits that you saw in the clubhouse aspect of the project was there being merit in the government spending money on building a facility which then a private organisation, albeit a non-profit organisation, could then make money out of and therefore be asking for less money from the public purse, is that the idea?---Yeah, we support investment in not-for-profit organisations to do that on a regular basis.

30 But that's the particular, or it's at least a particular bit of merit that you saw in at least the clubhouse aspect of the ACTA proposal?---Yeah. And they also had, they had the World Championship event, I can't remember exactly what it, what type of shooting it was, it might have been down the line shooting. They had, they had this World Championship event, obviously they were going to have lots of people involved in their sport there for that event, any capacity to provide better quality amenities for that event would, would, would be better for that organisation, and then there would have been an opportunity to drive additional visitor-economy benefits to that region as well.

40 But how did you know that those kinds of visitor-economy benefits and the like would be likely to flow, at least in a sufficiently substantial amount that would justify government involvement?---Experience. I had been a minister for a pretty lengthy period of time. I'd seen the benefits of enhanced facilities for sporting organisations and I also knew how important the visitor economy was to regional New South Wales. If you expand the quality of facilities, make them available to organisations, they can have more choice about where they choose to take their events.

So just to be clear then as to why you were, I think to use your phrase, particularly disposed to this project, at least one aspect of it was with a view to securing a forward-revenue stream for the Australian Clay Target Association in terms of building a building which might then secure a forward-revenue stream to it which might then in course decrease the prospect of that organisation asking for more money from government, is that right?---Yeah. So the clubhouse or function-facility element would have been very useful for a national sporting association that was located in a regional location and it also would have allowed them to make their facility available to many other organisations. One of the things that I would hear regularly from sporting groups right across the state is the ability to find cost-effective meeting spaces, event locations. That, that was a regular thing. So this was a, this actually was kind of right in that sweet spot.

I just want to be clear as to the core reasons as to why you saw this on the sweet spot. One of them I think you were explaining before is the desirability as you saw it to secure a forward-revenue stream for the Australian Clay Target Association with a view to decreasing the prospect that that organisation would need government funding going forward. Have I got that right, as one of the merits, one of the reasons why you were particularly disposed to this program, to this proposal?---Yeah. If they've got a facility and they can hire it out that's, that's good for them.

A further reason why you saw this proposal to have some merit, or at least to be particularly disposed to it, is the potential tourism benefits that might arise from having a facility of the clubhouse kind, is that right?---Yes.

But that's a view that you came to based on your experience as a minister and a member of parliament rather than necessarily seeing any particular data, is that right?---At that particular point in time, I would have wanted to validate it, which I later do.

So is this right? Whilst that was at least something in your mind as a possible merit, based on your experience, you would want some assurance by way of analysis that those kinds of benefits would be likely to be achieved through the use of government money?---That's correct. So the document we saw earlier, the proposal by ACTA for the expansion of their clubhouse and function facilities was looking to utilise that World Championship event in 2018. When I read that document, I, my assumption was that they had done some form of assessment around costs. They didn't create the budget out of thin air, at least that was my assumption. So I, I had taken an assumption that they had undertaken some form of basic quantity surveying, QS costing, to form the basis of that, their costings there. But I would always want that validated before I took a project forward.

So that particular proposal that you've identified wouldn't have been sufficient, in your mind, to support funding itself as distinct from potentially considering funding, is that right?---We could have put it forward, but I thought it would have lacked the prospect of success without it.

Well, when you say put it forward, are you saying that that document was of sufficient information and rigour to support you as the minister putting it forward? Or are you saying it might start the process but you would want, as the minister, some further rigour or analysis performed before putting it forward?---I, no, I would have, I would have preferred a more rigorous assessment. There's nothing that stops me from utilising that document as the basis of a submission to, to Treasury at any stage, whether it be ERC or through the new policy proposal process, which you've discussed a couple of times today. But I would have, well, I thought that that document alone was not strong enough to warrant a submission, 'cause I thought that that submission would not have had strong prospects of success without a more rigorous analysis.

So what you would at least want is an appropriate business case, doing some further analysis as to the potential benefits of spending government money? ---That's correct.

In effect, you had in your mind at least two key potential benefits of this proposal. One, provide a revenue stream to ACTA in the way that you and I have discussed and, secondly, the desirability of potential tourism benefits that might be involved in having a large clubhouse in Wagga Wagga, is that right?---That's correct. I also have in my mind also the presence of the World Championship event and providing better amenities for people participating in that event. I also have in my mind that this is a national association, so people from largely all over the country will travel to participate in sport at this location. So those sporting benefits come from that as well.

What about potential political benefits in a proposal of this kind? In particular, at least as you saw it, in or around 2016 and 2017 and perhaps even into 2018, did you see it as desirable from a political perspective to provide support or funding to an organisation associated with shooters, with a view to attempting to counteract or act as a counterweight against any political advancement of what I'll call the Shooters Party?---No, that wasn't a consideration.

Wasn't a consideration at all at any time in your involvement in the ACTA proposal, is that right?---At no stage did I think we needed to fund this proposal to counteract the Shooters Party in regional New South Wales. This was a project that I'd started to form the view derived a good public benefit. If it, if it had stronger financial merit around it, then I, I would have been proceeding with that. I think all local members see projects that are delivered in their community to be delivering a public benefit as well as a

political benefit. But my thinking around this project wasn't influenced by the Shooters Party. It's probably fair to say I didn't spend a lot of time thinking about them.

Wasn't influenced at all, in any way?---No, not, not at this particular point in time, no.

10 At any point in time?---Well, the Orange by-election I think happens at the back end of this year. I don't think that's, I don't think that changed my view about this project.

20 So are you saying that the, both the potential political influence and power of the Shooters Party or the Shooter, Fishers and Farmers Party, I may have those last two around the wrong order, including the result of the Orange by-election, in which that party received or successfully won its first Lower House seat, was not a factor at all in your involvement in or support for this particular project?---Oh, I didn't think the Shooters had any – I wasn't at all concerned about any political risk regarding the Shooters in the seat of Wagga Wagga at all.

Well, concerned or not, I just want to be clear that that wasn't a factor that exercised your mind at all?---No.

Your focus was on the kinds of merits matters that we've dealt with, such as potential revenue stream for the Australian Clay Target Association and potential tourism benefits?---Yeah, so in the sporting benefits that I discussed earlier, but no.

30 When you say the sporting benefits, what are the sporting benefits that you're particularly drawing attention to?---For the, for the participants in the sport of clay target shooting.

40 But why as you saw it did one need a new or advanced facility in Wagga Wagga in circumstances where, as of course you know, in western Sydney there's an Olympic standard facility that was used for the Olympics in 2000?---'Cause you don't need to just provide facilities to people who live in Sydney. You should provide them to people who live in regional New South Wales, as well. This was also the home of the National Clay Target Shooting Association. This was, this was their home base. This was their community, this was the, the, the community of clay target shooting's home. It was much more important to them than the Cecil Hills shooting facility.

And so are you saying that it was only those kinds of what I'll call underlying merits issues that exercised your mind and influenced your involvement and you put out of your mind completely the kinds of political considerations that you and I referred to a moment ago?---I think every minister is aware to the political benefits that come from supporting projects in a local electorate but that wasn't a high priority for mine, for me at the

time I was making or considering this project, and I definitely wasn't thinking about the Shooters in the seat of Wagga. It was a safe Liberal seat. I'm not even sure they would have contested it.

Was the Shooters, the Orange by-election not a matter that exercised your mind at all in relation to this particular project. Is that right?---No. I don't recall that at all.

I tender the letter from Mr Maguire to Mr Ayres 24 March, 2016.

10

THE COMMISSIONER: Exhibit 443. I think you've tendered that one, Mr Robertson. I've got that as, is that volume 26, page 175?

MR ROBERTSON: Page 175, yes.

THE COMMISSIONER: Well, that's Exhibit 442 already.

MR ROBERTSON: I'm grateful, Commissioner. Sorry. I didn't take a note as we went there. Now, I think you've accepted a moment ago that whilst you saw some of those underlying merits type issues, you still wanted some form of analysis performed to, in effect, confirm or deny your what I might call instinctive view based on your experience as a minister. Is that fair?---Yes.

20

In particular, what you would seek is a satisfactory business case that would seek to analyse the costs and the benefits. Is that right?---That's correct.

30

Do you recall whether you took any steps or your agency took any steps to procure such a business case?---Yes, we approached the end of this financial year, so it's the end of the '15-16 financial year. We were, a process that we traditionally undertook in the Office of Sport was just to determine whether or how we were tracking against our budget and if there was any funds that were not going to be spent, it's often referred to as an underspend, we would discuss strategic projects that we would undertake or local sporting facilities that we would look to fund. So we would largely choose to do two things – fund local sporting infrastructure or fund research into projects that we, I'll use the phrase were on our radar, that we, that might help us in future submissions. And in that year, we allocated a fund or an amount of money, I think it was around \$40,000 for the completion of a business case on this particular facility to determine whether we thought it had or to determine whether we could take it forward as a proposal to government.

40

In that answer, you used the phrase "strategic projects". Why was the ACTA proposal, at least as you saw it, a strategic project?---So the reference for strategic, we had a fund called, I, I think it was, what was it called, strategic, it might have even been called Strategic Infrastructure or something along those lines. And so out of that fund, we would often, out of that fund, we would often do research into other sporting facilities around

their enhancement. In this particular location, I mentioned it before, it was the, it was an, it was a, a national facility for a sporting association in regional New South Wales that that filled the criteria for me to say that that would have strategic benefit to the sporting community in regional New South Wales.

10 But, presumably, even when towards the end of the financial year, you're searching for underspends, there are still more worthy projects available or worthy uses of the money available than money actually available in your experience. Is that right?---Yeah.

20 So why was it that the Australian Clay Target Association proposal was one that was a sufficiently strategic project or sufficiently high priority project that it should get money as distinct from no doubt many other proposals that could have been put forward for funding or many other proposals that could have been the subject of funding?---I, I think three things. Daryl Maguire had been a strong advocate of the project for a sustained period of time. I visited the site and having visited the site, seen it with my own eyes, spoken to the operators, I was confident that there was, a project could be delivered. And the third thing was the presence of the World Championship event in 2018.

Why is the fact that Mr Maguire was a strong advocate of the project of particular significance in circumstances where I thought you said earlier, he was one of a class of MPs of a similar kind who would be similarly, what I might say, assertive in relation to their local area?---It's, it's a local MP's job. I think in the underspends of this year we've probably funded other sporting projects from other MPs.

30 No doubt it's a local member's job, but when I asked you to identify the particular reasons as to why this was a strategic project, the first one you identified was Mr Maguire. Obviously enough, as you have just pointed out, every member of parliament, if they're doing their job properly, will be an advocate for their local area. Why was the fact that Mr Maguire was a strong advocate for this particular proposal a factor of significance in deciding whether it was, to use your phrase, a strategic project?---I, I think, to be clear, my reference to Mr Maguire was through his role as an MP. The significance of this project, from its strategic perspective, is definitely to the sport of shooting and definitely its location in regional NSW.

40 But what I'm trying to understand is why does Mr Maguire's project – I withdraw that. What I'm trying to understand is, why does this project, as part of its consideration as to whether it's a strategic project or not that might be the subject of funding towards the end of the financial year, why is the fact that it's Mr Maguire putting it forward, as opposed to some other member of parliament, why is that a relevant factor at all? Why isn't it just

about the kinds of merits issues that you and I have discussed this morning?
---Well, it is but I think it's, I think it's remiss to suggest that ministers
won't listen to the advocacy and advice of local members.

But not just Mr Maguire, any local member presumably.---That's correct.

10 So what makes Mr Maguire special in this scenario, why is that a factor that
counts in favour? Because presumably the other projects that you could
have funded, but didn't, would also have local members who, if they're
doing their job properly at least, would be advancing those projects.---And,
no we, we'd done that. We did that through the course of our budget. We
did that with that underspend that year.

20 Well, then I still don't understand why the first of the matters that you
identified as being matters that led to you regarding this proposal as a
strategic project, was Mr Maguire's advocacy? How does that set this one
apart, or how does that count in favour of this particular proposal?---It's just
part of, it's, it's part of the, the process in which I'm considering all of the
projects that I've got. He's a local member, I'm not seeing him any
different to anyone else.

So are you saying that in relation to other proposals there were local
members who were not supportive of proposals in their area?---No, I'm
saying there are other projects that we funded.

30 No doubt, but I'm just trying to understand why Mr Maguire's support for
this particular proposal was the first factor that you'd identified in
determining that it was a strategic project in circumstances where
presumably, in most or perhaps all cases, projects in other local areas would
have the support of their local members as well.---Yes, but I don't
understand. I think you're placing emphasis on the order in which I gave
them to you. If I was to reorder them, I'm not sure whether your
interpretation would be any different but the, at this particular point in time,
where I'm allocating a small amount of funds to conduct the business case,
that's relative to the other funds I've allocated in the underspend, which
included a number of local sporting projects in local communities, which
almost certainly would have been advocated to me by their local members.

40 It doesn't matter how I interpret it, I'm just trying to understand why it was
that you regarded this project as a strategic project, or to use another one of
your phrases, on the radar. It was in your radar in part because of Mr
Maguire's advocacy for it, is that right?---And so were the other projects
that I funded. Not by Mr Maguire but by their local MPs too.

No doubt. That was really my point before. Presumably just about every
project is going to be supported by their local member. Are you saying Mr
Maguire's support had a particular importance or factor in your
consideration?---Absolutely it did, like all of the other local members who

had advocated for projects that were also funded at this particular point in time.

So you're saying Mr Maguire's no different to anyone else in terms of the consideration of that particular factor?---No.

So that's not a factor that in the result ultimately helps this proposal, is this what you're saying, because whether it be a project in Wagga Wagga or anywhere else, it's likely to have the support of the local member?---Yeah.
10 The most important factor about this project proceeding is that I determined it has merit.

Well, that's really what I'm trying to focus on, that – are you really saying this, if you had an opportunity to answer that previous question again, Mr Maguire's support might not be number one, it might be somewhere else on the list?---Yeah, that's correct. My, my emphasis on this project was I thought it had merit. I thought it played – the project itself had merit. I thought it played an important role for this particular sporting organisation. Its regional location was attractive to me as well, and it had the strong
20 support from the local member. Might be a better order to put things in.

Now can we go, please, to page 279 of volume 26.0, and use the redacted version of that document, please. I'm going to show you a briefing document, which might assist us in getting some timing around this issue. If we zoom in to the top half of the page, please. Do you see there the briefing to you says, "As at the 22nd of June, 2016, funds of \$1.5 million are available in the Office of Sport recurrent budget, and \$900,000 is available in the Sport and Recreation Fund." Do you see that there?---Yes.

30 And then underneath the heading Key Information, it says, "Uncommitted funds are available to support a number of sport facility projects." Do you see that there?---Mmm.

And so is that the kinds of uncommitted funds you were referring to before that, at least as a matter of practice, towards the end of a financial year, one will look around for, what is sometimes referred to as hollow logs, uncommitted funds that are available to be spent before the end of the financial year?---That's what this briefing is. The key information is the department's advice, but obviously I have the ability to direct those funds.
40

When you say the key information is the department's advice, what are you there particularly referring to?---Well, I don't, this phrase that says uncommitted funds are available to support a number of sport facility projects that selected state sporting organisations and councils have identified as a priority under the Future Needs of Sport Infrastructure, I think it would be incorrect to interpret that, those funds that are listed in the Sport Facility Fund would only be applied to FNOSI projects.

In effect is what you're saying that ultimately for you as minister, you get to decide where these uncommitted funds go to, whether or not they're ones that have been identified as a priority in the FNOSI study?---That's correct.

And if we then go to the next page. So we've redacted the individual sporting organisations' names, other than the Australian Clay Target Association. You see there "Australian Clay Target Association business case, \$15,000" towards the middle of the page, and then another \$25,000 towards the bottom of the page. Do you see that?---Yes.

10

So is it consistent with your recollection that you approved the provision of \$40,000 – 15,000 plus \$25,000 – to the Australian Clay Target Association for the purposes of producing a business case?---Yes, that's correct.

Now, why was it that the government was giving money to the Australian Clay Target Association to prepare a business case which is going to inform the government whether or not it gives more money? Why wouldn't instead be a matter for the Clay Target Association itself to prepare its own business case?---At the time I actually thought we were approving funds for the Office of Sport to conduct that business case. But as it, what I think Office of Sport did was allocate that fund to the Clay Target Association to, to conduct that business case.

20

But to be clear, the Australian Clay Target Association proposal, as you understood it, was a proposal for the government to give money to that organisation to build a facility for itself, is that right?---That's correct.

This isn't the government taking on the responsibility of building and operating, owning and operating a facility itself, correct?---No.

30

So why is the government spending \$40,000 to work out whether it spends more money for the benefit of a private organisation like the Australian Clay Target Association?---Well, we would, it's a regular process here for a minister who's going to appropriate funds to a non-government agency to make sure that there's some value for the taxpayer that comes from that. We fund not-for-profit organisations and sporting clubs on a regular basis, and in fact councils are considered recurrent funding, so any council project would have gone through the same process.

40

That's no doubt right, but why is the government paying for the document to identify whether the government should give more money? Why didn't you simply turn around to the Clay Target Association and say, "This project looks pretty good to me. It might have tourism benefits. I'm particularly disposed to it, but you need to demonstrate to me that this is money worth spending"?---I, from recollection, I think there was a question mark about whether they would have the ability to fund that. But we were already thinking about this as a future budget submission. Whether, whether we were going to take that forward separately or put that forward

into our next round of NPPs, we would have needed to validate those costings with a business case.

But you remember one of the previous letters indicated that of the \$6.1 million in funding that was sought, ACTA was proposing to put forward \$1.2 million. You remember seeing that?---Yes, yep.

10 So at least \$1.2 million to contribute to a large building project but, what, not \$40,000 to prepare a business case to support the government paying some many millions of dollars for its benefit, is that what you're saying?
---Well, I think it's, it's a, the, the point around the club is a, is a reasonable one. I, the, for me the priority was here validating the funding. I didn't see any reason why we – in fact, my recollection of this business case was that the Office of Sport was going to conduct the business case or at least commission the business case. That was my recollection.

20 But even if the Office of Sport was going to conduct it or procure it – I withdraw that. Would you agree that, at least as a matter of general practice, if a private organisation wants money from the government, it would usually be required, at its own cost, to demonstrate to the government that that money should be paid?---Not, not, not all the time. I don't think that's, I don't think that's a, a fair statement to say that that would always be the case.

I deliberately didn't say "always the case". But at least in the ordinary course, which is I think my phrase - - -?---Yep.

30 - - - in the ordinary course that's what would be expected?---I, I don't necessarily think – I think this will be a case-by-case process, and in this case we, we were always thinking, and I was always thinking, that we would need to fund the business case to be able to take the project forward.

For example, one of the funds that you administered as Minister for Sport at the time, or in fact I think Minister for Sport and Recreation, was a thing called the Sport and Recreation Fund, is that right?---Mmm.

40 If one wanted money from the Sport and Recreation Fund, could one ordinarily write in to you or to your agency and say, "I want to put together an application for funding under that fund, but can I have some money to put together that application and any supporting material?"---Well, in, in a number of funds that we utilised, we would utilise them to run research or business case or design work that would help organisations with the preparation of future submissions.

So you're saying you don't agree with me or you don't agree with the proposition or suggestion that, at least in the ordinary course, if one wants money for a sporting project for the benefit of a private organisation, that they have to put together at their own cost the application, as opposed to

government funding the preparation of the application, including any necessary business case? That's not the general practice?---I, I, I think that it's a case-by-case basis, and any minister can determine whether they want to allocate funds to support that work.

And you're saying there's not a general practice or an ordinary practice one way or the other?---No, I don't think so.

10 It just depends. There'd at least be more circumstances, at least more in terms of number of circumstances, in which a sporting organisation who wants money has to pay to prepare its own application and any supporting material, including business cases, than the government preparing, paying for supporting material such as business cases, at least in terms of number? ---True. And I, my, and I think I gave this earlier in my remarks, that I had worked on an assumption that ACTA had undertaken some form of quantity surveying to identify what the costs of the project were. So they've obviously incurred some expenses already.

20 But in terms of preparation of the business case that you considered was necessary to confirm or otherwise your intuitive views as to the potential benefits, that was a matter that you decided should be paid for by the taxpayer, rather than by the organisation itself, is that right?---Yes.

I tender the Briefing to Minister document, page 279, and 280, volume 26.0.

THE COMMISSIONER: Exhibit 443.

30 **#EXH-443 – BRIEFING TO MINISTER PREPARED ON 28 JUNE 2016**

MR ROBERTSON: I'll then just go to volume 26.1, page 1. Just to close off that aspect of the matter. 3 August, 2016. You see there a letter to you from Mr Maguire?

THE COMMISSIONER: Shouldn't that be redacted, Mr Robertson?

40 MR ROBERTSON: Just take that off the screen. Take that off the screen, please. Just pardon me for a moment, Commissioner. Were you referring to the signature, Commissioner?

THE COMMISSIONER: Yes.

MR ROBERTSON: In the version that I'll tender in a moment, that will be redacted.

THE COMMISSIONER: Very well.

MR ROBERTSON: The signature itself is not being published on the live stream. That's only to, in effect, the lawyers in the room.

THE COMMISSIONER: Very well.

MR ROBERTSON: Volume 26.1, page 1. 3 August, 2016. See there a letter from you to Mr Maguire?---Mmm.

10 Referring to the representation of 24 March, 2016. See that there?---Yes.

And then, second paragraph, "Please pass on my thanks to the ACTA for recently meeting with me and showing me around their venue on the visit to Wagga Wagga." See that there?---Yes.

And so is that a reference, at least as you understand it now, to the visit to the site that you and I were discussing a little earlier?---That's correct.

20 And then you say, "I'm pleased to confirm that I have approved funding of \$40,000 to ACTA to assist in the preparation of a business case to support its funding request for the stage 3 project." See that there?---Yeah, that's a reference to the department recommending that funding to me in the previous document you showed me.

And you making the ultimate decision that that amount should be paid?
---That's correct.

30 I take it when you're referring to recommendations coming from the department that, like, the Treasury process that you and I discussed is an iterative one?---Mmm.

Ordinarily, there will be regular discussions between, in your experience, your ministerial advisers and the agencies for which you have responsibility. Correct?---That's correct.

That will include indication from the adviser level to the department level or the agency level as to the particular desires, preferences, priorities, et cetera, of the minister. Correct?---Yes.

40 And so is it right that the mere fact that that appears in a briefing to minister document doesn't necessarily confirm that the idea of the funding came from the agency level. It just confirms that it forms part of the ministerial briefing that is provided to the minister?---That's correct. In this circumstance, this project we had discussed. It had been a project that we knew of for some time. And we had discussed whether, how we would advance the project, what options were available to us and as we approached the end of that financial year, the, you know, the, the department or the Office of Sport making those recommendations were broadly in line with

the things that we had discussed as we approached the end of the financial year on how we would – in fact, I shouldn't say “broadly in line”, were, were in line with the things that we had discussed as what would be our priorities.

10 What was the bureaucracy's view generally, by which I mean, the Office of Sport's view, the agency level view, of the ACTA project more generally, as you understood it at the time?---Well, I hadn't, I don't recall any specific objections to the facility. I'd spoken to Paul Doorn about it. We'd discussed the prospect of taking it forward either to ERC or to a future budget submission. I think it almost certainly would have been part of our early cut on our NPPs for the following year, so I think that's the, that discussion was ongoing. Iterative I think we said before.

Well, does that mean, as you understood it, you understood the bureaucracy, by which I mean, relevantly here, the Office of Sport to be supportive of the government advancing money for this particular building project?---I don't recall any, I don't recall any objections.

20 Well, does that mean you don't know what the view was, whether it was positive or negative or does that mean you understood it to be positive or - - -?---Well, I understand - - -

- - - if neither of those two things, what does it mean?---So I, well, I, I don't, I don't recall them objecting and I also recall us working with the Office of Sport, as you would expect any minister to work closely with their department to do, we would, we were already planning to take this project forward through our budget proposal process. So I'm, I'm taking that as an endorsement from the agency.

30 So is this right? As you recall it, there was no objection to the proposal of spending some number of millions of dollars of funds or advancing some millions of dollars of funds to the Clay Target Association for what I'll call the clubhouse project. Is that right?---I think at this particular point in time, we haven't made any decision to fund the project. We've made a decision to fund the business case to determine whether we have a, a project that warrants taking forward.

40 And so the answer you gave a moment ago, was that focused on the funding for the business plan as distinct from the project more generally. Is that right?---Yeah, I was, I thought this project had merit but it needed, it needed greater research or a business case behind it for me to feel confident enough to take that project forward.

Let me make sure I understand that. As at the middle of 2016, at which point you had approved funding of \$40,000 to assist in the preparation of a business case, you were particularly disposed to the merits of the project itself, by which I mean actually advancing funds for the purposes of

building a clubhouse et cetera, correct?---Yeah, I was, I was definitely disposed to that. I thought the project had merit but I didn't think we had a strong enough position to take it forward at that particular point in time.

And at that point in time what was your understanding of the view of the Office of Sport? Were they supportive, not supportive or something in between?---I think they were supportive of undertaking the business case.

10 Supportive of undertaking the business case but what about the underlying project itself of building the facility?---I don't have any recollection around what their views were about the project, but that doesn't surprise me because we would have wanted to undertake the business case before deciding whether we were going to advance this project any further.

20 At least as the middle of 2016, at least as you recall it, you were particularly disposed to the project and you don't recall one way or the other as to whether the advice of the office was in favour or against spending the substantive money in relation to building the clubhouse facility et cetera, is that right?---Yeah, I don't, I don't recall if I had a position one way or another.

I tender the letter from Mr Ayres to Mr Maguire, 3 August, 2016, page 1, volume, 26.1.

THE COMMISSIONER: Exhibit 444.

#EXH-444 – LETTER FROM MINISTER STUART AYRES TO DARYL MAGUIRE DATED 3 AUGUST 2016

30

THE COMMISSIONER: There is some water there, Mr Ayres, if you - - - ?---Oh, thank you.

MR ROBERTSON: So I take it that a business case was ultimately procured having regard to the funding that you had authorised?---Yes, that's correct.

40 And do you recall that being provided to you personally as minister or was that dealt with by others either at the adviser level or at the departmental level or perhaps both?---I recall that most of this work was done at the department and the adviser level in my office. I recall looking, looking at the business case. I recall having a good look at its final result and understanding the justifications around the BCR. So I understood what was in that but the, the business case would have worked through my department and my office first, that I, I would – well, not “would have”, I remember looking at it.

When you say the final result, what are you referring to there?---Distilling a business case down to a BCR as a - - -

When you say BCR, you're referring to a benefit-to-cost ratio, is that right? ---Yeah, yeah.

And that's a ratio, as you understand it, that identifies the benefits to the state as compared to the cost to the state of a particular proposal, is that right?---That's, yeah, that's correct.

10

It's not focused on, for example, just the electorate of Wagga Wagga or the city of Wagga Wagga, it's associated with assessing the benefits to the state as a whole, versus the cost to the state as a whole?---Oh, that would be dependent on the inputs in the business case. So you may well choose to conduct a business case based on the, the economic benefit defined to a particular region. I, that would be business-case specific what you've just described. But a, I think it's reasonable to say that a BCR, broadly talking about this, is plusses and like, there's more benefit than there is cost.

20

But you said before that you were particularly disposed to this proposal but in effect you wanted some more work done to confirm the intuitive views that you had on the proposal, and part of that, I think, was ensuring that there was an appropriate business case in place, correct?---Yep.

Such business cases identifying the costs and the potential benefits of government funding being provided, is that right?---That's correct, yep.

30

When looking at the benefits though, were you focused on – are you saying this just focused on the benefits to Wagga Wagga or were you focused on the benefits to the state more generally?---Both. I don't think they're mutually exclusive.

Certainly not mutually exclusive, but in terms of the focus of what I think you described as the final result that you were concerned about, were you concerned about the effect on Wagga Wagga only or was it about the interests of the state more generally?---Sorry, I don't think these things are mutually exclusive. I'm not saying that - - -

40

I'm not saying they're mutually exclusive. I'm asking about what your focus was on. You said you wanted to look at the final result. I want to understand what you meant by the final result. Is the final result about ensuring an overall benefit to the state, or do you not care about the overall benefit to the state versus the cost to the state and focused only on the, perhaps the City of Wagga Wagga or perhaps the Wagga Wagga electorate?---No, I think the, the, the BCR delivers a benefits-over-costs ratio. It's, I think it's reasonably crude but it is nonetheless part of a process that we put in place to put more rigour around the allocation of public funds. Those business cases will determine, at a very broad level, but they're, you

can, you can look at the benefits at a more localised level that will change how that's reported in the business case.

No doubt you can, but is this right, the focus at least of your consideration would be to ensure that the benefits to the state would exceed the benefits to – sorry, the benefits to the state would exceed the cost to the state?---Yes.

10 Go, please, to page 61 of volume 26.1. Do you see there a letter from the Australian Clay Target Association to you, 12 September, 2016? Do you see that there?---Yep.

If you have a look at the third paragraph, it says, "The business case study is attached for consideration of the NSW Government." Do you see that there?---Yep.

We'll just turn to the next page so you can see the front cover of the document.---Mmm.

20 Is that the business plan or does it at least look like the front cover of the business plan to which you drew attention a little while ago?---Yes, this is the front cover of the business case.

Do you recall receiving any advice from your agency, Office of Sport, as to whether this document was a satisfactory or unsatisfactory document in terms of analysis of whether the ACTA proposal should be funded?---I, I don't recall receiving any advice specific to this. We received this business case, and then on receipt of the business case were looking to advance the project to budget submission.

30 So are you saying that, having received the document that we can see on the screen, that was sufficient, at least in your mind, to justify moving forwards with the proposal?---Yes, the correspondence you just had on the screen, ACTA thought these figures in here were a conservative assessment. I thought they were more on the optimistic side, but I thought that the business case was a strong business case and it warranted – it was the validation that I was looking for on those costings that were put in place by ACTA in their original concept or proposal that they put forward.

40 How did you come to the view that this was a document that validated your, in effect, intuitive view? Was that one that you came to with the benefit of advice from your agency or elsewhere? Or is that just a matter that you, in effect, analysed yourself?---A combination of both. Discussion with my own staff. But that business case has a BCR of 0.23, maybe 1, I can't quite remember.

THE COMMISSIONER: I think it goes, I think there's a decimal point in between, Mr - - ?---Sorry?

It's 2.31, Mr Ayres.---Yes. Yeah, 2, so it has a BCR of 2.31. That's a strong result in any BCR, and it also clearly identified that a lot of the benefit was going to come from visitor economy benefits, which was consistent with my thinking.

MR ROBERTSON: You would agree, wouldn't you, in your experience, I think you described it as the overall result, the BCR number, is in effect only as good as the inputs that are used to get that output number?---Yes, that's correct.

10

You would have had experience, in your time in government, where, for example, BCRs change in different iterations as one changed the inputs in relation to that number?---Yes.

One of the things that you indicated that you inferred from this document, or at least a conclusion you drew from the document, that at least some of the numbers were optimistic, is that what you said before?---I said the BCR was optimistic.

20

Well, but for the BCR to be optimistic, that must mean that one or more of the inputs are optimistic, is that right?---Yeah, I think that's a reasonable inference, yes.

It's a ratio of benefits to costs.---Mmm.

30

It's simply an output. And so if the BCR is optimistic, it must follow that either the costs are optimistic in the sense that they are lower than they might be. Alternatively, that the benefits are optimistic in the sense that they are higher than they might otherwise be. Have I got that right?---Yes, and I think that, as I alluded to the ACTA correspondence there, where they thought that the inputs or the outcome was conservative, and I thought it was optimistic, and in many respects it lands somewhere in the middle.

40

Now, in answer to a previous question when I was asking you how you came to that view about it being optimistic or not or sufficient to confirm or not your tentative view or intuitive view. I've asked you whether that was just a view that you came to or whether it was with the assistance of others and I think you said both. I just want to be clear who the other part of the "both" is? Is that at the agency level or is that at the ministerial staff level or is that both?---In the ministerial staff level. I don't recall discussing this business case at length with the department.

So is this right? You have a recollection of having received the business case that I showed you on the screen a little while ago attached to a letter of 12 September, 2016, you obtained advice from ministerial advisers to the effect that this business case was sufficient to validate the tentative views that you previously had as minister. Is that what you're saying?---Yes. GHD is a reputable business. We had used them for other sporting projects

and, in particular, other shooting projects. They had done a lot of very good work on a shooting range in the Southern Highlands, which was a problematic shooting range facility. So I considered them a reputable organisation. I thought that their business case was solid even if the BCR was optimistic and I thought it gave me the validation that I was looking for so that I could take forward a proposal to either ERC or a future budget submission.

10 But that's not a view that you just came to yourself. It's a view that was informed by advice from your ministerial staffers. Is that right?---Yeah, I discussed it with my staff.

But is this right, without input from those at the agency level?---I, I have no doubt the agency would have reviewed and assessed this business case. I just don't recall the interactions with the agency. It might have been something that my chief of staff had done more of.

20 Well, did you ask the agency either directly or indirectly through your advisers as to their views on the quality or satisfactory nature or otherwise of this business case?---I don't recall what interactions I, I had there. I think after receiving this business case, I was feeling that I had a strong business case to take forward.

Are you aware that the business case itself focused on the economic, social and other benefits to the City of Wagga Wagga as opposed to the economic, social and other benefits to the state, more generally?---It, it, I recall it prioritising the benefits to the Wagga community, yeah.

30 Well, how then does that validate in circumstances where I think you accepted before that at least a significant factor in determining whether a business case validates the kinds of issues that you're talking about in terms of the final result, the ultimate outcome, is an assessment of the benefit versus cost to the state at the state level as distinct from, for example, the city level?---So I think this is a good example of why regional communities are often at a disadvantage in business cases if you're applying the principle that you remove activity from somewhere else in the state and relocate it to another part and the state has a no net gain position. This business case shows quite clearly that there's a benefit to the state but also a benefit to the Wagga community, as well.

40 But why is it in the interests of the state to do the kind of thing you're talking about, moving economic activity from one part of the state to a different part of the state?---Well, I don't believe it's doing that. I think that this project would have actually expanded the size of economic activity.

But you drew that to attention really in answer to a question I asked before about the relevance of the benefit to cost in the City of Wagga Wagga rather than elsewhere. And I thought you were saying this is a good reason as to

why you should adopt a more regional-based or city-based approach. Is that what you're trying to say?---Yeah, so, I'm, I'm interpreting that BCR as a strong return on the investment that would be undertaken by New South Wales in our state and if that, if that benefit is disproportionately allocated to Wagga, as opposed to the rest of the state, I don't have a problem with that.

10 You're referring to what you might call cannibalisation where, as a net benefit, this was your phrase before, there might actually be no net benefit to the state because there may be benefits to Wagga Wagga but they may simply be taken from, say, Albury, are you saying a scenario of that kind, at least in your mind, is sufficient to support the project, validation I think was the word that you used before. Is that what you were trying to explain before?---No. I'm saying, I'm saying that this business case provides a strong BCR, which means we obtain more benefits than the costs that we are putting in place and that is the main justification for why I want to continue advancing this project.

20 Did you ask or receive any advice as to whether the business plan attached to the 12 September, 2016, document had been prepared in accordance with Treasury guidelines?---I don't recall doing that, no.

30 Isn't that something that you'd be interested to know in deciding whether to take this matter further?---At this stage, I'm, I've, I feel like I've got a strong business case that I want to take forward. I've got a project in regional New South Wales that I think will deliver a good outcome. We've invested money in a business case to determine particularly a validation of costs and a validation of whether there is a return on that investment. This, this business case does that. And I'm, I'm, I'm now thinking about taking that forward.

I tender the letter from the Australian Clay Target Association to Minister Ayres, 12 September, 2016, page 61 and following of volume 26.1.

THE COMMISSIONER: That will be Exhibit 445.

40 **#EXH-445 – LETTER FROM AUSTRALIAN CLAY TARGET ASSOCIATION TO MINISTER STUART AYRES DATED 12 SEPTEMBER 2016**

THE COMMISSIONER: Is this a convenient time to take a short adjournment, Mr Robertson?

MR ROBERTSON: Yes, Commissioner.

THE COMMISSIONER: We're just going to take a short adjournment for some morning tea for 15 minutes, so if you return at 11.20.---Thank you, Commissioner.

We'll now adjourn.

SHORT ADJOURNMENT

[11.06am]

10

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Can we go back, please, to page 279 of volume 26.0 and go to the unredacted version of that document, please? Mr Ayres, I'm just going to take you back to the briefing to you of 24 June, 2016. I just want to ask you a further question about this document. Do you remember I showed you this before the morning-tea adjournment?---Yes.

20

This was the briefing before the end of the financial year in relation to the uncommitted funds. If we could then just turn to the next page, I'm going to show to you, although not through the live stream, the individual projects. Can you see now a version where you can see the various projects that you approved funding with respect to?---Yes.

Now, they include the Australian Clay Target Association but there's a series of other projects in the – I think the maximum we were see there is about a quarter of a million dollars, the second-to-last one under the Sport and Recreation Fund. Do you see all of that?---Yes.

30

How many of these projects, other than the ACTA project, were funding for a business case or a benefit-to-cost ratio?---Looking at this list, just reading through them, these, most of these, all of these projects, outside of the ACTA business case, are for local infrastructure with the exception of, looks like, the NSW Rugby League Summit in Yamba, which might have been a professional development activity and the Macintyre Warriors Rugby League looks like it's an event, perhaps a rugby league event, I'm not quite sure, maybe Indigenous but I would be surmising a bit there.

40

So does that mean that the only one of these projects, at least insofar as you can recall, that involved a funding to prepare a business case was the one for the Australian Clay Target Association?---Looking, looking at this, yes, they are either events or local sporting community infrastructure.

As at the time that we're talking about, when you were minister, Mr John Egan was a director within the Office of Sport, is that right?---Yes. John was a director.

Can we go, please, to page 6 of volume 31.0. I'm just going to show you some evidence that Mr Egan gave to this Commission by way of a record of interview. I'm so sorry, I meant volume 30.0, and we'll actually start on page 7. And here Mr Grainger, one of the investigators, is asking some questions of Mr Egan regarding the same business case that you and I are talking about. I'll just show you the top to give you some context. So I'll just zoom into the top half of the page. Mr Grainger asks, "The \$40,000 you mentioned, is there any criteria around it? It's, it's through a business case. Could it be the case that ACTA could write their own business case and keep the \$40,000 for the requirement around the agreement?" Mr Egan says, "So ACTA would not have the capacity to write a business case that would be in compliance with NSW Treasury guidelines on business cases." Can you see that there?---Yes.

Just showing you that there by way of context, but I want to draw your particular attention to the bottom of this page. Scan down to the bottom-half of the page. If you just have a look at what Mr Egan says starting at line 35 using the line number on the left-hand side and I'll read it out as you're reading it to yourself. Mr Grainger asks, "Was that something that was" – withdraw that, and I'll start with Mr Egan's answer at line 33. Mr Egan says, "That one, the only one that was funded for a business case is the ACTA one." And that seems to be consistent with an answer you gave a moment ago. But Mr Grainger asks, "Was that something that was unusual?" Mr Egan says, "It is unusual for us because, under our grant program, we don't provide money to fund feasibility studies or business cases, so whether it's the Regional Infrastructure Fund or the Sydney, or the Greater Sydney Fund or any of the other ones we administer, it is our expectation that the applicant provides the business case," it says, "of the feasibility study to us, and that they fund it out of their own money." Do you see that there?---Yep.

Do you agree or disagree with Mr Egan's evidence as I've just read it out to you?---Oh, well, I, we would fund business cases on a regular basis, or research. How many of those would be for non-government entities, I'd have to, I'd have to look at decisions we'd made in the past to, to look at that.

Well, what's the answer to my question, then? Do you agree or disagree with the evidence from Mr Egan that I've just read out, between lines 35 and 40 of page 7 of volume 30.0?---Well, I don't recall how many other research or, or business case-type documents that I funded over my five years as the minister to determine whether it's unusual or not.

Well, does that mean you agree with it or you disagree with it? Perhaps you're saying you disagree with it. I draw your particular attention to Mr Egan saying - - -?---Sorry, I just, I want to be clear that I'm - - -

Just let me finish the question.---Yep.

Mr Egan saying, "It is our expectation," which seems to be a reference to the Office of Sport, it's the expectation of the Office of Sport, "that the applicant provides the business case or the feasibility study to us and that they fund it out of their own money." As Sports Minister, was it the expectation, as you understood it, of you and your agency that, at least in the ordinary course, the applicant would provide the business case or feasibility study and that they would fund it out of their own money? Do you agree or disagree with that proposition?---I, I, well, I disagree with that proposition, 'cause not every sporting organisation would have been in a position to be able to fund business cases and, in a lot of circumstances, we were either funding government-owned assets or we were, or work was being provided by councils.

Well, let's put aside government-owned assets here, because a particular context that Mr Egan seems to be talking about is applicants who are asking for money. We'll put that back up on the screen. In relation to applicants who are asking for money, by which I mean a private organisation that says, for example, we want to build a clubhouse or facility that we are going to own, do you agree or disagree with Mr Egan that it is the, it at least was at the time that you were the Minister for Sport, the expectation within government that the applicant would provide the business case or feasibility study to the government, and that they would fund it out of their own money?---Not all the time. And the reason why I say that is because local governments are not considered capital expenditure of the State Government. So a local government is treated, from a budgeting perspective, exactly the same way as a non-government entity, and not every local government would have provided a business case, and it would have been more than possible for the Office of Sport to either fund or co-fund either feasibility or business case work with local governments or any other non-government entity, particularly ones that were not for profit.

So does that mean you agree with Mr Egan's evidence provided, that there's a qualifier in there to say something like, in the ordinary course, it is the expectation of government that the applicant provides the business case or feasibility study to the government and that they fund it from their own money?---I'm reluctant to say that's in the ordinary course 'cause there's such a disparity of different types of sporting organisations. Some are very small, some are larger, some have got more capacity to do that than others.

So you say that there's no expectation one way or another, as a matter of ordinary practice, in relation to the issue that Mr Egan is referring to on this page of his record of interview, is that right?---Well, I don't recall me exercising that as a minister during my time in that portfolio.

You don't recall you having that expectation, is that what you're saying?
---Yes, yep.

And you don't recall your agency having that same expectation, is that right?---Oh, they may well have had that expectation in the way that they communicated to people, but it wasn't something that I did.

They may well have had that expectation, but it was not an expectation that either you had or that, as you understood it at the time, the Office of Sport had?---I, I don't recall whether the Office of Sport communicated that expectation to organisations. But from my perspective as the minister, if I wanted to engage with a non-government entity or a local government to help produce a feasibility study or a business case, then we would have, we would have been in a capacity to either fund that or co-fund it.

I'm not suggesting that there's no potential exceptions to the expectation, and of course, as minister there may well be guidelines and you may take the view that in the particular case there are appropriate circumstances to depart from the expectation or ordinary practice, but I just want to be clear as to what you say in relation to Mr Egan's position. I think what you're saying, tell me if I've got this right or wrong, is that you didn't have – as minister – you didn't have an expectation that the applicant provides the business case or feasibility study to government and that they fund it out of their own money, is that right?---Not as a general rule because of the diversity of sporting organisations that exist across the state. Small organisations that have limited funds are vastly different to say, the NRL, so you've got to have enough flexibility in how you're engaging with these organisations.

Did you have – and do I take it from that that you didn't have some kind of a stock standard approach as minister to advise people who might ask for money for feasibility studies or business cases or business cost analysis, you didn't have a general approach or a standard approach of writing back and say, "That's not the kind of thing that we fund within the Office of Sport"? ---Our standard approach to responding to people was to direct them back to funding pools that were available for application. Outside of that, it would have been through engagement with communities or community organisations, sporting clubs, local governments, local MPs about whether there was anything that we needed to look to fund out of our own budget.

So is this right, you're saying that there wasn't a standard approach in your office to the effect of saying, "The Office of Sport does not fund these kinds of business cases, feasibility studies, things of that kind"? It was all completely on a case-by-case basis?---Definitely more case by case, but we would have had our standard piece of correspondence when people were applying, well, or seeking funding to direct them back towards the funds that were available for people to make application to.

So are you saying where someone writes in and says, "We need some money for a feasibility study, business case," et cetera, the standard response at a ministerial level would be, "Well, don't ask us for specific

money in relation to that. Why don't you have a look at this grant program or that grant program or that program?" Is that the idea?---I think it was probably similar to some of the earlier correspondence that we put up today.

I just want to make sure I've got that right. Is that what you say the standard approach was as Minister for Sport? If someone says, "I want some money for a feasibility study, business case," or the like, "I'm not just giving you money, I'm not just cutting you a cheque, but go and have a look at this grant program or that grant program or that grant program"?---Or
10 engage through the Future Needs of Sport, which would have opened up opportunities for the Office of Sport to learn more about projects where we established an infrastructure unit inside the office as well, so.

And so not to simply say, "No, no, we don't fund those sort of things. Here's a series of potential routes in which you might be able to fund a business case, feasibility study," et cetera?---Yes, the course of action would be to route people back to funds that were already appropriated and allocated or to make application to those funds.

20 But I just want to make sure I've got that right. Have I got it right? As you understood it, the standard approach, it wasn't to say, "No, no, we don't fund business cases, feasibility studies," et cetera. If someone writes to you and says, "I need money for a business case or feasibility study," the ordinary approach, accepting that it might change on a case-by-case basis, is to say, "Why don't you have a look at this grant program or this grant program or speak to this agency" or so on and so forth?---Yes, standard practice would be to direct people back to what was already in the published grant programs.

30 So I've basically got that right, do I?---I think so, yes.

Can I just show you what Mr Egan said when he was asked a similar question, so Mr Grainger says, "So what was the difference here?" Do you see that a line 41 at the bottom of the page, do you see at the very bottom of the page, Mr Ayres?---Yes.

And if we turn the page, zoom into the top half, Mr Egan says, "The difference here is that the minister wished to fund a business case." Mr Grainger asked, "Okay is there any guidelines around that? Is it a policy
40 document you refer to before, stating you don't fund business cases?" Mr Egan says, "Yep, so when you do our guidelines for individual grant program, we specify what actually our," I'll do that again, "specify what our actually projects and what our not-eligibility projects, and also over the years people have written into the different ministers and said, 'Could we have funding for a business case,' our stock standard answer in all the ministerial letters is that the Office of Sport does not provide funding for feasibility studies and business cases." Do you see that there?---Mmm.

I take it you disagree with Mr Egan's evidence in light of your answers earlier, is that right?---Oh, well I, I do disagree but I, what I would say here is that I don't recall all of the forms of correspondence that would have gone back. What I don't disagree with is his first line about me wishing to fund the business case.

I tender page 7 and page 8, lines 1 through to 10, record of interview of Mr Egan, volume 30.0 of the Public Inquiry brief.

10 THE COMMISSIONER: Exhibit 446.

#EXH-446 – RECORD OF INTERVIEW OF JOHN EGAN

MR ROBERTSON: Could you go back now to volume 26.1, page 61, which is where we got to before the morning adjournment? So this is the cover letter that I showed you at the morning adjournment covering the business case. And I think your evidence this morning, just confirm that
20 I've got this right, is that that business case was, at least as you saw it, sufficient to validate the intuitive view that you had as to the merits of this particular project, is that right?---Yes.

And that's a view that you came to with the benefit of ministerial advisers but not at least directly any advice from your agency, the Office of Sport, is that right?---No, I don't recall discussing it with the department.

So now that this project is validated, at least in your mind, what steps if any did you take in relation to the project, as in the ACTA project?---I asked my
30 chief of staff to have a Cabinet minute prepared for us to take it to an ERC meeting before the end of the year.

Now, why did you ask your chief of staff to adopt that approach of preparing a Cabinet minute as opposed to adopting, for example, the new policy proposals approach that you and I discussed this morning?---Oh well, one, it's my prerogative, I'm a minister and I choose where allocation of funds go.

Certainly your prerogative. I'm asking you why you have exercised that
40 prerogative.---Yes. So, main reason was time limits of construction of the project. The 2018 World Championships was looming large and the ability to try and have this project completed before then would, or have that project completed and available for that event would have made that event much better. So we were looking to take the business case that we had, put forward a Cabinet submission for funding. It, it was at the back-end of that year, so we thought that we had a good chance to get onto an ERC agenda with a business case, which we didn't have before and we prepared that Cabinet submission and took it forward.

I think you said in that answer you thought that having the clubhouse would make that event much better. Do we take it from that that as at the time that you asked for the ERC minute to be prepared, as you understood it, the event had already been secured and the building was a nice-to-have, in my terminology, rather than a must-have?---Yes. So at this stage we knew that the event was going to take place at, in Wagga. So, advancing from this point, we were about enhancing the amenity of that facility, having a World Championship event with a better-quality amenity would have been a good thing.

So in putting the ERC minute together, you weren't attempting to say to your colleagues we really need this money so that we can build a facility so as to secure an event that isn't otherwise happening, rather it was to have a better facility in place for when the event is going to happen, that event happening in any event?---That's correct. And this is a pretty regular occurrence in sport, from the Olympics right down to Clay Target World Champion shooting facilities. We tend to find infrastructure gets allocated in line with events and then the community derives that material benefit over a longer period of time.

But for the Olympics, for example, it was necessary to build particular facilities in order to successfully host the Olympics, correct?---Yes. I think, to be clear, events create a point in time where the delivery of infrastructure for the benefit of that event, not to secure it. I'm not making a comparison to say that this project required these funds to be allocated to secure the event. We already knew that ACTA had secured the event. We were just merely trying to utilise this facility to enhance what the amenity would be at that facility for an International World Championship event.

So are you in effect saying that the fact that the event was forthcoming within relatively short order was the reason why you chose to exercise your prerogative, to use your phrase, of invoking what I'll call the ERC process, as distinct from what I might call the more traditional new policy proposal process.---Yeah, timeliness was a critical factor there.

It was a critical factor not so as to secure the event, but with a view to having a nice large facility there when the event is going to happen in any event, is that right?---Yes, so there's two things at play here. One is the project in my mind is a project of merit. I now have a business case from a reputable business that has worked with the Office of Sport before. I have an international World Championship event taking place in 2018. If we don't appropriate those funds in a timely fashion, whilst that event will still take place, the amenity won't, won't be improved.

But that's the reason for invoking your prerogative to go down what I'll call the ERC route, rather than the new policy proposals route, the urgency

associated with that particular event that had been secured, is that right?
---It's definitely a factor, but I also am of the view that this project will, this project can go to ERC and stand on its merits at an ERC submission.

But you'd agree, wouldn't you, that the ERC process is, in effect, an exception or alternative route, at least an alternative route to the new policy proposals process that you and I have discussed this morning?---I wouldn't call it exception. It's a pretty regular practice. At best I'd call it supplementary.

10

Well, would you accept that it's at least fairly unusual to have, as a single agenda item before the Expenditure Review Committee of Cabinet, a proposal associated with a single-digit million dollar project – \$5 million or so is a significant amount of money but is a relatively small amount of money in relative terms to a very large New South Wales budget – you'd agree it's at least unusual in your experience to have a project of that level of magnitude being dealt with as a single item before the ERC?---No, not at all. In fact, it's relative to the portfolio budget. If you don't have the flexibility in your own budget to fund these projects, you are left with
20 nowhere else to go but to ERC. It's the only other source of revenue.

Well, another way to go, well, another way to go, it might take longer but another way to go is to, is for you to exercise your prerogative to decide that this is a proposal that should be very high up the new policy proposals list that's put forward in terms of the next budgetary process? That's another approach available, is that right?---It is, but that time frame clearly wouldn't have allowed that facility to be constructed in time for the World Championship event in 2018.

30

So that then explains, doesn't it, the reason why you invoked your prerogative to go down the ERC route? It's, as you saw it, the urgency of having a good facility in place in relation to the event that had already been secured in 2018, is that right?---Yes, and I also thought the prospects of this project being funded at ERC would have been higher than had this project been in a sea of projects by multiple ministers going through the wider budget process.

40

And is that because when one puts a new policy proposal through the ordinary budget processes, one needs to compete against, as you put it, a sea of other proposals, whereas if you put a single project up, it's, in effect, an up-or-down vote as to that particular project, rather than a comparison between other projects in respect of which money could be spent?---Yeah, I think that's a reasonable assessment.

So you asked your, I think you said, chief of staff to prepare an ERC or to cause for an ERC submission to be prepared in relation to funding, is that right? You need to answer out aloud, I'm sorry.---Yes, sorry, yes. Yep, understand, sorry.

THE COMMISSIONER: Is that Mr Hall at the moment?---Yes, Chris, Chris Hall. So I think that normal course of action here would be to, I would have said to Chris, “I want to take this to Cabinet. Can you engage departments and other officers for the purposes of putting a Cabinet submission forward?”

10 MR ROBERTSON: Did you give any particular instructions as to the period of time, the urgency in which it would be necessary to prepare and submit such a Cabinet minute?---Well, we, at this particular time, we would have been nearing into a very few number of ERC submissions before the end of the year, and the timeliness around approving funds to allow for a construction time frame large enough to deliver that, long enough to deliver that facility would have been high in my mind. So there would have been very few ERC options available from – I think we’re talking September/October now. We’ve only got November and December as the options left. And in September/October we’ve probably already missed the November meeting.

20 So at September and October, you’d already missed the November meeting. Why?---In attempts to, or like when you prepare the Cabinet submission where you, where possible, you should try and provide time for that submission to be presented to, to the Treasurer and to the Premier, or go, yeah, upload it in our eCabinet system for it to be put on the agenda, there’s, you can’t just drop a minute in unless you’ve got approval from the Premier or Treasurer.

And so is this right? To get a matter on the agenda of the Expenditure Review Committee, you require approval from the Premier or Treasurer. Is that right?---So - - -

30

THE COMMISSIONER: I think he said “and”.

THE WITNESS: Sorry?

THE COMMISSIONER: I thought you said “Premier and Treasurer”?
---Yeah, I, I think you, the, the ERC agenda is controlled by the Treasurer, but no doubt the Premier has a substantive influence over how that ERC agenda is formulated and you, you have to propose Cabinet minutes and the Treasurer will determine whether they get on the agenda.

40

MR ROBERTSON: So in your time in government, the Treasurer has been the day-to-day chair of the Expenditure Review Committee of Cabinet. Is that right?---That’s correct.

It’s within the gift of the Treasurer to put something on or take something off the agenda subject to obviously enough the Premier?---Yeah.

So if you want to get something on the agenda as a minister, you need to get the Treasurer to agree for it to get on the agenda. Is that right?---Yeah. And that, that activity would be, that activity can be quite passive in that you just upload to the eCabinet system your proposals, it effectively gets logged in the system and then there's often discussion amongst staff about, you know, what's in that minute and whether it proceeds or not or, yeah – sorry. That's, yeah, that's the main process.

10 You said a moment ago that once you hit September, you've probably missed the October and November ERC meetings. Is that right?---Yeah. I think we were, we would have been, it's hard to recall exact dates but it probably would have been quite difficult in October to be able to make the November, unless we were finalising something, you know, relatively quickly.

THE COMMISSIONER: Well, you got this on 12 September, Mr Ayres. ---Mmm.

20 You got this on 12 September.---Got the business case, Commissioner?
Yes.---Yes. And I think we've taken some time to assess it and read it.

MR ROBERTSON: But is this right? The reason why if you're in September, there might be a risk as to whether or not you can get something on an ERC agenda in October or November is because at least as a matter of ordinary practice, there's a procedure of inter-agency consultation in relation to submissions to either Cabinet or a committee of Cabinet. Is that right?---There's as a normal course of practice, it doesn't exist for every minute but it is a normal course of practice.

30 Well, just to understand that, can we go to Exhibit 378, please? Exhibit 378. I'm going to show you a floater diagram which I think is consistent with what you've just been seeking to explain. And this is a publicly available document identifying what's described as the current NSW Cabinet system. And do you see there, Mr Ayres, that there's a series of steps identified above the red line in eCabinet as to the process for putting together a proposal, draft submission and final submission, lodgement, et cetera. See that there?---Mmm. Yes.

40 And what you can see on the screen is consistent with your experience of the practice of putting forward submissions to Cabinet or committees of Cabinet. Is that right?---These days vary quite substantially, I think, from minute to minute. So five days, two days, six days, I, I, I, I largely have been operating on a sort of four week and two week arrangement that if you want to be on a Cabinet minute, I haven't actually seen this flowchart before but I just work on, and my staff work on the basis that you engage with the, with other ministers, particularly the, in this case, the ERC, the Treasurer

about getting on the, on the ERC agenda but you would normally try to do that in a sort of two or four week advance notice.

So at least in the ordinary course, you would want a period of about four weeks or so, perhaps longer to get from the point of draft submission to ERC or another committee of Cabinet or perhaps Cabinet itself and the actual meeting itself?---Yeah, and some, some minutes are much shorter time frames. Other minutes are, are much longer.

10 No doubt it'll change, it'll depend on the circumstances but at least as a matter of general practice from your perspective, four weeks is, as it were, the default time. Might be longer, might be shorter depending on the - - -? ---Yeah, I think four weeks if probably a general assessment, yeah.

Depending on the particular circumstances.---Yeah.

When you say four weeks and two weeks, the reason you've identified two dates is to allow time for interagency consultation, is that right?---Yeah. That is a part of the internal Cabinet process, yeah.

20

And if we put that document back on the screen, if you have a look underneath the red line when it comes back up, there's a reference to what happens outside eCabinet. See the little box called Pre-Draft? It says "Policy planning, project management, research data collection, analysis, impact assessment, targeted consultation." Do you see that there?---Ah hmm, yes.

Ordinarily, at least in your perspective as a minister, that kind of work would be done in advance of even a draft submission being uploaded to eCabinet system, is that right?---If a minister wanted it.

30

Well, what I'm putting to you for your comment is whether, from your perspective as a minister, you would expect that kind of work in the ordinary course to be done before a draft submission is uploaded to the eCabinet system?---Yes, but I'm also clear that's entirely at the discretion of the minister.

No doubt the minister might take a different view in a particular case, but I'm asking you about ordinary practice at the moment.---Yeah.

40

You're agreeing with me that a matter of ordinary practice, that's what you would expect, correct?---Yes.

And in relation to the ACTA proposal, had the kind of policy planning, project management, research, data collection, analysis, impact assessment and targeted consultation that you as a minister would ordinarily expect to be performed, had that been performed at the time that a submission was uploaded in relation to the ACTA proposal?---No.

Why not?---Because I didn't feel it was required.

Why not?---Because I had a business case that had a BCR of 2.3 and supported a project that I thought was meritorious.

10 So you had reviewed the business case with the assistance of your ministerial staffers but not with any direct input at an agency level and you're of the view that that was of a sufficient standard to support the ERC making a submission – to support you making a submission to the ERC, is that right?---Yes. I, I don't actually need the business case to go to ERC, the business case, in my mind, validates my proposal.

You, as a minister, are entitled to be a proponent of a suggested decision to Cabinet or a committee of Cabinet, correct?---Yeah. I can take forward a proposal.

20 At this point in time you weren't a member of the Expenditure Review Committee, is that right?---That's correct.

But despite not being a member, any minister is able to be a proponent minister in relation to a particular decision, correct?---Yes.

That's something that only ministers are able to do, not parliamentary secretaries or ordinary backbenchers, is that right?---That's correct. Only ministers can take minutes forward to Cabinet.

30 Although presumably if a backbencher or a parliamentary secretary has a particular proposal they will seek to engage with a relevant minister with a view of getting that minister to become a proponent of the particular Cabinet proposal, is that right?---If, if it requires a Cabinet submission.

If it's a thing that requires a Cabinet submission there will be other things like grant programs that are within the specific gift of the minister, is that right?---Yep, that's correct.

40 So, in relation to the ACTA proposal, is this right, from your perspective as minister, the kind of pre-drafting work, to use the language of the document on the screen, that you would ordinarily expect to be provided, or to be done before getting to the submission stage, had in effect been done because of the business case by GHD that you regarded was of a sufficient standard to support a ERC submission, is that right?---That's correct.

Did you received any advice from your agency, the Office of Sport, as to whether they agreed that that business case was of a sufficient standard to support such a submission?---I don't recall receiving that advice myself. It's more than possible that the advice of the department was given to my

office and discussed amongst my staff but I, I don't recall having any interactions about that.

Did you receive any advice directly or indirectly from Treasury as to whether the benefit-to-cost ratio that you described before as the, I think, the outcome, the core outcome had been prepared in accordance with Treasury guidelines?---I don't recall receiving that advice.

10 Just to understand the kind of material that you would have available to you for the purposes of an Expenditure Review Committee meeting in respect of which you were not a member – so at this point in time I think you accepted you weren't a member of the ERC, although as a minister could make proposals to the ERC. Have I got that right?---Yes, yep.

I take it that at least for the particular agenda item that you've put forward as proponent minister you would be entitled to attend the meeting, is that right?---Ah, yeah, that would normally be the case.

20 For the ACTA proposal, do you recall whether you attended the meeting?
---I don't recall being in the room for the decision.

Does that mean you don't recall being in the room at all in relation to the agenda item or just in relation to the decision?---No, for the agenda item.

For the agenda item at all?---Yes.

30 So you were the proponent minister in relation to the ERC decision itself. You may have been in the room or may not have been in the room at the relevant time, is that right?---Yeah, my recollection is that I wasn't in the room. I, my recollection is that I, I had the minute up. We were waiting to be called in and a decision was given to me.

40 In the ordinary course, would a proponent minister, in relation to an ERC submission, where that minister is not a member of the ERC, would they ordinarily attend, in your experience, with a particular agenda item?---Yes, however, I would clarify to say that it is also quite usual practice for non-contentious issues to be dealt with relatively quickly, and particularly if there was agreement across ERC members. If there didn't need to be any substantial discussion, ERC could resolve a decision and you wouldn't need to enter the room to prosecute the case for your submission.

And did that approach apply in relation to the ACTA proposal, as you recall it?---Yeah, that is, that is my recollection. I don't recall having this discussion inside the ERC meeting.

Does that mean you have some recollection of some indication, in advance of the meeting, that in effect you don't need to bother turning up because it

already had sufficient support amongst the members of the ERC?---No, I actually remember sitting outside the room, waiting to be called in.

So you have a recollection, in relation to this particular item, being in effect outside the room, with no doubt a copy of the submission, waiting to be called in or not called in on the particular item, is that right?---That's correct.

10 And your best recollection, is this right, your best recollection is that you were sitting out there waiting to be called or not, and ultimately someone let you know, "No need to come in. This has passed muster," as it were? ---That's correct. And that's regular. Happens on a regular basis.

Just to understand the kind of material that you would have available to you as proponent minister in the event that you are invited into the room to say, "Come into the room and put your case in support of the submission." Obviously enough, you'll have a copy of the submission itself, correct? ---Mmm, yes.

20 In the ordinary course, your staff will provide you with speaking notes, is that right?---Yep, that's definitely - - -

Points to make in advance of the submission.---Yep.

The submission may well be lengthy, but they might give you key matters to raise, is that right?---That's correct, yep.

30 Would you agree that one of the key matters to raise with your colleagues in relation to this proposal was the fact that the funding that was sought was, to use my terminology, a nice-to-have in relation to an event that had already been secured, as opposed to a must-have in the sense of we need this in order to secure the 2018 event?---If that was a point that was asked, we would have been able to clarify it. But my recollection is my Cabinet submission made clear that event was taking place.

40 Why is it something that you would only raise or draw to attention if asked? Wouldn't you agree that's a fairly significant factor on the question of urgency? One, in a sense, can understand "Big event, we can only get it if we spend money pronto," as opposed to "We've got this event in any event. It would be good to have a good facility in place, but we might spend some more time to work out whether we want to spend the money in Wagga Wagga as opposed to somewhere else, such as Albury."---Well, the, the event wasn't contingent on the project. The event - - -

That's my point.---Yes, but the event wasn't contingent on the project. The ERC Cabinet said that.

What I'm suggesting to you for comment, or putting to you for comment, is whether you would agree that a matter that would be important to draw to the attention of your colleagues on the Expenditure Review Committee is the fact that the 2018 event was one that had been secured such that the funding was a and the building was a nice-to-have, to use my terminology, rather than a must-have.---Sorry, the Cabinet submission, to the best of my recollection, made clear there was an event on in 2018. So I, why would I need to confirm that to a minister unless someone asked me?

10 Well, really what I'm asking is whether you saw that as such a significant point – and maybe you don't – but such a significant point that, if you were presenting on the matter, you would want to draw that to your colleagues' attention.---I think it was already in the minute. And had I, if there was any confusion about that – because I think it's, yeah, if there was any confusion, we just would have clarified that the event was already happening.

But only if it was asked because I think you're saying you thought it was sufficiently apparent from the papers that had otherwise been prepared. Is that right?---Yeah. The minute, from the best of my recollection, said there was an event on in 2018.

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Now, I take it in relation to the minute or the Cabinet submission itself, it wouldn't be within the gift of people within your ministerial office to decide on their own account to prepare an ERC submission. That's something that is within, as you see it, your prerogative as a minister. Is that right?---Yes. So the submissions that I put forward are mine, yeah.

30 The submissions you put forward are your but even the idea of preparing or not an ERC submission, that's not something that at least in your ministerial offices anyone would go away and do without a direction on your part? ---Normally, what we would do is utilise the department for early stage drafting of a submission. That submission could be, could, could go forward with, with very few changes or we could make quite substantial changes to an ERC minute. So we would utilise the department but my, my office, my office could draft an ERC minute, could absolutely do that but that wasn't common practice.

40 I'm directing to something slightly different, really the start of the process. Is it the case that, at least in your ministerial offices, one wouldn't start the process of preparing an ERC submission without your direction as minister. It's you that gets to decide I want to deal with this particular proposal as an ERC submission?---Yeah, my chief of staff might start the process rolling on something that he could anticipate I would want to do but in most cases, the preparation of a, a, a Cabinet minute would have been something that we discussed and most likely between me and my chief of staff, yeah.

At least in most cases, your chief of staff wouldn't give a direction or request to anyone to prepare a draft ERC minute for funding absent you

giving a direction as minister for that to take place. Is that right?---It's, it's unlikely but Chris and I, Chris, my chief of staff, was a pretty intuitive chief of staff. He knew what my directions were. He would try to get ahead of the game, so it's more than possible that he could have forewarned. We had a quite close working relationship with the Department of Sport, so had we discussed our intention to take forward a Cabinet submission, he may not necessarily have needed a, well, like, a, "Chris, please go away and prepare a submission," but if we knew that was the intention, he could have easily done that. But most likely my direction.

10

Not necessarily some formal "I hereby with a red stamp direct you to prepare the submission" but it may be from your regular discussion with your chief of staff, it's apparent to him that that's what you ultimately want and that he therefore puts things in place. Is that right?---That's correct.

And can I just try and confirm that point this way. Can we go to Exhibit 409, volume 26.1, page 144. And this is an email chain to which you're not copied but can you just have a look at the email from Mr Hall to Mr Doorn, D-o-o-r-n, of 26 October, 2016. Do you see that there?---Yeah.

20

Mr Hall was your chief of staff as of 26 October, 2016. Correct?---That's correct. Now, Mr Hall says on 26 October, "As discussed, can we get an ERC minute to build this facility in Wagga." Do you see that there?---Yes.

Do we take it from what you said before that Mr Hall wouldn't have just gone off on a frolic of his own to request that ERC minute, rather he is following either your direction or at least some sort of indication that that's the way in which you want to deal with this facility in Wagga Wagga through the preparation of a minute for consideration by the Expenditure Review Committee?---That's correct.

30

So that's 26 October, 2016. What's your recollection of your next involvement in relation to the ACTA project?---Well, we're, the next thing I'm doing is taking an ERC minute to Cabinet.

Well, there's a few more steps before that, isn't there. We need to get the ERC submission prepared, obviously enough?---Yes.

40 Did anything happen in the process between 26 October, 2016, or perhaps a day or two before Mr Hall says to Mr Doorn, "Please prepare an ERC minute for funding," that operated to either speed up or slow down the process? I mean, you explained before that at least in the ordinary course, you'd expect a four week process between starting the, well, between having an ERC submission and it getting before a committee of Cabinet. Was there anything that you can particular recall that caused for the process to be sped up or slowed down?---I don't recall that at all. I think at this stage this is going to be quite operational engagement between ministerial staff and the department.

Did the Coalition's loss of Orange by-election on 12 November, 2016 have any impact on speeding up or slowing down the process from the direction or request to prepare an ERC submission and it being in fact considered by the ERC?---I didn't think that was a motivating factor in my decision to take it forward.

10 But was that a matter sped up or slowed down in any way the process of, process from ERC submission to consideration by the ERC, at least insofar as you were involved?---Not in my mind, no.

Can we go, please, to Exhibit 379, volume 26.1, page 213. I'm going to show you some communications to which Mr Hall is a party or at least was a party. If we zoom in, do you see an email from Mr Doorn to a series of individuals in the Office of Sport, saying, "Chris Hall called this morning to request the OOS urgently develop a submission for ERC." Do you see that there?---Yes.

20 And then if you look at Mr Doorn's email back to Mr Toohey towards the top of the page, it says, "Fancy a challenge? MO has requested a draft ERC submission today." Do you see that there?---Mmm.

Do you have any recollection of the circumstances in which your chief of staff apparently asked for a draft ERC submission for the Australian Clay Target Association's clubhouse and site in Wagga Wagga to be drafted within a day?---I don't have a recollection, but the dates on these two emails seem particularly pertinent to me. 14 November would put us about four weeks out from the middle of December, which is when I think the ERC submission is happening, and the previous email you showed me said that
30 my office requested an ERC submission, what was it, 26 October?

Yes.---So, 14, 18 days earlier.

But how, at least insofar as you can recall it, do we draw together the event of 26 October, 2016, which is a request from Mr Hall to Mr Doorn to prepare the minute for funding, presumably the Office of Sport then at least starts the process for it to be turned around in a couple of weeks later, maybe two and a half weeks later, to say, well, we need it today?---I suspect the fact that I want to go to the ERC in December, we've given them 18
40 days to prepare a cabinet submission with a business case. We've now reached 14 November, I'm four weeks out, Chris has probably been trying to meet the submission time frames for the December Cabinet meeting.

So are you saying, doing the best you can, there was nothing in particular that happened between 26 October and 14 November that caused the process to speed up other than the fact that one was running out of time on, by 14 November to get a submission through the ordinary processes to get before the ERC in December meeting?---I don't recall anything at all that is

about speeding up, but just looking at these emails, obviously five years ago, that just looks to me like the department hasn't moved at the speed that we wanted to.

10 Did you or, to your knowledge, your ministerial staff take any particular steps to cause for this proposal to get on the agenda for the December meeting or was it more in the nature of something that you were describing before, where you just upload it and you let the system run its own course in effect?---No, I think there was discussion from my staff to Treasurer's Office staff and more than likely with the Premier's Office as well.

What's your recollection of either your discussion or at least your staff's discussion in relation to that matter?---I don't actually recall having any interactions at this stage. I'm, in my mind, this task is now going done by my staff, it's ordinary preparation of a minute, we've got a target Cabinet meeting in mind, it's the end of the year and my team is off doing their job trying to get that minute on the agenda.

20 So far as you can recall do you have any communications directly with the Treasurer, then Treasurer Berejikian, with the view to having the ACTA matter added to the agenda for the December ERC meeting?---I don't recall that interaction. It doesn't mean that there wasn't any, I'll call it incidental contact, exchange of text message, it's possible. But I just don't have any recollection of me doing that.

So it may have happened, it may not have happened, you just don't recall one way or the other?---Yep, that's correct.

30 Do you have any recollection of any indication being given to your office, your ministerial office, to the effect that you as minister needed to get involved in getting the Cabinet submission on the agenda because of the very short period of time between the submission being finalised and the scheduled Expenditure Review Committee meeting on 14 December, 2016?---No, I, no, I don't recall that, but that would be what I thought was a pretty sort of uncontentious project. So I don't recall interactions. I, it's just such a long time ago that I don't recall those small interactions.

40 So there may well have been interactions of that kind, you just don't recall one way or the other, is that right?---Yep.

Let me see if this assists. Page 32 of volume 26.2. Do you recall how long it actually took to get a final ERC submission in a form that could be uploaded to the eCabinet system, noting that it appears that there was an urgent request on 14 November, 2016?---No, I don't.

Can we just zoom in - - -?---Can you just, can you just blow that up a little bit?

Yes, no, we're going to zoom in to it right now. We'll zoom in to the bottom half. Bottom half, please. Now, this is not an email to which you're a party, but I do want to draw it to your attention. There's a Mr Broadhead from the Department of Premier and Cabinet, and he says, "As at the 5th of December, 2016, we understand that Minister Ayres has agreed with the Treasurer," that's Treasurer Berejiklian, "that a submission seeking \$5.5 million for a Clay Target Association facility in Wagga Wagga be considered by the ERC on the 14th of December." Do you see that there?
---Yes.

10

Does that assist in any recollection of any agreement that you personally reached with the Treasurer to have your submission considered by the ERC on 14 December?---No, that, that doesn't. I'm actually just reading that, interpreting that as our officers interacting with each other, not me and the Treasurer.

So is this right, it's possible that you had a direct discussion and agreement with Ms Berejiklian to have it on the agenda, and it's possible that you didn't?---Yeah, I just don't recall any.

20

You just don't recall one way or the other.---No.

And do you see that Mr Broadhead goes on to say "there'll be a one-stage process only"? Do you see that there?---Yes.

What do you understand Mr Broadhead to be referring to as "a one-stage process only"?---I think at this time the Cabinet process required or had, as a standard course, two stages. I think a, a stage where it would be circulated amongst departments and then a second stage where it would go forward to Cabinet ministers. So that's probably bypassing that first stage.

30

And so you gave an explanation before about four weeks and two weeks as the desirable approach, at least from your perspective as minister.---Yep.

That's why you identified two dates, to allow those two stages to take place, is that right?---That's correct.

I tender the email chain ending with email from a Mr Foley to a Mr Savania, S-a-v-a-n-i-a, 5 December, 2016, 6.12pm, page 32 of volume 26.2.

40

THE COMMISSIONER: Exhibit 447.

#EXH-447 – EMAIL CHAIN ENDING WITH MYLES FOLEY TO YOGI SAVANIA REGARDING CLAY TARGET FACILITY DATED 5 DECEMBER 2016 6.12PM

MR ROBERTSON: Do you have any recollection in the lead-up to the ERC meeting which occurred on 14 December, 2016 of any concerns concerning your submission emanating from the Premier's Office, then Premier Baird's office?---No, I don't, I don't recall any interactions relating to concerns. I think at this stage this was primarily being done by, by my staff.

10 So is it right that that may have occurred or may not have occurred, you just don't know one way or the other?---Yeah, I, yeah, it's possible, but I don't, I actually don't recall any interactions with, with the Premier's Office about this particular project.

Let me show you this document that may or may not assist on that matter. Page 118, volume 26.2. If we zoom in to the bottom half of the page, this is Mr Broadhead again. Same day as before, 6 December, 2016, 12.47. Do you see there it says, this is to Mr Doorn and Mr Toohey in your agency, Office of Sport. "As discussed, the Premier's Office has questioned why the Wagga Wagga clay target facility submission could not be delayed until the new year." See that there?---Yep.

20

"To allow time for market testing of costings and project planning to be completed." Do you see that there?---Yes.

And it then says, "The submission does not make a clear case as to why it requires approval before submission although discusses" – sorry, before Christmas I should say, "although discusses the broad 2018 construction deadline." Do you see that there?---Yes.

30 Does that help you at all in answering some of the questions I've asked you before about the ERC submission itself and whether or not you'd want to draw to your colleagues' attention the fact that the 2018 event, as you understood it, had already been secured?---No, I think this, I think this email actually reinforced my, what I was providing to you earlier, that our primary focus at this stage was on a construction deadline. For me, I'm looking at this email and saying, seeing that the Cabinet submission very clearly states that there's an event in 2018 and that is the primary reason for urgency.

40 But at least Mr Broadhead seems to think that the submission didn't make a clear case as to why approval was required before Christmas. Do you see that there?---Oh yes, but I think he also acknowledges the construction deadline.

So do I take it you disagree with Mr Broadhead that the submission did not make a clear case as to why it required approval before Christmas?---Yes.

And if you have a look at the second-to-last paragraph, do you see there it says, "Minister Ayres office," missing a possessive apostrophe, "may wish

to discuss the priority of the item direct with the Premier's Office." See that there?---Ah hmm, yes.

Do you have any recollection of having a discussion as to the priority of the item direct with the Premier's Office?---I don't but my staff probably did.

Well, it is possible that you discussed the priority of the item directly with Premier Baird's Office?---It, I don't recall that. It is possible but I don't recall, like I said before, I don't recall many interactions or any interactions on this issue.

So it's possible that it happened, it's possible that it didn't happen, is that right?---Ah hmm. I think this is, as I've already stated a couple of times, at this stage, I think this is very much a, a staff-member-to-staff-member discussion.

Well, save that it seems at least from Mr Broadhead's email that there are some concerns emanating from the Premier's Office, that's how you would read this email as me?---Yes, that's correct. Yep.

But in the face of that, is this right, you don't recall one way or the other as to whether you got involved directly or simply left it to your staff?---Yeah, that's correct.

Where Mr Broadhead says, "Minister Ayres' office may wish to discuss the priority of the item direct with the Premier's Office." Do you see that there?---Ah hmm.

In terms of the priority of the item, is this right, you saw it as an urgent matter because it would be desirable to have the facility in place in time for the event that had been secured in 2018, is that right?---That's correct.

Now, in terms of the priority of the item, is that the sole reason for the priority of the item, at least as you saw it, is it all about the urgency or are there some other matters that were informing you in terms of the priority of the item?---No, I think that's, that's -- I don't know who Mr Broadbent is but -- or Broadhead, sorry -- but that's his turn his phrase. I think he's just talking about how important or how urgent it is to get onto the agenda.

That's how I read his email as well. I just to confirm what, from your perspective, the priority of the item was and I think your evidence, but tell me if I've got it wrong, is the priority of the item was the desirability of having the facility in place for the event that had been secured in 2018, is that right?---That's correct, yes.

It wasn't a priority because, for example, the coalition had just lost the Orange by-election, is that right?---I've said a couple of times that that wasn't a dominant thought in my head at all about this project.

It wasn't something that informed your consideration as to the priority of the item, is that right?---Well, I, I, I think, based on the documents that we've seen today, I had already started to advance this project before the Orange by-election, which I can't even remember when that actually was.

The Orange by-election was in the middle of November, specifically 12 November, 2016, although the result of that by-election wasn't known for at least a few days if that assists at all.---Yeah.

10

But you're drawing attention to the fact that the election itself occurred at a time after, it seems, that Mr Hall, your chief of staff, first asked for the minute to be prepared in relation to the Wagga Wagga project?---That's correct.

Is that what you were drawing attention to before?---Yeah.

And if we then just scroll up the page, we've got a Mr Landrigan, L-a-n-d-r-i-g-a-n.---Yeah.

20

Who's Mr Landrigan - - -?--- Landrigan - - -

- - - at least as at December 2016?---Yeah. Marc Landrigan is an adviser in my electorate, in my ministerial office at the time and acted as a sport adviser.

30

So was he then, in effect, the main point person within your office in relation to this project?---No. Him and Chris would have worked closely together. Chris probably would have done most of the interactions with the Treasurer's Office and the Premier's Office but there will be some, almost certainly some interactions with, with Marc, as well.

Who would have prepared, for example, any speaking notes or the like prepared for you as proponent minister?---Marc and Chris would have done that.

40

Possibly with some input or assistance from the agency?---That's correct. Perhaps a first draft of those notes would have come from the agency and then my office would have added or changed anything that they felt was relevant.

And is that, as you've just explained it, is that a fairly standard practice that at least a draft of speaking notes for that purpose would be prepared at the agency level but that they would often or at least not unusually be added to or amended at the ministerial level?---Yes, 'cause they're, they're minister's speaking points, not department's speaking points.

And so whilst the department might, for example, be able to provide input as to some of the background and the facts and the like, you might want advice as to further things you might want to say to your colleagues with a view of making sure you get the proposal over the line?---Yeah.

If you have a look at what Mr Landrigan says to Mr Hall at 4.31pm. He says, "Was there any deadlines for the funding that would make this a bad outcome?" Do you see that there?---Yes.

10 I take it your answer to that question, at least sitting there now, was at least as you saw it, the desirability of having this facility in place as at 2018 in relation to the event that had been secured on that date. Is that right?
---Yeah, based on, that's what we're looking at here. Yeah.

I tender the email chain ending in the email from Mr Landrigan to Mr Hall, 6 December, 2016, 4.31pm.

THE COMMISSIONER: Exhibit 448

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#EXH-448 – EMAIL CHAIN ENDING WITH MR LANDRIGAN TO CHRIS HALL REGARDING WAGGA WAGGA CLAY TARGET FACILITY SUBMISSION DATED 6 DECEMBER 2016 AT 4.31PM

MR ROBERTSON: Can we then please go to Exhibit 393, in fact, before we go there, I'm sorry, so are you saying you don't have any recollection of any involvement after the ERC submission had been directed to be prepared as to the question of whether the matter would be on the agenda or not?

30 ---No, I don't, I don't have any recollection. This time of the year is a pretty crowded time of the year, so I'm probably utilising staff to do a lot of this administrative work. So I don't, I don't recall any interactions.

Do you recall any interactions where it was drawn to your attention any concerns within Premier Baird's Office regarding this particular submission?---No, I don't recall that, either.

40 You have any recollection of any concerns within anywhere within government as to whether or not this particular proposal went against the principles of sound economic management?---No, I don't.

Did you and Mr Maguire have any particular deal or arrangement in relation to this submission?---No.

Did you and Ms Berejiklian have any particular deal or arrangement in relation to this submission?---No.

Did you ever speak to her directly about this submission or did the submission simply go in in writing?---I don't recall having any interactions with her.

Is it possible that you did but you just don't recall one way or the other?
---It's possible, just through the normal course of interactions between a minister and the Treasurer.

10 But are you saying your recollection is that your only involvement in getting this submission over the line, as it were, was to direct that the submission be prepared and to authorise the final submission for uploading to the eCabinet system. Is that the only recollection that you have?---Yes, because I'm thinking that if there was any discussion around this, it will happen at ERC.

So your involvement, is this right, so far as you recall it, your involvement was only within your ministerial office and your agency to get the ERC submission prepared, you request that, you presumably sign off on the submission itself?---Mmm.

20 You're sitting outside the room, at least so far as you can recall it, ready to make a case in favour of the submission but you're not, is this right, you're not in the background lobbying or speaking to the Premier's Office or speaking to the Treasurer's Office or doing anything along those lines at least insofar as you can recall?---Yeah, I think as I've said a couple of times, I think by this stage we're in Cabinet submission format, preparing the Cabinet submission and there's what I would just describe as the usual course of discussion amongst ministerial officers about having this project on the ERC agenda.

30 But you say, so far as you can recall, you had no involvement yourself directly in causing for this particular item to get onto the agenda in the middle of December 2016, is that right?---Not any more than the directions that I'd offered my staff to say, "Prepare a Cabinet submission, I'd like to take it forward."

40 Well, let me be quite clear about what I'm asking. As best you can recall, you had no involvement yourself – and the reason I add the word "yourself" is I'm excluding, for the purposes of this question, the possibility that your ministerial staff may have had involvement in this matter – but in terms of your involvement yourself, so far as you can recall, you didn't have any direct involvement with the Treasurer, the Treasurer's Office, the Premier or the Premier's Office in relation to this particular proposal?---I don't recall that at all.

It's possibly you did but you don't have any particular recollection of that, is that what you're saying?---That's correct.

No doubt, your desire of having the matter on the agenda on 14 December, 2016?---Yes.

You made that desire clear to your ministerial staff, correct?---Yes.

They no doubt took some steps in aide of that desire of their minister, correct?---Yes.

10 But you're saying, as best you can recall, you didn't have any direct involvement beyond giving directions indications, requests, et cetera within your ministerial office, is that right?---Yes, I don't recall that, I've said I think a couple of times now, there may well have been incidental contact but I have no recollection of it.

There may have been some contact, you don't have any recollection of any contact of that kind, including any direct contact along the lines that Mr Broadhead was at least suggesting that you might want to engage in either directly or possibly through your ministerial office?---Yes, that's correct.

20 Can we go please to Exhibit 393. I'm just going to show you an email from Mr Landrigan to Mr Hall and another 14 December, 2016, do you see that there?---Yes.

It's 2.28pm the ERC is on the same day 14 December, 2016?---Yes.

If we then turn two pages, please, have a look at the third dot point there. Do you see there a reference to the urgency with the championships in March, 2018, do you see that there?---Yes.

30 So that was the priority that you would have put forward in the room had you been invited into the room, is that right?---Yes, that's correct.

Just on that question of the room, are you saying it's quite possible you were in the room, you're not quite sure but doing the best you can, you thought you were out in the corridor?---Yes, I just don't recall this discussion at all so I don't think I was in it.

40 So your best recollection is that you weren't in it, it's possible that you were, but doing the best you can, noting that it was some time ago, you think that you were probably sitting there eagerly awaiting to – maybe not eagerly but at least awaiting to be called upon or not?---Yes, I actually think I was waiting outside the room.

You've got sort of recollection in the back of your mind, as it were, of waiting outside the room ready to be called or not called?---Yes, with the other ministers who had their submissions ready to go.

But we see here this appears to be draft speaking notes, does this look like at

least to you as a form in which you might be provided speaking notes by your ministerial advisors?---Yes, this is standard practice whether I would, often I wouldn't use them, but they would be, particularly if we had a lot on and I needed to refresh myself before I walked into a meeting, you, a standard practice would be to put together some speaking points so you could quickly read over them and refresh your memory.

It at least gives you an easy guide on the kinds of things that you might want to say to, in this case, your colleagues within the ERC?---That's correct.

10

And so I take it that one of the things that you'd want to draw to your colleagues' attention if you're called upon is the urgency with the championships in March of 2018 as we see in this document?---Yes.

That was the core reason as to why you saw this to be a priority project, is that right?---Mmm.

If we just go back to the preceding page I just want to draw your attention to the highlighted passage.---Mmm.

20

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

Are you able to assist as to why it says it's something that only "if asked"? ---It's a pretty standard turn of phrase in preparation of talking points for – it's actually more used in media talking points, so it could just be a carryover from that. But I also think this has been put in these notes so that if a member of the Cabinet asks me whether this project, sorry, whether the event is contingent on this project, this, this is a reference point for my staff to say, "You need to advise the Cabinet that the project, the event will go ahead even if the funding doesn't."

30

But you'd agree with me, wouldn't you, that the highlighted point is a pretty important point in the ERC's consideration as to whether or not to approve your Cabinet submission?---No, because the event is, the, the event is already happening. We've already put that into the Cabinet submission.

40

Sorry, are you saying that whether or not the event had already been secured or not was not a particularly important point, at least so far as you were concerned?---No, I think it's a clarifying point. So we say in the Cabinet submission that there is a championship event in 2018, and that is, that is an important factor in making this decision. But if I'm asked, "Are these things contingent upon each other?" that's my staff member making sure I inform Cabinet that that's not the case.

So you say it was sufficiently clear from the text of the more detailed ERC submission, is that what you're saying?---Yeah.

And I showed you an email before from Mr Broadhead, which seemed to suggest that at last Mr Broadhead didn't seem to understand the overall urgency of the matter and thought that it was not made clear that, the case for urgency was not made clear. I take it you disagree with what Mr Broadhead said there and you say that it was - - -?---Yes.

10 - - - sufficiently clear from the ERC submission?---Yes.

And so is that your explanation as to why this is only an "if asked"?---Yeah.

I mean, why, at least from your perspective, wouldn't this be a matter that you would at least want to have drawn to the attention of your ERC colleagues in case they thought it was a matter of particular relevance, whether or not the event had been secured or not?---'Cause we've already indicated in the submission that the event's happening.

20 But I'm just trying to understand why these particular points – I withdraw that. One can understand why in, for example, a talking points for media or perhaps even notes for answering questions in Question Time, well, one might say, well, here's the core things that I want to say in any event, these are particular things that I don't really want to expose unless I'm specifically asked, and one can understand why you might have a series of talking points that you want to speak about, and other things that you'll only raised if asked. But here this is a meeting amongst ministerial colleagues. Do you not agree that this is a matter that you would want to ensure that your colleagues were aware of, whether it was, in my terminology, a must-
30 have or a nice-to-have?---No, I think this was just a clarifying point, that if one of my colleagues asked me, "Is this funding, is the event contingent on this funding?" we made clear that it's not.

So you say that was sufficiently clear, do you say it was sufficiently clear from the balance of these talking points?---No, I think that it's clear - - -

Or do you say that it's sufficiently clear from the ERC submission - - -?
---Yeah.

40 - - - that you're expecting your ERC colleagues or the members of the ERC to read?---This is just my staff anticipating where questions might come in a Cabinet meeting, and they want to make sure that if a Cabinet minister, maybe a minister who hasn't read the minute in detail, asks whether this event is contingent on receiving capital funding, or funding for this capital project, that I make very clear to them that this event is still happening regardless of whether the funding is approved or not.

And so you're in effect saying it doesn't need to be a dot point in these speaking notes because your expectation is that the members of the ERC will read into the detail of the ERC submission, but you want it there in case they have a particular question about that particular issue? Is that in effect what you're saying?---Yeah. I think I've got a staff member here who's ensuring that I don't mislead Cabinet.

10 That's really my question. Isn't that a matter – there's a whole series of matters that are being addressed in this note, including the cost, the urgency, as we saw on the next page, associated with the 2018 event. So as to avoid any possibility of misleading Cabinet or a committee of Cabinet or particular members of the ERC proceeding on the erroneous basis that this was a must-have rather than a nice-to-have, is that not a matter that you would want to ensure that the members of the ERC were aware of in any event?---I think the minute already does that. I think this is just a prudent staff member making sure that if I get asked this question, I answer it.

20 Now, was the ERC decision – I withdraw that. Was the ERC submission ultimately supported or not supported within the ERC itself?---It was supported with amendments.

How did you find out about that position?---It was, I was notified of it. I don't actually recall the exact notification in – I think I recall being told that the submission had passed ERC by someone who came out of the room to tell me that I didn't need to go in and then, so that's why I don't think I was in the room at all because I, I do have a recollection of that. And then I would have seen a published decision at a later date.

30 You referred to the fact that it was agreed to with amendment, have I got that right?---Yes.

Do you know how that amendment came about?---No. That was discussion inside the room, which is also another reason why I don't think I was in there because I think I would recall that discussion.

40 If we go to page 255, volume 26.3, which is Exhibit 395, I'll show you the formal record of that decision. Can we zoom into the text of that document, please? So is this right, Roman (i) was what you were putting forward as proponent minister, correct?---Without seeing the minute, that does look, that does look very similar to what we would have proposed, yeah.

And doing the best you can sitting there, Roman (ii) is the amendment to which you drew attention earlier?---Yes. So we, the first, the top Roman (i) is what we proposed, that was our, our submission, our recommendation to Cabinet and the, the second submission are the recommendations, or the approvals that have come out of the ERC discussion.

If you have a look at Roman (ii) (b), do you see there that “The ERC decides that it is subject to the finalisation of a satisfactory business case.” Do you see that there?---Yep.

So I take it that when this decision came to your notice, you understood that the view of the ERC at least was that the business case that you and I have discussed today was not, to use their terminology, a satisfactory business case?---That, they definitely want additional work done on the business case, yes.

10

Well, they use the phrase “satisfactory business case”. It follows from that, doesn’t it, that the business case that was then in existence was not, at least in view of the ERC, a satisfactory business case, do you agree?---It was satisfactory enough for them to approve the funding and then they’ve also asked for other quality-assurance arrangements here, Infrastructure NSW to undertake an assurance process. This looks like a pretty stock standard activity by ERC to put a safeguard on the allocation of funding.

20

So are you reading this as saying we’ve got one satisfactory business case that Minister Ayres procured, or at least his agency procured and paid for, but we want another satisfactory business case, is that what you’re saying? ---I think that they’re saying that the business case, that, that there is sufficient information in this business case to warrant an allocation of funds. However, we would like you to finalise the business case and undertake an Infrastructure NSW assurance process and almost certainly that would have been about validating the costs of the project. And then the last point there is about making sure there’s no risk or exposure to the tax payer above 5.5 million. They all look like standard recommendations that would come out of ERC.

30

Do you say that up to and including the time at which the text of this decision came to your notice, you were unaware of any concerns that may have been held within government as to the quality or rigour of the business case that you had regarded as sufficient to validate your views in relation to the ACTA proposal?---I, I don’t, I don’t recall any interactions around that and I was going to Cabinet with a business case that I thought was good enough to take forward this proposal.

40

So you’re saying, doing the best you can, at no point did anyone suggest to you, or at least at no point up to the time at which this decision came to your notice, did anyone suggest to you either directly or indirectly that there were concerns within government as to the quality and/or rigour of the business case that had been prepared?---I, I don’t have any recollection about that, no.

Were you ever given any advice to the effect that the view of the bureaucracy was that what should be funded was not this building itself, but rather, at most, a feasibility study as to whether or not it was feasible and

appropriate to build such a facility?---Oh, I, I don't recall that. But if, I suspect in my mindset at this stage was the concept of a feasibility study after we've already completed this business case seems like a, a bit of a waste of money, actually. I'm thinking a more important process here is the assurance process by Infrastructure NSW, which would have validated costings in a competitive tender environment.

10 Well, are you saying you recall or don't recall any advice or suggestion to the effect that the view of at least some within the bureaucracy was that the business case wasn't sufficient to support an expenditure of money and that, at most, there should be funding of a feasibility study?---Oh, I don't, I don't recall that. That interaction could have happened with Chris, my chief of staff, if he was interacting with the Office of Sport, as well as other ministerial staff.

20 Are you saying there was no such interaction or are you saying it's possible that there was an interaction, you just don't recall one way or the other?---I, I've said a few times, I don't recall. These are, I was thinking these were relatively minor matters at the back end of the year.

So does that mean that may have occurred, you just don't recall one way or the other?---That's right.

Or are you saying you're fairly confident that that didn't occur in terms of any advice coming to you?---No, I just don't, I don't, I don't recall that. I'm seeing emails that I haven't seen in five or six years.

30 Now, you saw from that additional, and I think you described it as an amendment. There was a reference to the Regional Growth – Environment and Tourism Fund.---Mmm.

Do you remember seeing a reference to that particular item?---Yes.

That was a fund that formed part of Restart NSW, is that right?---I think it was a sub-fund of Regional, of Restart. So Restart was a very large fund. It had multiple allocations. One of those was the Regional Growth – Environment and Tourism Fund, or Environment and Tourism, I'm not sure the order of words.

40 Restart NSW is a special fund that holds money raised from, amongst other things, what's sometimes described as asset recycling, is that right?---Yeah, it was a fund that took windfall returns on asset recycling and so that, I think the best way to think about that is as, as an umbrella fund, pool of money. And then sitting underneath that were a series of funding allocations, either directly to projects or to a sub-fund, which may have been managed by a different minister.

That the Restart NSW overall fund, or I think you said umbrella fund, has money in it from, for example, what's sometimes colloquially referred to as the poles and wires matter?---Yes.

More precisely, the lease of the electricity assets in this state, is that right?
---Yeah. I think your asset recycling phrase was probably more appropriate because it had, it had, I think it had other revenues in it.

10 Not my phrase but a phrase that, at least as I understand it, is used in government from time to time.---Mmm.

Certainly a phrase that you've heard before, is that right?---Yes.

In relation to that particular fund, the Regional Growth – Environment and Tourism Fund, was that a fund in respect of which you had any ministerial responsibility in December of 2016 or into 2017?---No.

20 Who was the minister or were the ministers who had ministerial responsibility associated with that fund, at least as you recall it?---It's the responsibility of the Deputy Premier in Regional, through the Department of Regional NSW.

And at that point in time the Deputy Premier is Deputy Premier Barilaro, is that right?---That's correct.

30 It's also right, isn't it, that in relation to Restart NSW, there are special procedures or special conditions as to whether money can be paid out from that fund or from sub-funds falling within that umbrella, is that right, as you understand it?---I'm not sure what you mean by special conditions.

Well, I mean that one of the requirements, for example, before spending any money from that fund is to procure a recommendation from Infrastructure NSW?---I don't recall the specific nature of that, but it might well have been, and that might well have been part of the process, yeah.

40 But Restart NSW and the Regional Growth – Environment and Tourism Fund doesn't form part of consolidated revenue, or what's sometimes is referred to as ConFund, in the ordinary way, is that right?---No, but it's an appropriation of funds already. So it's already budgeted for and appropriated.

That's really my point. It's an existing fund outside of the consolidated revenue fund that has special procedures as to the way in which, or the circumstances in which money can be paid out from, is that right?---Mmm. Yes. And that also gives effect to this, the decision that we just had on the screen not having a budget impact because it would be being drawn down out of a fund that was already budgeted for.

But does all of that mean as a practical matter that, at least the administrative consequence of the ERC decision that was just referred to primarily became an issue for the Deputy Premier as the responsible minister for the fund or did you and your office and your agency continue to be involved in the day-to-day following the ERC decision?---No, we actually no longer have carriage of this project. It moves over to I think Infrastructure NSW and the Department of Regional NSW to complete the requirements that were determined by ERC.

10 And so that wasn't your proposal as the proponent minister. That was something that came about by reason of the amendment, that, at least so far as you understand it, was made in the room. Is that right?---Yes, that's correct.

So but for that amendment, it would have an Office of Sport project, is that right, that was your proposal?---Yes.

20 But by reason of the amendment, it became at least in part a Deputy Premier Barilaro project because he was the responsible minister for the fund that we saw identified. Is that right?---That's correct. Yeah. We have I think very little interaction on this project. I think INSW provides me with a quality assurance report because I'm the Minister for Sport and then my only other interaction with this, I think, is the photo with the organisation in Wagga later that year when they start the project.

And referring to the RGETF which I think you agreed, at least as you understand it, forms part of the Restart NSW Fund. Is that right?---Yeah, sorry, Regional Growth Tourism and, or Environment and Tourism, yeah.

30 I may have got that wrong.---Yeah.

Regional Growth – Environment and Tourism Fund is what I meant to say, whether or not I did, in fact, say it.---Yeah. Yeah, sorry.

Do you agree that, at least as you understand it, one of the requirements for payment out of that fund is, firstly, a recommendation from Infrastructure NSW and, secondly, an approval or decision by the Treasurer of the day? ---Yeah, that's my recollection of what has to take, what took place there.

40 Are you, in effect, saying that once that was added, your role, in effect, went into the background because it became a responsibility of other ministers rather than you?---And also I, I can't see a role for the department here, either. This is an appropriation of funds from another agency. So there might well be some interaction between Regional NSW, I'm expecting there's a handover of documents and then it's being delivered by another minister.

What about as to whether there should be any public announcement in relation to the ERC decision of December 2016? Do you recall having any involvement in that?---No, I do recall there was I think there was some interaction between my office around the local member wanting to announce the project but outside of that, I don't, don't have any other recollection on it.

When you say "the local member", do you mean Mr Maguire?---Yes.

10 What's your recollection of involvement in that question of whether Mr Maguire or about Mr Maguire's proposal to announce the project?---I just, I recall him wanting to, wanting to put out a, a media statement or a press release. That's a reasonably common activity.

What was your involvement if anything in relation to that matter?---I, I, I don't recall, I don't recall, you know, much interaction at all there. I'm trying to work out whether, whether we were playing any role in informing him about the Cabinet decision but I can't recall all of that.

20 Well, as you understood the ERC decision, as I showed it on the screen before, was that, in effect, money in the bag, it's been approved, we're going to get this facility, we're going to get it on the road or was it more in the nature of the ERC can see why you've put forward the particular submission but wants further assurances before any decision is made to actually expend the money?---I, I think it is, I think it's a combination of both, in many respects. There's an allocation of money, the project has got the support of ERC, it just needs to go through its, its final investment checks and balances before the money is actually appropriated. And we would do that on a regular basis.

30 At least in your mind was the ACTA proposal right to be subject of a public announcement as at the end of December 2016?---Yeah, I think it was in a pretty strong position to publicly announce.

Does that mean yes?---Yes.

Did you receive any advice as to whether the ACTA project was sufficiently right for a public announcement, do you remember?---I don't recall whether I received any advice to that effect.

40 You may have, you just don't recall one way or the other, is that right? Let me try and assist this way, page 15, volume 26.4, and we zoom in to the bottom of the page. I'm going to show you an email from Mr Landrigan, who I think you said before was one of your policy advisers, indeed he was a policy adviser for Sport for you at that point in time, is that right?---That's correct.

Zoom into the bottom of the page, do you see there, “The Treasurer’s Office has just given me the draft decision,” do you see that there?---Yes.

And the subject heading is Clay Target, do you see that?---Mmm, yes.

And he provides a summary, “Grant should be sourced from the Regional Growth – Environment and Tourism Fund and comply with the criteria to access the fund.” And then two, “subject to the finalisation of a satisfactory business case”, do you see that there?---Yes.

10

I think from what you said before, as you understood it, that didn’t mean that the ERC thought that the other business case was unsatisfactory, it just wanted a further, perhaps more satisfactory, business case?---Yes and I think it’s a good prompt here, the Treasurer’s Office asking to follow process. I think the most relevant point here is that the criteria for that Regional Growth Fund hasn’t been determined at this stage or what, what the process will be, so I can understand why they would provide that advice not to announce this project until they’d finalised those guidelines.

20

We’ll come back to the announcement in a moment. But if you just have a look at numbered paragraph 2, Mr Landrigan indicates to you “current business case is not acceptable”, do you see that there?---Yes.

So having your memory refreshed with this email, you must accept, mustn’t you, at least as you understood it as at 20 December, 2016, the business case that was regarded by you as providing sufficient validation to put forward an ERC submission was not, at least in the view of the ERC, acceptable or acceptable to it?---It definitely wants more information, there’s no doubt about that.

30

THE COMMISSIONER: It’s rejected it, hasn’t it, Mr Ayres?---Sorry.

It has rejected it, hasn’t it?---No, I don’t, Commissioner I don’t believe that actually is the case. I think it’s approved - - -

40

Unacceptable, doesn’t that amount to a rejection of it?---No, the reason why I don’t think it’s rejected the case, or the business case, is because it’s approved the funding. I think that ERC has, if it has identified a weakness in the business case, it’s asked for, for that, those weaknesses to be validated or updated, and then it’s also sought approval from INSW to provide a quality assurance. So if there has to be an update the business case, then that’s not necessarily a reason why you would not advance funding.

Well, it wants a satisfactory business case.---No, I accept that point but I don’t believe that the GHD business case is not the starting point or a key reference point for whatever update happens to that business case.

Well, it may be a starting point but not in a manner which was acceptable to the ERC?---Yes, no doubt, Commissioner, but ERC made that point clear in its recommendations and put in place safeguards to accommodate for that.

MR ROBERTSON: If you then look at the paragraph that starts after paragraph number 2, “Treasurer’s Office say to follow proper process. The grant won’t be able to be announced until the criteria for the fund is approved by ERC,” do you see that there?---Yes.

10 So is it consistent with your recollection that at that point in time the criteria for the Regional Growth – Environment Tourism Fund had not yet been announced?---This is probably one of the reasons why I don’t recall it, wasn’t actually my fund, I wasn’t in the process of developing the guidelines, so that sort of make sense why it wasn’t high on my agenda. But I don’t have any recollection of that, only that this email confirms that.

The parentheses in numbered paragraph 1 might help you on that, “I am advised that the criteria has not been approved by ERC yet,” do you see that there?---Yes.

20

Does that help in refreshing your recollection or - - - ?---Only because I’m reading I don’t actually recall having discussions about the guidelines for the Regional Growth – Tourism and Environment Fund.

Was it your view as at 20 December, 2016 that it would be not in accordance with proper process for the grant to be announced until the criteria for the RGETF was approved by the ERC?---I think that would have been more prudent based on this email.

30 Does that mean you agree?---Yes.

And if we then go up a little bit further, we’ll just scan up to see your response. We’ll stop there, please. Can you see there you respond and you say, “Project is legit.” Do you see that there?---Yes.

Why did you think that Mr Landrigan, or perhaps Ms Scoutas, S-c-o-u-t-a-s?---Scoutas, Scoutas.

40 Needed to be told whether or not the project was legit? What was it from the email to which you responded that led you be concerned that you needed to make it clear that from your perspective the project is legit?---I think that Marc Landrigan is confused about the position that the funding has been allocated but the business case that we took forward needs, needs further work.

So when you say “legit”, is this right, you’re not referring so much to the substance of the project but rather to the consequence or effect of the ERC’s

decision, is that what you're saying?---That's correct. ERC has approved \$5.5 million.

But that's what you were trying to communicate by referring to the fact that it was, to you use your truncated word, legit?---Yeah.

And look at the next sentence. "Perhaps Gladys and I need to write to Daryl." Do you see that there?---Yes.

10 What's it got to do with Gladys? Why would it be Gladys writing to Daryl?---So, there are two points here. One, Gladys is the Treasurer of New South Wales and I am the minister. We've made a decision at ERC, this project is no longer being funded out of the Office of Sport. I think it's a reasonable thing that the Treasurer and myself would inform the local member how a project that's been, appropriated funds by ERC is going to proceed.

20 But why Ms Berejiklian as opposed to, for example, Mr Barilaro, who you explained before became the responsible minister in regard to the decision that was made by the ERC?---Oh, I think I'm just working on the fact that Gladys is the Treasurer at this particular point in time and the ERC has resolved that, has, had approved those funds and also put some additional conditions on them.

Is that the only reason you say that you identified Ms Berejiklian in that sentence?---Yeah, I can't see why I would have any, why, why I would any other way.

30 As you understood it, as at 21 December, 2016 - - -

THE COMMISSIONER: 20th. Oh, I'm sorry, I apologise.

MR ROBERTSON: I'm so sorry, 21 December, 2016.

THE COMMISSIONER: Yes, 21st.

40 MR ROBERTSON: Was Mr Maguire someone that Ms Berejiklian had a particular ear for, by which I mean someone in respect of whom, as you understood it, was someone who she would value his advice?---Not in any other, not, not out of the ordinary course of events.

So in terms of it least the professional relationship between Ms Berejiklian and Mr Maguire, it was, at least as you saw it, no different to her relationship with other parliamentary secretaries and members of parliament, is that right?---That's correct.

If we then just go up a little bit further, and I'll just finish on this document, if I can, Commissioner. If we just go up a little. See there, a response comes

back that says “Project is a solid one but someone should talk Daryl off the ledge.” Do you see that there?---Ah hmm, yes.

10 What ledge did you understand Mr Maguire was on, as at 4.53pm on 21 December, 2016?---I, I’m not sure. This, my, I, I will surmise here and suggest that Marie Scoutas has had an interaction with Daryl about wanting to announce the project. Maria’s informing Marc and myself, or probably responding to Marc here because I think he sent that earlier email to confirm that ERC has approved the funding and it’s now just about communicating to Daryl what has happened.

20 But that’s a pretty forthright way to put it, no doubt metaphorically, but it says “Someone should talk Daryl off the ledge.” What did you understand Ms Scoutas to be referring to, what ledge?---Well, Marie was, I think Marie was, was covering off media at this particular point in time. It’s the, the period of time just before Christmas, so I suspect that Daryl’s had some interactions with her. I, I don’t know the, all of, I can’t recall what that actually means but I’m, I’m working on the assumption here that she’s had some interaction with him and he wants to do something.

Well, let’s go back to the preceding page, because that might help you. Bottom of that preceding page, we’ve got an email chain. So we’re going from bottom to top. You respond and say, “He just wants to know what the process is” dot, dot, dot, “if we can explain it to him, how can he communicate with his electorate.” See that there?---Yeah.

30 So does that assist in your recollection and in particular is this right, the metaphorical ledge, at least as you understood it, was something in the nature of a threat or suggestion that Mr Maguire would make an announcement within short order as to the ERC’s decision, or in particular as to the ACTA project. Is that how we read this, at least as you understand it?---I’m looking at my response here, I’m also looking at the email above it that makes a reference to another member of parliament that I think we use as an example of someone who wouldn’t necessarily wait for all of the formal approvals to take place, they would just go out and announce the project. I think I’m just making a fairly standard observation here that a local member who’s not part of the ERC process doesn’t see the ERC decision wants to know what they can and can’t do. If we explain that to them, they’re in a better position to explain it to the members of their
40 community.

So at least as you’re reading it now, the ledge is the ledge of making an announcement or not of the kind that the Treasurer’s Office say would be inconsistent with what they there describe as proper process?---Yes, and I think that for Marc and Marie, who are interacting here, if the Treasurer’s Office has told them they don’t want an announcement and they’ve got a local member who wants to make an announcement, they’re trying to resolve that issue.

Then if we scan up a little bit further, if we stop there, please. So she comes back to you, if you have a look in particular at the fourth paragraph, “Can’t we give him something to announce?” Do you see that there?---Yes.

“Or is there a risk that this will still unravel?” Do you see that there?---Yes.

10 Is this right, this is effectively communications within your office as to the level of certainty that this project will ultimately be funded having regard to the ERC’s decision, is that right?---Yes, I think this is Marie having some interaction with Daryl, Daryl wanting to announce a project that has had funding appropriated to it, and I think as she says here, you know, she’s asking the question, would this unravel and it feels like to me we’re just ticking boxes. If it was that MP, they would have announced it already.

20 If we scan up a little bit further, noting the time and that I’ve trespassed into lunch, Mr Landrigan says, “But it hasn’t been approved.” Then the third paragraph he says, “Has the DP started announcing grants from this fund yet.” Do you see that there?---Yes.

I think you accepted before that, at least as a matter of proper process, this grant funding wasn’t right to be the subject of a public announcement as at the end of December 2016, agree?---Yes, based on that correspondence from the Treasurer’s Office, yes.

30 I tender the email ending with the email from Mr Landrigan to Ms Scoutas and Mr Ayres, 21 December, 2016, 5.47pm. Can I indicate, Commissioner, that in the email of 5.35pm, 21 December, 2016, there’s a reference to a particular member of parliament in the second-to-last paragraph, and in the version I tender I propose for that member of parliament’s name to be redacted.

THE COMMISSIONER: Yes, that will be Exhibit 449.

#EXH-449 – EMAIL CHAIN ENDING WITH MARC LANDRIGAN TO MARIE SCOUTAS AND MINISTER STUART AYRES DATED 21 DECEMBER 2016 AT 5.47PM

40 MR ROBERTSON: I note the time Commissioner.

THE COMMISSIONER: Very well. Mr Ayres, we’re going to take the luncheon adjournment, slightly abbreviated because of the time, but will you return at 2.00pm, please.

THE WITNESS: Thank you Commissioner.

THE COMMISSIONER: We'll adjourn.

LUNCHEON ADJOURNMENT

[1.08pm]