

KEPPELPUB02306
25/10/2021

KEPPEL
pp 02306-02369

PUBLIC
HEARING

COPYRIGHT

INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE RUTH McCOLL AO
COMMISSIONER

PUBLIC HEARING

OPERATION KEPPEL

Reference: Operation E17/0144

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON MONDAY 25 OCTOBER, 2021

AT 10.00AM

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

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

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Commissioner, in a moment I'll call Mr Minucos, who is a former adviser to the Honourable John Barilaro when he was Deputy Premier. I expect to finish my examination of him morning tea. I will then call the Honourable John Barilaro, former Deputy Premier. After I have called both of those two witnesses, I anticipate tendering some evidence from certain other witnesses that I don't intend to call, at least as presently advised, in the public inquiry, but that's the program of witnesses for today and otherwise I expect the program of witnesses to continue in a manner consistent with the published statement.

THE COMMISSIONER: Thank you, Mr Robertson.

MR ROBERTSON: I call Peter Minucos.

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

20 MR MINUCOS: An oath, please.

THE COMMISSIONER: Thank you. Listen to the hearing officer, please.

MR TAYLOR: Commissioner, Taylor is my name, solicitor. I seek your authorisation to appear on behalf of the witness.

THE COMMISSIONER: Yes. You have that leave, Mr Taylor. Have you explained to Mr Minucos his rights and obligations as a witness?

10 MR TAYLOR: I have, Commissioner, and he does seek a section 38 declaration to be made.

THE COMMISSIONER: Thank you, Mr Taylor.

MR TAYLOR: Thank you.

THE COMMISSIONER: Mr Minucos, will you listen very carefully to the explanation I am about to give you before I make the declaration to which Mr Taylor referred?---Sure.

20

As a witness you must answer all questions truthfully and produce any item described in your summons or required by me to be produced. You may object to answering a question or producing an item. The effect of any objection is that although you must still answer the question or produce the item, your answer or the item produced cannot be used against you in any civil proceedings or, subject to two exceptions, in any criminal or disciplinary proceedings. The first exception is that this protection does not prevent your evidence from being used against you in a prosecution for an offence under the Independent Commission Against Corruption Act, including an offence of giving false or misleading evidence, for which the penalty can be imprisonment for up to five years. The second exception only applies to New South Wales public officials and I don't understand you to be one any longer.---No.

30

Very well. I can make a declaration that all answers given by you and all items produced by you will be regarded as having been given or produced on objection. This means you do not have to object with respect to each answer or the production of each item. I will now make that declaration. ---Thank you.

40

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.

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
10 **PRODUCED.**

THE COMMISSIONER: Do you understand that, Mr Minucos?---Yes.

Very well. Thank you, Mr Robertson.

MR ROBERTSON: Can you state your full name, please?---Peter Thomas Minucos.

20 You are presently a director at the professional services firm known as RPS?---Yes.

In 2017 you were a senior policy adviser in the office of then Deputy Premier Mr Barilaro, is that right?---Correct.

And you had particular responsibility for regional development and regional infrastructure, is that right?---Correct.

30 You commenced your post-graduate career at NSW Treasury, is that right? ---Correct.

And that was as a financial analyst, is that right?---Yes.

And I think you might have also had a stint in the NSW Department of Planning, Industry and Environment as an economic policy lead, is that right?---Yes.

40 I take it through those various roles you have experience in economic appraisals as they apply to the government of New South Wales?---Yes.

I take it that includes at least a general understanding of the Treasury guidelines that apply in relation to economic appraisals?---Correct.

You have a Bachelor of Arts majoring in history and politics. Is that right? ---Correct.

And a master's in Commerce, as well?---Yes.

When you were an adviser in the Office of Deputy Premier Barilaro, did you have any involvement in grant funding that was promised and/or awarded to the Australian Clay Target Association?---Yes.

And what was that involvement?---As the regional infrastructure adviser, I had conversations with both the department and the proponent about the process that they were in to get funding.

And you might need to get a little bit closer to the microphone.---Mmm.

10

And what brought that particular involvement about, at least as you recall it?---When I commenced in January 2017, the ERC decision had just been made to approve the funding pending the business case and so my experience and my role were relevant to the next steps in the process.

You just referred to an ERC decision. Are you referring to a decision of the Expenditure Review Committee of Cabinet?---Correct.

20

And so are you saying prior to you becoming employed in the Office of Deputy Premier Barilaro, there was, as you understood it, a decision of the Expenditure Review Committee?---Yes.

And that was a decision in relation to grant funding to be awarded to the Australian Clay Target Association. Is that right?---Yes.

30

What was your understanding as to the effect of that decision when it came to your notice? Was it, in effect, that money had been approved and was going to be spent subject perhaps to some procedural requirements taking place or, as you understood it, was it very much still a question as to whether any money would be advanced in the sense that there were other steps that needed to take place that may or may not involve a final approval of money being paid?---It was, I mean, it's a little bit of both because for the money to be approved from Restart, then it would be required to meet those business case requirements but the fact that the ERC decision said "approved" unsure what that meant as, as far as or what happened if the Restart funding wasn't available.

40

So is this right? As you understood it, the source of funds the subject of the Expenditure Review Committee decision would be a Restart NSW Fund. Is that right?---I believe that was in the decision.

And a consequence of that is that the money couldn't, in fact, be advanced without sufficient assurances as to the business to cost ratio of the particular project. Is that right?---Not from the Restart Fund, no.

Sorry? Say again?---It couldn't be advanced from the Restart Fund without those conditions.

So, in other words, at least as you understood it, one of the things that needed to be achieved before the money referred to in the Expenditure Review Committee decision could, in fact, be paid was a business-to-cost or evidence of a business-to-cost ratio of 1 or more than 1. Is that right?
---Benefit-to-cost ratio of 1 or more than 1.

And in terms of the benefit-to-cost ratio, that's a ratio that assesses the ratio between the benefits to the state as compared to the cost to the state. Is that right?---The economic benefits compared to the economic costs.

10

But that's at the level of the state, is that right, not at the level of a particular community or particular part within the state?---Yeah, so Restart Funding, BCRs that are applying for Restart will be expected to follow the Treasury business case guidelines in that, yes, around New South Wales.

20

Appreciating that there were conditions on the Expenditure Review Committee decision, at least as you understood it, had the money, in effect, been committed as in there'd been a commitment from government subject to dealing with some procedural matters or, at least as you understood it, was the effect of the ERC decision simply to indicate a desire or preference on the part of government to advance money but which might not ultimately be advanced because it may or may not meet the requirements, for example, of a BCR?---I, I'm not sure of the answer to that. I'm not part of the ERC, so unsure as to what level of, what, what would happen if the Restart funding conditions weren't met.

30

But what I'm trying to understand is your understanding of the position. Was it something in the nature of a funding commitment, at least as you understood it, or was it more in the nature of an indication of, for example, a preference or a desire that money be paid but it very much being open to question as to whether this particular proposal would or would not meet the requirements for funding, for example, from Restart NSW?---Sorry? Could you repeat that question?

40

I'm just trying to understand, in effect, which category the decision of the Expenditure Review Committee was as you understood it, and accepting that the two categories I'm giving you aren't necessarily ones that have a bright line between them, at least as you understood it, had the government in effect made a commitment to funding and it was simply a matter of attempting to deal with some procedural matters to get the money out of Restart NSW or out of some other fund, that's my category 1, or was it more in the second category of there was at least some support for the, what I'll call the ACTA project, but it may or may not get off the ground because it may or may not satisfy the kinds of analyses that you and I have been discussing so far this morning?---It really is a fine line in, in my mind at the time. I can see that, certainly, they couldn't get the Restart funding without the conditions being met.

So what's your first recollection of involvement, as in personal involvement, in grant funding that was promised or awarded to the Australian Clay Target Association?---It would have been early in my time with the Deputy Premier's Office, sometimes in January 2017. It would have been made aware to me that the ERC decision had been made.

And what were the instructions or requests given to you as to what your involvement should be in relation to that matter?---I don't specifically recall at the start what, what the instructions would have been.

10

Well, as you understood it, what was your role in relation to the funding?---I had a role generally to help improve the clarity around the process and what, and the understanding about the process to regional New South Wales.

As you understood it was what I'll call the ACTA project, was that one that had particular support within the Deputy Premier's Office, either from ministerial staffers or from the Deputy Premier himself?---No.

20 Where, as you understood it, did the support for this particular project come from, then?---It was the ERC decision was my source of the support.

So you understood, is this right, you understood that the ACTA proposal had support at a governmental because the ERC had made a decision in favour of it?---Yes, that's the purpose of ERC.

Was that the only source of understanding as to support for the ACTA project within government, just the ERC decision? Or was it a little bit broader than that?---The ERC decision was the source of the support.

30 THE COMMISSIONER: Mr Minucos, can you keep your voice up, please?---Sorry. ERC decisions is the source of the support.

MR ROBERTSON: Can we go, please, to page 2133 of the public inquiry transcript, which is a transcript of evidence from Mr Hanger on Thursday of last week. And just while that's coming up, do you know a person by the name of Mr Hanger?---Yes.

40 Who's Mr Hanger?---He was the, I think, Executive Director in the Regional NSW Department, which changed names but that sort of describes it.

Did you have any dealings with Mr Hanger in relation to what I've described as the ACTA project this morning?---Yes.

What was the nature of those dealings?---I don't recall specific interactions around ACTA. I do recall we'd have - - -

MR AGIUS: Sorry, I'm still having trouble hearing, Commissioner.

THE WITNESS: Sorry, maybe if I move closer.

MR AGIUS: I wonder if the microphone could be moved closer or the seat could be moved closer to the microphone.

THE COMMISSIONER: Just need to – sorry, Mr Agius. You need to broadcast your voice across the room, Mr Hanger. I’m not sure it’s a very effective microphone for those purposes.

10

THE WITNESS: Okay, I’ll just speak up.

MR ROBERTSON: If you just move a little bit closer to the microphone.

THE WITNESS: Yep.

MR ROBERTSON: And if you just make sure your mouth is pointing in the direction of the microphone. Even if you need to move a little bit perhaps to the left so that you can point your face in the direction of it. It picks up your voice if you’re speaking in the direct area of the microphone.

20

THE WITNESS: Okay, cool, I’ll just speak much louder.

MR ROBERTSON: You were starting to explain what your dealings with Mr Hanger were in connection with the ACTA proposal, the ACTA project.---My only, well, I don’t have specific recollections but we had recurring meetings, whether they were weekly or fortnightly I don’t recall, but we would cover off on various things that were happening in regional New South Wales, and this would have been something that was mentioned in those meetings, but nothing particular.

30

So there are at least some discussions from time to time between you and Mr Hanger concerning what I’ve described today as the ACTA project, is that right?---Yes.

If we can put up on the screen, please, page 2133. I’m just going to show you an aspect of Mr Hanger’s evidence given before this public inquiry a couple of days ago.---Ah hmm.

40 Page 2133. Day four of the current public inquiry. So I’m showing you, Mr Minucos, some of the evidence received in this public inquiry a couple of hearing days ago. Can we zoom in towards the middle of this page, please? You’ll see there’s little numbers on the left-hand side. Those are the line numbers.---Yes.

And I want to kick it off at line 18. Do you see there a question starting with the words “And so do we take it,” do you see that?---Yes.

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

Do you see that there?---Yes.

And if we then just jump down to the question starting at line 28. I asked him “But how was it apparent to you? I think you said clear to you that ultimate interest or direction or priority or emphasis was coming out of the Premier’s Office, rather than the office in respect of which you had the principal contact, being the Deputy Premier’s Office?” He says, “Yeah, a range of conversations at that time indicating that the Premier and the Premier’s office were particularly interested in this particular project.” And then I’ll just jump down to line 38. “And that particular interest or strong interest was being communicated to you by who? Who were the individuals? I take it from that that you were referring to people, you were referring to political advisers or at least people in the office of the Deputy Premier, Deputy Premier Barilaro?” And his answer was “In his office predominantly it would have been Peter Minucos who was the adviser we were dealing with.” And then he went on to say “I also worked very closely with Gary Barnes.” Do you see that there?---Yes.

Do you agree with Mr Hanger’s evidence insofar as it concerned you? In other words, do you agree with Mr Hanger that you gave an indication to Mr Hanger to the effect that the core interest or priority in relation to this project was coming from the Premier and/or the Premier’s Office?---No.

So where, as you understood it then, did the core interest in this project come from?---My understanding was from the ERC decision.

So at least in terms of direction, indication and the like to you personally at least, is this right, that was wholly and solely from the fact that the ERC had made a decision favourably to the ACTA proposal, is that right?---Correct.

And can we go, please, to page 198 of volume 26.5? I’m going to show you an email of 12 April, 2017. So you started in Deputy Premier Barilaro’s office in January of 2017, is that right?---Yes.

And I think from what you said before, you got involved in the ACTA project relatively early in your tenure within that office, is that right?---I was made aware of it early in my tenure, yes.

Made aware of it earlier in your tenure. In the early couple of months did you have any particular involvement or were you just aware of it?---Aware of it and asking for updates.

When you say asking for updates, asking for updates from who?---From the department just to see what was happening in regards to the ERC decision.

10 Why were you asking for updates? Why did you care in circumstances where presumably you had a portfolio of things that you were interested in or at least had some responsibilities for?---Because it was an item in that portfolio, so all of the items were, were asked for updates.

And how did it become, as you understood it, an item in that portfolio?
---From the ERC decision.

And so the ERC decision identified one of the Restart funds as the source of funding for the ACTA project, correct?---Ah hmm, correct.

20 And is that, as you understood it, how it became a matter for the Deputy Premier as opposed to, for example, the Minister for Sport?---Yes.

And because it was a regional matter, that's why you had responsibility as an adviser, is that right?---Yes.

Go, please, to page 198 of volume 26.5. And if you can have a look at the email a little bit down the page, you see an email from you to Mr Maguire, 12 April, 2017?---Yes.

30 If you have a look at the second paragraph, see it says, "The funding commitment has been made by government. That much is done." Do you see that there?---Yes.

40 Does that help you at all in an answer to a question I asked you before as to whether, at least as you understood it, the effect of the ERC decision was really to make a commitment in relation to the funding, albeit subject to doing some in effect administrative tasks, as opposed to more in the nature of a desire that there be funding but it might not ultimately get off the ground because it may or may not meet the requirements of, for example, Restart?---Well, it was a decision that said approved, so I think that use of the word commitment there is relevant to the use of the term approved in the ERC decision. But to get the Restart funding, it would certainly still need to have the BCR.

So is this right as you saw your role to, insofar as you could sensibly do so, cause for the approval that the ERC had granted to result in the actual flow of money?---Sorry, could you repeat that?

As you saw your role, was your role to in effect take the, to use your phrase, funding commitment that had been made by the government and do everything that you could to turn it from a commitment to an actual flow of money?---To, um, yes.

Now, you see that's an email to Mr Maguire. It's copied to Fiona Dewar, D-e-w-a-r. Do you see that there?---Yes.

10 Ms Dewar was the chief of staff in the Deputy Premier's Office at that point in time, is that right?---Correct.

Why were you sending this email to Mr Maguire as opposed to, for example, liaising with the relevant agency?---I don't, I don't recall.

Well, why were you, in effect, reporting in to Mr Maguire?---I could only speculate that Mr Maguire had contacted our office and we were responding.

20 Were you in regular contact with Mr Maguire concerning this project, as you recall it?---There was some contact with Mr Maguire, yes.

Was that regular or was that fleeting or something in between?---I don't recall specifically how much contact there was.

Well, do you recall whether he was in regular contact with you or, to your knowledge, other people within the Deputy Premier's Office?---I recall that he would regularly contact the Deputy Premier's Office to check on the project.

30 I tender the email chain ending with an email from Mr Maguire to Mr Turner at 12 April, 2017, 8.21pm, page 198 through to 200, volume 26.5.

THE COMMISSIONER: Exhibit 453.

#EXH-453 -- EMAIL CHAIN ENDING WITH DARYL MAGUIRE TO TONY TURNER DATED 12 APRIL 2017 8.32PM

40 MR ROBERTSON: We see there, Mr Minucos, as at about the middle of April 2017, you advising Mr Maguire that "The funding commitment has been made by the government. That much is done." And then you're referring to a series of matters that then need to be dealt with. What's your next recollection of any involvement in the ACTA project?---This just came up on my screen now.

Well, you see there in the second sentence of the second paragraph of your email, you say, "There are a few intricacies involved in whether it's

Environment and Tourism Fund or other funding being ironed out by Treasury and INSW.” Do you see that there?---Yes.

So what’s your recollection of being involved in those intricacies or in any other matters concerning the ACTA project?---I don’t recall specifically what that would be. With that in front of me, that goes back to my statement that for Restart funding to be used, the Environment and Tourism Fund, that would need to be meeting the BCR, otherwise other, if they wanted to approve the funding, it couldn’t be from Restart.

10

So what was the – as you understood it – what was the state of play in terms of any preparation of things like business cases and the like from which a benefit-to-cost ratio analysis or cost-benefit analysis might be performed? ---The state of play was that a business case had been submitted by GHD, written by GHD, submitted by ACTA to the Office of Sport back in September 2016. That business case was deficient and couldn’t be used to access the Restart funding.

20

It was deficient in what way?---It was deficient in the methodology it used to produce the, in regards to the economic analysis, which is a, a, a section of the business case, the deficiency there was that it used an incorrect methodology that couldn’t be used to demonstrate the benefits to the state.

And what were the particular aspect or aspects that were deficient? ---You’ve made reference to it. So in cost-benefit analysis, the term is the community of interest, which is who do the costs and benefits pertain to. The community of interest in the September business case was Wagga Wagga. To access Restart funding, the community of interest would need to be New South Wales.

30

So is this right? One of the deficiencies in the business case that was in play as at the time of the ERC’s decision was that to the extent that there was an economic analysis, it was done based on the Wagga Wagga area rather than the state as a whole. Is that right?---That’s my, that’s my recollection, yeah.

And so your recollection is the document demonstrated that advancing this money, the \$5.5 million to the Australian Clay Target Association would be a clear benefit to the area of Wagga Wagga but it didn’t demonstrate whether or not it would be a benefit to the state as a whole. Is that right?

40

---Yes, and that’s what needed to be augmented.

And I take it in your experience, what the NSW Treasury expects is that if New South Wales money, New South Wales taxpayers’ money, is spent on a particular project, there is a demonstration at least for Restart purposes that that will result in an overall benefit to the state as opposed to just a part of the start?---For Restart purposes, yes.

And is this right? Where one doesn't adopt that approach and instead focuses on a particular part of the state, it's quite possible that all that's occurred or that would occur from spending the money is what I might call cannibalisation, where it might be good for, for example, the area of Wagga Wagga, but there might be an equal detriment to another area of the state, for example, Albury?---It's possible.

10 And so that's one of the reasons why, at least in your experience, a cost-benefit analysis is done at a state level rather than a regional level. One wants to ensure that the overall benefit to the state is positive of a particular expenditure of NSW Government money. Is that right?---For Restart funding, yes.

Well, for Restart funding, that's a requirement before the Restart funding can be paid. Is that right?---Yes.

What one requires before any money can be paid out of the Restart NSW Fund is a recommendation from Infrastructure NSW. Correct?---Yes.

20 One of the things that's required as a matter of practice from Infrastructure NSW is a demonstration of a benefit-to-cost ratio of 1 or more than 1. Is that right?---Yes.

And I think one also requires the formal approval of the Treasurer of the day. Is that right?---That's the final step, I believe, yes.

30 I take it, though, that even in the case of non-Restart Funds, at least from a Treasury perspective, back where you used to work before you worked for the Deputy Premier's Office, ordinarily Treasury would at least desire a demonstration that the benefit to spending money is equal to or exceeds the cost. Is that right?---Right. They have policies and guidelines around that, and for a capital expenditure over 10 million, that's what they require.

You're referring to what's sometimes referred to as the Gateway Guidelines. Is that right?---No. I'm referring to the cost-benefit analysis guidelines and the Treasury business case guidelines.

40 But is this right? At least as a general proposition, as you understand it, at least within Treasury, the desire unsurprisingly is that if a dollar of New South Wales money is spent, the overall economic benefit to the state should be a dollar or more than a dollar?---Generally, yes.

It's not to say there's not projects that from time to time will be approved with a BCR of less than 1 but at least as a matter of good practice from Treasury's perspective, that's what's expected, at least as you understand it. Is that right?---Yes.

Can we have on the screen, please, MFI 16, which is an email relevant to the discussion you and I have just been having. And we'll start at the top of the email chain. Do you see there an email from Ms Davis to you, 19 April, 2017, 1.28pm? That's just dropped off on my screen.

THE COMMISSIONER: And it's all gone blue. Is your screen just blue also, Mr Minucos?---My screen here is blue although on my laptop, I can see all of us and the document.

10 Don't worry. I fear there are more blue screens than usable ones.

MR ROBERTSON: Can you now, Mr Minucos, see the email from Ms Davis to you, 19 April, 2017, 1.28pm? If you look at the top of the page. ---Oh, yeah, I see. So she supported this, which is a – yes.

That's right. So she seems to be forwarding a chain of emails between a series of individuals, including, you'll see a little bit further down the page, an email from Mr Webster to Ms Davis. Do you see that there?---Yes.

20 I want to draw your particular attention to the email at the bottom of the page. Now, not immediately copied to you but it seems forwarded to you in April of 2017. Do you see there a Mr Nir, I think, N-i-r, sent an email to Mr Webster. "Dear Stewart, I have been through the materials sent to us by Jenny Davis regarding the proposal upgrades to the clubhouse and conference facilities at the current Wagga Wagga clubhouse." Do you see that there?---Yes.

Can we then turn to the next page and zoom into the top of the page.---Ah
hmm.

30 See there it says, "I agree with your assessment of the GHD business plans, possibly economic assessment is flawed." See that there?---Yes.

"The main issues are" and then the first dash point, "The cost cost-benefit analysis is performed from a Wagga Wagga perspective rather than the state perspective that the department and Treasury take." Do you see that there? ---Yes.

40 I take it you agree with that assessment that Mr Nir has identified?---Yes, that first dot point.

I'm sorry?---Yeah, on that first dot point, that person agrees with what they just said, yep.

And do you agree with the other matters that Mr Nir had raised, based on your experience within Treasury? The way in which things like gross revenues and operating costs are used?---At a cursory glance they appear to be sensible, yes.

And then if you have a look it says, “In order for us to conduct a cost-benefit analysis of the proposal, we would need at a minimum the following information” and then it there sets out a series of information, including the attendee profile for shooting events and business events, especially in terms of origin, interstate, international, New South Wales. Do you see that there?---Ah hmm, yes.

10 Now, did you have any involvement in dealing with the concerns that Mr Nir has identified as being inadequacies or being material that was needed as a minimum in order to conduct a cost-benefit analysis?---Yes.

And what involvement was that?---Some, I don't, I don't recall exactly when, I believe it was in April, I had a conversation with GHD, the business case writer, a short conversation that passed on very similar information to what Mr Nir's presented about the methodology being deficient, and let them know that this needed to be addressed in order for the department and for Infrastructure NSW to properly review and assess the, the business case.

20 Now at that point in time, you were working as a political staffer in Deputy Premier Barilaro's office, is that right?---Yes, I was policy adviser.

Why, as a policy adviser, were you engaged in direct communications with those who had prepared the original business plan, as opposed to, for example, given any comments that you had at the agency level?---I don't recollect exactly what caused that to happen.

30 Was that something you took upon yourself to do or was that something that you were asked to do by someone?---My chief of staff had asked me to look, look into the matter and just see if there was anything could do, given it had been idle for so long.

Sorry, say that last bit again.---Even though it had been, like, December that the decision was made, April, we, there had been to progress, so just look into it and see what's, see what's happening.

40 So is this right, you've got a recollection of being asked, what, during about April of 2017 by your then chief of staff to look into this issue of the ACTA proposal, is that right?---Yeah. I, I, I don't have specific recollection but what I believe is that following another, you know, that we were getting – he would have got a call, another call from Mr Maguire as to what's happening and I would have been asked to call him back and explain the process to him.

So is this right, doing the best you can, at some point perhaps in April of 2017 there was some communication from Mr Maguire to the Deputy Premier's Office and that led, as least as you understood it, to your chief of

staff, asking you to get a bit more closely involved in the what I'll call the business-case aspect of the ACTA proposal, is that right?---Yes.

And were you specifically asked to engage in communications directly with the consultant or was it a more general instruction or request that you were given by your chief of staff?---I don't recall who asked me to do what exactly, but somebody would have asked me to call the business case consultant and I would have called them without being asked.

10 Well, do you have a recollection of you being instructed or told to take that course or is it possible that you were simply asked to, in effect, find out what the situation was and get a bit of information that you might then be able to report back to Mr Maguire or perhaps someone else?---Yeah, it's possible, yes.

Was any issue ever raised with you as to the appropriateness or otherwise of you, as a political adviser, as a policy adviser, making direct contact with the consultant, as opposed to, for example, doing it through the agency?---I don't recall any conversation like that, no.

20

Is it possible that there was such a conversation?---It's possible.

Is it possible that this is a matter that was raised with you and you were asked to pull your head in or words to similar effect?---I don't recall anything like that, no.

You don't recall anything along those lines?---No.

30 You referred to your chief of staff before. That was a reference to Ms Dewar, is that right?---Yes.

Commissioner, I tender the email on the screen, which has otherwise been marked as MFI 16, which is an email from Ms Davis to Mr Minucos, 19 April, 2017, 1.28pm.

THE COMMISSIONER: Exhibit 454.

40 **#EXH-454 – EMAIL FROM JENNY DAVIS TO MINUCOS
REGARDING AUSTRALIAN CLAY TARGET ASSOCIATION –
UPGRADES DATED 19 APRIL 2017 1.28PM**

MR ROBERTSON: Can we go also, please, to volume 26.5, page 204. I'll show you another email from Ms Davis that appears to have been sent at almost the same time.---Ah hmm.

Do you see at the top of the page Ms Davis to you, 19 April, 2017, 1.28pm as well?---Yes.

And if you have a look at the attachment, see there's a series of attachments.---Yes.

One's called Australian Clay Target Assoc Rev 1.pdf and another one's ERC Submission Extension. Do you see all of that there?---Yes.

10 So this seems to be at least the second of two or so emails sent to you around about the same time.---Ah hmm.

The other one being the one that I showed you a little while ago, marked MFI 16. Do you recall receiving this particular email?---No, I don't recall specifically.

Just have a look at the context. You see towards the bottom of the page you're being forwarded an email from Mr Doorn to Mr Betts. Do you see that there?---Ah hmm. Yes.

20

At that point in time Mr Betts was the CEO of Infrastructure NSW, is that right?---Correct.

And you see there's a summary of the ACTA proposal, including reference to things like there are no independent reviews, feedback from agencies, et cetera, on the proposal. Do you see all that there?---Yes.

30 Doing the best you can, does it look like that in about the middle of April, and you can see here 19 April, 2017, around about then is where it looks like you were tasked with getting involved in some of the detail of the work that needed to be done to turn the ERC decision from an approval, to use your phrase from before, to money actually flowing.---The only thing I would correct there is it's, I don't think it was to turn it from an approval to get it flowing, but it was to get a business case compliant so it could be reviewed.

40 So, as you saw it, part of your role was to attempt to get the business case compliant in order to allow for it to be reviewed, is that right?---There was a request for an amended business case or whatever the decision said exactly, and that had not been completed yet, so the process wasn't, the steps weren't happening.

As at 19 April, 2017, do you have a recollection as to what the status of any business case or cost-benefit analysis were? You explained before that, as you understood it, there was a business case in play at the time of the Expenditure Review Committee decision of December of 2016. Had there been any progress, at least as you recall, in relation to that business case, or

any cost-benefit analysis by reference to that business case by that point in time?---I don't – no.

So do you have a recollection of whether there had been any attempt at a cost-benefit analysis producing a benefit-to-cost ratio as at about 19 April, 2017?---Yes, there was what you'd call a counter model done by the department based on the original business case, I believe. But there hadn't been an amendment to the business case. It's two different things.

10 And do you recall what the outcome of the particular review that you're now talking about was?---Well, with access to the documents that have been tendered, I have my memory refreshed that it was a 0.88 BCR.

Let me try and assist this way. Go to page 254 of volume 26.5. And while that's coming up, I tender the email that I showed to Mr Minucos a moment ago, which is the email 19 April 2017, 1.28pm, page 204, volume 26.5.

THE COMMISSIONER: That's exhibit 455.

20

#EXH-455 – EMAIL FROM JENNY DAVIS TO PETER MINUCOS REGARDING AUSTRALIAN CLAY TARGET FACILITY IN WAGGA DATED 19 APRIL 2017 AT 1.28PM

MR ROBERTSON: So we're still on 19 April, 2017. The particular email I'm going to show you is 3.12pm. And it's not one that you're copied to but it is one that you're referred to in, page 262. I'll actually start at page 255 if we can, volume 26.5, page 255 – I'm sorry. We'll come back to this one.
30 Just back to 255, please. 19 April, 2017, 3.05pm. So this is an email from Mr Hanger to Ms Davis, 19 April, 2017. See that there?---Mmm.

Sorry, Mr Minucos. We'll just pause while some of our screens are fixed. Has that now come back up on your screen, Mr Minucos?---It has, yes.

And if you see where it says "attachments", it says, "Wagga Clay Target Assoc CBA final." Do you see that there?---Mmm.

40 Do you see that there on the screen?---Yes.

But you'll see Mr Hanger says to Ms Davis, "I've also sent this to Peter Minucos in DPO as he was asking." Do you see that in the second paragraph?---Yes.

And I'll just show you the document itself that's attached. We'll go please to page 260. And I'll show you the result summary. This is forming part of the attachment to the email I just showed you. Do you see there a section called "result summary"?---Mmm.

It says, “Based on the business case prepared by GHD and on the assumption described in this document - - -?---Yes.

- - - it’s estimated the project would represent a net cost to the referent group of approximately \$653,000 and achieves a benefit/cost ratio of 0.88 over the assessment period of 25 years.” Do you see that there?---Yes.

10 So at least at this point in time, the assessments were indicating that the cost to the state of what I’ll call the ACTA project was higher than the economic benefits to the state. Is that right?---My interpretation is that is true based on the September business case prepared by GHD.

And so you’re saying, as you recall, it was based on the December business case, not some addition to it?---Well, I believe the business case was submitted in September to the Office of Sport and so I believe this is taking the, the, the information from that business case and applying it to the referent group as they refer to, the community of interest, New South Wales.

20 So is this right? To the extent that there was any work done, in terms of either a business case or a cost-benefit analysis, between the ERC decision of December and about the middle of April 2017, that wasn’t something that you were involved in. Is that right?---No.

You, in effect, got involved, at least in terms of the detail, from the middle of April 2017 but no earlier?---Yes.

30 You might have been aware of it in general terms because there may have been some discussion about it but in terms of your direct involvement, it wasn’t until about the middle of April of 2017. Is that right?---That sounds right.

Going back to page 255. Still part of the covering email to the same document. So is it consistent with your recollection that Ms Davis sent you a copy of the cost-benefit analysis that I’ve just shown you in part on or around 19 April, 2017?---Well, I don’t recollect but it’s here on the screen so it seems correct, yes.

40 Well, it’s at least – doing the best you can, appreciating it was a few years ago, it’s consistent with your recollection that you had access to a cost-benefit analysis that showed a BCR of about 0.88, is that right?---Yes.

And you’ll see that Mr Hanger says that “Mr Minucos was asking”, do you see that there?---Ah hmm. Ah hmm.

Do you recall whether you were asking for it?---I don’t recall, no, but – I don’t recall specifically, but that would be consistent with what was happening, yes.

Why would have you been asking for it, though?---Just was in my portfolio of Regional NSW and Infrastructure, and that was my, my job was to understand what was happening in that portfolio.

10 But it was also in your portfolio between January and April, and by the sounds of it, you weren't involved in the detail. Why did you get involved in the detail during or about the middle of April? What caused that to take place?---From what I'm seeing, that's when their, they had completed their counter model.

But do you have any recollection as to how it seems that, in about the middle of April 2017, you became involved in the detail of the, what I'm calling the ACTA project?---No recollection.

20 What in effect caused that to take place?---The two things that I believed caused it were that, after a few months, the department had finished their counter model and that my chief of staff had asked me to have a look at it, call back Mr Maguire, et cetera.

So you've got a recollection that during about the middle of April 2017, your chief of staff asked you to, in effect, work out what the status was of the ACTA proposal and to keep Mr Maguire informed in relation to that matter?---I believe so.

30 And as best you know, was that simply your chief of staff trying to ensure that a local member was informed or was there some further background or information that was relevant to the way in which you got involved in the matter?---No, purely to keep the member informed and the fact it was regional infrastructure, so that was my, my role.

So your role was to keep the local member informed on your, on the instructions of Ms Dewar, but also to be across something that was in your portfolio as a policy adviser, is that right?---Yes.

I tender – Commissioner, I tender the email from Mr Hanger to Ms Davis, 19 April, 2017, 3.05pm, page 255 and following of volume 26.5.

40 THE COMMISSIONER: Exhibit 456.

#EXH-456 – EMAIL FROM CHRIS HANGER TO JENNY DAVIS REGARDING WAGGA WAGGA CLAY SHOOTING CBA DATED 19 APRIL 2017 AT 3.05PM

MR ROBERTSON: Now, the information that I've just shown you, having been provided to you by about the middle of April 2017, what steps, if any,

did you take in relation to the ACTA proposal?---I said, at some point I had a conversation with a business case writer to inform them that the existing business case from 2016 was deficient, and steps would need to be taken in regard to the methodology in order for it to be reviewed and assessed by the appropriate departments.

10 And is this right, you were getting the benefit of your experience as someone who had worked in Treasury and providing specific advice as to the kinds of things that the consultant might do to improve the quality of their business case?---Yes, in regards to the method of the business case, not regarding the project.

I'm sorry, say that again.

THE COMMISSIONER: Not regarding - - -

THE WITNESS: In regards to the method of the business case, yes.

20 MR ROBERTSON: But you qualified that by saying you - - -?---Not, not in regards to the merits of the project or the scope of the project.

What do you mean by that?---It was still the business case writers and the proponent's job to submit the business case. It just needed to be compliant with the Treasury guidelines.

30 So in terms of things like the figures, as in things like how many events might one expect in the event that the new facility is built, what the proportion of interstate versus international versus intrastate visitors, things of that kind, is this right, that was all left by you to the consultant and it wasn't something that you were giving any particular input in?---I had a conversation with them about that, but the inputs came from them, yes.

So you had a conversation as to the kinds of inputs that needed to be included in the business case, but without saying, well, why don't you put it as this number of percentage or this number of people or things of that kind?---Yeah, it wasn't, I didn't provide a view as to what they should be. I'm not an expert in regional conference centres.

40 Your relevant expertise, as someone who previously worked in Treasury, is not, for example, in clay target shooting, correct?---No.

Or in the number of tourists that might be attracted to a conference centre in Wagga Wagga, correct?---No.

Your experience and expertise though is in putting a business case together in such a form that it may be capable of being analysed to produce a benefit-to-cost ratio, is that right?---Correct.

And so can we just have a look at an example of that? If we go to page 269 of volume 26.5. And just while that's coming up, I take it from you've just said that at least in your experience the quality of the output, by which I mean the ultimate number of a benefit-to-cost ratio, is going to be affected by the quality of the inputs, as in the assessment and the business case of the economic benefits and the costs of a particular proposal?---It would be affected by the quality of the inputs, which would then, then there needs to be a proper framework to produce the out, the outputs. So it's the framework that I was focused on.

10

So you were focused principally on the framework rather than the numbers to put in the framework, is that right?---Yeah. The framework and methodology, whichever way you want to term, it but not the, not what numbers went into the inputs, no.

You wouldn't know whether the numbers are accurate, inaccurate or anything in between, correct?---No, that wasn't my job and the regional department would stress test and check those, those inputs. So whatever GHD put in was going to be subject to review by the relevant experts.

20

But you were more focused on the structure rather than the individual numbers, is that right?---Correct.

Go to page 269, please, of volume 26.5. If you have a look at the email towards the bottom of the page, we'll zoom into that. There's an email there to a Mr Paul from GHD. Do you see that there?---Yes.

30

That was the gentleman who you were in principal contact with in relation to this matter, is that right?---I believe I had a conversation with him and then he sent me this email, yes.

And then if you have a look at the second substantive paragraph, you're raising, or you were confirming your discussion that one of the inadequacies in the business plan is that it demonstrated benefits for Wagga Wagga rather than New South Wales when it comes to non-shooting events and conferences, is that right?---Yes.

40

And so is this right, at least as you saw it as at April of 2017, a business plan that assessed the benefits for Wagga rather than New South Wales more generally would not be a suitable basis for allocation of funds from the New South Wales coffers, is it were?---Could you repeat that question again?

A business plan that focused on the benefits to Wagga rather than the state of New South Wales would not, from your perspective, be a suitable basis to confirm or deny allocation of funds from the state government?---That's correct, yeah.

And you then see a series of other suggestions that you make in relation to the business case?---Yes.

See that towards the bottom on the page?---Yes.

But to circle back to something you said before, if you look at the third dot point, for example, “Base case is X conferences with Y people of which Z were non-New South Wales.” See that there?---Ah hmm.

10 And so is that consistent with what you were explaining before, you were trying to give assistance as to the structure of what might be put in the business case?---Yes.

But leaving it to the external consultant to work out things like how many conferences were expected, how many people would be there and what percentage would be non-New South Wales versus NSW, is that right? ---Yes.

20 And then if we just zoom up the page, you then forward that email on, it seems, to Mr Maguire at 5.13pm. Do you see that there?---Yes.

And so you’re then updating Mr Maguire – is this right, you’re then updating Mr Maguire on it seems a relatively regular basis as to what’s going on in terms of things like preparing a further business case?---If there’s something to update him, then I would update him.

But why are you updating Mr Maguire?---It was, it, it was a project he was interested in and so let him know what the, what the status was.

30 Was that, in effect, the instruction that you were given from your chief of staff, Ms Dewar, “Mr Maguire has been making contact with our office, can you just try and take care of it and take the running of it and keep Mr Maguire informed?”---Oh, to a certain extent but this would be applicable to MPs across regional New South Wales to keep them informed as to the update of projects in their electorate.

40 So are you saying you dealt with this matter in terms of updating the local MP in exactly the same way as you would have in relation to any other MP?---Yes, if this project was in any electorate, that would have been updated the same way.

I tender the email from Mr - - -

THE COMMISSIONER: Before you do that, Mr Robertson – Mr Minucos, you also sent it to the executive officer of the Clay Target Association. Did you know that to be Mr Turner?---I believe that’s Tony Turner, yeah.

And had you spoken to Mr Turner about the - - -?---I believe I had one conversation with Mr Turner about the update, to, to let him know where the, how things were going.

MR ROBERTSON: I tender the email from Mr Minucos to Mr Maguire, 20 April, 2017, 5.13pm.

THE COMMISSIONER: That's Exhibit 457.

10

**#EXH-457 – EMAIL FROM PETER MINUCOS TO DARYL
MAGUIRE REGARDING ACTA BUSINESS PLAN DATED 20
APRIL 2017 5.13PM**

20

THE COMMISSIONER: So you communicated both with the member of parliament and with his constituent, or the representative of his constituent, Mr Turner. Is that also a usual course, Mr Minucos?---It might be. Just, I, I would sort of act as requested, so if there's some, my information can assist with clarity around process, then I'm happy to pass that information on.

30

MR ROBERTSON: You said you acted as requested. Do we take it from that that you were requested by someone to update not just Mr Maguire but, as I think the Commissioner put it, the constituent?---My recollection is, when I explained to Mr Maguire, this is the status, you can't get Restart funding without updating the business case, the business case is deficient, it needs to have the methodology corrected. Mr Maguire understood the explanation but asked me if I could let the proponent know because they hadn't been told this is where they were at, is my understanding.

So it was Mr Maguire that asked you to keep the proponent informed as to what was going on on the business case side, is that right?---To, to provide them with the status of the project, that, that the decision hadn't guaranteed them Restart funding, and an amended business case would be required if they were going to be able to access that Restart funding.

That was something that Mr Maguire asked you to inform the proponent, is that right?---I believe that's true.

40

Go then to page 275 of volume 26.5. So I take it your discussions and suggestions to Mr Paul led to a further business case or at least an addendum to a business case to be prepared, is that right?---I believe so, yes.

Page 1275, volume 26.5. We're now 24 April, 2017. Do you see that email from Mr Paul back to you?---Yes.

And Mr Paul says, "Please find attached the information you requested. Please consider this memorandum an annexure to the business plan previously submitted by GHD." See that there?---Yes.

So is it consistent with your recollection you have a discussion with Mr Paul, make some suggestions on the business case, and Mr Paul ultimately comes back with an annexure to the previous business case?---Yes.

I tender the email from Mr Paul to Mr Minucos, 24 April, 2017. 4.30pm.

10

THE COMMISSIONER: Exhibit 458.

**#EXH-458 – EMAIL FROM CALEB PAUL TO PETER MINUCOS
REGARDING ACTA BUSINESS PLAN DATED 24 APRIL 2017
4.30PM**

MR ROBERTSON: Is that then the end of your involvement in the business case, or do you have further involvement after that point in time?---I believe I have further involvement. I provide one last piece of advice to GHD around the methodology, and then I tell them need to get this to the regional department for them to review and assess it appropriately.

20

So let's just go to that email. Volume 26.6. Page 30. Now, while this is all going on, are you in contact with people at the agency level, as in people like Mr Hanger, or are you just dealing with this directly with the proponent?---I don't recall what conversations I was having with the agency in parallel.

30

At least in your experience, this kind of thing – making suggestions on, for example, the structure of the business case – would be dealt with at an agency level rather than at a political staffer level, would you agree?---Yes.

Why in this particular case was it dealt with, at least in part, at a staffer level rather than an agency level?---Because the dialogue I was having wasn't political. It was in regards to the methodology, and I had experience, like, in that matter, so I was - - -

Is that something that you took upon yourself to do or were you asked specifically to get involved in matters of that kind, for example, did you have a chat to Mr Hanger, for example, and say to Mr Hanger, "Well, I'm going to try and take the running of this," or with Ms Dewar, for example, or did you take it upon yourself?--- I don't, I, I don't recall.

40

It's possible you just took it on yourself, is it?---It's possible.

It's possible that you were asked to insert yourself into the process. Is that right?---It's possible.

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

If you have a look at the email towards the bottom of the page.---Mmm.

10 In fact, what we might do is we'll, just so you can see the context, we'll start on page 32. So there's the email I've already shown you, towards the bottom of the page.---Yeah.

There's then a response on 24 April.---Mmm.

If we then go back to the preceding page. See there, you're providing some further suggestions? See there it says "as discussed"?---Yes.

20 And, amongst other things, you're suggesting that he should provide an estimate on the number of interstate visitors to potential conferences. Do you see that there, towards the bottom of the page?---Yes.

And if we turn to the next page, we'll just zoom in on the top half of the page. Do you see there, "Based on our conversation, it sounded like the additional conferences might attract 5,000 new visitors." Do you see that there?---Mmm. Yes.

And, "A best guess might be that 65 per cent of these visitors are non-New South Wales." Do you see that there?---Yes.

30 So appreciating that it was Mr Paul who was coming up with the general idea as to numbers, you were at least providing some assistance as to how those kinds of numbers might be put together in the business case itself. Is that right?---So what's being suggested here is just the, is that the business case also requires a sensitivity analysis for it to be compliant with the guidelines, so just it's not sufficient just to put the essential estimate and what you believe will happen. You should also put a, a higher and low range in order for the relevant people to have a better understanding of that estimate in order to review. So I was suggesting they needed to add a, a sensitivity analysis to be compliant with the, the guidelines.

40 And when you're referring to a sensitivity analysis, what you're referring to is the practice in business cases of identifying key factors that might affect the ultimate analysis and working out what the consequence to the result would be of the true number being higher or lower than what is estimated. Is that right?---Yeah. To, to use your term, the inputs drive the outputs, so what happens if you change some of the key inputs, what does that mean for the outputs? So that's why it's required in the, like, the guidelines to have that sensitivity analysis.

And so for this particular proposal, although it was about a clubhouse at the Australian Clay Target Association site, the principal benefit that was put forward in the business case was a tourism benefit as opposed to what might be called a pure shooting benefit. Is that right?---Yes.

The idea was that build this large conference facility and there may will be significant conferences that might have absolutely nothing to do with shooting, attending for a conference at the Wagga Wagga facility. Is that right?---That was my understanding, yes.

10

But I take it from what you've just said, a critical aspect of whether the overall benefits to the state would be greater than the cost to the state was the accuracy of the new visitors figures?---Yes.

And that's why, at least from your perspective as someone with experience in this area from Treasury, one needs a sensitivity analysis because you might say, "Well, we're expecting 5,000 visitors and if there's 5,000 visitors, for example, there's a positive BCR but if we got that wrong and it's only going to be 3500 visitors, there might actually be a negative BCR." Is that right?---Correct.

20

That's all part and parcel of the outputs being as good as the inputs, in effect. Is that right?---Yes, and the sensitivity analysis is part of the methodology that allows you to do the review and the analysis assessment.

If we then go to the preceding page, and then if we just go to the preceding page before that and have a look at the bottom of the particular page. You see there from you to Mr Paul, it says "as discussed, please send through the revised business case" to a particular email address but if we then go over to the next page, "Once I review, the two contacts will be Chris Hanger and Jenny Davis." Do you see that there?---Yes.

30

So does that refresh your memory that at least in the process of improving the quality of the business case, it was really you engaging in communications directly with the consultant rather than doing that in conjunction with the, what I'll call the agency staff?---Yes.

So you were trying to get it to a particular standard by working directly with the proponent, or at least the proponent's consultant, and then only after that would it be sent to the agency staff here, Mr Hanger and Ms Davis?---Yes.

40

Can we then go back a previous page? Have a look at the email towards about the middle of the page.---Ah hmm.

"I haven't had a chance to review every detail of the second business case" but in effect forward the new business case to Chris and Jenny on the emails below. Do you see that there?---Yes.

And then we'll just go up the page. Mr Paul says, "I've been requested by Peter Minucos, Deputy Premier's Office, to forward you a copy of our revised business case, which was issued to the Department of Industry." Do you see that there?---Yes.

Commissioner, I tender the email chain ending in an email from Mr Paul to Mr Hanger and Ms Davis, 9 May, 2017, 8.18am.

10 THE COMMISSIONER: That will be Exhibit 459.

#EXH-459 – EMAIL CHAIN ENDING WITH CALEB PAUL TO CHRIS HANGER AND JENNY DAVIS REGARDING ACTA BUSINESS PLAN DATED 9 MAY 2017 8.18AM

THE COMMISSIONER: Should there be a few more redactions on this, Mr Robertson?

20 MR ROBERTSON: In the one that's uploaded, there will be. So the version that I've shown the witness has a few less redactions than the one that will be uploaded.

THE COMMISSIONER: Very well. Thank you. Exhibit 459.

MR ROBERTSON: Was that then, Mr Minucos, the end of your involvement in the ACTA project or did you have further involvement after that point in time?---I don't recall any further involvement apart from being updated later on as to what the outcomes were.

30 When you say updated in terms of what the outcomes were, what are you now referring to?---The, once that business case had been given to the regional people to review and assess, I believe they did an assessment. They, again, stress tested what GHD had put in as their estimates and they provided their analysis to Infrastructure NSW.

40 Can I just ask you about this email then? Page 299 of volume 26.6. Now, can we just zoom into the top-half of the page please? There's an email from Mr Barnes to you, 30 May, 2017. Do you see that there?---Ah hmm.

And what Mr Barnes says in response to your email is "Correct, Peter. The Wagga one will require an agreement to allow INSW to move outside of the guidelines which is a two-step process." Do you see that there?---Ah hmm.

What did you understand to be the reference to the guidelines being a two-step process?---Hmm. I don't recall this and I don't really understand what that, that means.

Well, have a look at the context. If we go back to the, if we go to the next page.---I'm just trying to read at the bottom now.

So if we zoom into the bottom-half of the page and Mr Barnes to Ms Dewar and to you. Do you see – I won't read out the other projects but if you see on 30 May, 2017, it says both a particular project “and Wagga Clay Target projects are to be funded from the RGEFT”?---Yep.

10 That's a reference to the Regional Growth – Environment and Tourism Fund, is that right?---Yes.

It says “Both are to be treated as per” another project “and separate to shortlisted projects.” Do you see that here?---Ah hmm.

20 What did you understand Mr Barnes to be talking about by saying that the Wagga Clay Target project was to be dealt with separate to shortlisted projects?---I believe there was, there, there was another round of funding happening and there were shortlisted projects. Because Wagga had, had the ERC decision in December it was separate to those projects.

When you refer to the shortlisted projects, that's a reference to a competitive process pursuant to which certain projects are shortlisted, is that right?---I, I don't recall specifically but that sounds possible,

30 And so is this right? As you understood it, because of the ERC's decision, it was unnecessary for the ACTA proposal to be the subject of a competitive process and get on shortlist, rather the government, through the Expenditure Review Committee, had in effect said we're going to pick this project, and provided that it meets the requirements, including a BCR of 1 or more than 1, then it gets funded without having to compete with other potential projects?---Yes.

I tender the email from Mr Barnes to Mr Minucos and Mr Hanger, 30 May, 2017.

THE COMMISSIONER: Exhibit 460.

40 **#EXH-460 – EMAIL CHAIN ENDING WITH GARY BARNES TO PETER MINUCOS AND CHRIS HANGER DATED 30 MAY 2017 2.33PM**

MR ROBERTSON: What's your next involvement in the ACTA proposal that you can recall beyond 30 May, 2017?---Well, I don't recall those emails. I don't recall anything except receiving advice that the funding – there was the, that the letter from INSW had gone to the Treasurer and that the funding had been approved.

So is this right, essentially your involvement on a day-to-day basis was the involvement that we can see in terms of assisting the consultant in the preparation of the business case, perhaps some information in terms of advising Mr Maguire what was going on and the proponent what was going on, but in terms of the more detailed work, it was only in terms of getting the business case in effect organised or to a sufficient standard.---That sounds right, yep.

10 And it ultimately came to your knowledge, what, the result of your work and Mr Paul's work on the business case was, is that right?---It, I'd forgotten that it did that eventually, yes.

And when you say it did that, what are you now referring to?---There was a letter from Jim Betts, INSW, to the Treasurer endorsing the funding.

So I take it there's a couple of steps in that process, though. There must have been a cost-benefit analysis showing a BCR of 1 or more than 1?
---Yes.

20

And it ultimately came to your notice that there was a recommendation from Mr Betts of Infrastructure NSW, is that right?---Yes.

Were you involved in the process of procuring that or was that left to others?---I don't recall being involved in that.

Do you recall who that was left to? Was that left to the agency staff, was it?---I would have thought so. I don't recall.

30 But why then were they, did they take the running in terms of a mechanical issue of that kind, but they didn't take the running in terms of an issue like getting the business case to a sufficient standard?---I'm not sure. No recollection.

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

40 Pardon me for a moment. Just go to page 292 of volume 26.6. Just see if this assists with your recollection in this area. I'll show you an email that you sent to Mr Maguire, copied to your chief of staff Ms Dewar, 30 May, 2017.---Ah hmm.

Now, you say to Mr Maguire, if we just zoom into that email, you say to Mr Maguire, "I've spoken to Tony and given him the update." See that there?
---Yes.

Tony's a reference to who?---That would be Tony Turner.

And he was the National Executive Of course of the Australian Clay Target Association, is that right?---Correct. Or as I understand it, yes.

And so you say, “We’ve been in constant dialogue with the department and almost ready to go on this one now.” Do you see that there?---Yes.

What was the constant dialogue with the department that you were having? Or perhaps - - -?---I have no, I have no recollection of that.

- 10 And you say, “The information in the business case demonstrated the dual aims of the project, shooting and conference facility, to enable the economic appraisal to assess those benefits.” Do you see that there?---Yes.

Is that a reference to what you and I have already discussed, namely that at least the principal justification for the facility as set out in the business case, or at least the finalised version of the business case, was the conference facility and its ability to secure or the possibility that it will secure tourists to the area of Wagga Wagga?---Yes.

- 20 And if you jump over a dot point, fourth dot point, “That will enable NSW to recommend to ERC that the project be funded out of Restart NSW, and once ERC approves, the deeds can be drawn up.” See that there?---Yes.

Do you recall whether that’s the way it actually played out, whether it went back to ERC or not?---No, that probably is incorrect ‘cause it probably went straight to the Treasurer.

And at that point in time that’s Treasurer Perrottet, is that right?---Yes.

- 30 It went to him for ultimate sign-off because he’s ultimately responsible for infrastructure, for money being paid out of the Restart NSW Fund, is that right?---Yes.

But the Treasurer, is this right, as you understand it, the Treasurer can’t authorise the payment out of money from Restart NSW unless it’s been the subject of a recommendation by Infrastructure NSW?---I believe that, that would have been the case with this tourism infrastructure funding, yes.

- 40 But is it right from what you said before that, in terms of the mechanics of procuring that – in other words the mechanics of procuring the recommendation and procuring the ultimate approval from Treasurer Perrottet – was not something that you had the day-to-day running of?---I don’t believe so, no.

Just pardon me. I should just give you the context of that email chain.---Ah
hmm.

So if we go, please, to page 294 and zoom in towards the bottom of the page.---Ah hmm.

This is an email from Mr Turner to Mr Maguire, 8 May, 2017, 8.55am, that you seem to have been ultimately forwarded. See that there?---Yes.

10 Mr Turner says, “Sorry to be a constant pain. I had the chief of staff at the Deputy Premier’s Office ring regarding the grant. He said he would send the paperwork. I still haven’t seen anything and need to understand the terms of the grant for acquittal purposes and to ensure we are clear on how the money is to be spent.” Do you see that there?---Yes.

Do you have a recollection of the circumstances in which either the chief of staff or someone else from the Deputy Premier’s Office was ringing regarding the grant?---No.

20 And then if you look at the next paragraph, “My understanding is that the money was granted to build the facility the size as agreed with former minister Stuart Ayres.” Do you see that there?---Yes.

Do you know what that’s a reference to, an agreement as to a size apparently agreed with Minister Ayres?---No.

No understanding of that at all?---Had no involvement, no, no.

What was your understanding of the size of the facility that was to be built, according to the business case that you had at least some involvement in? ---It would have been whatever how the scope was in the business case.

30 No, but do you have a recollection as to what that actually was?---No.

You presumably knew about it at the time but, what, sitting there now, you don’t have a recollection one way or the other?---I don’t think it was ever of interest to me, the line-by-line inputs. I was only worried about that the business case was compliant to how - - -

40 The only thing you were interested in is having a business case of a format that could be then the subject of an analysis, is that right?---Yes, the scope and so forth would have been for the people reviewing the business case to be concerned with.

And you didn’t have any particular involvement in the figures as opposed to the formatting in which those figures might be identified in the business case?---No.

And then go to the next page. See there, “I need confirmation of the terms and time frame for getting access to this grant.” See that there? So if we go to page 295, please. Zoom in to the top half of the page.---Ah hmm.

“I need confirmation of the terms and the time frame for getting access to the grant.” See that there?---Yes.

“I just want to ensure I adhere to all the requirements of the grant.” See that there?---Ah hmm. Yes.

10 “Once this is clear, I’ll have GHD measure and report against it.” And then goes on to say, “The DA was submitted two weeks ago and we have a meeting with council tomorrow regarding the submission. We don’t anticipate any further hold-ups.” Do you see that there?---Yes.

What was your understanding at the time of this email chain, which is 30 May, 2017, as to the physical status of the project, by which I mean had any physical works been done? You’ll see from this paragraph it seems to be suggesting that the DA had been submitted. What was your understanding as to that?---I don’t think I had any understanding as to the physical progress of the site.

20 Well, you at least knew at this point in time that a DA, a development application, had been submitted two weeks before?---My recollection is that there was preparatory work being done by ACTA so that if the funding was allocated, they would be able to move on the project.

But at least to your knowledge, at least some work was being done in anticipation of the funds flowing, is that right?---I’m not sure about physical work but I’m sure they were preparing to do work around the preparation so that the project received funding.

30 At least as you recall it, was it made clear to the proponent that this money was going to come in due course and all that was happening was it affected administrative processes to in effect release the funds that had already been committed by government?---I, I can’t comment on the expectations that were set at the local level for instance by the local member and so forth. There may have been misunderstandings as to how guaranteed the funding was and so forth. So, I, I, I don’t know.

40 When you say a misunderstanding – well, when you say “how guaranteed the funding was” what do you mean by that?---There may have been a perception at the local level that the December decision was going to guarantee funding in a timely manner. I, I don’t know what their, what their perception was.

At least as you understood it, was the funding in effect guaranteed, to use your term?---It was certainly not guaranteed out of Restart and so there was timing issues, and the fact that they needed a compliant business case to access that funding.

So it certainly wasn't guaranteed out of Restart. Do we take it from that that at least as you understood the view of the Deputy Premier's Office, this was a project that would be funded albeit it may have become necessary to find an alternative funding source than a Restart NSW funding source?---Again, I can't comment on what ERC intended when they approved conditional and what they, if they had, what, what would have happened if the conditions weren't met. I, I don't know.

10 So are you saying you've got no recollection of any discussions or understandings or anything of that kind within the Deputy Premier's Office?---I don't have any recollections about what would have happened but certainly everybody was aware that for the Restart funding to be paid, there needed to be a compliant business case that was approved by INSW.

20 But are you saying you don't have a recollection one way or the other as to whether it was made clear to Mr Maguire or the proponent that one way or another this matter would be funded. It may not be able to be funded through Restart NSW and if it can't be it'll be funded in some other fashion?---I don't recall that at the moment.

It was at least a project, as you understood it, that had political backing behind it, is that right?---Yes.

That was something that you inferred at least from the ERC decision itself, correct?---Yep.

30 Did you infer than from any other source? Did, for example, the Deputy Premier indicate to you either directly or through your chief of staff that he was a backer of this project?---I don't recall that, no.

Do you have any recollection of anyone else within the political aspect of government making it clear to you either directly or indirectly that this was a proposal that was supported at the political level?---I don't recall any specific conversations, no.

40 Well, you might not recall the specifics but did you draw an inference one way or other as to that matter, that matter of political support, based on any communications that you had with anyone?---No, I think any other staffer in there would have been drawing the source from the same point, the ERC decision that, that meant there was political support.

So you had an understanding that this was a proposal that had political support at a high level because you were aware of the ERC's decision, is that right?---Well, the ERC decision is the ultimate support, yes.

But not something added to or subtracted from, from any other communications that you had with anyone within government, is that right? ---Not that I can recall.

Just pardon me. That's the examination, Commissioner. Oh, in fact I should actually tender that last email. I tender the email from Mr Minucos to Mr Maguire, copy Ms Dewar, 30 May, 2017, 12.25pm, page 292 to 295 of volume 26.6

THE COMMISSIONER: Exhibit 461.

10 **#EXH-461 – EMAIL FROM PETER MINUCOS TO DARYL
MAGUIRE DATED 30 MAY 2017 AT 12.25PM**

THE COMMISSIONER: Mr Agius, did you wish to seek leave to examine or cross-examine Mr Minucos?

MR AGIUS: No, Commissioner. There's no application.

20 THE COMMISSIONER: Thank you, Mr Agius. Mr Harrowell, do you seek leave to examine - - -

MR HARROWELL: No, Commissioner.

THE COMMISSIONER: No. Thank you. Ms Callan, do you wish to seek leave to ask Mr Minucos any questions?

MS CALLAN: Yes, Commissioner.

30 THE COMMISSIONER: I give you that leave on the usual terms.

MS CALLAN: Thank you, Commissioner. Mr Minucos, my name is Callan, I represent Ms Berejiklian in this public hearing. Insofar as you've given evidence about your involvement in respect of the ACTA grant proposal, would you consider it accurate to describe yourself as having been interested into that process?---I would have been requested to be involved, so if you take that as inserted, then yes.

40 Do you consider as a policy analyst in the Deputy Premier's Office at the time that it was inappropriate for you to have done so?---No.

You were taken to a series of emails in Counsel Assisting's questions. For instance, there was an email, if I could have the witness be shown Exhibit 459.

MR ROBERTSON: Volume 26.6, page 30, if that's an easier way to get it.

MS CALLAN: You were taken to this a few minutes ago, Mr Minucos. Do you see that's an email chain, the final email of which is from Mr Paul at the

consultants to Mr Hanger at the department and, in effect, provides or attaches certain information. And below in that email chain, we can see communications that you had directly by email with Mr Paul. You see that?---Yes.

Insofar as that whole email chain was, in effect, forwarded by the consultant to those individuals at the department, were you troubled that that meant they could see the communications you had had with Mr Paul?---No.

- 10 You were also taken to an email from Mr Barnes which referred to the fact that this ACTA grant was not going to be the subject of the usual two stage process and there was some reference made in Mr Barnes' email to some other projects that had similarly not been subject to the two stage process. ---Mmm.

From your observation and experience, it was not unusual, from time to time, for particular projects or proposals to be dealt with outside the so-called competitive two stage process?---No. No, it wasn't unusual.

- 20 Could I ask the witness be shown Exhibit 461. Mr Minucos, you see that's your email you were shown a few minutes ago to Mr Maguire - - -?---Yes.

- - - copied to Ms Dewar? That was the chief of staff in the office where you worked?---Correct.

And did you report directly to her through the deputy chief - - -?---There was a deputy chief of staff, but, I mean, pretty dynamic office and I would also report directly to the chief of staff.

- 30 And the terms of that email really set out a discussion you'd had, as you said, with Tony Turner, who was from the proponent, from the ACTA? ---Correct.

Insofar as you've copied Ms Dewar on this email to the local member, are you doing so in order to keep her updated as to the work that you had been doing in respect of this task that fell within your area of responsibility?---I, I don't recall but that sounds possible, yes.

- 40 But insofar as you've emailed her, you were being open and transparent with her about the nature of your communications both with the local member but also with the proponent?---Yes.

And you didn't understand that there was anything improper with you communicating with either the local member or the proponent in the terms that you were communicating?---No.

She never suggested to you that that was inappropriate for you to have done so?---I don't believe so, no.

Now, you understood that upon the further work having been done by GHD to the business case, that that was then subject to stress testing within Infrastructure NSW?---Yes.

And was it your understanding that that was undertaken primarily by the Investment Appraisal Unit?---Yes.

10 And you inferred that the result of that analysis and stress testing was a BCR of 1 or more than 1?---Correct. I believe it was 1.15.

Insofar as you dealt with GHD, do you consider that you were seeking to apply any political pressure in an effort to have the BCR number inflated? ---No.

Thank you, Commissioner. Those are my questions.

20 THE COMMISSIONER: Thank you, Ms Callan. Mr Taylor, did you wish to seek leave to ask Mr Minucos any questions?

MR TAYLOR: No, thank you, Commissioner.

THE COMMISSIONER: Anything arising, Mr Robertson?

MR ROBERTSON: No, Commissioner.

THE COMMISSIONER: Very well. Shall I release Mr Minucos?

30 MR ROBERTSON: Yes, Commissioner.

THE COMMISSIONER: Thank you for attending.

MR TAYLOR: Might I – I'm sorry. Might also I be excused, Commissioner?

THE COMMISSIONER: Just one moment, Mr Taylor. Well, Mr Minucos, you're released from the summons to attend today. You may step down.

40 **THE WITNESS EXCUSED** **[11.30am]**

THE COMMISSIONER: And, yes, Mr Taylor. We're about to take a morning tea adjournment, so you are excused on both counts.

MR TAYLOR: Thank you.

THE COMMISSIONER: We'll take a morning tea adjournment, Mr Robertson.

SHORT ADJOURNMENT

[11.30am]

THE COMMISSIONER: Yes, Mr Robertson.

10 MR ROBERTSON: I call John Barilaro.

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

MR BARILARO: Take an oath, please.

THE COMMISSIONER: Please listen to the hearing officer.

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

MR AGIUS: Yes, I have, Commissioner, and Mr Barilaro seeks a declaration under section 38.

10 THE COMMISSIONER: Thank you, Mr Agius. Mr Barilaro, will you
listen very carefully to the explanation I'm about to give you before I make
that declaration. 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
20 protection does not prevent your evidence from being used against you in a
prosecution for an offence under the Independent Commission Against
Corruption Act, including an offence of giving false or misleading evidence,
for which the penalty can be imprisonment for up to five years. The second
exception only applies to New South Wales public officials. 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 be regarded as having been given or produced on
objection. This means you do not have to object with respect to each
30 answer or the production of each item. I'll now make the 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 Barilaro?---Yes, I do. Thank you.

Yes, Mr Robertson.

10 MR ROBERTSON: Can you state your full name, please.---John Domenic Barilaro.

You are the Member for Monaro?---Correct.

You've been the Member for Monaro since the March 2011 election, correct?---Correct.

20 On 15 November, 2016, you were appointed as the Deputy Premier of this state?---That is correct.

And you held that office until the resignation of former Premier Berejiklian on 5 October this year?---That is correct.

Whilst you were Deputy Premier, you were a member of the Expenditure Review Committee of Cabinet, is that right?---That's correct.

30 And you were also a member of various Cabinet committees, including the standing Committee on Infrastructure, is that right?---Correct. That is correct.

That's sometimes referred to as the CIC?---That is correct.

And I think you may have also been a member of the Policy and Strategy Committee.---At one point, yes.

You were first appointed as a Minister of the Crown in October of 2014, is that right?---That is correct.

40 And throughout your time as a minister, you've held ministerial responsibilities in relation to regional New South Wales?---Correct.

That's included as being the Minister for Regional NSW?---That is correct.

It's included portfolios like Regional Tourism and Regional Development, is that right?---Yes.

Is it right that prior to your appointment as Deputy Premier you were not a member of the Expenditure Review Committee?---That is correct.

And so your first appointment to that committee was when you became Deputy Premier in November of 2016, is that right?---Correct.

You're aware, I take it, that this Commission is investigating grant funding that was promised and/or awarded to the Australian Clay Target Association in 2016-2017?---Yes, I am aware.

10 When did you first become aware that the Australian Clay Target Association was seeking funding from the NSW Government?---Well, to the best of my recollection, when it became an item agenda for the December 14 ERC, Expenditure Review Committee.

So your first recollection of any involvement in relation to what I'll call ACTA funding was in connection with the Expenditure Review Committee meeting of 14 December, 2016, is that right?---To the best of my recollection.

20 You said a little while ago that you first became a member of the Expenditure Review Committee after you were appointed as Deputy Premier, is that right?---That is correct.

Does that mean that this was, what, the first or possibly the second Expenditure Review Committee meeting that you attended?---I think it was the third or the fourth. There was only a handful of meetings.

30 And so in terms of becoming aware of the grant funding being sought, are you saying that it only came to your knowledge in connection with, what, the papers associated with that Expenditure Review Committee decision, is that right?---That is correct.

In advance of receiving the papers do you have any recollection of anyone seeking to in effect lobby you in relation to what I'm going to call ACTA funding?---Not that I can recall, no.

And so it just simply came to your knowledge in connection with those papers, is that right?---That's correct.

40 Do you recall whether you attended the meeting of the Expenditure Review Committee on 14 December, 2016?---Yeah, I did attend. Yes.

And do you recall whether then Treasurer Berejiklian was in attendance at that meeting as well?---The Treasurer was in attendance.

Do you recall whether Minister Ayres was in attendance during the course of that part of the meeting that dealt with the ACTA proposal?---In preparing for, for this, for the giving of evidence, I would have said normally he would have been as proponent minister but I understand that he

may not have, he may not have actually attended, he may have been outside and the ERC had made a decision on this issue without having the proponent minister have to put the case forward.

So are you saying it's possible that he was in the room but possible that he was not in the room, is that right?---Correct, that is correct.

10 What, if anything, do you recall as to any discussions in the Expenditure Review Committee meeting itself concerning the Australian Clay Target Association item?---Look, I, I can't recall the specifics of conversations or debate around the issue, the ACTA proposal, that item on the ERC agenda. The only thing I can recall is of course it was booked against the Regional Tourism and Environment Fund, which was a fund that I was responsible for.

20 Is that something that was proposed in advance of the ERC meeting itself, in other words booking it to the Regional Growth – Environment and Tourism Fund, or was that something that only arose during the course of the meeting itself?---It arose during the course of the meeting because there was no source of funding as part of the ERC submission by Mr Ayres. It must have been through that debate in the ERC that we identified the Regional Tourism and Environment Fund, which was a new fund at the time, as applicable, to fund the project.

30 When you say it was a new fund, how new was it?---Well, we announced it at the 2015 election as part of the poles and wires money, \$300 million set aside for a Regional Tourism and Environment Fund but during that year of 2016, midyear I think, or around May or June, we started preparing guidelines, the criteria et cetera, in relation to the Regional Tourism and Environment Fund. So it was to be a new fund.

So is this right, there were guidelines in place at least in draft as at the meeting of December of 2016?---Yes, there would have been.

40 Was the fund, as it were, up and running in the sense that the procedures for the fund had been put in place and finalised?---Well, the fund, the funds was available at the time it was announced. Was it up and running? No. I think it was a competitive process that was being still worked through. I don't think the fund officially opened until the following March.

In terms of the Regional Growth – Environment and Tourism Fund, that's a sub-fund within Resort NSW, is that right?---That is correct, that is correct.

And you used the phrase "competitive fund". Is the Regional Growth – Environment and Tourism Fund always competitive in the sense that moneys being paid out of it only are paid as a result of a competitive process, by which I mean published criteria, people put in an application and the top applications succeed?---Well, what happens is that you, you go

to market. So you go out and you put the fund out, you open up a round and you allocate a, a, an amount of money, but the \$300 million wouldn't have been all available in the first round. I'm not sure what the amount, could have been 50 to \$100 million. Applicants, proponents all over the state would apply. There's a process to evaluate which had met criteria and then it goes to the next stage but it's not all – it is, it is also where governments can also book, if you want to use the term, against that fund projects. And I think at the time there were a number, number of projects that were being booked against the Regional Tourism and Environment Fund.

10

But are you saying that at least in relation to some projects booked against the fund, by which I mean the Regional Growth – Environment and Tourism Fund, they didn't go through a competitive process?---Well, no. They still would have had to produce, go through the process of getting evaluated through BCRs, the whole benefit to the state, but, but they were put forward by the government that that was an appropriate fund and I, I, to, to my knowledge, as I recall, if I can recall, I think there was some investment for the Dubbo Zoo, there was investment for Velocity Park at Bathurst and then post the ERC decision, there may have been a - - -

20

So is this right, in the time that you had ministerial responsibilities in relation to the Regional Growth – Environment and Tourism Fund, on most occasions funding was put through what I'll call a competitive process, application that's made, published criteria and the like, but from time to time there were exceptions from a competitive process of that kind? ---Absolutely. Plus 95 per cent would be in that space of competitive process.

30

95 per cent. Is that by number of applications or by value or by both? ---Could have been both.

So is this right? A small handful, perhaps one, two or three or something like that were not subject to competitive processes of the kind that I've referred to and the remainder in relation to the Regional Growth – Environment and Tourism Fund went through a kind of competitive process of the kind you and I have been discussing?---That's correct.

40

You indicated a little while ago that the ERC submission itself in relation to the ACTA proposal didn't identify a funding source. Is that right?---That is correct.

Having had some number of years of experience on the Expenditure Review Committee since your appointment as Deputy Premier, is that a usual or unusual thing?---It would be unusual.

I take it that wasn't something that struck you as being usual or unusual at the time back in December of 2016?---No, as a new member to the ERC, no, I would, I wouldn't have known different.

You didn't have sufficient experience in the committee to know whether it was usual or unusual?---That's correct.

10 Was there anything else about the circumstance in which the submission in relation to the ACTA came forward that now strikes you – with the benefit of hindsight and the benefit of your experience as a member of the Expenditure Review Committee over a number of years – that now strikes you as being unusual about how the ACTA item was dealt with?---Yeah. So, look, at the time, it wouldn't have been unusual but, in hindsight, not having a source of funding and the expediency of the process to get the item to ERC. Now, that, that's not uncommon but it would have been an unusual practice. Often you'd go through the full process of either multiple stage ERC submission process and you would have to identify a source of funding 'cause it was always difficult to get anything up in, in, in the ERC without that.

20 When you say “the expediency of the process”, what are you now referring to?---Well, when, when a proponent minister, any minister, lodges a Cabinet submission, either Cabinet or to the Expenditure Review Committee, there's often a two or three-week lead time. Look, that's changed over the years, so I'm not sure what it was at the time, but, on average, I would recall there would be a two to three-week lead time where the draft submission would be put online in the eCab, on the eCab system, departments would be able to make comments, any commentary around it on those issues and that would normally take two or three weeks. In, in hindsight, as, as I understand the evidence that's been given to the ICAC, you know, that, that, it seems in this particular case today that that wasn't the case back then.

30 Did you know at the time why this agenda item was dealt with in what I think you described as an expedient fashion or such an expeditious fashion? ---Well, I didn't know at the time why, not at all. As I said, I was a new member of the Expenditure Review Committee. It appeared on the agenda. I had notes or briefing notes in relation to the, the item that I would speak to if, if needed to in the, in the meeting itself. But, no, I wasn't aware of why.

Have you since found out any explanation as to the reason as to why it may have been - - -?---Yeah.

40 - - - deal with in the expeditious fashion that you identified?---Yes. Again, preparing evidence for, for the ICAC, it's clear that on the covering page of the submission, there was a, a note that it was on the request of the Treasurer at the time.

You're referring now to what documents that you've looked at in connection with preparing to provide material to this Commission. Is that right?---That is correct.

During the Expenditure Review Committee meeting itself, do you recall whether Ms Berejiklian, the then Treasurer, said anything in relation to the ACTA item?---No, look, I, I, I can't recall any of that debate, who spoke, who didn't speak at all. All I know, by the end of the meeting, the decision was to be, for, for the project to be booked against a fund that I had administrative powers or authority over.

10 But in terms of booking, it's that fund, that was a matter that you have a recollection of being discussed in the room?---Yeah, look, it, it, it had to have been discussed, the idea. If, if there was no source of funding prior to the meeting, it was very possible that that conversation was being had in the ERC and very possible that, that particular fund was identified by, by myself or others as, as a possible source of funding.

As a matter of practice, is this right, the Expenditure Review Committee is chaired by the Treasurer of the day?---That is correct.

20 In terms of getting matters onto the agenda or off the agenda, that's a matter for the Treasurer of the day. Is that right, in your experience?---In, in my experience, correct.

Do you have any recollection of whether the Treasurer of the day, Ms Berejiklian, played in relation to the ACTA item the role of what I might describe as a neutral chair, simply dealing with the item and not necessarily speaking for or against it, or whether or not she advanced in favour or against the particular proposal?---Look, I, I don't recall. I, I honestly don't recall what the role of the Treasurer would have been in that meeting.

30 Do you recall whether Ms Berejiklian indicated to you – either before, during or after the meeting – whether she personally supported the ACTA proposal?---Again, I don't believe that to be the case. I don't think I recall her mentioning to me that she supported the proposal.

At any time, be that before, during or after the meeting?---You mean directly after the meeting or, or the weeks and months post?

40 I mean at any time. I mean at any time.---Look, I'm sure that I had conversations with the Premier in relation to updates on projects. It's not unusual that that occurs. I met, you know, I meet with the Premier on a weekly basis. We talk about outstanding issues and she, she, she would raise with me any issues on behalf of members of parliament, not necessarily just the Member for Wagga Wagga, but anybody. So it is very possible that those conversations may have, may have occurred.

Well, do you have a recollection of any conversation that you had with Ms Berejiklian – whether during the ERC meeting, before the meeting or afterwards – where Ms Berejiklian indicated support for the clay target project?---No, not in relation to support. I, I would, I would say that, again,

in conversations post that decision and during the processes of delivering on the Expenditure Review Committee decision, the status possibly, we may have had conversations about the status of the project. Not, not necessarily that the Premier was in favour of or lobbying for. It was just asking for a status update, that she may have been asked by the Member for Wagga Wagga.

10 You were asked by this Commission to produce certain documents and a statement of information in connection with the Australian Clay Target Association project, is that right?---That's, that's correct.

And you produced a statement in response to that request from this Commission, is that right?---That is correct.

I take it that when you prepared that statement, you did your best to accurately record your recollection of events associated with the Clay Target Association?---Absolutely.

20 Can we go, please, to volume 29.1. And can we start, please, with page 55 of that document. 29.1, page 55. Mr Barilaro, does this appear to be a copy of a statement that you provided to this Commission in relation to your role associated with the Clay Target Association project?---Yes. Yes, it would be.

And if we just turn the page, I just want to draw your attention to paragraph 13 of that statement.---Ah hmm.

30 You see there where you say, "I can recall that I had conversations with Premier Berejiklian regarding the clay target project where Ms Berejiklian indicated support for the project." You see that there?---Ah hmm. Yep.

Is it consistent with your recollection, sitting there now, that you had one or more conversations with Ms Berejiklian regarding the clay target project where Ms Berejiklian indicated her support for the project?---Well, again, I go back to my previous answer, that we had conversations in relation to the status. That would of itself would mean support. She was chasing up or asking in relation to the status. I'll, I believe that my statement on paragraph 13 there stands true.

40 So is this right, it is accurate – both at the time of the statement and sitting there now – that you can recall conversations that you had with Ms Berejiklian regarding the clay target project, where Ms Berejiklian indicated support for the project?---I'd say yes.

And doing the best you can, when did those conversations take place? By the sounds of it, it may well have been after the matter was before the Expenditure Review Committee, is that right?---Yeah, look, I, I would say

that those conversations would have occurred months later, during the process of, again, delivering on the ERC decision.

But is this right, it was at least clear in your mind at some point in time that Ms Berejiklian herself supported this project, the Clay Target Association project?---Well, as, as leaders of parties I do it on behalf of my members, and the Premier would have done it on behalf of her members, as to raise the issues and support projects. I think that's appropriate.

10 I'm not asking whether it's appropriate or not. I'm just asking you to confirm that, as you understood it, Ms Berejiklian herself supported the Clay Target Association project.---Well, supported the project, yes.

Go, please, to Exhibit 395. I'll take you to the ERC decision itself, just to show you the text concretely in relation to some of the things that you've said so far. Do you see there, Mr Barilaro, a copy of the Expenditure Review Committee Decision, 14 December, 2016?---Yes, I do.

20 And you were referring before to this particular project being booked against the Regional Growth – Environment and Tourism Fund, have I got that right?---That's correct.

And so what you're specifically referring to, is this right, is the addition of Roman (ii) in the decision that we can now see on the page, is that right? ---That is correct.

30 So coming into the meeting, is this right, coming into the meeting there was a proposal to approve expenditure of \$5.5 million in 2016-2017 to the Office of Sport, is that right?---That is correct.

But the thing that was added during the course of the meeting was what we can see on the screen as Roman (ii), which is, to use your phraseology, booking against the Regional Growth – Environment and Tourism Fund, is that right?---That is correct.

That was something that was discussed to your recollection during the course of the meeting itself, is that right?---That is correct.

40 In your experience as someone who's been on the, or who was on the Expenditure Review Committee for some time, is it usual or unusual to have an item of the kind that we can see on the screen – something like a \$5.5 million item for a specific project – being dealt with as a specific agenda item in the Expenditure Review Committee?---Look, it would be unusual to, to have a single item as per the ACTA proposal as an item on the ERC. When we were, and you know, no disrespect to the quantum of this of \$5.5 million, but in the scheme of the Expenditure Review Committee, we're dealing with issues of tens of millions of dollars, hundreds of millions of dollars, if not billions. This was unusual that it came as a stand-alone item,

which then got booked against a fund like the Regional Tourism and Environment Fund, which wouldn't have, wouldn't, that fund didn't need an ERC decision to have something booked against it.

10 So in terms of aspects that now strike you as unusual, at least with the benefit of hindsight, one is the, in effect, the size of this particular item, the quantum of the item?---Yes. I mean, this, the size of the, and, and the value of the item as a stand-alone item is quite unusual, but again this would have normally been brought to the Expenditure Review Committee as part of either a budget bid, we're preparing for a new budget each financial year, or part of program funding, which would be the Regional Growth – Environment and Tourism Fund, that, that would be a batch of projects that would have been brought to, to ERC for signoff.

So we might, for example, see something that says approved expenditure of say \$200 million and then some kind of a schedule that identifies a series of sub-items falling underneath that overall item, is that right?---Absolutely, Mr Robertson.

20 So that's one aspect of the way in which this was dealt with in your understanding, with the benefit of hindsight, was usual. One was the expeditious way in which it was dealt with, is that right?---Yes, that's correct.

And one is the fact that the ERC submission itself didn't identify a funding source, is that right?---That's correct.

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

When did you first find out about that information?---A year ago when she gave evidence here at the ICAC.

Not something that you knew about at the time of the Expenditure Review Committee meeting of 14 December, 2016?---No, not, not at all.

40 Had you known about that information at the time of the Expenditure Review Committee meeting would have you done anything differently?---I think most members would, would have done everything differently. The way that the item would have been debated, who would have been in attendance, and if there was a process and another, another approach in dealing with what would have been a perceived conflict of interest.

When you say a different way of dealing with it, what are you now referring to?---Well, it's very possible that the, we would have dealt with this item before it came to ERC, that did it need to be on the ERC agenda. We could

have pushed it back, we could have made a number of other changes around then decision itself and who, who actually participated in the decision. You can as a member of the Expenditure Review Committee or, or, or Cabinet or any committee of the government, excuse yourself from this debate if you, you think you've got a conflict of interest. So if, if, if the Premier had – oh sorry, at the time the Treasurer had declared a conflict of interest, she would not have been part of the conversation or the debate and that in itself would have protected many of us in relation to the decision-making.

- 10 Just focusing on what steps, if any, you would have taken had you known the information in 2016, rather than finding out about it last year. What steps, if any, would have you taken?---I think it's a hypothetical question, and the reason I say that is that I don't believe it would have actually ended up on the ERC agenda in the first instance unless there was some probity arrangements made around the, the, the issue of the relationship. So that, that would be the first thing. And the second part would have been if, if it was on the ERC agenda, you know, again, hypothetically, I would have, if it was quite public and we had known, I would, would assume that the Treasurer would have, at the time, left the room from the debate because of
20 the conflict.

- When you say in the event that the relationship had been disclosed, you don't think it would have got on the ERC agenda, why do you say that? ---Oh, well, it's very possible because of, of the conflict. We would have managed it differently. And it may – if, if the question is in relation to the ultimate outcome, did the project have merit to be funded, I think in the process post that decision it was funded based on its BCR, on its merits, and therefore appropriately funded. But in relation to how we made that decision at the Expenditure Review Committee to book \$5.5 million against
30 a, a competitive process or competitive funding fund like the Regional Tourism and Environment Fund, there would have been other arrangements put in place. What they are – I mean, again it's a hypothetical – could vary from not being on the ERC agenda through to who participated in the ERC agenda, and then what the decision of the ERC would have been in relation to the next steps, like who would have actually conducted the next process if we, we as the members still agreed to funding it. As in, did we leave it just to the public service, the bureaucrats, to run it arms-length distance from all members of parliament, 'cause we all would have had a level of conflict.

- 40 So is this right, at least as you see the matter, the matter of Ms Berejiklian's relationship was a matter that required management, I think to use your term?---Yeah, that, that would be an appropriate term.

I take it at least you would seek some legal or other advice as to the appropriate way to manage the, what I think you described as a conflict or potential conflict, is that right?---Yes, we, we, as members of the Expenditure Review Committee or Cabinet, have the ability to seek advice from DPC Legal. We would have asked the question.

Well, is this right, as a first agenda item on any Cabinet meeting or committee of Cabinet, there's an opportunity for members of the Cabinet or the committee of Cabinet to declare any interests that they have that may be relevant to the agenda, is that right?---That is correct, agenda item 1 is always declaration of conflicts of interest.

10 There's a facility in advance of the meetings to seek advice from the Department of Premier and Cabinet as to whether it's appropriate or necessary to declare a particular interest, is that right?---Yes, you can go to DPC Legal, seek advice well before the meeting in relation to any conflicts.

And I think you're drawing to attention that the matter that I've drawn to your attention – namely the close personal relationship between Mr Maguire and Ms Berejiklian – is at least a matter that you would have regarded as requiring some form of management, to use your phrase?---Correct.

20 But I think you're saying exactly how that may have played out in the particular case would be something that would require some advice and some consideration at the time?---Correct.

One possibility would be for the person with the conflict or potential conflict to exclude themselves from the debate on the item?---That is correct.

And there may well be other ways of attempting to manage the conflict or potential conflict, is that right?---That is correct.

30 It's at least something, so far as you're concerned at least, would need to be dealt with or managed in some fashion, is that right?---Absolutely. You've got the opportunity to, pre the meeting, item agenda 1, and even if you've missed it at item agenda 1, as the item comes up for debate, I have seen on occasion members go, hang on, I've got a conflict here, I need to excuse myself. So you've got a number of opportunities to do that.

So one of the consequences of the Expenditure Review Committee decision is that the particular item had been booked against the Regional Growth – Environment and Tourism Fund, is that right?---That is correct.

40 The proponent minister of the Expenditure Review Committee decision was Minister Ayres, is that right?---That is correct.

So I take it from that that you and, to your knowledge, your office then didn't have any involvement in the preparation of the Cabinet submission itself?---As, as I believe not, not to be the case.

But was a consequence of the decision that the Expenditure Review Committee made that your office and your agency then needed to have

some involvement in taking the matter from the approval of expenditure to considering whether or not money would actually flow?---Yeah, as the lead minister in relation to the Regional Tourism and Environment Fund, and my agency being the agency that oversees that fund, what it meant was that we, at that point, took the project on off the back of the ERC decision.

10 So is this right? A practical consequence of the Expenditure Review Committee decision itself was that, at least in terms of the day-to-day administration of the question of whether money flows to the Clay Target Association, that was being run through your agency rather than, for example, the Office of Sport?---That's correct.

Following the decision of the Expenditure Review Committee, you said I think that Ms Berejiklian in conversation or conversations indicated support for the project. Is that right?---I would say support and asking about updates.

20 Asking for updates directly from you?---Yeah. Look, I, the conversations that I recall would have been something in the lines of, you know, just, it could have been that the Member for Wagga Wagga had chased it up and she raised it with me post a meeting, post an ERC meeting, post a, a leadership meeting. It could have been any. But I do, you know, I, I do recall conversations around it. What the detail of the conversation was is what I don't recall.

30 In terms of that sort of chasing up and the like, was that also done, to your knowledge, between the ministerial offices, in order words, was there, to your knowledge, communications between the Premier's Office and your office, trying to seek to, as it were, push the project along or get information about it or anything along those lines?---I'm not aware of that, but I, I, I would assume that that is very possible.

40 Was there any particular ministerial office that, at least as you saw it, was attempting to push this proposal along from the ERC decision that approved the expenditure to money actually flowing?---I'm, I'm not sure if there was any ministerial office, again, to my recollection, and not understanding what may have happened at an officer level, being the political officers, as the everyday decisions or processes that happened are arms-length of the minister of the day, the deputy – sorry, the chief of staff has got delegated authority to run the, the office, deals with staff, policy advisers. They've got an ERC decision and they've got to get on with it. Now, if there's conversations or, or, or communication between officers, ministerial officers, I'm, I'm not aware of that.

But is this a proposal that you had a particular interest in and were asking for regular updates on or was this more in the nature of a decision that had been made by the ERC, we'll let ministerial officers and agencies do their work to implement or not or to implement the ERC decision?---Yeah. This

is just about implementing the ERC decisions. You know, my office oversees hundreds and hundreds of projects, if not thousands of projects, in relation to grant funds. I don't have any interest in any particular fund, any project.

Well, at least so far as you were concerned, is this is project, the ACTA project, was it one that had any particular special interest or priority so far as you were concerned?---No, not that I'm aware of.

10 This, at least in your mind, was one of the very large number of projects that would be administered at an agency level from time to time. Is that right?
---That is correct.

Was it a project that you asked your either ministerial staff or your agency to put a particular priority or emphasis on?---Not at all.

20 Was it something that you personally as the minister had regular involvement in, by which I mean asking for updates and giving instructions and things of that kind?---No, I wouldn't have.

So in terms of following the ERC decision itself that we saw on the screen, you were in the ERC meeting room at the time. Correct?---Correct.

30 What role did then you play in relation to that decision following the decision being made? What's your recollection of any further involvement in that particular decision?---I, I, I don't think personally I would have had any involvement. Once there's an ERC decision, the next day or the day after, that decision is then distributed to all members of the Expenditure Review Committee to make sure that it, it is in line with our recollection of what occurred in the meetings. Often sometimes it's reported differently but, so therefore once that happens, it gets flicked to the appropriate minister, as in the office, the policy adviser, to start the process with the, the, the agency.

40 So is this right? At least so far as you were concerned, a consequence of the ERC decision was that you became, in effect, the responsible minister in terms of the administrative action of things like finalising the business case but that was something that was left to your staff both at the political level and at the agency level to take account of the mechanics?---That is absolutely correct.

You don't have a specific recollection of you personally asking for regular updates or anything along those lines?---I have no recollection of that.

You have at least some recollection of Ms Berejiklian asking you for at least some general updates, is that right?---Yes, I do.

I take it, it's likely that this item would have appeared on an agenda item, for example, when you're being briefed from time to time about what's going on within your office and within your agency?---So I had weekly meetings with the secretary of the agency, Mr Gary Barnes. I would have had fortnightly meetings often with executive directors of Regional NSW, like Mr Chris Hanger and others, where they would put on the agenda issues or outstanding issues. This may or may not have been on those agendas but I can only assume at some point they must have been.

- 10 But it's not a project that, at least from your perspective as the minister, that you directed it should have any particular priority or emphasis within either your office or with your agency, is that right?---No, absolutely not.

So post the ERC decision itself, what's your recollection of any involvement directly in the ACTA proposal or the ACTA project other than some of the things that you and I have discussed so far, such as things being on general agenda items and discussions with Ms Berejiklian from time to time, things of that kind?---Yeah, to my recollection, nothing more.

- 20 You've also heard that one of the matters that this Commission is investigating is allegations concerning grant funding promised and/or awarded to the Riverina Conservatorium of Music?---That's correct.

- Did you have any involvement in taking any steps with a view to establishing the Riverina Conservatorium of Music on a site at 1 Simmons Street in Wagga Wagga?---I'm not sure if I had a role to play in seeing that come through, but in June – and I'm getting my dates wrong, it could be June 2016 I had an electorate visit to the seat of Wagga Wagga. I was there with a staff member, Kailee Shaw. We had an agenda, an itinerary for the day to visit a heap of projects and it's part of the regular visits that I did to regional and rural communities. Mr Maguire, the local member, took us around, but in that particular, on that particular trip I do recall that he took us to the old RTA site or the RMS site in particular, 1 Simmons Street, and talked about a future proposal in relation to the Riverina Conservatorium being relocated there from Charles Sturt University.
- 30

- So is that your first recollection of any proposal to, in effect, move the Riverina Conservatorium of Music from its existing site to the 1 Simmons Street site?---Yeah, to my recollection it was about June 2016 and that was the first time.
- 40

And in effect, during the course of a visit to the electorate of Wagga Wagga, Mr Maguire takes you across to show you the site, to in effect lobby you to say, well, this looks like a good project to me?---Yeah, absolutely. As local members often they'd show you projects they were fighting for, projects they were delivering, projects that had been completed. You sort of, the local member takes you about and you have an itinerary for the day of

maybe some events or some announcements, but that was a site that I was taken to by the local member.

Having done that, what's your next recollection of any involvement that you had in relation to what I'll call the RCM proposal?---So again, I think again 12 months after that, by now possibly roughly the same time, June/July 2017 as I recall, and in preparing for today, there was a meeting disclosure in my diary to meet with Daryl Maguire and I think at the time Mr Andrew Wallace, if I've got the name correct, who runs the Riverina Conservatorium.

What was the purpose of that particular meeting?---Again, as I recall and I know that we've submitted this evidence of the diary extract, but I think it was talk about the conservatorium and possibly it may have been at that meeting or another meeting in relation to an unsolicited proposal for funding.

What was the nature of that unsolicited proposal as you understood it at the time?---Probably at the time, it would have been, like many projects, large projects, there was a process within government through unsolicited proposals. If they were unique in any kind, there was a particular pathway that was able to get funding for projects. At that moment, in that time, I would have seen no more than an update that that was occurring.

But you mentioned during the course of the meeting you referred to before there was discussion, is this right, some discussion about an unsolicited proposal?---Yes, the discussion would have been indicating that they were going to put forward a proposal for an unsolicited proposal possibly.

And that proposal was a proposal to do what?---My, again, at the time I would just assume that it was about relocating – after the meeting with Daryl onsite 12 months earlier, it was about relocating the RCM from the Charles Sturt University to the 1 Simmons Street.

Was that the extent of the proposal, simply moving from one site to another?---Well, I, I can't recall. And again preparing for, for, to give evidence, you know, I know there was two stages, stage 1 and stage 2. One was about moving across and some initial capital works and then the second stage was in relation to a recital hall and the further investment or a further announcement around investment.

And are you saying that may have been included in the unsolicited proposal or may have not?---I, I can't recall.

Is this at least right, at some point it came to your knowledge that what was being proposed had two components to it, one was to move to a new site at the 1 Simmons Street, and a further one was to build a further facility at the 1 Simmons Street site?---Yeah. I, I think it became obviously there was a

second stage but I, I would say that after decisions were already made around, of the stage 1 proposal, and that is to move the site to the old RMS building site.

But at least have those two components at one point in time, one was the move as it were, stage 1 move, and stage 2 was to build a further building. ---Yeah, that, that's true.

10 And stage 2 was build a further building to do what, as you understood it?
---Well, I think again, just, it was to, to attach a recital hall to the, to the first stage. So the first stage was in relation to taking, moving into the old building, the old RMS building, capital works to prepare it and, and, and prepare it so that they could take occupancy. But there was always a second stage in relation to what I believe was a recital hall, and I, look, there would other, other amenities, other works associated with that.

20 Just to help you in terms of some timing around this, can we go to page 150 of volume 31.0, which may well be a record of the meeting to which you have just drawn attention? This is a reference to 2 November, 2017. We'll just zoom in. Do you see there a reference to a meeting with you as the meeting organiser, "Location DP Office, meeting Daryl M re. Riverina Conservatorium." See that there?---Yep, yes.

30 Does that appear to be the meeting that you were referring to a moment ago, the meeting with Mr Maguire?---This was a meeting in relation to the transfer of the property from RMS to the RCM and that Victor Dominello for, I think, Customer Service at the time, or whatever it might have been at the time, Finance. It was putting forward a policy in relation to, to public properties or properties that were government-owned that were no longer being used by the government being able to be used by communities. So that's what this meeting I think refers to.

Now, is this the meeting that you were referring to a moment ago or is this a different meeting?---No, I, I, I, no, I think it was a different meeting in relation to the conservatorium.

40 Well, can we go then to volume 31.0, page 114? I'll show you now a meeting reference for 21 June, 2017. See there a separate meeting, "Meeting Daryl Maguire, JB office" and then if you look towards the bottom it says, "Arts funding and an unsolicited proposal that has gotten lost in DPC." See that there?---Yeah. This is the meeting that I was referring to in relation to, I, I said June 2017, so I got that right. And it was in relation to arts funding and an unsolicited proposal, which I assume at that time, meant the unsolicited proposal on behalf of the Riverina Conservatorium of Music.

So you have a recollection of Mr Maguire arranging a meeting with you and you having a meeting with him towards the middle of 2017 with a view to,

in effect, lobbying you on the substance of the unsolicited proposal that he says has gotten lost within the Department of Premier and Cabinet?---Yeah, look, I have no, no sight of what happens with an unsolicited proposal in the Department of Premier and Cabinet. It's not within my remit or my authority as the Minister for Regional NSW. That goes to a DPC process, so he says it's been lost, I don't know what that actually means.

Let me just show you some further documents around that time. I'm just going to go back in time and we'll go to page 82 of volume 31.

10

THE COMMISSIONER: Are you going to tender any of these, Mr Robertson?

MR ROBERTSON: I will. I might just go back in time and then I'll tender then in order. Can we go please to page 86 of volume 31.0 so we're 27 February, 2017, do you see there Mr Maguire is writing to you, he says he encloses correspondence from Dr Wallace Chair of Riverina Conservatorium of Music seeking financial assistance to ensure the future of RCM?---Yes I see that.

20

Then if we go to the next page, page 87, just show the enclosed correspondence, do you see there a reference to a submission being made under the unsolicited proposals to government process, do you see that there?---Yes I do.

And so just to understand the timeline, you find out about the Riverina Conservatorium of Music project during the course of a visit to the seat of Wagga Wagga, correct?---In June of 2016, yes.

30

In June of 2016, Mr Maguire writes to you to forward you material or forward you a letter from Dr Wallace on 27 February, 2017, correct?---Yes, I see that, correct.

You ultimately have a meeting with him regarding the matter, regarding arts funding and an unsolicited proposal that's gone lost in DPC towards the middle of June 2017.---That's correct.

Commissioner, I tender the letter from Mr Maguire to Mr Barilaro, 27 February, 2017, page 86 and following, volume 31.0.

40

THE COMMISSIONER: Exhibit 462.

#EXH-462 – LETTER FROM DARYL MAGUIRE TO JOHN BARILARO DATED 27 FEBRUARY 2017

MR ROBERTSON: And can I tender, so I can have it in order, page 114 of volume 31.0. This is a note of an appointment of 21 June, 2017 regarding a meeting between Mr Maguire and Mr Barilaro.

THE COMMISSIONER: Exhibit 463.

10 **#EXH-463 – MEETING SCHEDULE JOHN BARILARO AND
DARYL MAGUIRE FOR 21 JUNE 2017 RE "ARTS FUNDING AND
AN UNSOLICITED PROPOSAL THAT HAS GONE LOST IN DPC"**

THE COMMISSIONER: What about the 2 November one?

MR ROBERTSON: I'll come back to 2 November, but before I do that, I'll go to, please, page 115 of volume 31.0. See there an email from Mr Maguire to you and Ms Berejiklian 18 July, 2017- - - ?---Yes I do.

- - - 9.24am, do you see that?---Yes.

20

Entitled, "Here we go on the merry-go-round again!"---Yep.

That's the kind of email that Mr Maguire would send you from time to time?---That is typical Daryl in relation to the way he approached ministers when chasing funding or chasing up status or venting, absolutely.

30 Typical Daryl would be to be quite vociferous in his advocacy of projects that he wanted to get across the line, is that right?---I'd say, I'd say he was a pain in the arse. He was very, a very strong local member and someone that really didn't let go. He was a dog with a bone, yep.

So as part of being a pain in the arse he would make regular contact with ministers and ministers' staff, is that right?---That would be correct.

Contact with agency staff as well, is that right?---It's very possible, yes.

Well, not just possible, in your experience - - -?---Yeah, at - - -

40 - - - not necessarily to do with this project, as part of being a pain in the arse, Mr Maguire would be in regular communication with ministers, ministerial offices and agency staff?---Yes.

And then just go to the next page so you can see what's there. Do you see there what appears to be a photograph of a letter from Mr Myers, from Department of Premier and Cabinet, to Dr Wallace, saying, amongst other things, that the, if you look at the second paragraph, "Appreciate you taking the time and effort to make a submission on the unsolicited proposals process. Unfortunately, the submission has not met the very high

requirements put in place under the unsolicited proposals guide for submission and assessment.” Do you see that there?---Yes I do.

If you then have a look at the final paragraph, see it says, “Mr Chris Hanger, Acting Executive Director, will contact you shortly to discuss a range of potential funding application opportunities.” Do you see that there?---Yes, I can see that, yes.

10 Do you have any recollection of any arrangements being made for Mr Hanger to make contact with the Riverina Conservatorium of Music to discuss a range of potential funding application opportunities?---That looks like a standard letter, that makes sense that Mr Hanger would be asked to consider other potential sources of funding, but I don’t recall any role in this.

20 That would be the ordinary course within government, that if you fail – at least within governments of which you’ve been a member – if you fail through one route, at least look at whether or not there’s another route available?---Yeah, ‘cause there’s, there’s other, other funding, other programs of funding and it may not, there may be something else that was more applicable to fund the project than go through an unsolicited proposal. But the unsolicited proposal pathway or process is a very strict and very little get through it. It’s, it’s, it’s about uniqueness of the project and the idea that a conservatorium was unique probably wouldn’t have met that, that, that level of criteria and that’s why rather than just saying, no, you’ve missed out, we, we’d say to a proponent, “Let’s have a look if there’s other opportunities for funding.”

30 I tender the email from Mr Maguire to Ms Berejiklian and Barilaro entitled “Here we go on the merry-go-round again!” 18 June, 2017, pages 115 and 116, volume 31.0.

THE COMMISSIONER: Exhibit 464.

#EXH-464 – EMAIL FROM DARYL MAGUIRE TO GLADYS BEREJIKLIAN AND JOHN BARILARO TITLED 'HERE WE GO ON THE MERRY GO ROUND AGAIN!' DATED 18 JULY 2017 9.24AM

40

MR ROBERTSON: And can we now go to page 150 of volume 31.0. This is the meeting note that I showed you before, Mr Barilaro, just to get us back into the chronology. So it’s 2 November, 2017. Can we just zoom in to the notes. So this is said to be from Daryl, “Dominello has taken to Cabinet a building transfer policy that the Treasurer and regional MPs are championing and across. DP has been tasked with delivering the policy.” Do you see that there?---Yes, I do.

What's the reference, at least as you understand it, to the building transfer policy?---I, I made a, a reference to it in, in a previous answer, that I, at the time, the minister, Minister Dominello was the Minister for Property and Finance. There, there was always requests from Regional NSW. I'm aware we had vacant building, vacant government buildings from old courthouses through community halls, could be some health infrastructure. There, there are plenty of those about. And often the local council, local community groups and the local member may be asking to see if they are able to use those particular properties on behalf of the community. But there was no, my understanding at the time, there was just no formal arrangement around that. And I understood that Minister Dominello was bringing the Cabinet a policy to deal with that about thresholds and minimum thresholds over a transfer or, or what may have been the criteria. The part that says, "DP has been tasked with delivering the policy," I don't get that. I had no role in that. That was Minister Dominello.

But is this right? At least what was being suggested by Mr Maguire as at 2 November, 2017, as you understood it, was a transfer of the RMS building at 1 Simmons Street to the Riverina Conservatorium of Music from whoever owned it before, be that RMS or another agency of government?---Well, that was always the intent, that, that the property was, you know, from the very first meeting onsite with Daryl, and this was always in relation to how we could repurpose the RMS building for the Riverina Conservatorium.

But at least at this point in time, the suggestion was a straight transfer of the building from government ownership to Riverina Conservatorium of Music ownership. Is that right?---I'm not sure about ownership. It, it, it would be rare that the government would actually be transferring ownership. It would have been about use. And this is what I believe the policy that he's referring to here from Minister Dominello was to deal with.

But isn't that how you read this note, at least? See the final sentence. It says, specifically, "Daryl wants to advocate for the transfer of RMS building to the Riverina Conservatorium of Music." Did you read that as suggesting that what Mr Maguire was seeking to advocate for was the transfer of ownership of the building from the RMS or from whoever owned it within government to the Riverina Conservatorium of Music?---Look, it's very, it's very possible that in, in, in the first instance, this was about transferring a building, but I believe that through the process of the policy work that was done by Minister Dominello, you know, it was clear that that wasn't going to be an option, and the option would possibly be one that you get use of a property. It's very possible that at that stage, Daryl Maguire thought it would be transferred, ownership would be transferred. Very possible.

I tender the meeting record 2 November, 2017, 3.20pm entitled "Meeting: Daryl. M. re Riverina Conservatorium," page 150, volume 31.0.

THE COMMISSIONER: Exhibit 465.

**#EXH-465 – MEETING SCHEDULE JOHN BARILARO, DARYL
MAGUIRE AND OTHERS FOR 2 NOVEMBER 2017 RE REGIONAL
BUILDING OWNERSHIP TRANSFER CABINET POLICY
(TRANSFER OF RMS BUILDING FOR RIVERINA
CONSERVATORIUM)**

10

MR ROBERTSON: Now, the meeting that appears to have occurred on or about 2 November, 2017, did that cause you to take any steps as minister or was that simply a meeting where you were being lobbied for and it didn't result in any particular steps on your part?---Yeah. There, there would have been no steps required from me. I, I think this would have been just making sure that I was aware of it, as the Minister for Regional NSW, you know, my interest was always about regional New South Wales and I was very vocal about that. And Daryl would have, definitely have wanted to put that on my agenda, that I understood clearly what this item that Minister
20 Dominello may have been bringing to Cabinet or the ERC and how that was relevant to this particular project but it will be no more than that.

So it wasn't, at least so far as you can recall it, a meeting that led you to take any particular steps in exercise of any of your powers or functions as minister, is that right?---No, not at all. I, I had no role as this point in this, in this project.

Did you ultimately play some role in relation to this project?---Not in stage
30 1. Stage 1 was a decision of ERC to transfer, to, to fund it, which I think there's an announcement later on, but when it came to stage 2, stage 2 was part of an election commitment, a by-election commitment which again was part of my Regional – I think it was the Regional Communities Development Fund that was actually booked against, that those project was booked against. So that was stage 2, not stage 1.

So we'll come back to stage 2 in a moment but in relation to stage 1, are you saying that there were certain decisions made by the Expenditure Review Committee of Cabinet relevant to the Riverina Conservatorium of Music project?---I, I believe there was a decision made, and I'm not sure when in
40 the timeline, of an Expenditure Review Committee that allocated the \$10 million that was part of stage 1 to commence the, the capital works.

Were you the proponent minister in relation to any of those ERC decisions?
---No, I was not.

So you remember the committee at the time but you weren't the proponent minister, is that right?---That is correct.

Let me assist you in this way in relation to ERC decisions. Can we go, please, to volume 31.1 and we'll start at page 24 using the redacted version of the document, please. The redacted version of the document is starting at page 24, volume 31.1, please. Do you see there a decision of the Expenditure Review Committee, 12 April, 2018?---Yes, I do.

Now, we've redacted any reference to other matters that were being considered at that particular meeting, but if we just zoom in to Roman (i), do you see there it starts "Approve the following recommendations in relation to the intra-government transfer and/or sale of real property assets"?---Yes, I see that.

"As detailed in the relevant attachment, including" colon.---Yes.

And I'll draw your attention while we're here, a little bit further up the page there's a reference to the Minister for Finance, Services and Property. Can you see that there?---I, I do.

And so that confirms, is this right, as you read this document, that you weren't the proponent minister in relation to this submission, rather the Minister for Finance, Services and Property was?---That's correct.

And then if we can go, please, to page 27 of the redacted version. This is a subparagraph within Roman (i). We'll just zoom in to the top half of the page. Do you see there the transfer of Simmons Street from PNSW, see that there?---Yes, I do.

Is that a reference to Property NSW?---Yes, that's correct.

To the DPE, is that the – what does that stand for? Might be Department of Planning and Environment, perhaps?---It would have been at the time, DPE, yeah, Department of Planning and Environment, correct.

And, "Via an equity adjustment, i.e. non-cash at current market value, \$2.7 million subject to the resolution of recommendation 1 (v) of the submission." See that there?---Yes, I see that.

"And the lease of Simmons Street on market terms to the Riverina Conservatorium of Music and note DPC will assist RCM to apply for funding from the Regional Growth Fund envelope for fitout, capital works estimated at up to \$10 million." Do you see that there?---Yeah, I do see that.

And so this is 12 April, 2018. Does that refresh your memory that at least one of the decisions that the Expenditure Review Committee of Cabinet made was to transfer the Simmons Street site from one government agency to the other and to agree to a, or to decide upon issuing a lease to the Riverina Conservatorium of Music?---That is correct.

There's a reference in Roman (v) to the Regional Growth Fund envelope. Do you see that there?---That is, I see it, yes.

10 What's the Regional Growth Fund envelope?---Again, the Regional Growth Fund is an overarching fund that was part of the government when we, under Premier Berejiklian and myself, we negotiated a series of funds like arts funding, sports funding, community, community funding for councils. There's a range of different funds within that overarching program of funding which is called Regional Growth Funds. And therefore, again, it would have been a fund that possibly could have funded the \$10 million component of this decision.

Can we go then, please, to page 29. I'll just show you this. This is an attendee list. Do you see your name is identified as the second name there? ---Yes. Yes.

20 Now, at that point in time Ms Berejiklian is the Premier. And can you see it says "chair" next to her?---Yes, correct.

But is this right, at least as a matter of practice, in your experience as a member of the Expenditure Review Committee of Cabinet, the duties as chair would be delegated to the Treasurer of the day, at this point in time Treasurer Perrottet?---Yeah, absolutely, yes.

I tender the redacted version of the Expenditure Review Committee decision of 12 April, 2018, starting at page 24 of volume 31.1.

30 THE COMMISSIONER: Exhibit 466.

**#EXH-466 – EXPENDITURE REVIEW COMMITTEE DECISION
RE RCM DATED 12 APRIL 2018**

40 MR ROBERTSON: Now, at least so far as you can recall, was 12 April, 2018 the first point at which the government had made any positive decision in aid of the RCM project? In other words was that the first time that the government had actually decided to do anything in terms of agree to transfer properties or to lease properties and things of that kind?---Well, looking at that, those statements, yes.

And you drew attention before to a distinction between stage 1 and stage 2. ---That's correct.

Stage 2 was the recital hall, is that right?---That, to my recollection, yes.

And stage 1 was in effect moved from the existing site to the new site.
---That is correct.

Stage 2 had not been the subject of any approval as at 12 April, 2018, is that right?---No, it hadn't, correct. That is correct.

Well, can you just help me with this. Can we go to Exhibit 436, please.
Volume 31.0, page 170. Volume 31.0, page 170. Also Exhibit 436. I'm
going to show you a press release from Mr Maguire, 16 February, 2018. Do
10 you see that on the screen?---Yes, I do.

And if you just have a look at the first paragraph, first of all, it says that
there's an announcement that RCM has secured a permanent new home at 1
Simmons Street, Wagga Wagga. Do you see that there?---Yes, I do.

Does it follow from what you said before that, at least so far as you
understood it, there'd been no securing of a new permanent home as at 16
February, 2018? It wasn't until the ERC decision of 12 April, 2018 that
there'd been anything approaching securing a new home?---That's to my, to
20 my understanding, yes.

Then if you have a look at the third paragraph, Mr Maguire is quoted as
saying, "This building will be redeveloped to house a world-class music
recital space." Do you see that there?---Yes, I do.

I take it, at least as you read it, that's a reference to stage 2 rather than stage
1?---That is correct.

As at 16 February, 2018, there'd been no agreement or decision at least
30 within government to redevelop the 1 Simmons Street site to house a world-
class music recital space, is that right?---Yeah, there was no decision of
government in relation to that. But that doesn't mean someone like the local
member wouldn't pad out their announcement, as in the bigger picture,
Daryl would have been more clear on the bigger picture in relation to the
RCM, and this was step 1, and he talks about a, a world-class music recital
space, but that would have been in a, a separate funding ask.

In the political real world, does that kind of padding out that you just
40 referred to, is that apt to cause to impose some political or other pressure on
government to, in effect follow through with having a world-class music
recital space or something along those lines, given that, at least so far as the
reader of this document might be concerned, they think that's what they're
getting?---Yeah, look, often announcements are made and people will talk
about the project as a in total, and there's a vision here, but stage 1 in this
case was \$10 million, transfer the property, some capital works. There may
have been some preliminary works in relation to the recital hall. Possibly
that's part of it, and therefore someone like Daryl could put that in his press
release. Does that then put pressure back on the government that we need to

front up or pay up on a second stage? No, I, I don't think this media release puts any pressure on the government in relation to what happens next.

Well, does it at least create the impression or at least have the risk of creating the impression to those interested in having a world-class music recital space within Wagga Wagga that the government may well be desirous or moving in the direction of providing such a facility?
---Absolutely, absolutely, yeah.

10 It potentially adds a political cost in the event that the government ultimately decides that a, in this case, a world-class music recital space doesn't stack up in terms of business cases and the like?---Well, that's the risk, that's the risk we – when a member goes out like this and talks about the, the total project yet only has funding for stage 1, the risk is that, is that they never achieved getting the second-stage funding which means political risk for the, that member in relation to a broken promise. So, you know, the risk sits in with the member for padding out what was the announcement.

20 The risk sits with the member but it also risks reflecting badly on the government of the day if the local member is a member of the government, is that right?---Yeah, reputational damage to the government for not, not delivering on promises.

I note the time, Commissioner.

THE COMMISSIONER: Yes. Mr Barilaro, we're going to take an hour for lunch. If you return at 2.00pm, please.---2.00pm, thank you.

30 **LUNCHEON ADJOURNMENT**

[1.02pm]