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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 2.00PM

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: Mr Barilaro, I just want to be clear on a couple of answers to come of the questions that I asked you this morning regarding the ACTA project.---Yep.

10 And in particular the matter that was before the Expenditure Review Committee on 14 December, 2016. Is it right that, as you understood the position on 14 December, 2016, the agenda item being put forward by Minister Ayres in relation to ACTA was one that had the support of Ms Berejiklian?---Well, it had the, the, the cover, the cover letter to the submission had indicated that it was brought on, it was brought on the agenda on the advice of the Treasurer, or the Treasurer has asked for it to be put on the agenda.

20 The only way it could have got on the agenda was if the Treasurer supported it, correct?---Yeah. All, all items for ERC would have to go through the Treasurer's Office and, and, and it would, that's the only way it can go up to the agenda, yeah.

I suppose another way is if the Premier took the view it should be on the agenda, it would get on the agenda, is that right?---Well, no. The Premier has, has also some level of power and authority and they would work it out through their officers, but it would be on the agenda, yes.

30 And so it was clear to you that the them Treasurer, Ms Berejiklian, at least supported it to the extent of getting it on the agenda, correct?---That would have to be correct, yes.

40 Is it right that, as you understood it, Ms Berejiklian was also supportive of the substance of the agenda item, as in her view, at least as you understood it, was that that particular agenda item should be supported in the sense of a resolution being made by the Expenditure Review Committee?---Yeah, yeah. So as, as I understood it related to the ERC or the Expenditure Review Committee site, all ministers would receive, say briefing notes from their relevant policy advisers. On my note, and I think mine was done by the, my agency, it said to support, so I assume others would have had similar notes about supporting the agenda. And if the Treasurer herself at the time brought it on the agenda, it would have a level of support, yes.

I'm focusing particularly on Ms Berejiklian. As you understood it, Ms Berejiklian was supportive of the substance of the agenda item, or in other words she thought, at least as you understood it, that the agenda item should be supported in the sense of a resolution being made favourable to it by the

Expenditure Review Committee, is that right?---Well, that's why it went, it was on the agenda, yes.

Well, isn't that two different aspects here? To even get it on the agenda it would have had to had at least a level of support from either the Treasurer or possibly the Premier, correct?---Correct.

As you understand it, from your time as a member of the Expenditure Review Committee, the gift of the agenda is in the hands of the Treasurer of the day, is that right?---That's correct.

If the Premier wants something on the agenda, the Premier will be able to get it on the agenda, correct?---Correct.

But at least on a day-to-day basis, it's up to the Treasurer to decide what goes on or what is taken off the agenda, is that right?---Correct.

So it was at least apparent to you that Ms Berejiklian supported this agenda item at least enough to get it onto the agenda, correct?---Yeah. To point of getting it on the agenda.

But what I want to be clear about your answer is whether as you understood it during the meeting itself, Ms Berejiklian wasn't just supportive of it being on the agenda, a sense of being supporting of the fact that there should be a debate about it, but she was in favour of the particular agenda item?---Well, I'm not sure about that. As I said, I don't, I don't recall conversation and debate that was had during the committee meeting and so I, I, I have no recollection of the, the input by the then Treasurer. You know, the only, the only thing I can assume is that the debate included the identification of sources of funding, which, which we determined was the Regional Tourism and Environment Fund, and a decision was needed to support it because they found a source of funding. Now that's as far as I can say, that there was a level of support for the project. I don't know what the level of support that the Premier had in relation to the elements of the proposal but she, she, as Treasurer, allowed it to come on the agenda for debate.

But what I want to be clear about, she supported it going on the agenda for the purpose of debate, that's plain enough from the fact that it was on the agenda itself.---Correct.

Did you understand, during the time of the meeting, that she supported the item in the sense that she supported the substance of the item?---No, I don't recall. I, I cannot recall what involvement the Treasurer had at the time in relation to the debate or the discussions and what the level of support would have been.

Commissioner, I apply for the direction that was made under section 112 of the Independent Commission Against Corruption Act in relation to the

compulsory examination of Mr John Barilaro on 10 September, 2021, be lifted insofar as it would otherwise prohibit publication of the fact that Mr Barilaro gave evidence on that occasion and insofar as it would otherwise prevent publication of any question asked or answer given in this public inquiry.

THE COMMISSIONER: Yes, I make that order, Mr Robertson.

10 **VARIATION OF SUPPRESSION ORDER: THE DIRECTION THAT
WAS MADE UNDER SECTION 112 OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION ACT IN RELATION TO
THE COMPULSORY EXAMINATION OF MR JOHN BARILARO
ON 10 SEPTEMBER, 2021, IS LIFTED INsofar AS IT WOULD
OTHERWISE PROHIBIT PUBLICATION OF THE FACT THAT
MR BARILARO GAVE EVIDENCE ON THAT OCCASION AND
INsofar AS IT WOULD OTHERWISE PREVENT PUBLICATION
OF ANY QUESTION ASKED OR ANSWER GIVEN IN THIS
PUBLIC INQUIRY.**

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MR ROBERTSON: Mr Barilaro, you participated in a compulsory examination before this commission on 10 September, 2021.---Correct.

And during the course of that compulsory examination I asked you questions concerning the Expenditure Review Committee meeting of 14 December, 2016. Do you remember that?---Yes, correct.

30 Can we have up on the screen, please, page 3499 of the transcript of that evidence. I just want to refresh your recollection as to some aspects of the evidence that you gave on that occasion.---Ah hmm.

It's page 3499 of the transcript of 10 September, 2021. Can we zoom into the bottom half of the page, please? We'll start at line 22. Do you see there I ask you the question, "So to be clear, you do have a recollection of having discussions with Ms Berejiklian during the course of which she indicated her support for the ACTA proposal, is that right?" See that there?---Yes. I see that.

40 And you're transcribed as saying, "I would say yes, correct." You and I then have a discussion as to the timing of that, but can I draw your attention in particular to the question towards the bottom of the page, the very last question that we can see on the page?---Ah hmm.

My question was, "Is it right that as you understood it, during the meeting of 14 December, 2016, Ms Berejiklian was supportive of the agenda item that was put forward by Minister Ayres." And the answer is transcribed as saying, "Correct." Do you see that there?---Yes, I can see that.

Is that consistent with your recollection, sitting there now and having been reminded of the evidence that you gave on 10 September, 2021, that as you understood it, during the meeting of 14 December, 2016, Ms Berejiklian was supportive of the agenda item that was being put forward by Minister Ayres?---Well, I believe the answer I've just given you in the last few minutes is in line with that answer, when I said it is correct that Ms Berejiklian was supportive because she brought it onto the agenda item, onto the agenda of the ERC. You, you separated the two, the two questions, Mr Robertson.

You see them, in effect, as one and the same thing. Is that right?---Yes.

And you saw it, the fact that Ms Berejiklian took steps to cause the matter to come onto the agenda was an indication not only of her support for having a debate, in effect, in the ERC, but as to the substance of the item by which I mean it being supported by the Expenditure Review Committee?---Yeah, yes, that's correct.

Now, I take it that at least as a practical matter in the real world if an agenda item in the Expenditure Review Committee has the support of the Premier or the Treasurer of the day, it's likely to also engender the support of other members of the Expenditure Review Committee. Is that right?---Yeah, well, that's correct. It doesn't mean you can't have dissenting debate but often if the Premier and the Treasurer are supportive, you would get consensus support from the rest of your ERC members.

It will depend on the circumstances but if one is focusing on a grant of something like \$5.5 million, which as you explained this morning, whilst it's a significant amount of money, it's not that significant in the context of a many tens of billions of dollars of New South Wales budget, it's likely in the real world for other members of the Expenditure Review Committee to fall in line as it were if a particular agenda item had the support of the Treasurer of the day. Would you agree?---I wouldn't use the word fall in line, but I would say it would have, when there's support of the Treasurer and the Premier on a particular item, most members would take that into consideration.

Would at least, not just take it into consideration, it would at least be a significant factor in whether that particular agenda item is supported or not by the committee as a whole?---Yes.

Is that right?---Yes, it would.

Had you known about the close personal relationship between Mr Maguire and Ms Berejiklian at the time of the ERC meeting on 14 December, 2016, would have that had any effect on whether you would have supported the item, as in Minister Ayres' item?---Again, it's a hypothetical but, but, again,

I said earlier today in my evidence, that, you know, if we had all known that there was a relationship there, we would have genuinely have believed that the Treasurer would have excused herself from the debate. That would have given us a level of comfort that we could have the conversation and debate around the item and we would have made a decision about supporting the item, I, I, you know, it could have gone either way or we would have put in place other processes to manage the conflict.

10 Can I just remind you of what you said in response to a similar question I asked of you on 10 September, 2021. If we can go, please, to page 3502 of the transcript of 10 September, 2021. And can I draw your attention to the question starting at about line 23. So we'll just zoom in to that if we can. And I asked you, "And I take it that the existence or not of the close personal relationship that you and I have been discussing between Mr Maguire and Ms Berejiklian would at least be a factor, even if Ms Berejiklian was to disqualify herself, it would at least be a factor that you would want to take into account in deciding whether to support a particular project that might have the support of Mr Maguire?" Do you see that there?---Yeah, I see that.

20

And you're transcribed as saying in response, "Mr Robertson, understanding how the item came on the agenda, and if, if I was aware of a relationship between Ms Berejiklian and Mr Maguire, I would not have supported the agenda item, I believe my colleagues would not have supported the agenda and, and, and therefore it would not have been supported." Do you see that there?---Yeah, I do.

30 Does that remain your evidence sitting there today?---It, it does remain my evidence in, in the sense that I said earlier about managing the issue. So we may have, you know, in, in answering that question, it's also in line with that we may not have put it on the agenda item and dealt with it in another way, not necessarily that we wouldn't have supported the agenda item or, or the project because that should have been assessed on its own merits which it, which it had been later, but I still, you know, I'm happy and comfortable to still stick to that, that version.

40 And if we just then scroll down the page a little bit, by reference to what you've said in the sense of perhaps dealing with it in some other way, you'll see at about line 34, I ask you about why you would not have supported the agenda item in one of the hypothetical circumstances that I put to you. And can I draw your attention, in particular, to your sentence starting at about line 43. Do you see there's a sentence - - -?---Yeah.

- - - that starts with the words "If I had known"?---Okay. Yes.

And so you're transcribed as saying, "If I had known and an, an allocation was made against my, against the fund, that would be very difficult. We would have, I would have reversed the process, the applicant would have

come directly to me, the fund, the person that ran the fund that had governance over the fund, we would have put them through a process to see a business case and then we would have submitted to ERC.”---Yes.

And we’ll turn over the page and go to the top of the page. “As a lump sum, a lump, one of many other projects in the normal practice.” And you say, “So it’s difficult to answer. I’m just trying to go through the process. So, so if we knew there was a relationship between Mr Maguire and Ms Berejikian, we would have, we would have questioned processes before it became an agenda item, I think. That’s how I’ll summarise it.” Do you see that there?---Yes, absolutely.

Does that remain your evidence sitting there now?---Yes, it does. Yes, it does.

THE COMMISSIONER: In this hypothetical universe we’re occupying at the moment, Mr Barilaro, if it had been at that stage, and bearing in mind the RGETF was, in the majority of cases, as I’ve understood your evidence today, a competitive process, do you believe you would have required the ACTA application to basically go into the competitive pool?---Yeah, so, Commissioner, the way I see this is that if we understood there was a relationship, this item would not have had to go to ERC to be booked against the Regional Growth – Environment and Tourism Fund. That the proponents could have lodged against the fund in the normal course of round 1. And I genuinely believe on its merits, as we said with the business case, it still would have got up. So, but it would have been a different process and then it would only go back to ERC as part of all the decisions of all the projects under that fund as a one-off.

And for this fund, as I understand again your evidence today, the competitive process didn’t start till March 2017.---That’s what I recall, yes.

So it would have been delayed until at least then to put its hand up.---Well, in the end the fund still had to open in March 2017, even though an ERC decision was made in December of 2016. The reality is the fund still had to run its process, ‘cause we didn’t fund this project until I think later that, that year, around August 2017. So my, my view is, is that it could have been dealt with just being put through the fund, through the process and the program run by the public service, and it still would have got approved, but that would have been a cleaner and a way to have managed the issue if we knew there was a relationship between the Treasurer at the time and Mr Maguire.

MR ROBERTSON: But if it’s been put through the fund in the ordinary course, to use your phrase in answer to one of the Commissioner’s questions, the ordinary course is one that involves a competitive process, as I understood your evidence of this morning, is that right?---That is correct.

So one of the consequences of the way in which it was done in the ERC decision of 14 December, 2016, is that it formed one of the handful of projects that didn't go through a competitive process, is that right?---Well, it didn't get, yeah, the answer would be that it was given priority in that fund but it still would have had to go through the process of achieving a BCR, et cetera.

10 It would have gone through what you might call a one-stage process of justifying it by reference to a BCR, but not necessarily a two-stage process that has this particular program or project being competing against other projects, is that right?---That's right. So what happens in a fund like that, we're always oversubscribed. The fund would have only had, as I said earlier, 50 to \$100 million in projects, sorry, in funding allocated for that financial year. The fund would have been oversubscribed. What the agency would do is, first cut would be those that didn't meet the criteria would be cut. The next, those that met the criteria would get the opportunity to go further, and that is to develop the business case and lodge, et cetera.

20 In that parallel universe, where the process is reversed, to use your language of your compulsory examination, I take it at least in the ordinary course the proponent would have to pay for its own business case?---Oh, look, in the funds that I administer, I would say the vast majority, it would be very rare that we fund business cases on behalf of proponents, because if we did that, we'd actually have no money to fund projects 'cause it'd be chewed up by business cases. So proponents would prepare their own business cases for application of the fund.

30 Now, is that what happened, to your understanding, in relation to the ACTA proposal?---Well, well, in my case I wasn't aware that ACTA had received funding from the government. That's only become, became aware to me watching the evidence given by Minister Stuart Ayres on Friday, that the Office of Sport had given a grant to ACTA in relation to lodging, or to do work on their business case.

But if we go back to Exhibit 395, the ERC decision itself, you'll recall that one of the conditions that was added in the ERC room, as it were, was the finalisation of a satisfactory business case.---Correct.

40 Do you remember that being one of the conditions that was added?---Yes, absolutely.

We'll just have it up on the screen to refresh your memory - - -?---Yep, no, absolutely.

- - - as to the wording of that. See Roman (ii) (b)?---Yep.

Now, do you know – I withdraw that. Once this decision was made, as I understood your evidence this morning, it effectively became your agency

and your office's role in taking the day-to-day running, is that right?---That is correct.

That's because you were the lead minister in relation the Regional Growth – Environment and Tourism Fund, is that right?---That is correct.

10 Now, in terms of procuring the finalisation of a satisfactory business case, was that paid for, as you understand it, by the government in any of its manifestations or was that paid for by the proponent, as in the Australian Clay Target Association?---Well, the, as we heard evidence this morning from one of my policy advisers, from a, from a political office, we gave some advice to the proponent, GHD, in relation to what a business case needs to consider, as it's very different from government compared to what's happening elsewhere in the community. They worked on that, that was lodged then with Infrastructure NSW. Infrastructure NSW then evaluated and stress tested it and then they made a decision in relation to funding. My executive director at the time, Chris Hanger, was the one that procured Infrastructure NSW to do that. But in relation to the business case itself, prepared by GHD, I, I wasn't aware until Friday's evidence by
20 Minister Ayres that that business case by GHD was being funded through the Office of Sport.

I'm focusing at the moment on the work that was done to, to use the language of the ERC decision, the finalisation of a satisfactory business case. Now, just to put that in stages, is this right as you understood it? There was a business case of some kind that was in existence as at the time of the ERC decision itself?---Correct.

30 And as you understood it, one of the consequences of the ERC decision was that that business case had to be turned into what the ERC decision described as a satisfactory business case?---It was insufficient, so yes.

Now, in terms of not the pre-work when, in effect, the Office of Sport was taking the running of this project, but after the ERC decision when your agency and your office was taking the running of the project, do you know who paid for the process of tuning what might be described as the unsatisfactory business case into a satisfactory business case?---Well, I wouldn't know who was paying for it at that stage, no.

40 At least one of the consequences of the ERC decision as you understood it, was that your agency and your office would be taking the running of attempting to procure a satisfactory business case, is that right?---Correct.

And so is that another difference between what in fact happened and what would have happened if you had reversed the process in the way that you were explaining in your compulsory examination? And if you'd reversed the process, then the ACTA could have put through a, put an application form in in the ordinary way, through the Regional Growth – Environment

and Tourism Fund, but they would have had to pay themselves, at least in the ordinary course, for a satisfactory business case?---Correct. I would agree with that.

And so in this parallel universe – I withdraw that. So that’s one aspect of it. Another aspect in this parallel universe is that it is likely that if ATCA had to proceed in that fashion, it would have to be subject to a competitive process, is that right?---That’s correct.

10 That’s not something that it had to go through by reason of the ERC decision, is that right?---No, it didn’t have to, no.

And so you would agree, wouldn’t you, sitting there now, in that parallel universe you can’t say that this proposal would have got up or would not have got up. It may well have had a positive BCR or BCR of 1 or more than 1, but there may well have been, as part of the competitive process, an identification of equally deserving or perhaps more deserving projects that got the money rather than this one, do you agree?---That, that’s correct to say that, yes.

20

I take it that at least in your experience as a matter of reality, the fact that this proposal had sitting behind it a decision of the Expenditure Review Committee, that’s an indication of, at least as you see it, of political support for the program?---Yeah, absolutely. Anything that goes through the Expenditure Review Committee has the imprimatur of the government of the day.

30 So at least as you see it as someone who has been a minister, or at least was a minister for some period of time, it will be apparent to those in political offices and at an agency level that the particular project has the imprimatur of the government of the day, is that right?---I believe, yes, that’s correct.

Back then to the Riverina Conservatorium project that you and I discussed this morning. I’m going to show you a second ERC decision, So I showed you a first ERC decision of 12 April, 2018. I’m going to show you a second one of 24 April, 2018. And we’ll go, please, to page 180 of volume 31.1. And use the redacted version of that document, please. Is it consistent with your recollection that for stage 1 of Riverina Conservatorium there was actually two relevant decisions of the RCM?

40 ---Yeah.

Relating to the RCM of the Expenditure Review Committee?---Yes. My understanding was the one that we looked at this morning first was in relation to the first decision about the transfer of the property and the \$10 million that was associated with that, and it said to explore the Regional Growth Funds. During I think that period after that decision, it was clear that the Regional Growth Funds was not compatible in funding this project, and therefore it came back to Expenditure Review Committee a second

time, I can't recall the date, where the \$10 million was funded through consolidated funds through the Treasurer.

So you're drawing particular attention to the fact that in the first ERC decision I showed you, there was a reference to the Regional Group Fund envelope?---Regional Growth Fund.

The Regional Growth Fund envelope, I'm sorry.---Yes.

10 Thank you for that correction. But you're drawing attention to the fact that it was ultimately identified that that wasn't the appropriate or most convenient envelope or source of funding, and that the better course was to allocate it from the consolidated revenue fund.---That is correct.

Consolidated revenue fund is the ordinary fund of government where ordinary taxes, et cetera, go into it and that is appropriated from on a year-to-year basis as part of the budgetary processes, is that right?---That is correct.

20 And so when we use a word like allocation from the consolidated fund, that's a reference to money that's been appropriated as part of the ordinary budget processes, but the Expenditure Review Committee is deciding to allocate a particular part of the appropriated funds for a particular project or program, is that right?---That is correct.

And just to see how that looks like in the documents themselves, we'll go back to page 172, just so I can show you the start of the ERC decision. Again, using the redacted version of this document, please. Page 172, volume 31.1. If we just zoom in. Now again pausing there. The particular
30 agenda item that led to this decision wasn't one in respect of which you were the proponent minister, is that right?---That is correct.

Instead what we have here is a submission concerning 2018-2019 budget allocations, correct?---That is correct.

And then if you have a look at Roman (i), "Endorse the Treasurer's acceptance of the following unqualified recommendations," et cetera, in relation to Restart NSW funding commitments. Do you see that there?
---Yes, I do.

40 So that's the context. Now, we've redacted the individual items, but I can indicate that there's a number of subparagraphs, (a), (b), (c), (d), (e), (f), (g), et cetera. Is that more consistent with the way in which, in your experience, Expenditure Review Committee ordinarily deals with matters? There might be an overall concept such as endorse acceptance of unqualified recommendations, and then the individual items are dealt with en bloc?
---Absolutely, correct.

And that's what you were drawing attention to before in relation to the ACTA proposal? It was unusual, looking back, in your experience as someone on the Expenditure Review Committee, to have a single agenda item dealing with a single project worth only – or at least only in the scheme of things – \$5.5 million?---That is correct, Mr Robertson.

10 But if we then go specifically to the matter concerning the Riverina Conservatorium of Music, can we go to page 179. This is part of the same ERC decision. Again the redacted version, please. If we zoom in to the bottom half. "Approve the following changes to regional programs." See that there?---Ah hmm.

And it says, "Allocating a particular figure from the consolidated fund for the following programs and projects." See that there?---Yes, I do.

20 And then there's a number that we've redacted. But if we turn to the next page, zoom in to the top half of the page, please. See there, "\$10.0 million to Property NSW for Riverina Conservatorium of Music." See that there? ---Yes, I do.

So is the effect of, though, the two ERC decisions to which I've referred, firstly the transfer of the 1 Simmons Street property from one agency within government to another, that's one aspect of it?---Yes, absolutely.

And another aspect of it was to fund Property NSW in the sum of \$10.0 million so as to, in effect, refit the 1 Simmons Street site. Is that right? ---That is correct.

30 And you said in relation to the ACTA project that you understood that Ms Berejiklian supported the individual agenda item, the one being put forward by Minister Ayres. Do you give the same answer in relation to the two ERC decisions that we've said in relation to the RCM?---Can you ask that question again, please?

In relation to the ACTA proposal, as I understood your evidence from immediately after lunch, you understood that Ms Berejiklian was supportive of the agenda item, as in supportive of the ACTA agenda item. I've got that right, don't I?---That is correct.

40 Do you give the same answer in relation to these two ERC decisions pertaining to RCM, in other words that Ms Berejiklian, now as Premier rather than Treasurer, was supportive of the substance of these two RCM items?---Not necessarily because this was brought on with a series of other projects. This, you know, singling out one project, I mean, \$10 million to Property NSW is identified in the submission and the previous ERC decision was to transfer the property but we're not focused just on one project here. We are focused on an in globo sort of approach to a package of, a package of funding that picks up a whole series of projects and the

conservatorium being one of them. So it's very hard to gauge if she was supportive or not supportive of this project because it was all part of a, a broader program of funding that had gone through a process that had now been given approval.

You gave evidence this morning regarding the ACTA proposal of having conversations with Ms Berejiklian where Ms Berejiklian indicated support for the ACTA project. Have I got that right?---Yes. Correct.

10 Did you have any similar conversations with Ms Berejiklian concerning stage 1 of the Riverina Conservatorium project?---Yes, I previously stated in evidence that, on occasion, the Premier would ask me on projects such as the projects in the seat of Wagga Wagga for the then local member which was not unusual. She would ask on behalf of other MPs, as well, but, I do recall, but the, the specifics of those conversations, I, I, I don't, I don't know.

20 So is this right? As you understood it, Ms Berejiklian was supportive of what I'll call stage 1 of the RCM project?---Well, absolutely, she would be supportive, firstly because of the decision of the ERC that she's a member of and therefore she would be supportive and, and, and I think I've answered that previously, yeah.

Well, the fact that the ERC decisions were made confirms, to use your phraseology a little earlier, of a political imprimatur for the project. Is that right?---Correct.

30 Ms Berejiklian's support for stage 1 of the RCM proposal, do you recall whether that was communicated to you before the two ERC decisions of the 12 and 24 April that you and I have discussed?---I, I, I don't recall. My sense would be it would have been again after the decisions, again checking up on status but I can't be, I, I can't be certain.

So it's possible there were some communications before? You just can't assist one way or the other. Is that right?---It, it is, it is possible, yes.

40 In relation to the ACTA project, I asked you some questions about whether you would have done anything different in the event that you were aware of the close personal relationship between Mr Maguire and Ms Berejiklian. Do the answers that you gave to that question, do they apply also the two ERC decisions that I've shown you in relation to the RCM stage 1 project? ---I, I, I think the, the underlying factor here is that there should have been a disclosure, there, there should be disclosure of conflict of interest regardless, the, these, this project or the ACTA project. That's what should have occurred, and if that had occurred, I, I again would say that Ms Berejiklian would have excused herself from the debate and discussion and, and we would have dealt with it. Would it have influenced our decision in relation to funding? It would be the same answer as I said earlier. I don't know

about that. We would have put, we would have put procedures in place to manage, so that none of us got caught up in the conflict that, that arose.

Is part of the concern that you're drawing attention to what I might describe as political risk, a concern that in the event that it later became public of the existence of the relationship, you would want to be desirous of avoiding any suggestion of some preference in relation to projects concerning the electorate of Wagga Wagga?---Absolutely. We would have wanted to be sure that the, that if that was to happen, that level of scrutiny came, that the processes that were put in place that were arms-length distance could be clearly shown it was, the project was approved based on its own merit.

So in relation to both the ACTA matter and the RCM matter, you would be desirous of ensuring some kind of an arms-length process in the sense of being an arms-length from Ms Berejiklian, is that what you're saying? ---Well, I think it'd be arms-length of probably most members of the ERC, including myself as the minister that was responsible for some of the programs that funded these projects. You know, my friendship with Ms Berejiklian – I was the Deputy Premier at the time, worked closely with the Premier. We worked, I had total respect for the Premier. So I would have to – I, I in one way could argue that I had a conflict of interest if I had known there was a relationship, and I think other members of the parliament, because we're either the same members of the same political or the government of the day. So there is a ripple effect of conflicts that we would have had to manage, not just the conflict of interest for Ms Berejiklian.

So what you would seek to achieve, both in relation to the ACTA matter and the stage 1 of the RCM matter, is to ensure that there was a completely arms-length process, arms-length of the executive government, of the ministry, before anything got before the Expenditure Review Committee for a decision or otherwise?---Yeah, well, that, that, definitely. Depending when the conflict of interest was actually announced. I mean, if it was only announced at the meeting of the ERC, which is possible at the first agenda item, it was about managing it at that point, but if we knew in advance, you would manage it differently. And if you sort of knew after the decision, there was probably even a possibility of managing it or revisiting it by seeking DPC Legal advice.

But in effect, one way or the other, trying to avoid any suggestion of what I'll call inappropriate influence by saying, well, there's been an arms-length process, completely arms-length of the ministry, that's come up trumps as it were, that's come up to confirm that this is a good idea to do, and so now all the ministry is doing is, in effect, confirming the decision that has been recommended on an arms-length basis.---Well, ERC decisions are taken seriously, and the public service, the agencies that are involved, execute the decision of ERC. So, you know, so they know that the government of the

day is supportive, that the executives that sit on ERC are supportive, and therefore they execute the decision.

But focusing on your reference to an arms-length process - - -?---Mmm.

10 - - - is this right, what you would seek to do is make an arms-length analysis process in relation to both the ACTA and the RCM proposal so that before it even gets before the ERC or an equivalent body for decision, the minister has already got the benefit of an arms-length analysis and process so as to avoid any suggestion or at least minimise the risk of any suggestion of inappropriate influence. Is that what you're saying?---Yeah, absolutely. Conflicts of interest arise often with program funding. I, I, as the leader of the Nationals, for instance, who have colleagues that get funding from my portfolios, there have been examples where a member may have had their wife employed by a particular company but that company had lodged for funding under a particular program. I still need, because he's a member of my party, it's his wife, it's, there's still distance, I still put in parameters in place to give, to make sure there is transparency and clarity that it's done at arms-length, including the use of probity officers and other processes
20 internally within the agency, to make sure that we are all covered, because this all becomes quite public, and that we, there is no accusation of wrongdoing.

Pardon me for a moment. Now, you and I have talked a fair bit about stage 1 of the RCM proposal. We discussed in passing stage 2. Stage 2 being the one associated with the recital hall, is that right?---Ah hmm. That is correct.

30 What involvement, if any, did you have in relation to stage 2?---So stage 2, that came off the back of, I understand, of course we had the by-election announced for the seat of Wagga Wagga. Now we are talking middle of 2018.

So just to help you in terms of timing there.---Mmm.

Mr Maguire gave evidence before this Commission on 13 July, 2018 in an inquiry referred to as, or an investigation referred to as Operation Dasha. ---Ah hmm.

40 That's consistent with your recollection?---That's correct.

The evidence that he gave on that occasion was a matter of considerable political controversy, correct?---Correct.

He resigned within relatively short order as parliamentary secretary and member of the parliamentary Liberal Party, correct?---That's correct.

He ultimately resigned, as in Mr Maguire resigned, as the Member for Wagga Wagga, correct?---That is correct.

Although that took a little bit longer.---Yes, that's correct.

I think you may have made a public call for Mr Maguire to resign in light of the evidence that he gave before this Commission, is that right?---Yes. I think I was Acting Premier at the time.

And that then, as you said, caused for a by-election to be necessary for the electorate of Wagga Wagga?---That is correct.

10

And so just to help you with your bearings in terms of timing, 13 July, 2018, Mr Maguire was before this Commission in Operation Dasha. The Wagga Wagga by-election was 8 September, 2018.---Correct.

Now, what did the Wagga by-election have to do with stage 2 of the RCM? ---I, I think during the, the, Wagga by-election, all through the campaign, it was an extended campaign, Andrew Wallace, I believe from the conservatorium, wrote to the government of the day, seeking I, I think it was updating in relation to stage 1 and seeking support and a \$20 million commitment for stage 2. That was taken into account. A decision was then made by the executive to, to make an election commitment of \$20 million, which was subsequently announced by the Minister for Arts, Don Harwin, during the by-election. During that whole process, I had to of course, when you make an, an election commitment – now, when I say that, the election commitment, this was a Liberal Party by-election, it was the Liberal Party that was running it, and therefore the Liberal Party leadership and the Treasurer, the Premier of the day, et cetera, they make decisions about what election commitments are to be made. In the meantime, I was resolving my Regional Community Development Fund and was asked to, again, book against that, the \$20 million for the conservatorium. As I recall, I may have written to then the Treasurer and the Premier for that approval and then there would have been a series of letters between the Treasurer, the Premier and myself, not only with the approval but also the allocation of the funding from the Regional Development, the Regional Communities Development Fund. As I said, the announcement was made and then since then of course the process put, was put in place, no different to these other projects about without the BCR et cetera in relation to the \$20 million, and I know that this year alone the \$20 million project, or stage 2, was rejected. It didn't, didn't meet the, the BCR.

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30

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So we'll just unpack that a little bit. The decision to make an election commitment announcement in relation to what I'm calling RCM stage 2, who to your understanding made that decision?---Oh, it would have been the, the, the Liberal Party. As I said, the, the, the Liberal Party was running in that by-election, not the Nationals and not the – and therefore the Liberal Party would, you know, through their research, know what, what, what projects, what issues were relevant in the by-election. There would have

been some level of discussion at some point within their leadership in relation to making an election commitment.

10 So is this right, at least as a matter of practice, where there's a by-election in relation to a seat to be contested by the Liberal Party but not the National Party, the decision as to what election announcements and commitments might be made is, as a matter of practice, dealt with by the Liberal Party and not by the National Party?---That is correct. And recently we had the Upper Hunter by-election which the National Party ran in, and I, as the leader of the party, along with my senior ministers, working on the ground. We, we, we identified projects that we made as election commitments, so that would be no different.

20 And so in the case of Upper Hunter, for example, it was you as the leader of the Nationals – albeit, no doubt, consulting with your colleagues – who decided what election commitments and election announcements to make, is that right?---Yes. And, but before you make that announcement, because we are in government, I would also seek the support of the Treasurer of the day, to see if we could fund it, or those ministers relevant to those funding announcements. I know we made some announcements around road funding, hospital upgrades, we made some announcements for some community projects. That meant liaising with those ministers to see if they had relevant funding to do so, and again getting it all signed off by the Treasurer. That's how we managed it but those, that, we identified the projects that we wanted funded during the by-election.

30 And the ultimate decision to make an announcement positively in relation to a particular election announcement was a matter for you as leader, is that right?---That's correct.

And similarly in the case of the Liberal Party, is this right, the ultimate decision in terms of what election announcement to make is a matter for the leader of the Liberal Party?---The leader of the Liberal Party or a delegated minister that's given the authority to make an announcement.

40 So, in the case of the RCM matter, do you know whether the decision to make that announcement was a decision made by the then leader of the parliamentary Liberal Party, Ms Berejiklian, or whether it was made by someone else within the Liberal Party?---I, I don't know how the decision was made but I do know because of the press release that the Minister for the Arts, Don Harwin, made the announcement.

But are you saying you're not able to assist one way or the other as to whether the decision to make that announcement was a decision made by the leader of the Liberal Party, the then leader of the parliamentary Liberal Party, Ms Berejiklian - - -?---No, I would - - -

- - - as opposed to, in effect, delegated to someone else?---No, I would have no, no, no, I, I have no ability to, to answer that because I would not have been in those meetings. They would have been meetings of the leadership of the Liberal Party.

10 But at least the practice as you understand it within the Coalition Government or within the Coalition being in government or opposition, is that it's a matter for the leader or their delegate to decision on what election announcements are to be made in relation to a by-election being in respect of which there's a candidate from the Liberal Party or the Nationals?---By-election, by-elections are very uniquely different to general elections, where general elections which have a vast campaign across the whole state, across every seat, ministers play an important role in their, their ministerial responsibilities. In a by-election, it almost becomes like a presidential election where the leader of the party, be it the Nationals or the Liberals or when Labor are in government, the focus is on the leader and the leader makes predominantly all those announcements. That, that's seems to be the norm in by-elections.

20 And can we go, please, to page 223 of volume 31.0. Now, I'm not sure why those boxes are in that fashion but can you see a letter from Dr Wallace - - - ?---Yes.

- - - the name in the top right-hand corner to the then Premier, Ms Berejiklian?---Yes.

30 Does this appear to be the letter to which you drew attention before as a letter that was putting forward a suggested funding from the Riverina Conservatorium?---Yes, this is the letter that I was referring to.

Now, if you have a look at the third dot point on that page, we'll just zoom in to that, the bottom half of the page. It says, "We were working with Mr Maguire to extend funding to support the second stage of our development." See that there?---Yes, I do.

And jumping over a sentence, "Our submission at this stage is based upon QS estimates of around \$20 million." See that there?---Yes, I do.

40 "Mr Maguire had been working with us to find funding sources to support this stage but the work is incomplete." See that there?---Yes, I do.

Did you or, to your knowledge, your office or agency have any involvement in working with the Riverina Conservatorium to find funding sources to support stage 2?---Look, not, not to my knowledge, not with me. Is it possible that Mr Maguire went through my office or the agency to find those sources? Very possible. Mr Maguire would have been also knowledgeable of all the grant funding programs that were in play at that time. There may

have been no work other than Mr Maguire identifying those programs, but I, I can, I, I don't recall having any role in sourcing or identifying funding.

Now, we then turn to the next page, page 224. You see there three questions that are said to lie at the heart of this letter. See that there?---Yes, I do.

10 And I draw your particular attention to the second question addressed to Ms Berejiklian. "Are you in a position to promise the completion of the popular RCM initiative in the upcoming by-election or in the general election in 2019?" Do you see that there?---I see that.

And so this appears to be the letter that you were referring to before of 31 July, 2018, that started the process that led to an election commitment. Is that right?---Correct. Correct.

20 And so this is, in effect, the Riverina Conservatorium seeking an election commitment during the course of the by-election period. Is that right? ---That, that is correct. And that's not unusual. Other, other community groups or groups may have come forward and have, would have been lobbying for election commitments.

But the decision to or to not make an announcement in relation to this matter was a matter for the Leader of the Liberal Party, at least as you understood it, the Leader of the Parliamentary Liberal Party or her delegate, not a matter for the Coalition more generally?---That is correct.

Consistent with the general practice adopted within the Coalition?---Correct.

30 I tender the letter dated 31 July, 2018, from Dr Wallace of Riverina Conservatorium of Music to the Honourable Gladys Berejiklian, pages 223 and 224, volume 31.0.

THE COMMISSIONER: Exhibit 467.

**#EXH-467 – LETTER FROM DR ANDREW WALLACE TO
PREMIER GLADYS BEREJIKLIAN DATED 31 JULY 2018**

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MR ROBERTSON: Now, I think you then drew attention a little while ago to some letters that you may have - - -

THE COMMISSIONER: Before you go on, Mr Robertson.

MR ROBERTSON: I'm so sorry.

THE COMMISSIONER: I'm sorry to interrupt. You haven't tendered those documents for 31.1, 179 through to 180, yet. The second ERC decision.

MR ROBERTSON: I'm grateful, Commissioner. I do tender that. I tender a redacted version of the Expenditure Review Committee decision of 24 April, 2018, which is volume 31.1, starting at page 172.

10 THE COMMISSIONER: Will be Exhibit 468. And that exhibit, what, goes through at least to page 180, is that correct?

MR ROBERTSON: It goes through to page 186.

THE COMMISSIONER: 186. Thank you.

**#EXH-468 – EXPENDITURE REVIEW COMMITTEE DECISION
RE RCM DATED 12 APRIL 2018 DATED 24 APRIL 2018**

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THE COMMISSIONER: Yes.

MR ROBERTSON: Now, Mr Barilaro, you were referring a little while ago to I think the fact that you may have been involved in some correspondence or some form of paperwork in connection with the RCM stage 2 announcement.---Correct.

And the election commitment or the election announcement, is that right?
---That is correct.

30

What's your recollection as to what your involvement was with that?
---Again, my recollection is that I wrote, when the decision was made to fund the \$20 million, either before or after the decision was made, or during understanding to make the announcement, again finding the source of the funding for that project, I ended up – on the advice from what was a standard letter written up by my agency, I wrote to, if I recall, to both the Premier and the Treasurer, seeking their support, either for the criteria or the booking of that amount against the Regional Communities Development Fund.

40

Let me try and help you this way.---Yep.

If we go to page 241 of volume 31.10. And I take it you're writing this correspondence not because you've necessarily sat back and analysed the project yourself, but rather as part of the Coalition you're putting in place appropriate steps to deal with the announcement - - -?---The funding, yeah.

- - - that the Liberal Party wants to announce as part of the by-election campaign, is that right?---Yep, that's it. And this is the letter.

So 23 August, 2018, that appears to be the letter that you were just referring to, is that right?---I believe so, yes.

It's a letter to - - -?---The Treasurer.

10 The then Treasurer, Mr Perrottet, now Premier. You see there, "I'm writing to advise you that I will be submitting the recital hall component of stage 2 of the Riverina Conservatorium of Music project for a funding reservation of up to \$20.5 million through the recently announced \$80 million Regional Communities Development Fund." See that there?---That is correct.

And that particular fund was a fund that you had ministerial responsibilities with respect to as Deputy Premier, is that right?---And as the Minister for Regional NSW.

20 Probably more precisely as the Minister for Regional NSW, is that right? ---Yes, Yes, Mr Robertson, yes.

30 It uses the word "reservation". What in the context of your letter does the word reservation mean?---Because at the same time these funds have process around them, wrapped around them, including BCRs. They've got to show a return of investment to the state. So we reserve. We can put a reservation against the fund, therefore that we know that we've got to honour it if and when that process is completed and you can give it the green light. But in this particular case, as I said earlier, we've only just finished this process earlier this year. It didn't meet the criteria to get a BCR up, and so therefore the \$20.5 million has now been released from that fund to go to other projects.

So I'll come back to the detail of it being released, but just in relation to the word "reservation". Does the word "reservation" in this context, as least as you understand it, effectively mean we're going to reserve some of the funds from an overall, in effect, pot of money - - -?---Correct.

- - - so it can't be spent on anything else?---That is correct.

40 It doesn't necessarily mean you've got the money.---That's right.

It just means that it can't be spent on anything else because it's been reserved for that purpose if it jumps through the relevant hoops necessary for the particular fund.---Absolutely. That's correct.

Now, I showed you in relation to the ACTA decision, that didn't use the word reservation. It said it approved the expenditure of \$5.5 million. Do you remember seeing that?---Yes, I - - -

And so do we take from what you've just explained that there's a difference between what was done in relation to RCM stage 2 in the sense that all that was was a reservation, make sure you don't spend the money on anything else. As opposed to in the case of the ACTA decision, where there was an actual approval of expenditure, albeit approval subject to conditions such as a satisfactory business plan and the like.---I think the difference there is that the decision by the ERC is a decision that does give, give approval for expenditure, but it had those conditions in place that it was being booked against the Regional Growth – Environment and Tourism Fund and that it had to meet criteria. And, and unfortunately when Mr Maguire put his press release out around that he forgot to put in the fine print, which was all the extra recommendations and criteria around it. He sold it as a done deal, that, that the money was done, and I don't see a difference in that sense because in my mind both were, were technically reservations. Because if the ATCA proposal didn't stack up, then it wouldn't have got funded and that money would have then been released to another project. I don't see the difference, yeah, the reservation here is the same. It's a reservation but we, this is more clear in how we actually do it.

20

And is this right, in both methods, both the reservation that you're asking the Treasurer to perform, and the approval of expenditure in the ERC decision of 14 December, 2016, both of them indicate at least a level of, to use your phrase from before, political imprimatur in relation to the particular proposal, do you agree?---Correct, I agree.

I suppose the ERC one might be a higher level of political imprimatur because this isn't just a single minister writing to the Treasurer to ask for a reservation, but rather it's the very high-powered Expenditure Review Committee itself agreeing to the expenditure of money, albeit subject to conditions. Do you agree with that?---There, there is a lot of authority around the decision made at the ERC, so yes.

30

So I think you're agreeing with me that, as a matter of political imprimatur, which I think is the phrase you used before, one backed by an ERC decision is likely to be seen in your experience both at the political level but also at the agency level as indicating a strong political support for the particular project.---Mr Robertson, I think I said earlier about government imprimatur in relation ACTA because it was a decision of the ERC but in an election commitment like this, of course there's political imprimatur.

40

Now, you'll see in the second paragraph you refer to the previous approval of \$10 million. I take it that's a reference to stage 1 that you and I have been discussing earlier today, is that right?---That's, that is correct. That is correct.

Then you'll see if we go to the second page there's some details as to project background but you'll see there that there's a provision in the second

page, page 242, for the Treasurer to confirm that reservation and you'll see in the second paragraph of this page a reference to the fact that the government has made a number of reservations against the Regional Communities Development Fund, which is currently open and receiving applications. See that there?---Yes, I, I do.

10 So, is this right, what you're suggesting during the course of the by-election campaign to the Treasurer is let's reserve \$20.5 million out of the \$80 million funds in effect to allow stage 2 of RCM to be submitted as an application through the fund but whether to not the \$20.5 million will in fact be paid or not will depend on whether the application by the RCM is successful or not through the Regional Communities Development Fund process?---Yes, that is correct.

20 And was this a competitive process along the lines of what you and I have discussed before or does this fall more within the ATCA situation where it still needs to pass muster in terms of a BCR or at least in terms of the guidelines of the fund but isn't necessarily competing against other projects?---Yeah. This, the Regional Communities Development Fund is very different than the Regional Growth Tourism Fund. This didn't sit within the Restart NSW Fund overall, so therefore I had every different criteria processes. Was it a competitive process? I mean, everything's a competitive process to a degree but was that how it was managed? No, it wasn't, as I recall. There were just projects being, it was almost, we had a fund that was available for the public. Whenever projects that met the criteria for this particular fund, we would apply it and therefore address and do the process around it and so it's quite different.

30 And so this fund, unlike a Restart NSW fund, it wasn't essential to have an analysis that shows a BCR of 1 or more than 1, is that right?---To my recollection, no.

In the ordinary course, though, I take it ordinarily you would want some assurance that the overall benefits to the state of a particular expenditure of money is going to exceed the overall cost to the state?---Yeah, that's true. You still go through the processes but you, you know, you would find projects that may, may fall under the 1 or better BCR.

40 So at least there's a possibility under this fund of funding a particular proposal even if it isn't demonstrated to have a BCR of 1 or more than 1, is that right?---You can, yeah, you can take other, other issues into account like social benefit and the, the importance of a project like it to the social fabric of a community, not just the economic fabric. So it gives you a little bit more leeway.

I tender the letter from Mr Barilaro to Mr Perrottet, 23 August, 2018, pages 241 to 243 of volume 31.0.

THE COMMISSIONER: Exhibit 469.

**#EXH-469 – LETTER FROM DEPUTY PREMIER JOHN
BARILARO TO TREASURER DOMINIC PERROTTET DATED 23
AUGUST 2018**

10 MR ROBERTSON: If we then go to page 244, I'll show you what appears
to be the response, to which I think you drew a passing reference a little bit
earlier. You see there a letter on the letterhead of the then Premier
Berejiklian?---Yes, I do.

It's signed. It's behind a black box but signed by the Treasurer, Mr
Perrottet, on the right-hand side. See that there?---Yes. Yes, I do.

20 And so you see there it said, "As per the ERC terms of reference, the
Premier and I have agreed to the reservation of up to \$20 million from the
recently announced Regional Communities Development Fund for the
project, subject to". Do you see that there?---That's correct.

And there's a series of conditions, including a final business case being
approved by the ERC.---That's correct.

30 So is this right, at least as you understood it, what happened in relation to
RCM stage 2 during the Wagga by-election was that the leader of the
parliamentary Liberal Party, Ms Berejiklian, or her delegate, decided that
RCM stage 2 should be the subject of an election announcement during the
course of the by-election campaign. That's step 1?---Step 1, correct.

To assist in that process, and as part of being part of the Coalition, you write
the letter to Mr Perrottet, or at least you signed a letter prepared by others to
Mr Perrottet, seeking a reservation against the fund that you're
administering.---That's correct.

Or at least slated to administer, the Regional Communities Development
Fund. Is that right?---That is correct.

40 That's in effect to give the government something to announce, this is the
reservation that has been made, is that right?---That is correct.

And that proposal, at least as you understood it, was approved by both the
Premier, Ms Berejiklian, and the Treasurer, Mr Perrottet, by way of the
letter that we can see on the page.---That is correct.

I take it, at least as you understood it, that proposal was in fact agreed to by
both the Premier and the Treasurer, even though at least on the version that
we have on the screen, we can only see a signature or at least a box in front

of a signature for the Treasurer and not for the Premier.---It was supported by both, yes.

How did you know it was supported by both?---Well, this is on the Premier of New South Wales' letterhead. Could only be generated within her agency or her office. So I don't know why there's no signature on this document. There may be another document with both signatures. But definitely would be, you know, receiving this letter would give us no doubt that it was supported.

10

THE COMMISSIONER: By the Premier?---By both the Premier and the Treasurer.

Sorry, Mr Robertson.

THE WITNESS: The Treasurer doesn't have the ability to write a letter like this on the Premier of New South Wales' letterhead. That's, that's my point.

20

THE COMMISSIONER: Yes, of course, thank you.

MR ROBERTSON: And further, if you have a look at the second paragraph, at least as you understood it, under the ERC terms of reference to reserve the \$20 million referred to, that would require the agreement of not just the Treasurer but the Premier as well, is that right?---Yeah, so my understanding there is under the ERC conditions of this fund that the Premier and Treasurer would have been signatories to approvals or reservations. So this was in accordance with the decision of the ERC.

30

So to actually reserve it in a manner consistent with the ERC's either terms of reference or other decision, one needs two bits of agreement, as it were, one on the part of the Premier and one on the part of the Treasurer, is that right?---Treasurer. Yes, that's how I understand it, yes.

That document, Commissioner, is Exhibit 437, according to my note.

THE COMMISSIONER: Sorry, the one you were -- this document?

MR ROBERTSON: The document that's currently on the screen has - - -

40

THE COMMISSIONER: I thought it had been tendered before.

MR ROBERTSON: That's why I stopped myself after I said the words "I tender".

THE COMMISSIONER: I thought I interrupted you. So just remind me, what was that exhibit number?

MR ROBERTSON: Exhibit 437.

THE COMMISSIONER: Thank you.

MR ROBERTSON: We'll then go to page 245 of volume 31.0, which is Exhibit 438. I'll show you a media release on the letterhead or at least the format of Minister Harwin, the Minister for Arts, 24 August, 2018. Do you see that there?---Yes, I do.

10 And we'll just zoom in the top half of the page. It says, "The NSW Government has committed an additional \$20 million for the construction of a purpose-built recital hall," et cetera. Do you see that there?---Yes, I do.

Now that's, at least as you understood it, that's commitment in the sense of an election commitment rather than necessarily a commitment in the sense that there is some sort of a guarantee or assurance that the money will actually ultimately flow, is that right?---That is correct.

20 But if we have a look at the last paragraph here, it seems that Minister Harwin has included what I think you described earlier as the fine print. "The funding of \$20 million will be made available subject to full project scope and costings for the recital hall being finalised." Do you see that there?---Yes Mr Robertson, this press release is done in my way, the appropriate way, and that is to announce a commitment but also explaining to the public that there will be a process in place in relation to the scope of the works, et cetera. So this is appropriate, that is the fine print at the bottom.

30 So as I understood it, you were critical of the media release that Mr Maguire issued in relation to the ACTA project?---Yes, because there was fine print, again, the ERC decision talked about a BCR, a satisfactory BCR, booked against the Regional Tourism and Environment Fund. There was no talk of that in his press release. His press release reads as it was a done deal and it was a commitment that we were funding.

So in effect, your criticism of Mr Maguire's media release is it didn't do what Minister Harwin's release did, which is provide what you've described as the fine print, is that right?---That's correct.

40 And I take it that not including the fine print, going back to a question I asked you a little bit earlier, not including the fine print is apt to put some political risk on at least the person who issues the media release, and potentially the government more generally, because so far as the community's concerned it might be thought to be a done deal even though there is in fact fine print which means the money may or may not be flowing?---Yes, absolutely that is correct.

That's why, at least as you see it, including the fine print in an announcement is important, is that right?---Not only important but appropriate and being absolutely transparent with the decision.

Appropriate in the sense of not misleading, for example, the public as to the actual status?---Absolutely.

10 As at 24 August, 2018 there is an announcement of a commitment of \$20 million. As you know, the Liberal Party were not successful in winning the Wagga Wagga by-election.---Yep.

20 Did the commitment ultimately turn into a flow of funds?---So the commitment remained, in an election like that or most elections we make a commitment to the community and we do fund projects regardless if we win or not, win those seats, they're election commitments. The by-election difference is that regardless of the result of that particular by-election, we remain the government of the day post that by-election and therefore we would have to honour the commitments that we made, and that, that is exactly what has occurred here. We made a commitment that we would
20 fund or reserve \$20.5 million or \$20 million in relation to the stage 2. A process has been run, we've engaged on a number of occasions with the new member for Wagga Wagga, who was an independent member, on this process. And only recently, as I said, earlier this year it was clear that the project didn't stack up and therefore we are not funding the project.

30 So, is this in effect right, that once the fine print was sought to be followed through for project scope and costings et cetera, that more detailed exercise indicated that the project didn't, to use your phraseology, stack up?---Yeah, it didn't stack up because again, but we were honest and upfront with the public about the commitment and the process that had to be run. And now
30 the process has been run, unfortunately, it didn't stack up.

40 And so we saw earlier a reference to a reservation of 20 or so million dollars. What's the status of that reservation?---So my understanding is that reservation now has been released, as if I recall correctly, we have indicated to the local member, the new local member in Dr Joe McGirr, that we are prepared with Wagga Wagga Council to see if there are other projects that we could fund to that value in that region, as we, you know, we did make a commitment. Council had some ideas about a performing arts centre
40 themselves outside of this particular project, so we'll explore that, but what status that's at I actually don't know.

Do you recall whether you had any input into – or to your knowledge your office – had any input into the kinds of announcements that might be made during the course of the Wagga Wagga by-election?---Look, it's possible that my office could, could have had input, you know, or conversations. I, I can't answer that.

Do you recall whether Mr Maguire had any input into the kinds of announcements or the announcements that might be made during the Wagga Wagga by-election?---No, Mr Maguire had resigned parliament at that point. He was under investigation. I would be, I would be very surprised if my office had any engagement with Mr Maguire.

Presumably he was in a bit of a nature of a persona non-grata within the government at that point in time?---That is correct.

10 So you're saying, to your knowledge, he didn't have any input either through your office or elsewhere in government - - -?---Yeah.

- - - as to what announcements might be made?---Absolutely. I don't, I don't think he would have played a role.

And I take it that in the circumstances in which he came to resign, it would be a fairly strange thing, at least in your experience, for him to be giving any input as to the particular announcements that might be made?---That's correct. It would have been very, very strange.

20

I asked you a little while about whether you would have done anything differently in relation to the ACTA proposal and the ACTA stage 1 proposal had you known about the close personal relationship between Mr Maguire and Ms Berejiklian. I may have said that wrong. I meant the ACTA project and I mean, RCM stage 1. And you've given some answers with respect to that. What about with respect to RCM stage 2 during the course of the Wagga by-election, had you known about the existence of the close personal relationship?---This, this sort of feels different. Firstly, you no longer have the, the Member for Wagga Wagga, so the conflict, in my mind, doesn't exist. You've got now a new candidate as the Liberal candidate. It was an election commitment, with criteria around it, in relation to how it was funded. So you've got a whole level of transparency and process put around it. So in one way, this, out of all those three projects, ACTA, stage 1 of RCM and this, I think this one, this one was a lot easier to manage because of the, the conflict which was the local member didn't exist, there was an election commitment with processes, I think there wouldn't have been a problem. The, the only conflict here would, would have been, I think there was that letter that you, you showed me, Mr Robertson, earlier, from the Riverina Conservatorium's Mr Andrew Wallace that had indicated that Daryl Maguire had played a role or a supportive role or worked with the Riverina Conservatorium. That could have caused us a level of concern. But this is so different to the other two.

30

40

That's the examination, Commissioner.

THE COMMISSIONER: Thank you, Mr Robertson.

MR ROBERTSON: I took Mr Barilaro to aspects of his compulsory examination transcript. I tender page 3499, line 22, through to page 3504, line 21, that being a passage in respect of which I asked Mr Barilaro some questions immediately after lunch.

THE COMMISSIONER: So 3499 to 3504 or those two pages?

MR ROBERTSON: Five pages, I think that will. 3499 to 3504.

10

THE COMMISSIONER: Very well. That will be Exhibit 470.

**#EXH-470 – EXCERPT FROM COMPULSORY EXAMINATION
TRANSCRIPT OF DEPUTY PREMIER JOHN BARILARO ON 10
SEPTEMBER 2021**

MR ROBERTSON: May it please the Commission.

20

THE COMMISSIONER: Mr Harrowell, do you wish to seek leave to examine or cross-examine Mr Barilaro?

MR HARROWELL: No, no, Commissioner. No.

THE COMMISSIONER: Ms Callan, do you wish to seek leave to examine or cross-examine Mr Barilaro?

MS CALLAN: Yes, Commissioner, I make that application.

30

THE COMMISSIONER: Yes. You have that leave on the usual basis.

MS CALLAN: Yes. Mr Barilaro, my name is Callan. I appear on behalf of Ms Berejiklian for this public hearing. At the point in time that you became Leader of the National Party and Deputy Premier, the Nationals had lost or were looking like they were going to lose the seat at Orange in a by-election that was conducted there in November 2016. Do you recall that?
---Absolutely. That's correct.

40 That had long been considered a safe Nationals seat?---We've held it for 74 years, yes.

The result of the by-election as it transpired was very close but ultimately it was a member of the Shooters, Fishers and Farmers Party who won by a small number of votes. You recall that?---Yeah, that is correct.

Did you or to your knowledge others within the National Party regard that election result as reflecting a backlash by the regional electorate against the

Coalition Government?---Yes, but on, on two counts. That, that election, by-election was all about greyhounds, the banning of greyhounds and local government mergers which was alive and well in the local government area of Cabonne, so that, that election, by-election, the backlash was on those two particular policy issues.

10 To your observation, did that give rise to a real concern, both held perhaps by yourself and other members within the National Party or, indeed, the Coalition, about the need to address the difficulties that regional voters had expressed, for instance, in respect of the greyhounds issue and the amalgamation issue?---Absolutely. That, that by-election was the catalyst for a number of things. Firstly, the resignation of the Leader of the National Party, Mr Troy Grant. That's, that's how I became leader post that Orange by-election, two, that we had to reverse the decision of the ban on greyhounds which occurred during the by-election but it was too late, and, three, the demergers – sorry, the mergers of regional councils which, you know, I fought against and have been quite vocal about. On those issues, clearly, there was a concern within the National Party that if we didn't fix those issues, that we would pay the toll at the, at the general election.

20

To your observation, did you also consider it coloured other government decisions which affected the regional electorate in terms of demonstrating to the regional electorate that the Coalition was paying attention to regional issues?---No, I, in my sense, at that point in time, the money from the Restart, the poles and wires money, the 30 per cent guarantee to the regions was starting to flow. The issues weren't actually about expenditure or investment on the ground. I mean, we, we get accused of the opposite, that we're, that we're spending far too much in some of those areas. The issue was, the issue alone was on those two issues of greyhounds and local government, and that is an area that we had to resolve. I don't think anything else was an issue at the time.

30

Can I ask in your evidence that you've given in relation to the extent to which certain funds are subject to requirements, including the benefit-to-cost ratio analysis, is it the case that you've observed over the years that regional projects and proposals are often assessed as having a BCR of less than 1?---Yeah, absolutely, I, and I made that, I made that comment in my evidence, that it's very possible to fund something under the, under the BCR of 1, absolutely.

40

But it's been your observation that some regional projects, when they achieve that score, that means that they would miss, they have missed out on funding as a result?---Yeah, they have, absolutely.

But as you point out, there are other sometimes intangible benefits that, at least from your perspective, should be taken into account in terms of assessing whether a project ought be the subject of funding?---Yeah, absolutely, it's not just – you know, we've always argued for a long time it

shouldn't just be seen through the economic lens. It needs to be seen through the social lens and, and the social dividend and the social fabric of a community. These, these investments create jobs but also they leave a long-lasting asset that has greater benefits often beyond its original use. So there are other tangible outcomes from a funding decision.

10 And in such circumstances, as I understand it, the consequence of the evidence you've just given is that, from your perspective, if a project or a proposal for funding is assessed as having a BCR of less than 1, that doesn't necessarily indicate a decision to fund it is an inappropriate decision or an improper decision?---No, no, I agree with that.

In relation to the period of time when you sat on the ECR, and decisions – ERC, sorry – and decisions were made to fund programs, would it be fair to consider it's likely that would have covered the breadth of the electorates of New South Wales?---Yes, I would agree with that.

20 And in that respect, it follows that they would be electorates held by the various parties and independent members sitting in parliament?---Yeah, a lot, a lot of our funds and programs that we administer over the state are not – they're not just funded in the seats that the government owns. They're, they are statewide funds that have the ability to fund all electorates regardless of colour or political alliance.

30 Have you observed instances of who holds the seat and whether it was marginal as being, raises a relevant consideration in the ERC's decision-making?---Oh, I, I would say that there's been conversations. There are political, there's a political section where we have conversations at ERC, and things of matter, like are they a marginal seat or not, could be, could be raised and considered, yes.

Those being more political considerations which flow into the overarching decision that is made by the committee.---That's correct.

During your time in parliament, it's a regular occurrence for members of parliament to advocate for projects in their electorate?---Absolutely. That's, it's what we expect them to do.

40 I think Counsel Assisting suggested Mr Maguire maybe may have been quite vociferous in that, and you described him as "a pain in the arse". ---Yep.

He was not alone, though, was he, in – to your observation – in advocating regularly to anyone who he thought needed to listen?---He was, he was probably top of the bunch in his advocacy and the, and the aggressiveness of it all. But, no, absolutely. Members would always use the opportunity, especially when we convened for parliament, especially regional members. It's the time that we do come together. And when they convene, they are

able to walk the hallways, pop into our offices, free or during Question Time or time in the, in the chamber, and they would be advocating and lobbying for projects or issues that they had in their electorate, and that, that was appropriate and that was common.

It's something that you yourself would have done in early years?
---Absolutely, absolutely.

10 That is in terms of programs and projects for the Monaro electorate?---Yes, absolutely.

Mr Barilaro, prior to the series of revelations that emerged in ICAC in July 2018 in relation to Mr Maguire, would you agree with the description of him as a hardworking member of parliament?---Oh, look, he was definitely a hardworking member of parliament, always working hard on behalf of his electorate. You can't take that away from Mr Maguire, he did that very hard, very well. He is a very experienced member of parliament, and a lot of us, I was elected in 2011 so, you know, you looked at people like Daryl and thought, wow, he's fighting for his electorate. So, yeah, he was
20 hardworking. I would never put doubt over that.

Insofar as you observed that he was fighting for his electorate, did you make the more general observation that he fought or provided a voice in respect of regional issues?---Not predominately broader regional but more so in the seat of Wagga Wagga. In my time as a backbencher or a parliamentary secretary or then as a minister, I don't believe Daryl ever advocated on broad, wide regional programs or issues or policies, but he would be very vocal on issues and policies in relation to his seat of Wagga Wagga.

30 Prior to July 2018, to your observation Mr Maguire had not done anything to suggest improper or corrupt conduct?---No, not at all.

In relation to the evidence that you've given about the ACTA grant, as I understand it, it was your perception that Ms Berejiklian as Treasurer supported that proposal insofar as she permitted it to go onto the agenda?
---That is correct.

40 That is the agenda of the ERC meeting of 14 December, 2016. You don't mean to suggest that she undertook that task of allowing things onto the agenda as form of gatekeeper, do you? That is, that she only permitted items onto the agenda that she supported?---No, what happens is the office, the office or the Treasurer's Office would work with all members who were putting items up on the Expenditure Review Committee. It didn't mean that she was a gateway, that she only supported those projects that she wanted up, it was everyone had to follow process, that everybody had to put up relevant ERC submissions, made sure you met all those issues like source of funding, et cetera. But no, it wasn't because she was blocking everyone else so she could get her own projects up, no, that's not what I was referring.

But equally she wasn't blocking projects put up by other people that she didn't support?---No, not at all, not at all, absolutely not.

In relation to your consideration of that ACTA grant for the purposes of the meeting of the ERC, you had the ERC submission that had been prepared in respect of that proposal?---That is correct.

10 You also had received advice from one or more of your advisers in respect of that proposal?---That is correct.

And the advice you received was to support the proposal?---To support the project, yes.

You understood that was on the basis of the merits of the proposal?---Yes, absolutely.

20 You had the benefit of an arms-length analysis, didn't you, in terms of your decision to support that proposal?---Absolutely, the briefing note that I received was from my agency that said to support the project.

And in terms of support for the project or your support for that project, to your best recollection, was that on the basis of its obvious benefits to that particular national sporting body?---Yes, look it was another project for regional/rural New South Wales that had merit, and the ERC made a decision in relation, which I was part of, and on the advice of my agency of Regional NSW or Regional Development, it was appropriate to support. So, yeah, there was no question about supporting or not supporting.

30 Was it a factor in your mind that supporting this proposal may assist in regaining regional support after the loss at the Orange by-election?---Not necessarily. This was the seat of Wagga Wagga, I think Daryl was one of the safest seats in the state. It was a Liberal Party seat, we'd gone through the by-election, we reversed the decision on greyhounds. Eventually we did make some changes to local government mergers. So no, I, I don't believe that this had any, there was no policy shift or policy change of government to address other issues outside of greyhounds and local government to deal with the loss of the National Party seat in, in Orange.

40 Can I ask you, the evidence that you've given in answers to questions from Counsel Assisting about this hypothetical alternate reality in terms of how the ACTA proposal might have been dealt with other than at that ERC meeting of 14 December. As I understand it, what you're suggesting could have occurred is that the ACTA proposal be submitted into round 1 of the Regional Growth Development Fund.---Yeah, that's correct.

And if it had managed to make its way through those, you know, hurdles, it could have come back to the ERC as a decision made at that stage?---Oh, I,

absolutely, and I, and I've said that clearly today that if he'd followed that process, I genuinely believe, and knowing what the BCR and the process did eventually give us an outcome, it would have got funded, yes.

Just to be clear, if you assume in this alternate reality that Ms Berejiklian was Treasurer and chair of the ERC at that point in time, there's no difficulty with her having permitted such an item to come onto the agenda?
---No.

10 Insofar as your best recollection is that Ms Berejiklian expressed support for the ACTA project, as I understand your evidence, that was an inference you drew from the fact that she asked you for updates from time to time?---That is correct.

And those requests for updates occurred after the ERC decision?---That's my recollection, yes.

20 And you did not consider those requests or your conversations with her to be anything out of the ordinary?---No, not at all. I mean, the Premier would raise issues on behalf of other MPs with me, you know, for other projects in other regional areas. It, it is, it was absolutely appropriate. Myself and the Premier used to meet, as I said, regularly, on a weekly basis and we both raised issues on behalf of our members, our MPs, any outstanding issues, any updates. It was, that was a regular occurrence across the board.

Reflective of a conscientious execution of your duties and obligations?
---Can you repeat that?

30 Reflective of a conscientious execution of your duties and obligations?
---Yes, yes.

In relation to the evidence you've given about the Riverina Conservatorium of Music, when you visited that location – sorry. You visited the conservatorium I think at its previous location?---No, no. I, I, I visited the, the new site.

Oh, I see.---That, that Daryl Maguire was advocating for in June of 2016, which was well before, I think a year in advance of any decisions, yeah.

40 At that point did you meet one or more representatives from the Riverina Conservatorium?---Yeah. I recall there was either one or, or, or two but, yeah, there, there was, Daryl had taken me to that site. I'm, I'm, I'm confident there was one other but I'm, you know, it may have been just Daryl and, and my staff member and myself.

Did you at that point or subsequently come to understand that the Riverina Conservatorium of Music is a relatively small not-for-profit organisation?
---Yes, I knew that, yeah.

And the discussion, as you understood it, as to what they were seeking, based upon that visit in June 2016 and subsequent conversations in 2017, was around a move for the Riverina Conservatorium to that location at 1 Simmons Street?---That, that, that's what I've understood it to be and that sounded appropriate. It's the sort of thing that happens with excess government property.

10 And did you also understand it was, well, the Riverina Conservatorium was seeking, was funding in respect of costs associated with the capital works to make that new site suitable for its purposes?---That is correct.

You, at no time, understood that it was proposed the Riverina Conservatorium was to be embarking on some kind of commercial proposition? Did you - - -?---No, no, I did not know that.

20 Now, is it correct to say you were generally supportive of this project or this idea from the outset?---Yeah, absolutely. And the idea of moving the conservatorium from the Charles Sturt University to some vacant, excess government property in line with what we expect with asset recycling, absolutely. There was no reason it didn't, that this did not have merit again.

That merit included in terms of promoting art and culture in regional areas. ---Absolutely. It's an area that we probably lacked in funding and focus for a very, very long time. And that's why, under the Regional Growth Funds, we have a dedicated fund called the Regional Arts and Culture Fund to, to actually improve that sort of asset in the regions.

30 That being the case, did it surprise you, Mr Barilaro, to learn that it had been, that the Riverina Conservatorium had pursued the unsolicited proposals process?---No, that, look, I would argue that that was probably bad advice, 'cause if you read through that process, it has to be unique in its, in its, in its project. I don't think it would have ever gone through the unsolicited proposal pathway. So it was, they probably received bad advice on, to go through that. But the reality is that it was a project worth pursuing, yes.

40 It's not just the fact that a project needs to be unique under that unsolicited proposal process, it also needs to involve some form of commercial proposition for the government, you're aware of that?---Yeah, that's correct.

And in no way was this in relation – that is, the proposal for the RCM – concerned with a commercial proposition for the government?---Not, not what I understood at the time, no.

So in that respect, the advice that had been given to the Riverina Conservatorium, according to their letter from then Treasurer Perrottet, was bad advice?---I, I genuinely think it was poor advice.

And in effect, the RCM wasted, you would expect, time and money putting together a proposal to pursue funding for a project via an avenue that was never going to succeed?---Probably wasted time. I mean, the work they did would have had to have been done, would have had to have been completed at some point anyway for any other pathway or program funding.

10 You've given some evidence that it's recently been determined that stage 2 of the RCM project was assessed as not feasible. That's in terms of it being funded from the Regional Communities Development Fund.---That is correct.

And that was because it didn't meet a BCR of 1 or better, wasn't it?---I think it was that and probably some other criteria, but I just can't recall.

But at least in that respect it was by reference to economic considerations - - -?---That is correct.

20 - - - the proposal has been rejected.---That is correct.

And were you involved in that decision?---My agency did the work and I received the brief that I signed, as the minister responsible for that fund, that signed the brief that killed off the project.

And that is releasing the reservation of funds?---Yeah. True.

And when was that decision made, Mr Barilaro?---I believe it was earlier this year. I can't recall which month.

30 Well, we're sitting here in October and it's been a busy few months, very busy few months for the government. But doing the best you can, when was the decision made to release those funds and reject, effectively reject stage 2?---I think it was about March/April.

40 And when was that communicated to the Riverina Conservatorium of Music?---It would have been shortly after, after I signed a brief. The department would most likely have got in touch with the conservatorium, and possibly someone from my office or from the department would have got in touch with the local member.

And have you been concerned that, in particular, that proponent, the Riverina Conservatorium of Music, be given that information so that they understood where they stood?---Yeah, absolutely. And it's important once, once these processes are completed, that you, you inform those institutions or those organisations exactly what the status. 'Cause they've got to rethink now what their next step is.

And so is it your evidence that the government has been honest and upfront with the Riverina Conservatorium of Music?---I believe so, from the very first day of the announcement, because I believe that the press release of the announcement was clear and concise in relation to that we made a reservation or a commitment, election commitment, that it'd have to go through a scope of works, including a BCR and a business case. We've done that work and now we've, unfortunately it hasn't stacked up, and we've been absolutely clear and concise and, and honest with the, not only the proponents but the public.

10

To your observation, was stage 1 of the Riverina Conservatorium of Music project supported by Premier, Ms Berejiklian?---Would have been supported by all members of the ERC, including the Premier.

To your observation, the Premier indicated support for the project through the by-election commitment?---For the second stage?

20

Yes, for stage 2?---For stage 2, yes. Look as I explained earlier, by-election commitments are often the norm, is that the party that is involved will identify projects, and this is a project they identified for funding.

Since the outcome of that election, as you've I think observed, the Independent, Dr McGirr, has lobbied enthusiastically in support of stage 2 of the RCM?---Absolutely, Dr McGirr's always reached out to find out each stage and where we're up to with the status of the project. He was supportive of it but he also, when we contacted him in relation to it not being funded, he also understood it. He understood the premise of the commitment and understood the reality.

30

Was that a conversation you had directly with Dr McGirr?---I genuinely believe I had a conversation in the chambers or he may have come and saw me in a formal meeting. So definitely, I would have had a conversation with Dr McGirr, advising my disappointment but we will work with him about what else we could do in the seat of Wagga Wagga.

40

In terms of the evidence that you have given as to what would have, you think, would or should have been done differently had known of the close personal relationship between Ms Berejiklian and Mr Maguire at certain points in time, your evidence before this Commission is that you regard that gave rise to a conflict, is that your position?---Yes, that's my position.

And insofar as that's your view, that was because Mr Maguire was the local member at Wagga, is that why you consider there was a position of conflict? ---Because of the relationship between Ms Berejiklian and Mr Maguire?

Not, she wasn't having a close personal relationship with – sorry, I withdraw that.---Okay.

Is it your view that the conflict arose because he was the local member for Wagga?---Well, no, the conflict arose that as the member for Wagga Wagga he may have been or he was in relationship with a member of the Expenditure Review Committee, and therefore a conflict arose that should have been disclosed and that would have changed the course of events in relation to how we managed the process. Not necessarily the outcome but how we managed the process.

10 In so far he was the local member for Wagga, did you consider that decisions made in respect of matters pertaining to his electorate might enhance his popular standing in the electorate?---Absolutely - - -

And did you - - - ?---That's why members fight for commitments or funding.

But did you consider that that conferred some form of benefit on Mr Maguire such as to give rise to a conflict?---No, no, I wouldn't have thought it through that lens, not at all.

20 Well, other than that, was it understanding then or now that a decision made by the ERC in respect of a matter pertaining to the Wagga electorate gave rise to a private benefit for Mr Maguire, that is, financial or some other advantage?---No, at no time did I think there was a going to be a private benefit to Mr Maguire when we made that decision.

30 But you nevertheless considered that something about the fact of the relationship constituted a conflict?---Yes, the conflict was the relationship. We often, as members and ministers through our disclosures through our pecuniary interest forms, discloses to the Premier of the day, there are disclosures at the start of cabinet or ERC, we disclose a range of conflicts of interests, and either a perceived conflict of interest or a real conflict of interest, and I've seen many of us declare conflicts of interests for just knowing someone because we worked with someone or we had been an associate with someone, let alone being in a relationship with somebody. So the issue that you're arising is that the conflict of interest that I believe is of concern was that Ms Berejiklian and Mr Maguire were in a relationship.

40 Mr Barilaro, over your time in parliament, did you disclose to the Premier all intimate personal relationships that you had?---I would have, yes.

When you say you would have, did you do so?---Well, I suppose on our pecuniary interests forms we have got to disclose assets or income or connections to trusts that include family members, like my wife or my kids or other family members. Those disclosures are done in accordance to the Ministerial Code.

What about any other personal intimate relationships Mr Barilaro?---I don't think that is a normal – that's a hard question because my relationship was with my family, so that's a hard one to disclose.

Insofar as you've made decisions about projects and proposals in electorates held by colleagues you considered to be close friends - - -?---Yeah.

10 - - - and by that, I mean, a friendship that you hoped would endure beyond your time in politics, you didn't consider that that meant you were in a position of conflict in terms of a decision to approve funding, did you?
---No. That, that's, that's, that's a fair point that you made. It's rare that you finish with friendships in, in politics. I'll say that. You probably lose more friends that you make. But if you, during your course and journey in politics, you do, you do hope to make friends. You, you've got friendships with, with all sorts of colleagues. You don't disclose those (not transcribable) so that's a fair comment, a fair point.

20 The fact of that friendship doesn't mean that you were making your decision in a partial or biased way, does it?---No, not necessarily, no.

Thank you, Commissioner.

THE COMMISSIONER: Thank you, Ms Callan. Mr Agius - - -

30 MR ROBERTSON: Commissioner, I'm so sorry. Before you call anyone else, there's a document of which I'm aware that my learned friend Ms Callan may not be aware that may be relevant to her cross-examination. I think in fairness to her and her client, the appropriate course is that if I expose that document and my learned friend can then decide whether she chooses to ask any further questions of Mr Barilaro in relation to that document.

THE COMMISSIONER: Do you wish me to take a few minutes, so you can show her the document rather than her have to do it on the run?

40 MR ROBERTSON: I have no difficulty with that course. What I was proposing to do is ask some questions of Mr Barilaro first, so as to expose the subject matter - - -

THE COMMISSIONER: I see.

MR ROBERTSON: - - - and then either if there can be an adjournment so my learned friend can consider what course, if anything, she wishes to take in light of that or, alternatively, she might not have any questions or, alternatively, she might wish to ask some questions immediately.

THE COMMISSIONER: Very well.

MR ROBERTSON: Mr Barilaro, you were asked some questions by Ms Callan regarding the circumstances in which stage 2 of the RCM had been the subject of a decision, an ultimate decision by you to, in effect, not proceed with stage 2. Do you recall being asked some questions regarding that?---Yes, I do.

10 Can we go please to MFI 25. I just want to show a document relevant to that matter that might just assist your recollection in relation to that issue because it may be that your recollection of timing was slightly different to what at least this document that I'm about to show you suggests.---Great. Thank you.

It's not by of re-examination at all. It's just to ensure that no one's proceeding under any misapprehension. I'll just show you a briefing document. It's entitled Riverina Conservatorium of Music Stage 1 and Stage 2. Page 4 of that document, please. And do you see there a document entitled Briefing for Deputy Premier Riverina Conservatorium of Music – Stage 1 and Stage 2?---Yeah.

20 Now, there's a reference to some key reasons regarding stage 1 but I want to draw your attention to the section under the heading Riverina Conservatorium of Music Stage 2. Do you see that there?---Yes, I do. At the bottom of the page, yes.

Can we then just turn the page, please? And so in this briefing to you, in the first full dot point, if we zoom in to the top half of the page, it says, "Based on research undertaken, including data supplied by the Board of the Riverina Conservatorium of Music, the strategic business case states that the conservatorium would not have the capacity to fund the ongoing operation and maintenance of the stage 2 development." Do you see that there?---Yeah. Absolutely.

And so does this refresh your memory, that one of the concerns being communicated in relation to stage 2, from your agency to you, was the concern – I'm just going to pause. Is it consistent with your recollection that one of the concerns regarding stage 2, at least as expressed by your agency, was the concern that if one spent a substantial amount of money on a new building, there would be a concern about how does one pay for the operational and maintenance expenses for that particular building?---Well, that, that is in the consideration when you put together the business case, not just the capital, up-front costs but the ongoing costs.

40 But that was one of the principal reasons as to why you were advised that stage 2 shouldn't proceed. Is that right?---That, that is correct. That is correct.

And if you then just have a look in terms of timing, just to try and refresh your memory in terms of timing, if we just scroll down the page a little bit, do you see there, there's a reference to an approval by Mr Hanger on 11 May, 2021, see that there?---Yes.

If we the just turn the page, I'm going to come back to this page in a moment, but if we just turn to the next page. I take it that's your signature towards the top of the page?---Yes, it is.

10 Do you see there 13 July, 2021?---Yes.

And so is that consistent with your recollection now having been shown this document that at least in terms of your decision it was more around July rather than I think the earlier date of April or the like that you were guessing before?---Yeah. So my first answer was that it was the middle of the year, so that takes it closer to this date and on, on being further asked that question I took a guess, I said it was a guess, that I thought it might have been March/April but, yeah, this definitely July this year.

20 And then the note says, "The \$20 million should be released back to the DRNSW budget." See that there?---Yes.

That's a reference to the Department of Regional NSW?---Yes, that's correct.

And by release, effectively you're meaning the reservation of the \$20-odd million should be released so as to be unreserved?---That is correct.

30 And then it goes onto say, "The commitment was only ever subject to a final business case and following program guidelines." See that there?---That is correct.

That's a reference to what you described before as the fine print, is that right?---That is right.

And if you just go back to the preceding page, do you see underneath the heading Recommendations and Actions someone, it looks like it might be you, ticks the second two dot points?---Yes. That's correct.

40 But if you have a look at the first dot point it says, "Approve the continuation of the tender process for stage 1. Do you see that there?---Yep.

Now, is that squiggle on the left-hand side, is that your initials?---That is my initial, that's right.

And so although there's a cross there, that should actually be taken as you approving the continuation of the tender process?---Yeah, that's correct. That, that cross was, was incorrect. I, I further was advised, after the

briefing note went back to the agency, they wanted that clarified, I think, as a second document that gives clarity that, that I got rid of that X if that makes sense.

10 And I'll just show you that second document. If we go to page 2 of the same document, MFI 25. Do you see there an email from you to Mr Barnes saying "Confirming that I am comfortable for the stage 1 tender process to continue as detailed in the brief"?---Yes. Mr Barnes, my secretary, just wanted clarity that that X was, was an error and that's why I gave him a confirmation by email.

But that's the other document that you were referring to a minute ago - -?
---Yes, that's right.

- - - clarifying that stage 1 still continues in effect but stage 2 does not continue.---That is correct.

20 Commissioner, I tender MFI, which is a briefing for Deputy Premier dated by Mr Barilaro on 13 July, 2021, as well as an email chain ending in an email from Mr Holden of Regional NSW and Mr Grainger of this Commission, 8 September, 2021.

THE COMMISSIONER: Those two documents will be Exhibit 471.

**#EXH-471 – EMAIL CHAIN ENDING WITH TIM HOLDEN TO
PAUL GRAINGER AND OTHERS REGARDING RIVERINA
CONSERVATORIUM BRIEF DATED 8 SEPTEMBER 2021 AT
12.02PM**

30

MR ROBERTSON: If it pleases the Commission, I've got another matter by way of clarification but I thought it was appropriate that I intervene and raise that in light of some of the questioning from my learned friend, Ms Callan.

THE COMMISSIONER: No, I understand. Ms Callan, do you wish to ask any more questions in relation to that?

40 MS CALLAN: No, Commissioner. I am grateful for that clarification but I have no questions.

THE COMMISSIONER: Thank you, Ms Callan. Mr Agius, did you wish to seek leave to examine Mr Barilaro?

MR AGIUS: No, thank you Commissioner. I have no questions.

THE COMMISSIONER: Thank you. Shall I release Mr Barilaro?

MR ROBERTSON: I just want to ask one question by way of clarification, if I may, or at least one topic by way of clarification.

THE COMMISSIONER: Yes.

MR ROBERTSON: Can we go, please, to volume 29.1, page 55? I'm going to take you back to the statement that you gave to this Commission in response to a notice requiring you to provide a statement of information and to produce documents. As I understand one of your answers to a question that Ms Callan asked you, in your experience Ms Berejiklian as Treasurer didn't act as, as it were, a gatekeeper in relation the ERC agenda but rather would take steps to put a matter on the ERC agenda if there was a view by a proponent minister that that was a matter that should be put forward before the ERC. Do I have that right or am I putting that a bit too simplistically? ---No, so, so in my view, the Treasurer of the day has the ability to put anything on or off or take anything off the agenda of the ERC but the question, as I understood it from Ms Callan was that, she put it to me that the Treasurer only backed projects that she supported. That was not what I was inferring to earlier. The Treasurer has the ability to put the, has the authority or the Treasurer's Office had the authority to put items on the agenda, not necessarily projects that she supports but has the authority and who actually sets the agenda for the ERC.

So is this right, at least as you understood it from your experience, the mere fact that a matter might be on what I'll call a Berejiklian agenda doesn't necessarily mean that she supports the underlying merits of the particular item, is that right?---That is correct, that's how I see it, yes.

Then if we can have your statement back up on the screen, please, page 55, volume 29.1. If we go to the next page where paragraph 13 exists, if you have a look at the first sentence of paragraph 13 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," do you see that there?---Yes, I do.

I just want to understand what you mean by the word "support" in that context. That means, is this right, that means that Ms Berejiklian, as you understood it, supported the merits of the project as distinct from simply the procedure as to whether or not it's on a particular agenda?---So this particular paragraph refers to conversation that I may have had with the Premier. The detail, as I said clearly, I don't recall but I do recall conversations in relation to the clay target project from either status updates and I took that into account that she supports the project.

But that's about the merits of the project, not the procedure about whether or not, for example, it's on an agenda item or - - - ?---No, that's the merits of the project, yes.

I tender the statement of Giovanni John Barilaro dated, sorry, undated pages 55 through to 59, volume 29.1

THE COMMISSIONER: Exhibit 472.

10 **#EXH-472 – STATEMENT OF JOHN BARILARO IN RESPONSE TO
A ‘NOTICE TO ATTEND AND PRODUCE A STATEMENT OF
INFORMATION AND DOCUMENTS’ BY THE NSW ICAC**

THE COMMISSIONER: Shall I now release Mr Barilaro, Mr Robertson?

MR ROBERTSON: Yes, Commissioner.

THE COMMISSIONER: Thank you for attending today, Mr Barilaro. You are released from summons, you may step down.---Thank you very much.

20

THE WITNESS EXCUSED **[3.52pm]**

MR ROBERTSON: Commissioner, there was some reference in some questions that Ms Callan asked of Mr Barilaro regarding the unsolicited proposals approach. it's probably appropriate in light of those questions that I tender a letter from the then Minister for Finance, Services and Property Mr Perrottet dated 13 October, 2016 to Mr Maguire concerning that matter pages 72 and 73 of Volume 31.0.

30

THE COMMISSIONER: That letter will be Exhibit 472.

**#EXH-473 – LETTER FROM DOMINIC PERROTTET TO DARYL
MAGUIRE DATED 13 OCTOBER 2016**

40 MR ROBERTSON: I apply for the direction that was made under Section 112 of the Independent Commission against Corruption Act in relation to the compulsory examination of Mr Jim Betts, then Chief Executive Officer of Infrastructure NSW, on 29 April, 2021 to be lifted.

THE COMMISSIONER: Yes, I make that order.

**VARIATION OF SUPPRESSION ORDER: THE DIRECTION THAT
WAS MADE UNDER SECTION 112 OF THE INDEPENDENT
COMMISSION AGAINST CORRUPTION ACT IN RELATION TO**

**THE COMPULSORY EXAMINATION OF MR JIM BETTS, THEN
CHIEF EXECUTIVE OFFICER OF INFRASTRUCTURE NSW, ON
29 APRIL, 2021 IS TO BE LIFTED.**

MR ROBERTSON: And in making that application I contemplate that that
compulsory examination will remain subject to the direction that you made
on the first day of the public enquiry concerning personal information and
the like but that direction having been lifted, I tender the compulsory
10 examination transcript of Mr Betts of 29 April, 2021.

THE COMMISSIONER: Yes, that will be Exhibit 474.

**#EXH-474 – – EXCERPT FROM COMPULSORY EXAMINATION
TRANSCRIPT OF JAMES BETTS ON 29 APRIL 2021**

MR ROBERTSON: As matters presently stand I don't propose to call Mr
20 Betts during the course of the public inquiry. However, in the event that
any person with leave to be represented in these proceedings or at least in
this public inquiry considers themselves to be at any disadvantage in respect
of that matter, or in particular if they propose to seek leave or wish to seek
leave to cross-examine Mr Betts, they should let me know and I'll consider
my position with respect to Mr Betts.

THE COMMISSIONER: Very well.

MR ROBERTSON: That's the only matters on my part. I propose to call
30 the next witness at 10.00am tomorrow.

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

**AT 3.54PM THE MATTER WAS ADJOURNED ACCORDINGLY
[3.54pm]**