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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE RUTH McCOLL AO
COMMISSIONER

PUBLIC HEARING

OPERATION KEPPEL

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TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON WEDNESDAY 27 OCTOBER, 2021

AT 9.30AM

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

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Commissioner, in a moment I'll call Mr Gary Barnes, the Secretary of the Department of Regional NSW. Before I do so, can I deal with some matters in the nature of housekeeping. First, I tender a record of interview between Commission officers and Ms Margaret O'Dwyer, O-apostrophe-D-w-y-e-r, which is at pages 115 to 285 of volume 30.0 of the public inquiry brief.

10 THE COMMISSIONER: That will be Exhibit 484.

#EXH-484 – RECORD OF INTERVIEW BETWEEN COMMISSION STAFF AND MARGARET O'DWYER ON 15 MARCH 2021

MR ROBERTSON: Can I just draw to the Commission's attention one aspect of that particular record of interview? Can we go, please, to page 118 of volume 30.0?

20

THE COMMISSIONER: What was the starting page again, please, Mr Robertson?

MR ROBERTSON: Page 115.

THE COMMISSIONER: Thank you.

MR ROBERTSON: While that's coming up, page 188 of volume 30.0. Can I indicate that as presently advised I don't propose to call Ms O'Dwyer to give evidence in the public inquiry, but again if anyone considers themselves to be disadvantaged by that course, and in particular whether they would seek leave to cross-examine Ms O'Dwyer, they should let me know and I will consider my position with respect to that. So now volume 30.0, page 115, please. 30.0. Can we zoom towards the bottom of page 118, that's the first page of the record of interview, which is page 4 of the record of interview itself. No, I think we've got the wrong document there, please. Ms O'Dwyer's record of interview

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THE COMMISSIONER: That appears to be Mr Egan.

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MR ROBERTSON: While that's coming up, I also propose to tender Mr Egan's record of interview. You will recall, Commissioner, that I tendered an aspect of that record of interview during the course of my, or immediately after my examination of Mr Ayres. I'll do that in a moment now this has come up on the screen. I'll just draw to the Commission's attention towards the bottom of this page, Ms O'Dwyer refers to what she describes as a rivalry between Wagga and Albury. You will recall Commissioner, from time to time I have referred to Albury, not by way of

10 simply me choosing a particular location but in effect by reference to Ms O'Dwyer's evidence, where you'll see Ms O'Dwyer gives some evidence as to some queries raised by Albury as to the particular funding program in respect of which ACTA was funded. We'll see that in particular from the following page. "Just wondering under what program they were funded because that's quite often the case due to Albury miss out on something they could have applied for. It's that type of question." But also she's wondering whether, "The NSW government had funded a business case for the application et cetera." So I just wanted to draw that to attention. I'll be asking some questions of Mr Barnes concerning that matter including the funding of the business case in a moment, but I just wanted to draw that to attention as I was tendering Ms O'Dwyer's record of interview.

THE COMMISSIONER: Very well.

20 MR ROBERTSON: As I've said, with a view to keeping the public inquiry within relatively short confine in terms of timing I don't propose to call Ms O'Dwyer, but again, if anyone is disadvantaged by that course, they should let me know. As I have just foreshadowed, I tender the record of interview with Mr John Egan, who at all material times was a director in the Office of Sport, and in fact as I understand it still is, page 1 through to 98 of volume 30.0.

THE COMMISSIONER: That will be Exhibit 485.

#EXH-485 – RECORD OF INTERVIEW BETWEEN COMMISSION STAFF AND JOHN EGAN ON 8 MARCH 2021

30

MR ROBERTSON: I call Gary Barnes.

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

MR BARNES: Affirmation, thank you, Commissioner.

THE COMMISSIONER: Mr Barnes, you will recall that when you were called last Friday for the first time I made a section 38 declaration in relation to your evidence.---Yes, Commissioner.

Do you wish me to explain again any parts of that?---No thank you, Commissioner.

10

Very well. Yes, Mr Robertson.

MS GOODWIN: Commissioner, might I continue to appear for Mr Barnes? Goodwin is my surname.

THE COMMISSIONER: Yes, of course, Ms Goodwin. You have that leave.

MS GOODWIN: Thank you.

20

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Mr Barnes, do you recall last Friday we were discussing grant funding that was promised and awarded to the Australia Clay Target Association?---I do.

Do you agree that in relation to the Clay Target Association project that was a project in respect of which both the Premier's Office and the Deputy Premier's Office asked you for regular updates?---I do.

30

Would you agree that the frequency of those requests was atypical in your experience?---Yes.

As you understood it Mr Maguire was a vociferous advocate for what I'm describing as the ACTA project. Is that right?---Correct.

As you understood it Mr Maguire had the ear of Premier Berejiklian at that point in time. Is that right?---I had been, that had been communicated to me by I believe someone maybe in the Deputy Premier's Office.

40

So is this right, when you joined the NSW Public Service from elsewhere, one of the things that you sought to do was get the, what I might call, the lay of the land in terms of matters such as how Mr Maguire was seen within government?---I did that to, because I thought to, that this particular project was something that they were spending a lot of effort on and so I asked the question of some of the people that were in I think the Deputy Premier's Office and maybe even the Premier's Office.

So this particular project was one that, is this right, stuck out to you as a little bit strange in, or at least atypical, in the level of priority or emphasis it was being given?---Amongst a small number of projects, this one seemed to be one that there appeared to be a particular interest in.

And as someone who didn't have a long history in the NSW Public Service at that point in time you sought to try and ascertain why this project was getting particular priority. Is that right?---I was interested to find out the context.

10

And in attempting to find out the context, you were engaged in communications with, what, both the Deputy Premier's Office and the Premier's Office. Is that right?---I, I believe it was, it wasn't formal sort of engagement but it would have been, you know, what's the story with the, this particular backbencher.

20

And was that principally from the Premier's Office or the Deputy Premier's Office or both?---I think I might have asked in both but I seem to remember that someone in the Deputy Premier's Office had told me that Daryl was well regarded by the, the Premier as a person that understood the bush as a Liberal Party person, and that he had the ear of the Premier.

30

Do you recall who the particular individual was within the Premier's Office who communicated that – within the Deputy Premier's Office, I'm sorry, who communicated that to you?---Oh, look, it may have been Laura Clarke, the deputy chief of staff, but it was some time ago, and it could have been one of the Olivias. They were two people that looked after backbenchers at the time, Olivia Faulkner and Olivia Graham. I'm not sure. But I have a recollection that, that, that was what I was told.

40

But is this right, at least as you understood it, part of the explanation for the priority and attention that the ACTA project was being given seemed to be the fact that Mr Maguire was interested in the project and that the Premier of the day had an ear for Mr Maguire's advice, is that right?---I imagine that as a strong advocate for projects in his electorate he was following up on the status of those projects. In the main I thought it was to the Premier's Office, then the Premier's Office would come across to get status updates because the Deputy Premier had the running of the project.

But does that mean, at least insofar as you understood it, the source of the, at least the principal source of the request for updates and the like was the Premier's Office, albeit through the Deputy Premier's Office?---That's how I understood it.

But back to a question I asked you before. From the communications you were referring to before, including communications with the Deputy Premier's Office, is this right, you understood that one of the reasons for the priority and attention of this particular project – the ACTA project – was the

fact that it was supported by Mr Maguire, and that the Premier of the day had an ear for Mr Maguire's advice. Have I got that right?---That is a conclusion that I drew as to why, why we were being asked for updates.

Can we go now back to Exhibit 451, which is volume 26.6, page 226. I'm just going to show you a document I showed you on Friday to get us back in the timeline for the ACTA project.---Sure.

10 And then I'll ask you some further questions according to the timeline from there. We can zoom in to the top half of the page. Do you see there, if we go a bit further, please, do you see there an email that I showed you on Friday?---Yes.

Scroll right up to the top of the page, please. From you to Mr Hanger, 9 May, 2017, 8.37am. "Hmmm".---Yep.

20 And I think you explained on Friday that by using the word "Hmmm" with lots of M's, you were indicating your disappointment with what had occurred, as appears from the email chain a little bit earlier down, a little bit further down the page, is that right?---That's correct.

Now, if you have a look at the particular context, you'll see Mr Hanger sends an email to Mr Webster and Mr Akopyan, 8.35am. Do you see that a little bit further down the page? Just towards the bottom of the page, Mr Hanger's email to Mr Webster.---Yes, yep.

30 And it says, "Hi, Stuart and Alex. DPO asked GHD to review and update the Wagga Wagga Clay Shooting business plan." Do you see that there? ---Yep.

Now, in terms of GHD reviewing and updating the Wagga Wagga Clay Shooting business plan, was that something that was paid for by the proponent – by the Clay Target Shooting Association – or was that paid for by someone else, so far as you can recall?---I couldn't recall at the time, but I have a sense that it may have been paid for out of the Office of Regional Development.

40 Is that unusual, for the Office of Regional Development to be paying money to prepare a business plan for the proponent of a grant?---I believe so.

Can we have on the screen, please, we'll go a little bit back in the timeline, an email from Mr Webster to Mr Akopyan and others, 31 March, 2017. I'm just going to show you something that might refresh your memory in relation to the question of payment for the updated business case.

THE COMMISSIONER: What volume and page number, please?

MR ROBERTSON: It doesn't have a volume and page number reference. So this is an email from Mr Webster to Mr Akopyan, Mr Hanger, Ms Spring and Ms O'Dwyer, 31 March, 2017. I'm going to show you in a moment, Mr Barnes, a reference to you in this email chain. I might come back to that one, Commissioner, while that particular email is recovered. But back to Exhibit 451, volume 26.6, page 226, what I'll call the "Hmmm" email. I think you explained on Friday that you identified your displeasure or disappointment to the Deputy Premier's Office regarding what had occurred as indicated by this email chain, in other words direct communication
10 between the Deputy Premier's advisers and the external consultant.---Yes.

Do you recall being given any advice or indication from the Deputy Premier's Office as to what, if anything, would be done by reason of your, or in relation to your expression of disappointment or concern?---Yep. I expected that either the deputy chief of staff or the chief of staff would talk with Mr Minucos, Minucos and ask him to work through the department, that that wasn't the appropriate way to do business.

Were you told something along the lines of that Mr Minucos would be told
20 to pull his head in and instead work through or with Mr Hanger?---I believe so.

Who told you that?---Either Ms Dewar or Laura Clarke.

So that last email I showed you was 9 May, 2017. Can we now go to Exhibit 482, volume 26.6, page 232? Do you see there an email from you to Ms Cruickshank, copied to Mr Hanger, "Wagga clay pigeons"?---Yes, I do,

Ms Cruickshank at that point in time was the chief of staff to Premier
30 Berejiklian, is that right?---Correct.

Why were you sending emails directly to Ms Cruickshank, chief of staff to Premier Berejiklian, regarding Wagga clay pigeons as opposed to providing updates to the office of the portfolio minister, Deputy Premier Barilaro?
---There was an accepted practice that we would report to the Premier, who was the cluster minister, and we did that every second week, I think on a Monday. The cluster minister – and I'm not aware of the appropriations that were in place between her and the portfolio minister, but it was clear that the cluster minister also wanted to be involved in particularly being
40 updated on Regional Growth Funds, which was a new initiative, and so I took it upon myself to provide regular updates on those Regional Growth Funds. And so I also formed a view, I think as I mentioned last Friday, that the Premier's Office had taken a particular interest in this project, and therefore while I updated the Premier and her staff through those formal briefings on a Monday by way of very brief written dot points, I thought that it warranted keeping Ms Cruickshank up-to-date.

How did you know that the Premier's Office had taken particular interest in this project?---I think I said this previously that my view was that Mr Maguire was hassling them. They were then asking for updates from the Deputy Premier's Office. And we regularly were asked to give an inkling as to where things were up to in terms of this project.

10 And so the information you're now referring to is information that came to your knowledge via the Deputy Premier's Office. Is that right?---In the main but I, I believe that from time to time, I also met on a semi-regular basis, there was a person in the Premier's advisory staff that had regional responsibilities and so I met with those people and I might have mentioned it to them as well.

That particular individual who had a particular focus in that area within the Premier's Office, who was that?---It changed on a fairly regular basis but I think at or about this time, it would have been Clive Mathieson, who was the, I think the deputy chief of staff.

20 So why is an email like the one that we can see on the screen being provided to Ms Cruickshank at the top of the tree, as it were, the chief of staff, as opposed to a person who's responsible for policy in a particular area, such as Mr Mathieson or perhaps someone lower down the chain?---So they would have been keeping Mr Mathieson up-to-date as well, but I believe that, you know, that the Premier had a particular interest in this project because I'd inferred that Mr Maguire might have been following up pretty regularly with her staff and maybe even with her, and therefore I wanted to make sure that Ms Cruickshank was, if you like, in the loop.

30 And so when you say "the Premier" in that last answer, you mean the Premier herself, I take it, not just her office but the Premier herself?---Well, I, I, I'd inferred that if Mr Maguire was someone that she trusted and had sought his advice on different things that he may well be speaking to her directly about this project and therefore I wanted to keep the chief of staff apprised of things.

But as you understood it, this was a particular interest of the Premier herself as distinct from just particular members of her staff. Is that right?---I, I had made that inference only by way of the context that I'd been given.

40 But that was an inference that you drew regarding the Premier herself as distinct from individuals within the Premier's staff. Is that right?---Correct.

Can we go then please to Exhibit 452, volume 26.6, page 2. In fact, before we go there, we'll go to Exhibit 483, page 233, volume 26.6 just so I can show you the remainder of the email chain with Ms Cruickshank. I'll just draw your attention towards the middle of the page. Ms Cruickshank's email to you 10 May 2017, 9.48am. Can we zoom in to that email, please? And do you see there Ms Cruickshank says, "Thanks for the updates on the

pigeons (!) – the Premier has signed the funds documentation last night and I told Fiona this morning.” Do you see that there?---Yeah.

10 What did you understand the reference to be to the “funds documentation” in that paragraph?---We were in the process of creating a range of different programs within the overarching Regional Development Fund, and the way, so the way in which the, these had been set up with the Regional Growth Funds is that it required the Premier’s signature to create those new funds, not just the portfolio minister’s signature. And I had been, if you like, looking at the possibility if this particular project did not proceed to be funded through the Regional Growth – Environment and Tourism Fund which was a Restart Fund, I was looking at the possibility of whether there were other legitimate avenues for funding that may be available.

Why were you doing that?---I had a sense that this project had the imprimatur of government by way of the ERC decision that had given effect to an approval being made with conditions.

20 Was that the only bit of information that drew you to the inference that this matter had a particular imprimatur to it, or was it also influenced by some of the other things we’ve discussed this morning, such as your understanding of the Premier’s particular interest in the project?

---My primary, my primary sort of inference would have been that this was quite an unusual project, having been quite a small project but gone through ERC. But it had some standing. It wasn’t a reservation. It was an approval. And from a very early time in this process, I thought that it would be prudent for the public service to look at other options if indeed government were to proceed with this project but couldn’t attach money to it through that other process.

30 So it was unusual in your experience, is this right, to have an ERC decision in relation to a project of this size, \$5.5 million, as distinct from perhaps a much larger figure in terms of quantum, is that right?---It certainly happened from time to time, but there would need to be urgency. But in the main, projects like these went up as part of a program of decisions.

40 What was the urgency or other reason, as you understood it, for dealing with this proposal in the unusual way you’ve just identified?---Look, I, I believe that there may have been some time pressures in terms of having a facility constructed for an event.

The event that you’re now referring to, was building the facility what I’ll call a must-have – in other words, we need the facility in order to secure the event in order to ensure the event takes place – or was it, as you understood it, a nice-to-have in the sense of the event is going to happen in any event but it would be nice to have a good facility rather than a lesser facility at the time?---I, I can’t fully recall. I think the event may have been secured, but I think in my first wave of thinking at the time, I thought the facility might

have facilitated acquiring the event as well. I now know that, well, later knew, after we'd already received a briefing I think from the Office of Sport that the event may have been secured.

10 You said before that it was unusual for a project of this sort of size to be dealt with at the ERC level. Was it also unusual for a, at least in your experience, for a public servant of your seniority – now a secretary, at the time a deputy secretary – to be involved in the kind of level of detail that you were involved in in relation to the ACTA project?---We were a very small unit at the time, and so I think at the front end of, of this particular process it was just a couple of us that were taking it forward with the support of some of our regional people in the regions. But I would make sure that if, if this particular project had some importance to government, that I'd at least keep across what was happening in this space.

Is this right, you gave this project a particular priority in your portfolio of work because of your understanding of the political imprimatur sitting behind the project?---I think we all did in the, in our team.

20 In relation to that question of political imprimatur, as I understood your evidence before, that is an inference that you principally drew from the fact that the ERC made an approval decision in relation to the project, is that right?---Correct.

30 Was it also influenced, albeit it may well have been a secondary consideration, by the kinds of things that we discussed this morning, for example, your understanding of the Premier's personal interest in the project?---As the, as time progressed through the carriage of that project, initially it was just about the ERC decision, but as time progressed, it was obvious that both the Deputy Premier's – well, particular the Deputy Premier's Office were being asked to follow up and provide advice on the carriage of the project and where it was at.

40 Does mean, as you understood it, it wasn't just the Premier's Office trying to get this project off the ground, as it were, but also the Deputy Premier's Office itself pushing it?---Primarily I, I would have thought that it was, the advice for follow-ups and where things were up to, were coming out the Premier's Office to the Deputy Premier, but I think the Deputy Premier's Office were keen for the project to move forward as well.

Was this a project that, as you understood it, the Deputy Premier himself had a particular interest in?---Not particularly.

Can we go back to the email of 31 March, 2017, that I was going to show Mr Barnes before? This is the email from Mr Webster to Mr Akopyan, Mr Hanger, Ms Spring, Ms O'Dwyer, of that date. Now, this isn't an email that you're copied to but I do want to ask you some questions about it.---Sure.

So 31 March, 2017, we're going back in time from the timeline that we were in before.---Yep.

Do you see there that Mr Webster says to that group that he's been shown the GHD business case, "The CBA it contains is utterly non-compliant with NSW Treasury guidelines." Do you see that there?---Yep.

10 Is that consistent with your recollection of the position as at March of 2017, that there was a business case in play, as it were, there's one that had been prepared but it was one that was utterly non-compliant with NSW Treasury guidelines?---So the business case - - -

Oh, sorry, the CBA, I'm so sorry. I'll withdraw the question and I'll put it more precisely.---Yeah, okay.

20 Is it consistent with your recollection as at March of 2017 that the CBA, the cost-benefit analysis, that was in the GHD business case that was in place at that point in time was a utterly non-compliant with NSW Treasury guidelines?---Yes.

And so that, in effect, was an issue that arose following the ERC's decision, the ERC indicated that any funding would be subject to the preparation of a satisfactory business case, correct?---Correct.

30 But not a business for its own sake, a satisfactory business case to allow a cost-benefit analysis to be performed, is that right?---I, I would have thought that there were a number of aspects of the, the business case that might have been tested, meant to be tested, including whether it contained appropriate information to comply with the, the government and Treasury's requirements for, for doing a CBA.

And if we just scroll a little bit further down the page, I want to show you an email from Ms O'Dwyer towards the bottom of the page. Do you see that on 31 March, 2017, at 11.20am?---Yes.

Can I just draw your attention to the fourth paragraph where you're referred to. Do you see that?---Yep.

40 Saying, "Gary Barnes has advised that we (ORD) will fund an update to the original GHD plan." Do you see that there?---Yes.

So is it consistent with your recollection that you gave advice that it would be the Office of Regional Development within government to fund an update to the original business case?---Look, I believe I had a conversation maybe with Mr Hanger or Ms Spring about the fact that I had been informed that the original business case was funded by the Office of Sport and that it would, for the upgrade, that it may be appropriate for us to fund it, given that the original one had been funded.

But why is the government spending more money to decide whether a business – sorry – to produce a business case that might cause the government to spend yet more money, \$5.5 million?---It was atypical. It happens from time to time but this was something that the government had approved, that the Office of Sport had, in my understanding, funded the original business case, and I thought that it may be appropriate for us to fund the addition work.

- 10 So is this right, in the ordinary course proponents are expected to fund the preparation of their own applications including any relevant business case, is that right?---Correct.

In this particular case you found out that the Office of Sport had funded the original business case that was put before the Expenditure Review Committee of Cabinet. Is that right?---I believe that was in the handover that had happened from the Office of Sport to our people.

- 20 But why then are you saying by the looks of it around March of 2017 that the Office of Regional Development can provide the funding to update the original GHD plan as opposed to adopting what I think you've described as the usual approach of making the proponent do it?---I would have thought that it would have been for consistency.

Because the original business case had already been funded by the Office of Sport. Is that right?---I thought it would have looked odd if we'd gone back and to change the way in which government had been engaging.

- 30 Is one factor that influenced your advice that the Office of Regional Development will fund and update the original GHD plan the fact that the Expenditure Review Committee of Cabinet had actually approved expenditure albeit subject to conditions?---Yes.

And so did you take that decision, at least in part, as a direction or suggestion that your agency should take the running and pay for the finalisation of a satisfactory business case?---It was one factor.

- 40 I tender the email from Mr Webster to Mr Akopyan, 31 March, 2017, 3.40pm.

THE COMMISSIONER: Exhibit 486.

#EXH-486 – EMAIL FROM STEWART WEBSTER TO ALEX AKOPYAN, CHRIS HANGER, JANE SPRING AND MARGARET O'DWYER REGARDING AUSTRALIAN CLAY TARGET ASSOCIATION - UPDATED BUSINESS PLAN RECEIVED DATED 31 MARCH 2017 3.40PM

MR ROBERTSON: Just to close off that topic, can we have on the screen, please, the invoice itself covered by an email from a Ms Maxwell to a Mr Pace, 21 April, 2017. Do you see there a invoice directed to the Department of Premier and Cabinet with a narrative “Revised ACTA business plan completed”?---Yep.

And see there a total sum including GST of \$26,950?---Correct.

10

Is that consistent with your recollection that a payment towards a revised business plan for the ACTA project somewhere in the vicinity of \$26,000 or \$27,000 was paid for through Office of Regional Development funds?
---Yes.

Presumably it was others’ responsibility to deal with the mechanics but - - -
?---Yep.

- - - in terms of quantum and timing, that’s at least consistent with your
20 recollection. Is that right?---Yep.

Commissioner, I tender GHD invoice number 2336720 dated 30 March, 2017 in the sum of \$26,950.

THE COMMISSIONER: Exhibit 487.

**#EXH-487 – GHD INVOICE NUMBER 2336720 TO AUSTRALIAN
30 CLAY TARGET ASSOCIATION DATED 11 APRIL 2017 IN THE
AMOUNT OF \$24,500.00**

MR ROBERTSON: Go, please, to Exhibit 452, volume 26.6, page 253. This is an email we briefly went to on Friday so we’ll just briefly go to it again to get ourselves back in the timetable or the timeline. Do you see there you’re saying to Mrs Dewar, “Please note the attached.” And you’ll see the attachment is ACTA CBA Addendum Final. Do you see that there?
---Yes.

40 With extra info now over BCR 1.---Yes.

And so does that in effect mean that you then didn’t need to worry about effectively your plan B, where you were looking at possible alternative funds to satisfy what you described as the political imprimatur for this project, because the prospect of funding if through the Regional Growth, the RGETF, the Regional Growth – Environment and Tourism Fund, was able to be achieved by reason of the fact that a cost-benefit analysis showing a benefit-to-cost ratio of more than 1 had been achieved?---Having a BCR of

above 1 would have been an important next step. That would have allowed us to send the revised business case and the cost-benefit analysis off to INSW to progress through the process.

THE COMMISSIONER: And I see you also sent that to Mr Mathieson, Mr Barnes.---That's right. He would have - - -

So you - - - ?---Commissioner, he would have been the person at the time in the Premier's Office that was looking after regional matters.

10

So you informed both the Premier's Office and the Deputy Premier's Office of this welcome development I gather?---Well, I believe that they both had an interest in the outcome of the further assessment or appraisal that was being undertaken.

MR ROBERTSON: Mr Mathieson was your main contact within the Premier's Office at that point in time concerning this project, is that right? ---At that point in time.

20

As we've seen, you engaged in communications with some others from time to time, such as Ms Cruickshank, but Mr Mathieson was your main contact, is that right?---It changed on a sort of semi-regular basis, but at that time it was Mr Mathieson.

And then you see in the final substantive sentence of this email, "Local member will be happy." Do you see that there?---Yep.

30

Why were you concerned about whether or not the local member was happy?---I think I gave evidence around this last Friday, and, and said that there had been recent correspondence about the fact that there had been a, a perceived lack of momentum in the project, and that the clay pigeon or clay target shooting folk were concerned because they were in the process of moving forward to build the facility, and he would be – given that he was following up and, and had a view that, that things were happening or not happening – that he would be happy that the momentum, that there was another step happening.

40

The perceived lack of momentum you've just identified, that was a perceived lack of momentum perceived by who, as you understood it? ---Well, I believe by the local member primarily.

Not by people within the Premier's Office or the Deputy Premier's Office? ---There was a point where one of my colleagues in DPC had communicated to me, one of my deputy secretary colleagues, that he had heard a view that there was a perception that our team hadn't been moving as quickly as they could have, but that was, well, it didn't come from the Premier's Office or the Deputy Premier's Office per se, that came from one of my colleagues.

When you say one of your colleagues, who are you now referring to?
---Simon Draper, who was a deputy secretary at the time.

I take it that you were, as at March 2017, attempting to make the local member happy?---Not my job to make any of the backbenchers happy, but we, we wanted to pride ourselves on, on doing good, solid work in accordance with, with the rules, but to do it in such a way that we didn't give the perception that we were sitting on things or that things were not given the attention that they required.

10

Well, is this right, you were desirous of attempting to make or keep the local member happy because, as you understood it, he was someone that the Premier had an ear for?---No. I'd need to qualify that. We would not want to keep someone happy in terms of making sure that things proceeded through a process unless everything was done the right way.

I'm not suggesting that you would do it the wrong way, as it were.---Yep.

20

So is that the qualifier that you're seeking to emphasise, that you wouldn't do something the wrong way, you wouldn't do something unlawful or unethical in order to keep a local member happy, is that right?---Correct.

But is this right, one of the reasons that this project was given particular priority within your agency was that Mr Maguire was an advocate for it, and Mr Maguire was someone in respect of whom, as you understood it, the Premier had an ear for?---Correct.

30

Can we then go to page 296 of volume 26.6. You were explaining before, in effect, the mechanics of what had had to happen after the further cost-benefit analysis had been performed. So just to close that off, do you see there an email from you to Mr Hanger and copied to people both in the Deputy Premier's Office and to Mr Mathieson in the Premier's Office?
---Yes.

Just have a look at the fourth line. Do you see a paragraph starting, "Can you please send a letter to Jim today, CC me, requesting the clay target project be funded ASAP" - - -?---Yes.

40

- - - "and not through the two step process." Do you see that there?---Yes.

What were you referring to there by saying "funded ASAP and not through the two step process"?---So two elements, so one again was to make sure that we gave Mr Betts and his team all of the information to be able to proceed to make a recommendation to the Treasurer to attach funding.

And just pausing there. Mr Betts at that point in time was the Chief Executive Officer of Infrastructure NSW. Correct?---He was, yes. And then the - - -

As you understood it, one can't pay any money out of the Regional Growth – Environment and Tourism Fund without at least a recommendation from Infrastructure NSW. Is that right?---That's correct.

10 And so when you're referring to "a letter to Jim today requesting that the clay target project be funded", what you're in effect directing Mr Hanger to prepare is a letter requesting the recommendation from Infrastructure NSW as a step along the way to paying money out of the Regional Growth – Environment and Tourism Fund. Have I got that right?---That's correct. INSW were, would have undertaken its own due diligence on whatever we put forward through Mr Hanger. And they definitely weren't a rubber stamping group. They would have looked carefully at everything that had been put to them and then they would make a recommendation through to the Treasurer, who was the custodian of the legislation which was Restart.

The legislation you're referring to, I think, is called the Restart NSW Act. Is that right?---Correct.

20 And that Act says, amongst other things, that before one pays any money out of any Restart NSW Funds, including a sub-fund falling within that fund such as the Regional Growth – Environment and Tourism Fund, you relevantly need two things, recommendation from Infrastructure NSW and the approval of the Treasurer of the day. Is that right?---That's right.

So that's the mechanics that you're seeking to set up by giving this direction to Mr Hanger to write a letter to Mr Betts. Is that right?---Correct.

30 But focusing then on the second aspect of the paragraph starting on the fourth line. See how you say "and not through the two-step process"? ---Yes.

40 What's the two-step process or what are you referring to there as the two step process?---So, typically, Restart programs have a two-step process. Step 1 is a call for applications against a set of guidelines that will have been developed by relevant agencies in consultation with INSW, and then once the call from, for applications happens, there would be an assessment around those that might move forward in the process, so it's a competitive process. So this, in effect, was reminding Mr Betts that this was one of a few projects that was happening outside of that competitive process.

So when you refer to a two-step process, the first step is a competitive process where there are established guidelines, opportunity to make an application and then an ultimate competitive ranking of projects. Is that right?---Correct. Yeah.

THE COMMISSIONER: Is that known as the expression of interests process?---Sometimes the first step has two parts to it, Commissioner,

calling for expression of interest and then there may be asking for formal applications for those expressions of interest that are found to be complying but, yes, it's an application process that may have one or two parts to it.

Just within what Mr Robertson referred to as step 1?---Yes. Correct.

10 MR ROBERTSON: Now, I take it that in a two-step process environment, there's still a requirement, at least as a matter of practice, that there be a BCR of 1 or more than 1?---For most things in Restart but some parts of Restart, the, I believe the BCR is, is not the tool used to attach economic benefit, for example, Restart funding for school, Restart funding for health and potentially I think at the time some of the water projects. But for, in the main, the vast majority of projects required a BCR, or programs.

And what about the Regional Growth – Environment and Tourism Fund? As a matter of practice would that always require a BCR of 1 or more than 1?---It did.

20 And so when one adopts a two-step process rather than a one-step process, is this right, one can only progress to the second stage if there is a sufficient demonstration of a BCR of 1 or more than 1? Well, a second step I should call it.---Yep. Sometimes the, it's a, a, a rapid BCR done in the first step to determine whether there's a, a, a likelihood that, that things will be found to have a positive BCR.

30 Well, let me ask it this way. When one adopts the two-step process rather than, for example, a one-step process, it's possible that that process will identify projects that have a BCR of more than 1 but nevertheless that don't get funded because they have, in effect, lost the competition because they might be a good project but not as good as other projects that have been subject to an application during that funding round?---That's right. Most Restart funding was always oversubscribed and the relative BCR that was afforded along with other things – deliverability and alignment, strategic alignment and stuff like that – was then used to, if you like, rank the projects that were taken forward.

40 And that's not unusual in your experience, I take it, that there are more, in effect, worthy applicants than funds available to fund the applications? ---That's quite typical.

Now, that's not the process that took place in relation to ACTA, is that right?---That's right.

That's what you were drawing attention to in the email that I had up on the screen a moment ago?---That's right.

So step one of that two-step process didn't happen in the sense of the kind of competitive process that you've just outlined, is that right?---Correct.

And why was that so, how was it at least mechanically? Did this one form part of, I think you said, the small number of projects that adopted a one-step process rather than a two-step process?---Again, it came from the, the origin of that was the ERC decision where it was approved with conditions.

10 So is this right, at least as you understood it, one of the consequences of the ERC decision of December of 2016 was to allow the ACTA project to adopt a one-step non-competitive process as opposed to the usual two-step competitive process?---Correct.

And can you give us a sense of how often or regular it was to adopt a one-step process within the Regional Growth – Environment and Tourism Fund? Was that 10, 20, 30 projects or was that more in the one, two, three, something like that?---The latter.

Commissioner, I tender the email from Mr Barnes to Mr Hanger, 30 May, 2017, 1.27pm, page 296 of volume 26.6.

20 THE COMMISSIONER: Exhibit 488.

#EXH-488 – EMAIL FROM GARY BARNES TO CHRIS HANGER AND OTHERS REGARDING REGIONAL GROWTH - ENVIRONMENT AND TOURISM FUND DATED 30 MAY 2017 AT 1.25PM

30 MR ROBERTSON: We spoke a little while ago about, effectively the plan B that you were at least thinking about, what happens if we don't get a BCR of more than 1, but how do we get this project funded given what you described, I think, as the imprimatur politically in relation to the project. If you'd been in that plan B scenario, would have that meant that money could simply be funded through some other source within the gift of either your, your portfolio minister, the Deputy Premier, or perhaps your cluster minister, Premier Berejiklian, or is that a matter that then would need to have gone back, for example, to the ERC or to somewhere else?---It would have to go through another process. The money couldn't be automatically attached because all of the other programs that were being developed had
40 their own set of guidelines. Most of those guidelines went up to ERC and most of the decisions went forward to ERC.

So the ERC decision of December 2016 was, as you understood it, sufficient to cause for the mechanics to pay the money out through a one-step process through the RGETF without going back to the ERC, is that right?---That's, that was the, that was my understanding.

Subject, of course, to going through the procedures, such as getting a recommendation from Infrastructure NSW and approval from the Treasurer, correct?---It wouldn't go back to ERC but be signed off by the Treasurer.

But to adopt a plan B, a different source of funding, it would be quite likely for that to need to go back to the ERC for approval?---Almost definitely.

10 Most likely, though, I think, based on what you said this morning, as part of a bundle of programs or projects, as distinct from as a single item or agenda item, is that right?---Normal practice.

Can we go now, please, to MFI 24. I just want to show you an email that seems to be relevant to something you were saying before. It's an email from you to a Mr Gillespie, with a copy to a Mr Murray.---Yep.

Who was Mr, or what role did Mr Gillespie and Mr Murray perform as at 30 May, 2017?---Both of those gentlemen were contractors that worked within DPC as, in the function of regional infrastructure coordinators.

20 If you have a look at this email from you to Mr Gillespie, do you see you're drawing to his attention two things? "Barra and I are meeting with the Prem next Monday." See that there?---Correct.

"Barra" I take it is a reference to then Deputy Premier Barilaro?---Yes.

And then you say, "I want to commit to her that I will pull out all stops to deliver for her, Barra and the government." See that there?---Yes.

30 "I will also commit to working effectively with you and your team (you know that)." See that there?---Yes.

That's the first of the two things. The second of the two things is Wagga clay pigeons. "The Prem might think my team has been sitting on this for a year, but we only received it just before Christmas, and because Wagga guys had engaged GHD, who did original business case and CBA, they went back till February and they were hopeless." Do you see that there on the screen?---Yep.

40 So this is you raising with contractors to the Premier's Office two matters that you regarded, as at 30 May, 2017 as quite significant, is that right? ---At that time, and I, I've previously said to you that I'd had I think a discussion with Mr Draper about the perception that, in the Premier's Office, that we may, you know, not be moving forward as expeditiously as, as we should have been. I knew that Mr Gillespie and, well, not so much Mr Murray, but Mr Gillespie was communicating with the Premier, and had, while he reported through the secretary of DPC, on occasion gave the Premier updates about how things were going right across the board in terms of regional infrastructure. And I therefore wanted him to be aware

that we, we would move quickly within the law to make sure that things were progressing. And I wanted, I wanted to make sure that he understood that we didn't have or get carriage of this particular project until effectively very late in the previous year.

10 But the reason that you identified Wagga clay pigeons specifically in this email, as opposed to the no doubt myriad of other matters within your portfolio area, was that – as you understood it – the Wagga clay pigeons proposal was a matter of particular interest to the Premier, is that right?
---Correct.

And part of you pulling out all stops to deliver for her, Barra and the government was to attempt to deliver on the Wagga clay pigeons project insofar as you could do consistent with the law and consistent with proper processes, is that right?---I didn't want anyone to perceive that we were in any way deliberately slowing things down, that we were moving along.

20 You would attempt to deliver for the Premier, Barra and the government including by, if you could consistent with proper processes, deliver on the Wagga clay pigeons project. Is that right?---Within the law.

So yes, but of course within the law and consistent with ethics and the like?
---Yes.

I tender the email from Mr Barnes to Mr Gillespie, 30 May, 2017, 3.08pm, also marked as MFI 24.

THE COMMISSIONER: Exhibit 489.

30

#EXH-489 – EMAIL FROM GARY BARNES TO KEN GILLESPIE REGARDING MEETING WITH PREMIER AND WAGGA CLAY PIGEONS DATED 30 MAY 2017 3.08PM

MR ROBERTSON: I'm sorry, that was Exhibit what, I'm sorry, Commissioner?

40 THE COMMISSIONER: 489.

MR ROBERTSON: 489. Can we have Exhibit 489 back on the screen, also MFI 24. Just have a look at the second dot point. If you can look at the second to last sentence that starts with the words "In the interim". Do you see that?---Yes.

"In the interim we agree to hold it against Confund." See that there?---Yes.

That's public service speak for the consolidated revenue fund. Is that right?---Yep.

“As we knew this needed to be funded if we couldn't get them compliant with Restart.” See that there?---Yes.

So is that a reference in effect to the plan B that you and I discussed a little while ago - - -?---Yep.

10 - - - let's hold some money. Because this project has an imprimatur behind it - - -?---Yep.

- - - we need to try and get it funded one way or another consistent with the law, consistent with proper processes, but the plan B or at least part of the plan B, was to hold sufficient funds against the consolidated revenue fund. Is that right?---Part of the plan would have been to potentially make a reservation in case this didn't go forward and government wanted to see if it could comply with another stream of funding.

20 Was a reservation in fact put in place by way of a potential plan B do you recall?---I can't recall.

When you say reservation, that's simply a decision that reserves the money in the sense of prevents it from being spent on anything else. Is that right? ---That's right.

In whose gift would it be to reserve money for a project like this as at May of 2017, who would need to make that decision?---It would have been the Deputy Premier would have had to make the call that he wanted to do that.
30 The normal practice was that given they were Regional Growth funds he would write to maybe the Premier and the Treasurer by way of making a reservation.

So as a matter of procedure at least, the Deputy Premier would write to the Premier and the Treasurer and ask for there to be a reservation so there's in effect a potential pot of money available to advance towards a particular project or program. Is that right?---Yes.

40 Now, can we go then, please, to page 62 of volume 26.7. I'm going to show you what appears to be the letter that you asked Mr Hanger to prepare. Do you see there email on Department of Premier and Cabinet letterhead to Mr Betts?---Yes.

And it says, “I'm writing to seek Infrastructure NSW review and consideration of two regional development projects that the Department of Premier and Cabinet's regional NSW group has been requested to assess in relation to the Regional Growth – Environment and Tourism Fund.” Do you see that there?---Yep.

And one of those two projects is the Australian Clay Target Association. Correct?---Yes.

If you just have a look at the text underneath the heading Regional Growth – Environment and Tourism Fund, do you see that the request in italics seems to be a request for an allocation?---Yes.

10 You see that word is underlined.---Yes. That's - - -

So that's something different to a reservation in the way that you used that word before. Is that right?---That's right.

This is involving not just reserving the money so it can't be spent on something else, this is a recommendation that says you're allowed to actually draw down money from the Regional Growth – Environment and Tourism Fund in relation to this particular project. Is that right?---It was to allocated funding.

20 To actually allocate the funding which means in effect funds can actually flow?---Well, recommend for an allocation of the funding.

Recommend for an allocation then ultimately has to be approved by the Treasurer of the day. Is that right?---That's right.

But an allocation here, as distinct from what you described before as a reservation, is that right?---Yeah.

30 And then if you just have a look near the first dot point in the first sentence. See a sentence saying "The department's Investment Appraisal Unit has assessed the updated business case"?---Yep.

"Provided by ACTA for the development of a large clubhouse/conference facility and associated infrastructure at their existing site in Wagga Wagga following a request by the Premier." Do you see that there?---Yep.

40 So is that consistent with your understanding of the position, namely that there was an assessment of an updated business following a request by the Premier?---So those are Mr Hanger's words but Mr Hanger would have been aware that both the Premier's Office and the Deputy Premier's Office were keen for the further work that was undertaken in relation to updating the, the business case to be assessed. They would have, he would have been aware of that.

But is this right, as you understood it, the Premier requested that there be an assessment of an updated business case?---Again, Mr Hanger's words, but I was regularly updating the Deputy Premier's Office and obviously the work, the additional work that had been done to augment the original, or the latest

business case, they were keen for us to take that through to let the Investment Appraisal Unit look at things again, and my understanding is that they would have the imprimatur of, of the Premier's office as well.

Just the Premier's Office or the Premier herself?---Mr Hanger might have inferred that, that the Premier was interested in this and also may have been interested in, in seeing it reappraised.

10 Was Mr Hanger taking responsibility for, in effect, the day-to-day of the mechanics, including things like requesting assessments of updated business cases, or was that you?---No, it would have been Mr Hanger.

So Mr Hanger was responsible for the day-to-day about that aspect, is that right?---Yep.

As we've seen, you were reporting in and giving updates and things like that, but in terms of the day-to-day it was Mr Hanger rather than you, is that right?---Yeah. Mr Hanger and I would have spoken often, probably too often about this particular project.

20

When you say "too often" why do you say "too often" do you think?---Oh, it was, it was a project amongst a few others that stood out as taking up a fair bit of our time.

And it stood out for the kinds of reasons that you and I have discussed this morning, is that right?---Correct.

30 Commissioner, I tender the letter from Mr Hanger to Mr Betts, dated 1 June, 2017. That, Commissioner, is one of a few attachments to an email that was sent. I don't propose to tender all of the attachments to the original email because at least some of the attachments pertain to a different project. So my tender is in relation to the cover email from Mr Hanger to Mr Betts, 1 June, 2017, page 1 of volume 26.7, along with the letter attachment to which I have just taken Mr Barnes, which is pages 62 and 63 of the same volume, being volume 26.7.

THE COMMISSIONER: Those documents will be Exhibit 490.

40 **#EXH-490 – EMAIL ATTACHING A LETTER FROM CHRIS HANGER TO JIM BETTS DATED 1 JUNE 2017**

MR ROBERTSON: If you go, please, to page 327 of volume 26.7. I'm just showing you now a further email chain between you and Mr Mathieson, 20 June, 2017. Do you see that there?---Yes, I do.

Subject heading, "Heads-up Wagga."---Yep.

And then in the email from you to Mr Mathieson, you say, “Clive” colon “Fiona asked me to follow up with INSW where the Wagga Clay Target project is up to as the local member has asked.” Do you see that there?
---Yes.

Is that consistent with your recollection that Mr Maguire is continuing to make requests and inquiries concerning this project?---That’s correct.

10 Is this right? I withdraw that. If you have a look at the last sentence before your salutation that says, “Cheers, Gary” - - -?---Yes.

- - - you give some further information, including you’re referring to a draft deed and accompanying letter, et cetera. And you say, “Just wanted to keep you in the loop given the Premier’s interest.” Do you see that there?---Yes.

20 So I take it that the reason that you’re drawing these matters to the specific attention of Mr Mathieson is that, as you understood it as at 20 June, 2017, the Premier herself had a particular interest in this project. Is that right?---I had inferred that early, some months previous.

You’d inferred that through the – withdraw that. You’d inferred that in the manner that you and I have discussed during the course of the morning. Is that right?---Yes. Not, not at the beginning of the project and the ERC decision but as the project evolved.

30 As soon as the ERC decision came to your notice, you knew that this was a project that had a particular political imprimatur sitting behind it. Correct?
---It, it was, it was unusual for a project of that size to go to ERC.

And that led you to understand that the project had a particular political imprimatur behind it. Correct?---Correct.

40 You came to learn over a period of time that there was a particular imprimatur sitting behind it from the Premier herself. Is that right?---I, I had inferred that. As I said earlier, given, I had inferred that she would be interested given that I’d assumed that the local member was, would have been hassling her, as well as her staff, as well as the Deputy Premier’s staff around the progress of this matter.

That was a matter that you inferred in the way that you and I have discussed during the course of the morning. Is that right?---Correct.

I tender the email chain ending in an email from Mr Mathieson to Mr Barnes 20 June, 2017, 5.24p, page 327, volume 29.1.

THE COMMISSIONER: Exhibit 491.

**#EXH-491 – EMAIL CHAIN ENDING WITH CLIVE MATHIESON
TO GARY BARNES DATED 20 JUNE 2017 5.24PM**

MR ROBERTSON: So, Mr Barnes, we've seen the letter that goes off to Mr Betts requesting the recommendation that's necessary to, in effect, get the money out of the RGETF. Is that then you and your unit's end of your involvement and it's then dealt with by Infrastructure NSW or others or did
10 your unit remain involved beyond that mechanical process or procedural process that we've just discussed?---The, we, we may have been asked to follow up to where things are up to with the allocation of, of funds. As I recall, there was some time between the, sometime between the recommendation from Jim Betts going to Treasury and then them pushing it to the Treasurer's Office and a formal allocation being made. And we may have been asked to follow up, in fact, I think, you know, we, we probably were because I, I would have thought that the local member would have continued to, and this is the case for most local members that have projects that haven't yet received a funding deed. They do follow up because their
20 constituent organisations, whether that's local government or a not-for-profit organisation would, would use them as an avenue to find out where things are up to.

But in terms of the mechanics of issuing and administering a funding deed and the actual flow of funding - - -?---It's not us.

- - - that wasn't your unit that was dealt with by others, particularly Infrastructure NSW?---Infrastructure NSW and/or Treasury itself were the ones that negotiated and then finalised the deed arrangements. Definitely
30 not us.

Commissioner, I'm about to change topics. Is that a convenient time for a slightly early morning tea break?

THE COMMISSIONER: Very well. We'll adjourn for 15 minutes for morning tea, Mr Barnes.---Sure.

SHORT ADJOURNMENT

[10.44am]

40

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Mr Barnes, you're aware that one of the matters that this Commission is investigating is allegations concerning grant funding promised and/or awarded to the Riverina Conservatorium of Music?---Yes.

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

When did you first become involved in taking any steps of that nature?---I think my team would have become involved in, I'm going to say, mid- or the second half of 2017 because I believe that Mr Hanger was consulted by someone in another part of DPC with respect to having his name added into some correspondence about an unsuccessful unsolicited proposal.

10

Can we go, please, to Exhibit 431, volume 31.0, page 116? I'm going to show you a document that may be the document or letter to which you've just drawn attention.

THE COMMISSIONER: What was the exhibit number again, please, Mr Robertson?

MR ROBERTSON: Exhibit 431, Commissioner,

20 THE COMMISSIONER: Thank you.

MR ROBERTSON: Do you see there a letter from a Mr Myers, M-y-e-r-s, of the State Economy Branch within the Department of Premier and Cabinet to Dr Wallace of the Riverina Conservatorium of Music?---Yes, I do.

And do you see in the final paragraph a reference to Mr Hanger, then an acting executive director?---Yes.

30 Is this the correspondence or document that you were referring to before?
---Yeah. I, I don't recall having seen it but Mr Hanger, in his regular updating of me on the work of his unit had mentioned that there was an expectation that he might meet with the conservatorium around funding sources for aspects of the proposal that had gone forward and had been unsuccessful.

40 So is this right, the Riverina Conservatorium of Music proposal first came to your notice after an unsolicited proposal had apparently been made but rejected, is that right?---I, I believe so. I think, again, one of the Olivias, I'll say that, Faulkner or Olivia Graham, who looked after backbenchers, may have mentioned the fact that the Riverina were looking for a new home and by virtue of the fact that they engaged with backbenchers, but the first sort of, I think formal engagement with our team would have come as a result of this letter or, yeah.

Now, this letter refers to an unsolicited proposal submission. That proposal, as you understood it, was a proposal in respect of what? As in what was proposed to be funded or to be done?---My understanding is that the conservatorium were looking for government to transfer some land and a

disused building to them, as well as providing them with a capital injection to move their premises from Charles Sturt University across to this site, as well as building a very lavish recital hall.

10 So the original proposal, at least as you understood it, was let's move from an existing location to a new location, have some capital expenditure so as to turn the old disused building into a conservatorium, but also build a lavish building on top of the existing building or in addition to the existing building?---As far as I can remember, those, those were the two primary aspects. There was a third aspect which was to potentially take some of the spaces that may not be used to relocate the conservatorium and use them to generate revenue.

So by that do you mean that in relation to some of the building space in the premises at 1 Simmons Street, turning that into, in effect, commercial space?---Correct.

20 To be owned by who?---My understanding, if I remember back, all aspects of that were to be owned by the conservatorium.

Now, before the unsolicited proposal came to your attention, who was the owner of the 1 Simmons Street site as you understood it? Was that government owned or not government owned?---It was government owned. I had an early recollection that it might be a, a TAFE facility but later I was corrected and I found out that it was maybe an RTS or RMS building, so Transport might have been the owner of the facility.

30 And so is this right, this was the, at least the original proposal as you understood it? Give the building to the Riverina Conservatorium of Music but only after it's been turned from a transport building into a conservatorium through capital expenditure, build a lavish recital hall, build some commercial spaces, give that all to the Riverina Conservatorium of Music and they get to take it from there. Is that the idea?---Look, that, that, that was my understanding but I wasn't at the time particularly close to that.

40 And on that particular proposal, in terms of the commercial spaces, who would then make the money in relation to any rent paid in relation to the commercial spaces?---It was my, sort of, understanding that that money might go to the conservatorium.

Did you come to any view within a month or two of becoming aware of that proposal as to the merits or otherwise of the components of that proposal you just referred to?---So Mr Hanger, I believe, did start to give some, turn his mind to this and see whether aspects of the proposal might be able to fit within one of the Regional Growth Funds, particularly I think at the time we had a culture fund that was administered in the front end by Create NSW. But he was looking at, at whether, the, the thing that, like, like, that Mr Hanger and I had talked about that we saw that there was public value in

was maintaining a, a service to schools and the community. And so that was the, the thing that, like, most resonated out of that broad proposal was the capacity or the ability for the conservatorium to continue to operate, given that I, I believe Charles Sturt University were going to move them on because they'd sold that campus and they were consolidating to another campus. So our focus, when we were looking at things, was on being able to have continuity of the service that many kids in schools across the Riverina accessed and a greater community access, as well.

- 10 Do you recall whether you or, to your knowledge, anyone within your agency gave any written advice in relation to the issues that you and I have just been discussing regarding the RCM proposal?---I think later in that year, and I can't tell you what date but towards the end of that year, we'd been updating I think again both offices. I think maybe Matt Crocker in the Premier's Office and it would have been Laura Clarke, I think. Fiona Dewar, I think, I updated her once, but Fiona left her role, I think, in August, so it would have been, it would have been Laura Clarke. We would have been updating them that we hadn't had much luck in looking at a solution through the culture fund and, but I think later that year, I was asked
20 to talk with someone in the Premier's Office, Alex Schuman. He did ask for some advice in relation to how the matter could be progressed.

So you were asked to speak to someone in the Premier's Office by who? Who asked you to do that?---It may have been Matt Crocker. It may have been Alex himself. I think Matt after, after Clive Mathieson, I think Matt may have been the point of contact, and after Matt, for a period of time, it was Alex Schuman who was our point of contact in the Premier's Office.

- 30 As at the second half of 2017, Regional NSW was a unit within the Department of Premier and Cabinet. Is that right?---Correct.

And your title was that of deputy secretary. Is that right?---That's right.

The portfolio minister for Regional NSW was the Minister for Regional NSW. Is that right?---That's correct.

Then Deputy Premier Barilaro?---Yes.

- 40 The cluster minister obviously enough was the Premier given that the unit fit within the Department of Premier and Cabinet. Is that right?---Yes.

Ordinarily, I think you agreed, either earlier today or on Friday that your main communications would be with the Office of the Minister for Regional NSW. Is that right?---Yes, but there was a strong expectation that, along with all the other deputy secretaries, we would keep the Office of the Premier updated on things that we were doing and we used to update the Premier by way of those fortnightly meetings.

So at least an updating process with the Premier's Office. Is that right?
---Yes.

Is it right that the principal place at which you would give advice and receive instructions was with the portfolio minister's office, the Minister for Regional NSW?---That was the principal place during that period of time. In early 2018, the incoming secretary, Tim Reardon, did an internal restructure and he allocated another regional team which was called the Regional Coordination Team. He, Tim didn't believe that it was a good practice to have two regional teams reporting up through two different deputy secretaries, and so in maybe very late 2017 or early 2018 the team that I had responsibility for primarily was combined with a team that were in the regions, and their primary responsibilities were in relation to policy and particularly social policy. Well, my team previously, my original team had a, an economic bent but - - -

But you were the - - -?--- - - - it remained the case that my primary port of call in terms of, was the Deputy Premier and his office.

20 And in both of those iterations of teams you were the senior person managing the team. Is that right?---Yes.

Can we go, please, to page 160 of volume 31.0. I'll show you an email that you sent to Mr Schuman, S-c-h-m-a-n [sic]. He was a gentleman I think you explained before who worked in the Premier's Office. Is that right?
---Yes.

And do you see there on the screen email 4 December, 2017 to Mr Schuman?---Yes.

30 And so this is you giving advice to Mr Schuman regarding what you describe as the Riverina Con of Music. Is that right?---Yes.

If you just go to the – I'll come back to the first paragraph in a moment, but if we scroll down a bit and have a look at the last dot point underneath the heading Background you say, "The ask is to gift an existing facility, old RMS site, and spend 25 to \$28 million to create a facility which includes three parts, a refurb on existing main building to accommodate office and teaching functions, a new building for early childhood functions and commercial use to create revenue stream and a new performance hall. \$25 million includes acquisition of the existing Simmons Street facility." Do you see that there?---Yes.

40 So is that consistent with your recollection as to what you describe as "the ask" was, or the proposal was that had those multiple components, move existing facility or existing operations to new facility, upgrade them so that it can be Riverina Conservatorium or can be Conservatorium of Music and

create commercial use so as to create a revenue stream. Is that right?
---That's right. That was a view that I formed in my reading of the information I had, which was the unsolicited proposal.

Now, did you come to a view as to whether the ask, as you put it, should be supported in part or in whole or not at all by the government?---My view was that the focus should be primarily on the aspect that was about maintaining service delivery. I did indicate that having access to performance space would be something that I think was worth looking at
10 down the, the track but that the, pretty much the two components which were, you know, a world-class performance hall and creating commercial places or spaces shouldn't be something that government should focus on at least initially.

Why not?---I didn't think that that would be in the public interest.

Well, focusing on commercial spaces, for example, was this the idea, that the government spends money to build commercial, a commercial space for a private organisation, albeit a non-profit one, but for the private
20 organisation to be able to keep the revenue stream? Was that the idea, as you understood, according to the ask?---Well, I didn't, well, I didn't, I had two main concerns. One is that I don't think that, I didn't think gifting government buildings or refurbishing and then regifting a government building to a not-for-profit or other things was a particularly wise course of action. And I had a view that the government upgrading a building and then making those buildings available to create a revenue stream for a third party wouldn't be viewed favourably, particularly as the precinct that that location was in had a number of other like buildings there, and I don't think they
30 would see the government stepping in to a marketplace as being a particularly wise thing to do.

THE COMMISSIONER: Like commercial buildings of the sort - - -?
---Yes.

MR ROBERTSON: Was a concern a concern about whether there would be a public interest in government spending money on building a building for a private organisation and then the private organisation earning the revenue stream from that, as opposed to the government earning the revenue stream from that?---Yes, and I think Mr Schuman shared my views.
40

In relation to what you described a minute ago as the world-class performance hall, I think you said that at least at this point in time you weren't of the view that it would be in the public interest for the government to construct a world-class performance hall at the 1 Simmons Street site. Have I got that right?---That's right. I - - -

Why was that your view?---Oh, I didn't think that was proportionate to what other conservatoria may have had, and I thought again there may well be,

within that broader precinct, existing facilities that could have been, from time to time tapped into when something of that nature needed to be utilised.

10 So I take it the Riverina Conservatorium of Music is not the only regionally based conservatorium in New South Wales, is that right?---I think I say in there that there are seven, but there may indeed be more. I'm not, not sure. But we, we at least would have done a, a quick scan of the fact that there were many of these across the state. They were all supported, typically, with operating expenses from the Department of Education. This building at 1 Simmons Street was quite close to an existing school facility, literally like 50 metres away. It was on a separate site. So at least I thought for the very big events it may well be that, you know, we could, they could find either a church or the civic centre or, or the -- I know CSU have a site somewhere in town as well.

20 So are you saying that one of the at least concerns you had with the proposal of having a world-class performance hall in Wagga Wagga would be at least a concern that that might be treating the Riverina Conservatorium in a more favourable way than some of the other conservatoria based in regional areas?---Yes, that was one of the concerns I had. The other concern I had was that if, if government, government would need to, if it was going to put money to something, be sure that, that the group that were going to run the facility could in fact operate it. And, and we had great regard, and we still do have good regard for the, the people that run the conservatorium, but it wasn't in their wheelhouse to -- at least our thinking was that, that they might not be able to do that themselves.

30 THE COMMISSIONER: Well, a recital hall would really be another form of commercial activity, wouldn't it?---I, I believe that it wouldn't be used solely for the purpose of the students that were at the conservatorium, and that the only way that you could generate enough funds to make that work would be to either let it out to other visiting performers or other groups within Wagga and, you know, I know that a lot of regional towns do have facilities of, of that nature but, yeah, being sure that if government were going to commit money, that, that something, you know, didn't end up not being fit for purpose.

40 MR ROBERTSON: Is an allied concern to that that you had a concern about funding in relation to what I'll call operational and maintenance expenses? The government might spend a large amount of money to build a world-class performance hall but you then need money to actually keep the lights on and keep the building at a sufficient level, to keep it up-kept? ---Yes. Correct.

So is this right? At least so far as you're concerned, in your experience, that's a critical matter to be considered in considering funding for capital works. It's not just actually building the building. It's making sure there's

sufficient money that once the building had been built, you can keep the lights on and you can keep it maintained so that, in effect, the roof doesn't fall in?---Yeah.

10 If we could have that back up on the screen, page 160 of volume 31.0, please? Did you ever change your view about whether or not it was in the public interest to build a world-class performance hall in Wagga Wagga? I was asking about your views as at December of 2017 but did you later change your view and come to the view, well, look now, on reflection, I think a world-class performance hall in Wagga Wagga might actually be in the public interest despite my previous concerns?---I don't believe so. I, I believe that when, if you like, stage 1 of the project happened, that we did allocate or government allocated some money in stage 1 to look at what a fit-for-purpose stage 2 might look like on that footprint. And, in my head, and I believe that of my team, that would have been I think we were pushing down the path of a smaller performance space that may be able to be funded with various other funds as they, they might, might happen both from State and Australian Government.

20 But in terms of what you described a little bit earlier as a world-class performance hall, that's not a matter that ever had at least your advice positive to that proposal?---I don't believe so.

And if you just have a look at the document on the screen. So do you see there in the second dot point, one of the bits of advice you give is, after the comma in the second dot point, "The site is valuable and should be retained by government." See that there? Second dot point underneath the heading Suggestions/Observations?---Sorry. On the bottom of the page, yeah.

30 THE COMMISSIONER: There are two sets of two dot points, Mr Robertson.

MR ROBERTSON: I'm so sorry. The second dot point under the heading Suggestions/Observations. Do you see after the comma in the second line, "The site is valuable and should be retained by government"?---Yeah.

40 And then look at the third dot point. "The starting premise for government consideration of finding a suitable home for the Con should be a staged approach, with the first stage offering a like-for-like solution." See that there?---Yes.

So you've used phraseology, I think, of stage 1 and stage 2 before. Stage 1 is about offering a like-for-like solution, in other words, move from the Charles Sturt University to 1 Simmons Street and have a similar facility at 1 Simmons Street as was in place at the Charles Sturt University. Is that right?---Yes. Yes.

THE COMMISSIONER: And then you appear to contemplate in the second part of the fourth bullet point there, Mr Barnes, that the conservatorium would liaise with either council or CSU around ensuring access to their facilities at an affordable rate for major performances. So that was in lieu of the - - -?---Yeah, where they needed 300 seats or a big, big audience for - - -

10 So that would accommodate the performance idea inherent in stage 2, or the recital hall?---Yes. And, and from time to time I would imagine that students and their parents from right across the Riverina would want to come to a place to celebrate together and I would imagine at those points they would need a larger facility and I thought we could work with existing facilities to make sure that those were, those were made available.

MR ROBERTSON: Can we just scroll up the page a little bit, please? Go to the first paragraph that I said I would come back to. See there you say, “Alex, as discussed, Don Murray and I went to Wagga last week to look at the proposal.” See that there?---Yes,

20 So I take it from that that in the week preceding 4 December you went to Wagga Wagga to look at the proposal?---Yes.

30 Why were you, as deputy secretary and the leader of the team, as we discussed before, why are you personally getting involved in doing things like looking at the proposal and things of that kind?---I, I may well have had a, a conversation with Mr Schuman or someone in the Premier’s Office or Deputy Premier’s Office about this and I thought, again, and it may have been, it may have been, oh, Mr Crocker or someone like that who had originally asked how things were going, and I, again, I formed a view that the Premier’s Office would welcome either myself or Mr Hanger as the two senior people in that group to go and have a first-hand look at, at what was happening.

So was the RCM proposal a proposal like the ACTA proposal which, as you understood it, had a particular interest at the Premier’s Office level?---Not as much as the ACTA one but, but it certainly, again, was something that had been raised with me and my team.

40 Well, is this right? The RCM proposal, as you understood it, was one that had a particular priority within the Premier’s Office albeit it not necessarily as significant or as high a priority as the ACTA proposal that we discussed earlier today and on Friday afternoon?---Yes.

I tender the email from Mr Barnes to Mr Schuman, 4 December, 2017, 12.53pm, page 160 and 161 of volume 31.0.

THE COMMISSIONER: Exhibit 492.

**#EXH-492 – EMAIL FROM GARY BARNES TO ALEX SCHUMAN
REGARDING RIVERINA CONSERVATORIUM OF MUSIC DATED
4 DECEMBER 2017 12.53PM**

MR ROBERTSON: And we saw there some advice you gave to Mr Schuman. Do you recall whether you gave any advice to either the portfolio minister, Deputy Premier Barilaro, or to the cluster minister, Premier Berejiklian, in relation to the Riverina Conservatorium proposal?---I would
10 have kept, I would have kept both of their offices again updated, as, as I mentioned in my earlier evidence, particularly if I had been asked to talk to the Premier's Office, I always made sure that either Laura Clarke or, well, back in those earlier times, Fiona Dewar, were updated on things.

What about in terms of a formal brief to either the Premier or the Deputy Premier?---I believe that after that site visit, and some reporting back to Mr Schuman, and I would have updated someone in the DP's office, we would ask to write a briefing note to the Premier, and I think preceding that, Mr Hanger might have given me a briefing note as well that led to a brief going
20 up to the Premier, which saw at least one letter approved by the Premier to go to the local member in relation to this.

Asked by who to prepare a briefing note for the Premier?---I'm pretty sure it would have been Mr Schuman.

Why is this, at least as you understood it, being dealt with out of the Premier's Office as opposed to out of the portfolio minister's office, being at that point in time Deputy Premier Barilaro?---I'm not sure. The Deputy Premier's Office knew that, had been approached I believe in relation to this
30 matter. I'd kept them abreast of the fact that I'd had a meeting with Mr Schuman. That I'd travelled out there. In fact again, one of the staff in the Deputy Premier's Office would have been, played a part in setting those meetings up and, but yes, this was, this, the request came from the Premier's Office.

During the course of the site visit you referred to before, did you express any views or indication to those present as to the level of support or otherwise for the proposal within government?---I believe that I have told them that, that the Premier's Office had asked me or encouraged me to
40 come and look at these things firsthand and that they were aware that the issue of, of relocating, that there was a clock ticking on the relocation of the conservatorium from one location to another and that they'd asked me to come and look at things firsthand so that I could provide them with some advice.

THE COMMISSIONER: So were these representatives of the conservatorium who you met also when you went to see the site?
---Commissioner, I think Dr Wallace was in attendance. There may have

been others from the conservatorium I'm not sure. Mr Maguire was there. Some of my staff were there and someone from the council at the time was there and Don Murray, and my initial recollection I couldn't recall whether Mr Murray was there but he did attend. I primarily think that his trip to Wagga may have been primarily to look at a road out at Bomen in the afternoon but he did attend as, as, that meeting.

MR ROBERTSON: Can I just help you this way in relation to the question the Commissioner asked you. Page 158 of volume 31.0. I'll show you a
10 copy of a document entitled Itinerary Deputy Secretary's Visit to Wagga Wagga 29 November, 2017. Do you see there 11.00am it says, "Inspecting", it says "Riverine" but presumably it's a reference to "Riverina Conservatorium site." Do you see that there?---Yes.

And do you see a list of attendees on the right-hand side?---Yes.

Are you sure Mr Maguire was actually in attendance or is it possible that he wasn't in fact in attendance?---I believe that he was in attendance.

20 And do you see there Mr Murray, who you referred to before, he seemed to be attending all of the events on that day? Do you see all of that there?
---Yes, I believe that he came along to all of those things.

Mr Murray was one of the gentlemen who you referred to a little bit earlier today as a consultant to the Premier's Office on, or consultant to the Premier sitting within the Premier's Office on matters of infrastructure and the like. Is that right?---Yes. He was one of the team or one of the, probably the second-in-charge of the team of contractors that came in to look at regional
30 infrastructure.

So at least as you understood it he wasn't a employed adviser in the ordinary sense of the word. Is that right?---He - - -

Wasn't a political staffer or a ministerial staffer in the usual sense of the word?---No, he wasn't a political staffer.

He was employed as in effect a consultant to the Premier's Office.---No, contractor.

40 Contractor, I'm sorry.---Yep, and he would have been employed, as I mentioned earlier, by Department of Premier and Cabinet but with the reporting line to both the secretary and the Premier.

Not an officer of the public service like you, but a contractor instead.---Both Ken and, Ken Gillespie, and Don Murray were contractors.

Did you or, to your recollection, Mr Murray give any indication to anyone present during the course of this inspection as to the level of political

support, if any, for the Riverina Conservatorium project?---Only, as I mentioned earlier, to say that, that I had been asked to look into this matter to see whether there was a way forward by the Premier's Office. And they may have inferred that, that the Premier, you know, knew about that trip.

Is it possible that a person by the name of Mr Mangelsdorf, M-a-n-g-e-l-s-d-o-r-f, was in attendance at the site meeting that morning?---It's possible. I later became aware that he had been working with maybe the conservatorium on pulling together their unsolicited proposal.

10

Do you know how he became involved in the proposal?---My understanding is that he was a drafter or a, or a, ran some sort of company that could not only sort of design, not only design these things but potentially deliver aspects of them.

Do you recall saying to anyone present something along the following lines, "Gladys has said that this project is very important and has got to happen"? ---As I said the last time we talked about this matter, I don't recall saying that because I wouldn't have spoken directly to the Premier, but I would have said that the Premier's Office saw the continuity of service being, you know, continuing to be provide, provided as something that was important.

20

So it's at least likely that you gave some indication to those present as to the fact that there was support within government for the proposal, at least to some extent, albeit you don't have any recollection of using the kind of language that I put to you a moment ago, is that right?---I don't believe I would have used that language, but they may have inferred that that was the case.

30

Doing the best you can, you at least gave some sort of indication of the fact that the government would be likely to provide at least some support for this project, is that right?---The government was prepared to look at options with respect to making sure that, that there was a resolution to the fact that they were coming to a, a hard stop in one location and needed somewhere else.

I'm not suggesting you gave anyone any guarantee, but are you accepting that, doing the best you can, you were likely to have given an indication to those present that this was a, that at least the relocation of the Riverina Conservatorium from the Charles Sturt University to the 1 Simmons Street site was likely to be looked favourably on by government?---That it would, again, I, I would say that I would have given an indication that we would look to see if there are options to move forward on that, yes.

40

But does that mean you're agreeing with what I put to you a minute ago, that you would have at least, doing the best you can, given an indication that the suggestion of the move from Charles Sturt University to 1 Simmons Street site would be one that would be likely to be looked favourably on by government? I'm not suggesting a guarantee, but at least an indication that,

at least so far as you were concerned, it was a proposal that you thought would be likely to be looked favourably on within government?---We, we were finding a suitable location for, for them. Part of the reason that I went to Wagga to do a site inspection would be to actually make, or form an opinion, about whether the site was fit for purpose. So I don't think that – oh, it would have been, it was about that government understood the, the dilemma that they were in and that the Premier's Office had asked me to see whether the matter could be, options could be developed to address the predicament that they were in. And part of that was me jumping on a plane and going out to have a look at the current digs that they were in at CSU to get a feel for the nature of their existing facility and then to have a look at, at 1 Simmons Street, because I'd only seen sort of drawings of it, to see whether in fact it, it, it was a suitable venue.

Because presumably the deputy secretary, you don't jump on a plane and have a look at every proposal that might possibly be the subject of funding through your unit, is that right?---I, I travel a lot but this, this was specifically something that I did to have a look at that facility.

20 And you did it specifically in relation to this facility because it was a matter that was, at least so far as you understood it, given at least some level of priority within the Premier's Office, is that right?---Within the Premier's Office. So, again, it's, people might infer that the Premier had in interest in it but the, the Premier's Office was the group that I dealt with. I, I didn't talk to the Premier about this matter.

Can we go, please, to page 165 of volume 31.0, which is also Exhibit 434?

30 THE COMMISSIONER: Do you want to tender - - -

MR ROBERTSON: I do. I tender the Itinerary, Deputy Secretary's Visit to Wagga Wagga, 29 November, 2017, page 158, volume 31.0.

THE COMMISSIONER: Exhibit 493.

#EXH-493 – ITINERARY OF DEPUTY SECRETARY'S VISIT TO WAGGA WAGGA DATED 29 NOVEMBER 2017

40 MR ROBERTSON: Exhibit 434, page 165, volume 31.0. Page 165 of volume 31.0. I'm so – I meant page 163. Whether I said page 163, I'm not sure.

THE COMMISSIONER: In what volume?

MR ROBERTSON: In volume 31.0.

THE COMMISSIONER: Thank you.

MR ROBERTSON: Do you see there a document in a pink background?
---Yes, I do.

Now, is there any significance to the fact that it's on a pink background rather than a different colour?---Typically briefings on pink would be considered by the Premier.

10 By the Premier herself, is this right, as opposed to by, for example, just other officers within the Premier's Office?---That's right. Sometimes we were asked to do briefing notes up for advisers, but if we were asked to put it on pink, that meant that it would go through to the Premier.

This particular briefing note is one that you approved, is that right?---Yes, I think it would have been drafted by either Carlia or, or Mr Hanger, I'm not sure, but it would have been drafted and, and I would have approved it.

20 And if you have a look at underneath the heading Purpose, if you look at the third-to-last dot point underneath the heading Purpose, there's a paragraph that says, "It is envisaged".---Yes.

"It is envisaged that funding can be sourced from the Regional Growth Funds for the repurposing of the site with a quantity surveyor to determine the scope and cost estimate. An estimate to refurbish and bring the building to code on a like-for-like would be less than \$10 million." Do you see that there?---Yes.

30 And then amongst your recommendations is "Approve and sign the attached letter to Mr Daryl Maguire, MP." Do you see that there as the first dot point underneath the heading Recommendations?---Yes.

So is this you, in effect, giving advice to the Premier directly that at least the first thing that should be done is to go down the path of having a like-for-like facility at the 1 Simmons Street site?---That's correct.

40 You're not suggesting at this point in time that the Premier should approve or direct you to take steps in aid of a world-class performance hall?---No. It was the bit that we'd originally talked about, that was, the, the "like" referred to what they had at CSU.

And, similarly, there's no suggestion at this point in time of building commercial spaces of the kind that you and I discussed this morning. Is that right?---That's correct.

Why is a briefing in relation to a matter of this kind going directly to the Premier as opposed to, for example, the portfolio minister, the Deputy

Premier, or one of the Premier's Office staff?---I, I can recall that Mr Schuman had asked for the, for the brief to go up in that form.

And so, in effect, what you're asking the Premier to approve is to, in effect, direct your unit to take steps with a view to having a like-for-like facility at the 1 Simmons Street site. Is that right?---Well, to, to look at options as to whether that could be achieved.

10 That's really what I'm focusing on, the look at options to achieve. This wasn't asking for approval of actual money or anything like that. Is that right?---No, that's right.

This is about asking for approval for you to go down the path of looking at options including the option of a like-for-like facility. Is that right?---That's correct.

20 And if we then just turn to page 164, I'll show you the letter in the form that was ultimately sent, it appears. A letter from Ms Berejiklian. This is Exhibit 435. Do you see the third paragraph where she says, "It seems according to your draft underpinning this decision" – I withdraw that. "Underpinning this is a decision that the site will continue to be owned by government and that initial parameters for work to be undertaken will include establishment of a facility and rental regime which allows for similar functionality (like-for-like) that the RCM enjoys at its current premises." Do you see that there?---Yes.

30 And so that's consistent with your advice at the time, is this right, that the government should continue to own the site but steps should be taken with a view to having a facility with a similar functionality on a like-for-like basis to that which RCM previously enjoyed. Is that right?---Yes.

This is about doing work with a view to achieving a particular objective - - - ?---Yes.

40 - - - rather than, at least at this point in time, anything in the nature of a commitment, promise, reservation, allocation or anything else?---It was working with Dr Wallace and his team and others across government who might have an interest in the conservatoria, like Education, like Create NSW, to see whether something could work.

With a view to achieving a particular objective but without necessarily a promise that that objective would be fulfilled because you've got to go through the process?---No, the offer was to begin working on the project.

Can we go then, please. to page 170 of volume 31.0? It's Exhibit 436. I'll just show you a media release that Mr Maguire put out, it appears, on 16 February, 2018. We'll zoom in to the top half of the page, please. Do you see in the second sentence of the first paragraph, there's a recording of an

announcement “that the RCM has secured a permanent new home at 1 Simmons Street, Wagga Wagga”. See that there?---Yes.

Is that an accurate or inaccurate statement of the position as you understood it as at 16 February, 2018?---Inaccurate.

10 Inaccurate because steps were being taken with a view to achieving a particular objective as opposed to there being any securing or not of a permanent home. Is that right?---Yes. Government, government had indicated by way of that letter that we would constructively work together to see if an outcome could be achieved.

And if you have a look at third paragraph, Mr Maguire quotes himself as saying, “The building will be redeveloped to house a world-class music recital space.” Do you see that there?---Yes.

Is that an accurate or inaccurate statement of the position as you understood it as at 16 February, 2018?---Inaccurate.

20 Is that because the only thing that had been agreed to at that point in time is doing some steps with a view to achieving a like-for-like facility?---That was the focus.

30 So you’ve sent up the pink to the Premier. A letter’s gone to Mr Maguire consistent with it. What steps do you then take? In fact, before I ask that, can I just ask this question. A press release of the kind that we’ve just seen that creates what you’ve described or agreed are inaccuracies, does that, in your experience, put some pressure on the public servants to at least focus their attention on the particular project?---I think it would potentially put more pressure on, on government, rather than the public service. So if – and again, if a media release like that had come from a minister, then there may be some more pressure, but it came from a backbencher that seems to have overreached, and I, again, remember that one of my staff on the ground out at Wagga drew my attention to that media release and, again, I think the last, my last piece of that email correspondence was “Hmmm” again.

40 Again indicating your concern about a media release of that kind being put forward?---It’s not, like, public servants don’t have the gift of what goes into the media. That’s a matter for, that’s a matter for the political class.

But would a media release of that kind, containing inaccuracies, at least have the tendency to affect the level of priority or attention that people at the agency level might ultimately have in relation to the project? Might not affect the ultimate result and it might not cause those in the agency to take different, different steps than what they might otherwise do, but might it at least have the tendency to cause some priority or attention to the ACTA project?---Well, particularly for those people that were living in that part of the world, like Jane Barnes – not related – Margaret O’Dwyer, James

Bolton, other folk like that would, would potentially get asked when, you know, the, the recital hall might be going to be built and things like that. So, but it wouldn't materially impact on any decisions that the public service might have.

10 Now, what steps do you then take post the pink going to the Premier and the letter going out to Mr Maguire in relation to the Riverina project?---I, I would have written a letter to, a similar letter to Mr Wallace that would have been sent to him prior to – sorry, after the letter from the Premier went to the local member, to request that, update him and to invite him to begin work with Mr Hanger and my team, who I would, I would have asked to progress the matter.

So I won't take you to the particular, that particular letter, but for the purpose of the record, that's at page 166 of volume 31.0, which is also exhibit number 433. I've just quickly put that up on the screen. That's the letter that you were referring to a moment ago, is that right?---Correct.

20 Now, this particular proposal, was it one that required any particular decisions to be made at the Expenditure Review Committee level? Or was it a matter that could be dealt with, at least as you understood it, at a ministerial level?---No, my understanding is that in the first instance there would need to be, if it looked as though this could happen, and that the conservatorium would be happy with whatever government were putting forward, there would need to be at least a decision to enter into a lease, given that it was a government building, so there'd be one decision that was required. I don't believe that could be taken at a ministerial level. I believe they went up in a batch, all those decisions went through ERC maybe twice a year or something like that, so, and then there would need to be a further
30 decision, if a government wanted to proceed, to attach money.

So I just want to show you an email chain in that connection. Page 171 of volume 31.0. We'll actually start at page 172, which is towards the end of the email chain. Go towards the bottom of the page. Do you see there's a discussion about trying to close out the Riverina Conservatorium of Music ERC proposal. Do you see a reference to that in the second paragraph from Mr Walker?---Yep.

40 And if we then just zoom up the page he's asking you, "Do the following recommendations continue to work based on what's been discussed and agreed within DPC with the PO and RCM?"---Yep.

To which you respond, "Put envelope after the Regional Growth Fund as it will be a carve-out."---Yep.

You then say, "Loose" – I think you might mean "lose" – "last reco as this will be negotiated outside of ERC." Do you see that there?---Yep.

What did you mean by “a carve-out” in relation to the Regional Growth Fund?---So I wasn’t, it was fairly standard practice at the time that we couldn’t be sure if government wanted to move forward and they wanted to use Regional Growth Funds and there are other funding options that play as well. But if government did want to use the Regional Growth Funds, then it would be better to talk about the envelope of the funds rather than a particular fund itself because I wasn’t sure what funds were open or committed, and so just for completeness I would have suggested that we talked about the envelope there rather than the particular fund.

10

But just focusing on the phrase “carve-out”, carving what out of what?---So that would be potentially making a reservation against the envelope.

Reservation the way that you used that term earlier today as reserving the money so it can’t be spent on something else?---Correct.

20

Does the phrase “carve-out” have any reference to whether this particular proposal would be a one-step or two-step process in the way that you and I discussed this morning concerning the ACTA project?---Yeah. Like, I don’t think we fully entertained, we knew for example that, because we’d looked at, at this earlier through the Regional Culture Fund, that that fund was I think \$25 million at the time as I remember it first round. It may have been fully committed. And I think in that earlier briefing note to, or that report back to Mr Schuman I indicated that that, the Culture Fund might not work because it had a requirement for a BCR for anything over \$1 million so, so I was just saying that we needed to be open-minded, if it was going to be the Regional Growth Fund, about how we could make the money legitimately available through that fund.

30

So just to be clear, are you saying your use of the phrase “carve-out” is more directed to the question mark, at least at this stage, as to what fund it might come out of, as distinct from carving something out in the way that you and I discussed this morning regarding the ACTA project - - -?---Yes, it wasn’t in the same - - -

- - - where it was carved out in a sense one way in which the ACTA proposal or the ACTA grant was carved out is that it was carved out of the two-step process - - -?---Yeah, it was - - -

40

- - - and instead only went to one step?---I think what was in my head at that time was we weren’t, we weren’t sure which fund it might come from. And at, at that time, there was also another fund that was being contemplated and that was a fund that wasn’t in the remit of, of the Deputy Premier or the Premier, which eventually I think it was funded out of.

Now, the second sentence of your email at 8.26am, it says, “Loose” – but I think you mean “lose” – “last reco as this will be negotiated outside of ERC.” Do you see that there?---Yes.

Let me just show you that last recommendation. Go to the next page, page 173.---Yep.

Page 173, please. Look at Roman (vi), “Note that ERC will be requested to provide an increase in recurring grant funding to the conservatorium so that its financial position remains on a like-for-like basis, allowing for a change from peppercorn to market rental.” Do you see that there?---Yes.

10 And so is this right, at the Charles Sturt University site, the conservatorium was not paying substantial rent, it was paying a peppercorn rent?---That’s right.

But what is being drawn to attention in Roman (vi) is the necessity to put the conservatorium in funds in order to be able to pay a market rental in relation to the government site, is that right?---Yes, and I think that’s probably in an earlier recommendation on this draft as well.

20 But have I got right the issue to which Roman (iv) appears to be directed? ---Yes. My understanding is that there was a requirement that Properties NSW had, that if they were renting a property to a third party outside of government, that they would require that group to pay market rental, and we had begun talking about how best to do this and whether indeed it was something that needed a specific allocation made by ERC or whether indeed, as I would have mentioned in a previous, that previous briefing note, that this could have been something. For example, if, if the facility, ownership of that facility had transferred to education, they could have applied for both this, or, or money for this conservatorium, and potentially others, to go up as part of the normal process, which was an NPP.

30 When you say NPP, you mean a new policy proposal, is that right?---Yes. And this was a live discussion at the time. I know that Mr Hanger was contemplating, I believe, that there, there were and still are potentially other conservatoria that are located in education facilities, and I thought at the time it was premature to do that. And in part, talking about a separate ERC decision, in part I thought that, that ERC may jump to the conclusion that that should come out of the Regional Growth Funds as well, and the Regional Growth Funds were primarily one-off infrastructure grants, not recurrent grants. So I thought it prudent that we have a, we continue to have
40 that discussion out of session. There was no question that if we needed to comply with Property NSW’s requirements, and to achieve the like-for-like that had been entertained by way of a rental regime, that we would have to find a way to satisfy both of those competing tensions.

But those were the reasons – what you’ve just outlined, those were the reasons why you said to Mr Walker that he could lose the last recommendation, is that right?---Yes.

Now, can we go back to page 171, part of this chain, and start at the bottom of the email chain? Do you see there, he says back to you, "Noted, thanks. Is there a risk that the recurring grant funding won't be secured? This would be problematic for the future running of the property if rental wasn't being paid as they would have maintenance and opex obligation without the funding to support it." Do you see that there?---Yes.

And you respond, just going up the page, "No risk on that. It will happen." See that there?---Yeah.

10

How did you know as at 21 February, 2018, there would be no risk on that, as in the recurring grant funding being secured and that it would happen? ---If we could find a way forward to attach funding for the upgrade of the facility and if the conservatoria agreed to the terms in which we had sort of been working with them on, the like-for-like rental regime was part of the correspondence that the Premier had sent through to Mr Maguire and I had no sense that she wouldn't honour that like-for-like component, particularly in light of the fact that it, it appeared to me that there were other, other not-for-profits that were enjoying that type of arrangement with government.

20

So is this right? The Premier's approval of your recommendation from the ministerial pink that we saw a little bit earlier today, which authorised the sending of the letter to Mr Maguire was a sufficient assurance to you that there would be no risk of the ERC on the one hand agreeing to things like transferring the asset and engaging in capital expenditure in terms of the asset but without following it up with what Mr Walker describes as recurrent grant funding. Have I got that right?---I had no sense that if ERC were to approve other aspects of the project, that that element couldn't be achieved, given that the Premier had noted, signed that brief and signed that letter.

30

The reason that there was no risk on that issue as you understood it was the fact that the Premier had signed off on the ministerial pink that you sent up to her. Is that right?---I had a, a strong sense that if the other parts or aspects stacked up, so if we could find a way to, to work productively with the conservatoria and if ERC made a determination to transfer the asset to another government department, if they approved letting it to someone else and if we, we found a, an appropriate and legitimate funding stream that, that the commitment given around like-for-like rental would, wouldn't be an issue.

40

But, to be clear, the strong sense that you got regarding that issue was because of the approval of the pink. Is that right?---Yes. Yes.

I tender the email chain ending in an email from Mr Walker to Mr Barnes and Mr Hanger, 21 February, 2018, 8.30am.

THE COMMISSIONER: Exhibit 494.

**#EXH-494 – EMAIL CHAIN ENDING WITH LEON WALKER TO
GARY BARNES AND CHRIS HANGER REGARDING CABINET IN
CONFIDENCE - 1 SIMMONS STREET WAGGA WAGGA DATED
21 FEBRUARY 2018 8.30AM**

10 MR ROBERTSON: Now, the ERC ultimately made decisions favourably to
the like-for-like proposal that you put forward. Is that right?---I think there
were two separate decisions, both might have happened in either April or
early May.

One of them involved the transfer of the Simmons Street site from one
government agency to another and an agreement to lease it to the Riverina
Conservatorium on a market rent basis. Is that right?---That's right.

20 And another one approved the expenditure of \$10 million in money to
perform capital works at the site. Is that right?---It was up, up to \$10
million.

We'll go to it, then. Exhibit 468. The wording of the resolution says,
"Allocating a certain amount of money from the consolidated fund for the
following programs." And one of them says "\$10 million to Property NSW
for the Riverina Conservatorium of Music."---Yes. Sorry. Yeah.

In any event, \$10 million was the estimated cost at that point in time. Is that
right?---Yes. We thought it would be somewhere up to \$10 million.

30 And so as a result of those two ERC decisions that involved the government
deciding to in effect proceed with what you and I have described as stage 1
today, is that right?---Yes, that's correct.

And in fact stage 1 is happening I think as we speak. There's work being
done at the 1 Simmons Street site, is that right?---I think the contract for that
has recently been let, yes.

40 But to be clear, that's to turn a transport facility into a conservatorium on a
like-for-like basis, but not including building a world-class recital hall or
commercial space along the lines of what you and I have discussed, is that
right?---That's right. Office space, small teaching rooms, online teaching
rooms, those sorts of things. Storage for instruments, yep.

Following stage 1, going through the processes that you and I have
discussed this morning, were you asked to give any further advice or, to
your knowledge, was anyone within your agency asked to give any further
advice on whether stage 2 would be in the public interest or not? By which
I mean, in particular, the world-class recital hall and potentially the

commercial space.---So as I recall, part of the, part of that decision around the \$10 million, as it was communicated to me, was that our team would continue, along with maybe Property NSW and others, to at least look at – or part of the work was master planning the site, and, and that would include potentially looking at an appropriate further stage at least. And, and I don't think a lot of work had been done on that, in all honesty, because I think somewhat events overtook things. There'd been a, a sort of by-election, I'm not sure when that was, maybe, I don't know, August or something like that.

10 You're referring to a by-election in the electorate of Wagga Wagga?---Yes.

And I can assist you by indicating that occurred on 8 September, 2018.
---That's right.

So you said that that in effect planning process was overtaken by events. Have I got that right?---Well, that, that aspect of it was - - -

20 THE COMMISSIONER: You mean the stage 2 aspect, if I can call it - - -?
---Yeah, that, the, so the, the \$10 million would deliver a new like-for-like facility. It would assist for some site master planning, including what a performance space may look like, an appropriate one. And I know that Dr Wallace, for example, was particularly keen not to lose some of the good thinking that had gone into the unsolicited proposal, and so we gave an undertaking that, at least in that first stage, we'd take that into consideration.

MR ROBERTSON: But you said that some of that planning, or at least the contemplated planning as part of stage 1, was overtaken by events.---Yes.

30 In what way was that overtaken by events?---Well, I think Mr Maguire had indicated that he was resigning from the seat of Wagga Wagga because of proceedings that he was involved in, which led to an election commitment being, or a by-election commitment, being made by the government of the day around stage 2 being a \$20 million recital hall.

So you're drawing attention to the fact that during the Wagga Wagga by-election campaign, a by-election announcement was made in relation to stage 2, is that right?---I think it was to be made or was made by maybe Minister Harwin as the Arts Minister.

40 Were you asked or, to your knowledge, your agency asked for any advice as to whether stage 2 was or was not in the public interest?---So one of my officers out in the field, James Bolton, I think was asked to provide an update of projects that were either planned or in planning in and around the electorate. He may have given advice to, well, I'm sure he did give advice to maybe someone in the Premier's Office. Maybe it was Berge. I can't pronounce Berge's last name.

Is that Mr Okosdinossian, O-k-o-s-d-i-n-o-s-s-i-a-n?---Yeah, yep, that's that, I think that was the point of contact because I'm pretty sure that he copied me in on a few emails so that he kept me in the loop on that.

But was that a request for advice in relation to whether stage 2 was in the public interest or was that just for advice as to the status of the Riverina Conservatorium project more generally?---I think it was more in the latter category but he may have, like, in one of those emails proffered an opinion but he was quite a, like he was a director but quite a junior person.

10

Stage 2 as was announced during the course of the Wagga by-election campaign, do we take that to mean both the world-class recital hall and the commercial space? What was your understanding of what was being suggested?---My understanding, like, was that it wasn't the, the commercial space wasn't, as I remember it, a part of that. It was, it was the world-class recital hall as, again as I understand it.

20

You explained a little bit earlier today that at least as at about December of 2017 you're of the view that stage 2 was not in the public interest. Do you remember giving evidence to that effect?---Yes.

Had you changed your mind on that question as at the time of the Wagga by-election?---No, I haven't changed my mind.

30

Did you or to your recollection anyone within your agency give any advice as to whether or not it was in the public interest to proceed with stage 2?---I don't recall having anyone officially ask us for advice around that though, like, Alex Schuman who worked in the Premier's Office would have known our work group's views on that and maybe Berge knew about it as, as well. But, but nothing official came and to be honest we, we didn't, like, it's the domain of, of the political, our political masters who make decisions in relation to what they believe, you know, are good election commitments and, you know, obviously they made that call.

When you referred in that last answer to your "work group's views"- - -? ---Yep.

40

- - - do I take it from what you've said before that those were adverse views, in other words, the view generally within your work group, both you and those within your work group was that stage 2 would not be in the public interest?---In that form of, you know, in that form we, we were very, we were very comfortable with working with the conservatorium to shape expectations about what a performing thing might be in the guise of the first stage. But as I previously stated, like, it would have been wonderful to have a facility like that in there, and I know how passionate the conservatorium were about these things, but in my opinion, and it was one of the reasons why my initial advice was to break this into the things that really mattered, and the things that really mattered obviously was the continuity of service.

So is this right, you in effect thought that stage 1 would likely stack up and be a good idea in the public interest but stage 2 would be unlikely to stack up at least in an assessment of public interest from your perspective as a public servant?---Yeah. Stage 1 was, was never considered as a, a, a sort of economic sort of infrastructure project, it was, it was seen as continuing to provide an educational and community service that was fundamental to, you know, such a cohesion of, of kids and families across the Riverina. Stage 2 was sort of like, it would have been nice to have but that was an economic
10 piece of infrastructure, and our view was that it would be very difficult for, for that to, if you like, stack up. But, but government, ultimately all of these things are, are, whether I think it's in the public interest or not, government needs to make those calls and they did make that call. We committed to working to see if we could make that happen.

Those views you've just summarised in terms of stage 2, are they views that, at least as you understood it, were held generally within your work group?---In my work group, I would, I would say yes.

20 There was no-one that sticks out in your mind within your work group as having a dissenting view on that question?---Oh, no, people would have, in the context of the by-election, may have said, you know, that it would be popular with some people within the Wagga electorate, but if you'd asked them whether you thought that, that this would be a, quite a difficult thing to make work, I think they all would have said that, that it was problematic.

And the proposal, at least at the Wagga by-election stage, I think you said included the world-class recital hall but was it dealing also with operational and maintenance expenses of the kind that you and I discussed earlier today,
30 or was that a matter of detail that just simply wasn't being discussed at that point in time?---I can't recall, I just can't recall that.

Can we go, please, to page 237 of volume 31.0, part of Exhibit 478? If you just look at the email towards the bottom of the page, do you see an email from Mr Bolton to Mr Okosdinossian and others, copied to you?---Yes. James worked for, for me.

And was that the gentleman you referred to before as a director who worked for you, based in the Riverina area?---He, he was based, he was based in
40 Wagga.

And then if we just turn the page so I can show you the rest of that email chain. Do you see there a series of points being made as to the stage 1 scope and as to the stage 2 scope?---Yes.

Does that appear to be the email that you referred to before from Mr Bolton giving some information to Mr Okosdinossian?---Yes.

And it's consistent with your recollection, is this right, that there was an advice asked in the sense of is this a good idea or bad idea, but there was a provision of information as to the status of the RCM project?---That's, that looks to be correct.

Can we then go, please, to page 58 of volume 31.4? If we can go down to the bottom half of the page and just zoom into that one. That's an email from Mr Hanger to various individuals with a copy to you, 22 August, 2018, 8.34am. Do you see that there?---Yes.

10

And then it's providing a quick update including first dot point, "The Premier is keen to announce this Friday that \$20.5 million in funding has been reserved for the recital hall component of stage 2 of the Wagga Conservatorium project." Do you see that there?---Yes.

20

So is that consistent with your recollection that once we hit about 22 August, 2018, a decision had been made within government to make stage 2 the subject of at least an election announcement?---I can recall in my conversations with Mr Hanger, he was asked to move very quickly to formalise a reservation because there was to be an announcement as part of the election commitments.

And so is this right? It was your work group's responsibility of procuring the paperwork that would be necessary to have a reservation so as to create the environment in which to make a by-election announcement?---I think it was best practice to at least undertake that paperwork to make sure that there was money that, that under certain conditions could be accessed if a commitment was to be made.

30

But that mechanic was dealt with by your work group. Is that right?---I think Mr Hanger, as the, if you like, the custodian of the Regional Growth Funds, would have generated or been asked to generate that paperwork. And it would have included the Deputy Premier potentially writing to the Treasurer and/or the Premier to give effect to that reservation being approved.

40

And then if we go to Exhibit 437, volume 31.0, page 244. Do you see here a letter on Premier Berejiklian's letterhead advising that she and then Treasurer Perrottet have agreed to a reservation of \$20 million from the Regional Communities Development Fund?---Yes.

So that's, in effect, the end of the paperwork at least at the agency level to confirm that there'd been a reservation of funds associated with stage 2 of the Riverina Conservatorium of Music project. Is that right?---I believe so.

And that uses the word "reservation". Is that, at least as you understand it, reservation in the sense that you and I have discussed earlier today, hold the

money so it can't be spent on anything else?---Not, not, not approval of funds or an allocation.

And then was it contemplated then that this particular proposal would go through a one-step or a two-step process, using the language that you and I used this morning?---I'm not completely aware of what the guidelines for the Regional Communities Development Fund were, but in the sense that it would, it would go through a competitive process and it says it there, yeah, it would, it would be competitive.

10

So, in effect, a two-step process of the kind that you and I discussed before, maybe slightly different 'cause it's a different fund but at least a competitive process?---Yeah. Yeah. I don't think, for example, in that process, a, a, like, benefit-cost ratio in the, in the sense of that which might be in Restart is contemplated.

So at very least, a competitive process where this project is put in competition with other potential demands on the public purse?---Yeah. As I, as I said, I can't completely recall what the guidelines for that fund were but, yes.

20

Now, that document identified a reservation not an approval or allocation or anything else.---Yeah.

To your knowledge, what then happened in relation to stage 2? Did that lead to funds flowing or what occurred?---I think, to the best of my recollection, stage 2 was not found to meet the criteria of that fund. And there was, the funds did not flow.

30 Did that leave the reservation to effectively become reversed, so that it was, I'm sure this is not a technical term, but unreserved, released, perhaps?
---Yes.

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

40 When did you first become aware of the existence of that relationship?
---About a year ago, someone drew my attention to the evidence that she was giving before this Commission.

Had you been aware of that information at the time that you were involved in the ACTA project and/or the RCM project that you and I have discussed today and on Friday, would have that led you to take any different steps or further steps to the ones that you in fact took?---I would have had to have discussed the matter with the secretary and perhaps take advice. I'm not completely au fait with the Ministerial Code of Conduct, but from a public

service perspective, it, it would have meant that I would have immediately had to have discussed whether there were issues in relation to the matters that I was dealing with.

So at the very least it's a matter in respect of which you'd want to seek and would have sought advice, is that right?---Yes, correct.

That's the examination, Commissioner.

10 THE COMMISSIONER: Thank you, Mr Robertson. Mr Agius, do you wish to seek leave to ask Mr Barnes any questions?

MR AGIUS: Yes, I do. Very shortly and on one issue only.

THE COMMISSIONER: Very well. You have that leave.

MR AGIUS: Mr Barnes, my name is Agius, A-g-i-u-s, and I appear for Mr Barilaro. In the course of your evidence earlier today, when you were taken to Exhibit 452, the document that you wrote, and I needn't take you back to it, but you said in substance words to the effect that you wanted to be sure that relevant people understood that your department – I think you used the word “team” – that your team was working as hard as they could in dealing with the ACTA proposal. And you wanted to make the point that your team had delivered good, solid work in accordance with the rules. Do you remember if you gave evidence today to that effect?---Yes.

Now, that was your genuine view, was it not?---Yes.

30 We've heard that Mr Minucos assisted GHD by – and we've seen it in the emails – suggesting matters that they should review in formulating an addendum to their first report, and it seems that they've acted on that. They provided an addendum to their report, and ultimately the proposal was accepted.---Yes.

I just want to confirm with you that after Mr Minucos had done whatever he'd done, and what's reflected in the emails, it's the case, isn't it, that the report that GHD produced was reviewed by Mr Hanger of your office?
---Yes.

40 It was also reviewed by the Investment Appraisals Unit.---Correct.

And it was also reviewed and tested by Infrastructure NSW.---Yes.

So it went through all of those examinations before Infrastructure NSW recommended it to the Treasurer.---That's right. I believe that Mr Hanger made Infrastructure NSW aware that, that, you know, the Deputy Premier's Office had an involvement in the process, so they would have looked at it quite carefully.

And Infrastructure NSW is very skilled at examining inputs that go into BCR analyses that are done by applicants for funding, are they not?---As I said, my earlier evidence, both Mr Betts and his team at Infrastructure NSW are not rubber stampers. They would look at things carefully because it's their, it's their job to make a recommendation to the Treasurer to release the money.

Yes, thank you. That's all. Thank you, Commissioner.

10

THE COMMISSIONER: Thanks, Mr Agius. Mr Harrowell, do you wish to seek leave to ask Mr Barnes any questions?

MR HARROWELL: Yes, just a couple if I might, Commissioner.

THE COMMISSIONER: You have that leave, Mr Harrowell.

MR HARROWELL: Thank you. Mr Barnes, perhaps I might move because Mr Barnes can't see me where I am.

20

THE COMMISSIONER: Come forward to the central microphone, Mr Harrowell.

MR HARROWELL: I'll swap with my learned friend Mr Agius. In the course of your evidence this morning, Mr Barnes, you made mention that you were regularly updating the Premier's Office and various people there and the Deputy Premier's Office.---Yes.

30

And that you remember there was an email where you wanted to emphasise the fact because you had an upcoming meeting or your people had an upcoming meeting that you were progressing the work on evaluating the ACTA program as rapidly as possible.---Yep.

And you also mentioned that there was a restructuring in your team or in the overall structure of the department initiated by Mr Reardon.---That's right.

Mr Reardon of course was at the time the Secretary of the Department of Premier and Cabinet.---Yes. Mr Reardon would have come in towards the end of 2017.

40

That's right. And he initiated a process of reviewing, a wide-ranging review across the whole of the NSW Public Service.---Yes, later in the – after the, after the re-election of the Berejiklian Government, Mr Reardon initiated a pretty significant machinery of government change.

THE COMMISSIONER: You mean after 2019, Mr Barnes?---I believe so, yes.

Or after the election in 2019.

MR HARROWELL: Yes. If I can take you back though before that period and just go back again to 2017.---Yep.

There was some pressure in terms of ensuring the performance, if I can put it that way, of public servants in New South Wales generally in terms of timeliness particularly and service delivery.---I think that's always the case.

10

So that your regular updates, and I'm certainly making no critical comment, Mr Barnes, of the work that your department has done or your agency has done, but the regular updates were part of reassuring government that the matters which were important to government were moving.---That's right.

And not because of a particular member of parliament necessarily making inquiries but to ensure that the ministers to whom your group was reporting were aware of the progress of various matters.---That's right. We did both. In respect to the, the ACTA proposal I made a conscious decision to include on occasions updates on that specific project, but I also updated the Deputy Premier and the Premier on the broad suite of activity that we were doing.

20

And in terms of the processes that were gone through to evaluate the ACTA program and indeed also the conservatorium proposal, they were done robustly and independently as hardworking public servants would do in giving advice to government.---Correct.

And not subject of any interference, if I can put it that way, in the process of work that you were doing by any particular politician.---Not that I'm aware of.

30

Thank you. Thank you, Mr Barnes.

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

MS CALLAN: Yes, Commissioner.

THE COMMISSIONER: You have that leave.

40

MS CALLAN: Mr Barnes, my name is Callan. I appear on behalf of Ms Berejiklian for the purposes of this public hearing. Can I ask, one task that as I understand it fell to your office from time to time was preparing a brief to the Premier in respect of draft correspondence for her to send to someone who had sent her a letter in respect of a regional matter?---If it, if it related in the, in the beginning of 2017 to matters that were within the remit of my work group, yes.

Did you also have such tasks or responsibilities in respect of correspondence that was to emanate from the Deputy Premier's Office in relation to regional matters?---Yes, yes.

10 Did you form any observations as to the difference or not in volume of correspondence that was emanating from the Premier's Office or the Deputy Premier's Office that you played a role in drafting?---Oh, I can't recall. I would have, it was, it was something that the department itself would have routinely been keeping an eye on because both Premiers and Deputy Premiers always want to be timely in responding to correspondence that's come in. I would have formed an opinion that the, I think maybe the, the majority of things were coming through the portfolio minister.

20 Insofar as the ACTA proposal and the ERC decision which related to it identified the Regional Growth – Environment and Tourism Fund as the funding source, that meant that it was subject to those more rigorous requirements of Restart, including a BCR of 1 and more than 1?---Yes, it would have had to have satisfied the four criteria, yeah.

Would you agree with the description of Restart as being the hardest path any agency can tread in terms of seeking funding because Infrastructure NSW required tests which other funding sources in government don't require?---I think any time you have to go through Infrastructure NSW, whether it's through their assurance process, which I think is for big, big projects, or through Restart, it's got lots of checks and balances.

30 If the proponent of a proposal got close to that magic score of 1 in terms of the BCR, for instance 0.8, something like that, was it your practice to go back and have another look at the business case?---From time to time we definitely did do that to make sure that we hadn't missed anything or, or interpreted data incorrectly. It was, it happened from time to time.

Would it typically happen?---I don't think it was typical but from time to time we did and I can recall, for example, when the, the, when we were looking to stimulate the economy, or government was looking to stimulate the economy in the time of the drought, they did go and ask to re-look at projects that hadn't got to 1 but might have fallen just below.

40 Do you recall when you gave evidence on Friday to the Commission stating that if a proponent, for instance, got to 0.8 or something like that, you would go back and have another look at the business case, that would typically happen? For the record that's at transcript 2298.---Oh, I, I don't recall whether it was typical but it happened on occasions that we had another look at things if, if they were quite close.

And would you regard 0.8 and above as being quite close?---Well, in terms, in numerical terms, yes. Although the microeconomists that work in the

IAU would often tell me that bridging the last part of that gap to 0.1, sorry, from 0.9 or, or, to get it to 1 was a difficult thing to do on occasion.

Is it the case, Mr Barnes, that you're not aware of the reasons, including, for instance, political considerations, why the ERC made the decision it did to fund the ACTA project in that meeting of 14 December?---No. Not, not aware.

10 As you have indicated, the fact it had been the subject of the ERC decision indicated to you the imprimatur of the government in terms of progressing what was set out in the conditions to that decision? That is, amongst other things, looking at whether a satisfactory business case could be achieved.---
As, as I gave evidence this morning, it was an ERC decision that, for a standalone project of quite small number, lent weight to my thinking that government had regard for this particular project, and the fact that it was an approval rather than another version of what could have been a decision gave me that opinion that, that government gave it a certain imprimatur.

20 In that respect, wasn't that the dominant, in fact overwhelming, reason why you gave it priority and attention?---It was, it was one of the reasons, for sure.

Was that also the reason you looked at what's described in your email to Ms Cruickshank around May 2017 of a backup position in terms of a funding source?---I thought it would be something that at least my team should be looking at in case government wanted, in case it failed through to be able to attach or meet the conditions in the decision and they were still interested in progressing the project.

30 That is, that they, if, where the government maintained the interest that you inferred from the ERC decision that had been made of 14 December?
---Correct.

And you accept that the fact of that decision was dominant in, for instance, you considering a backup position?---I, I'd be considering a backup position quite early in the piece because I thought that it, like, would be a struggle to get to 1.0.

40 Your evidence, as I understand it, is that at some point in time you came to infer that the Premier had an interest in this ACTA project?---Yes.

When was that, Mr Barnes?---It was after there had been several requests to update progress on the proposal, and, or on the project, and I had inferred that because my primary point of contact was in the Deputy Premier's Office, and they had indicated to me that they were being, if you like, hassled from the Premier's Office and that no doubt that Mr Maguire was hassling them. And about that, that time, and I'm going to say halfway through the project, maybe March/April, something like that, that I also had

had that conversation with someone – I think it was Laura Clarke or one of the, as I said, the Olivias – that said that, that Mr Maguire was well regarded by the Premier, and I think they used the term, you know, that Mr Maguire had her ear. So I had inferred from that that there's no doubt that, in my mind, that he potentially could have been hassling her as well. So that, that, that's the explanation.

10 Hassling her and/or hassling the staff in the Premier's Office?---It could have been both. I don't, like, I'm not aware of whether that happened. I didn't speak to the Premier about the matter.

You never spoke to her chief of staff either, Ms Cruickshank, about that matter?---I, Ms Cruickshank would have attended all of the meetings with the Premier that we had, had with deputy secretaries every second Monday, and I may have had a conversation, either before or after meetings, about, about that, but I can't recall.

20 Sorry, to be more clear, you never spoke to Ms Cruickshank, the Premier's chief of staff, as to whether the Premier had an interest in the project?---No.

And I think it's apparent from your evidence, you never spoke to the Premier directly about whether she had an interest in the project?---No, I did not.

30 Did you take any steps to confirm what the reasons were for the interest you inferred?---I, I thought that it was just a, a, a particularly pesky backbencher that was, like, continually following up and, and demanding information around whether things were up to in a process, in a project that he was particularly committed to.

Had you observed Mr Maguire approach projects that he was particularly, other projects that he was particularly committed to in a similarly pesky way as a backbencher?---I can't recall directly observing that but, through the conversations I had had with staff that worked in the Wagga area, they actually worked in the same building as Mr Maguire's electoral office and I think it was generally accepted that he was passionate and dedicated to following up things that were in his electorate.

40 As I understand it, your impression that Mr Maguire was someone the Premier had an ear for or that Mr Maguire had her ear was based on something you were told by a staffer in the Deputy Premier's Office?---That was the, the best of my recollection. I know that I probably talked to someone in the Premier's Office, maybe Matt Crocker or Clive Mathieson, I'm not sure, but that, I'm, I'm pretty much sure that I had formed the opinion that, that the Premier had high regard for Mr Maguire. I think as there were only a small number of Liberal Party regional members and that from time to time she took his counsel on regional matters, but that would have come, I think, from a Premier's Office side of things.

So the somewhat colloquial expression that the Premier had an ear for Mr Maguire, you use that to convey your impression that he was well regarded by the Premier as someone who understood the bush?---Correct.

Were you aware, by inference or otherwise, whether there were other members of parliament who were well regarded by the Premier?---Yes. I, I believe I would have formed a view about other members of parliament that she had regard for.

10

That is you observed, or there were indications that the Premier regarded well other members of parliament?---I'm sure she regarded a, a number of members of parliament very well.

And in that respect, in keeping with such regard, they were people whose advice, to your observation, she appeared to be interested in hearing?---I would imagine so, yes.

Were you aware, by inference or otherwise, whether the Premier took
20 interest in projects that local members were lobbying her about?---I would imagine that she would have always had regard for the information that was coming from her backbench and her frontbench on projects.

In that respect, the fact of your inference that she was interested in the ACTA proposal was not unusual or standalone in terms of the interest she expressed in proposals from time to time?---Not insofar as the Premier's engagement with proposals. As I said to Mr Robertson, the thing that stood out from my perspective is that for those other proposals we rarely got asked to update on those other projects that local members might have had an
30 interest in at the same frequency or, you know, that this one had.

Those other proposals that you're referring to that have the support of other local members, had they been the subject of ERC decisions?---Some of them would have been but possibly within the context of a, a consolidated list of projects that were taken up as a part of a program of work.

In terms of the time-sensitive or so-called time-sensitive aspects of the ACTA proposal, that related to the prospect of a 2018 World Championship event. Do you recall that?---My understanding was that initially I didn't
40 understand that they'd won the event but I later became aware that they had and that they were trying to get a facility completed in time to showcase Wagga for that event.

In that respect was it your understanding that the completion of that facility was regarded as something which would have made the event much better in terms of showcasing the organisation and the Wagga area?---To be honest, at the time we were looking at, at the, at the ACTA proposal more as a proposal that was about a tourism accommodation play rather than one to

do with shooting. The Office of Sport may have formed that view but we looked at, when that was handed over to us, we looked at it slightly differently because if it was only about sports then, you know, I don't think the proposal, you know, was as strong as it being an event conference facility.

During Ms Berejiklian's first year as Premier, that is in 2017, was it your impression she had a particular interest in programs and projects that were in regional New South Wales?---Yes.

10

And insofar as you observed her to have that particular interest, is that for instance as compared to Premier Baird?---I didn't work closely with Premier Baird, but my understanding is that both the Premier and the Deputy Premier made a point of demonstrating that their government was committed to people that lived outside the greater metro area as well as in.

So your experience was that you worked more closely, is this the position, with Premier Berejiklian and Mr Barilaro than you had with Premier Baird? ---I, I worked closely with the Premier's staff but I worked very closely with the Deputy Premier and his staff.

20

The work that you did with the Premier's staff, was that reflected - - -

THE COMMISSIONER: Which Premier are we talking about now, Ms Callan?

MS CALLAN: Oh, sorry. Premier Berejiklian. Was that reflected, for instance, in – I think you've given evidence about reporting on Regional Growth Funds at meetings directly with the Premier every fortnight.---Yes. There was always a, a template that the then Premier liked to use, and each of the deputy secretaries had to populate that template and in that template, given that Regional Growth Funds were a significant, a significant announcement that was made by that government, we gave regular updates on progress against that fund.

30

Your evidence about having attended meetings directly with Premier Berejiklian every fortnight, that's in respect of the Regional Growth Fund. Is that right?---No, no that's in respect of the Premier liked to gather together all of the deputy secretaries and hear from them on the matters that were, she needed to be aware of, including things like upcoming papers that, that may or may not require her signature. And for Regional Growth Funds, there was a determination made that, that she and the Deputy Premier and, from time to time, the, the Treasurer would be co-signatories on things. So we tried to let her know when things were coming forward.

40

The fortnightly meetings you've been giving some evidence about, did you attend them throughout 2017?---Whenever I was there, we always made a point of trying to be there for those meetings. From time to time, maybe one

of my executive directors might have to step in at those meetings, but I always tried to be there for those meetings. The secretary wanted us to be there.

And you were a deputy secretary throughout that time, were you?---In 2017?

Yes.---Yes.

10 And that is in respect of Regional NSW?---Correct. The – sorry. Just to be complete. At the very start of that year, I still would have been a deputy secretary at the Department of Industry, but there was a machinery of government change which took effect on 1 April but, in effect, I'd come across mid-January into the Department of Premier and Cabinet to set up the Regional NSW Team.

I do apologise, Commissioner. I just note the time.

20 THE COMMISSIONER: Well, keep going. We'll try and finish Mr Barnes if we can, Ms Callan.

MS CALLAN: Yes. Your evidence, Mr Barnes, about updating the Deputy Premier and the Premier on the broad suite of programs in your office, was that in addition to the fortnightly meetings that you attended with the Premier?---No. The, I would, for the Deputy Premier, yes. I'd have, I think, probably one on one fortnightly meetings or more as required and I'd be meeting far more regularly with Laura Clarke and occasionally Fiona Dewar to brief them on, on a broad range of issues, including the funds.

30 But in terms of providing updates to the Premier's Office - - -?---Yeah.

- - - on the broad suite of programs in your office?---Yes. Look, in between those times, we were allocated an adviser and there was an expectation on the part of the secretary, who at the time was Blair Comley, was that if you work in DPC, you, while you might have a portfolio minister and other people who were my colleagues had portfolio ministers, depending on the nature of the work they were doing, they were also expected to give the Premier and her staff briefings on things that were happening.

40 Was it your sense during 2017 that your office of Regional NSW was the subject of particular attention by the Premier?---I was not convinced that, that the Premier thought that the introduction of the office was or my area was going as well as it potentially could, could do.

What do you mean by that?---Well, there was another regional group in the, already that existed and there seemed to be a bit of role confusion and often I think, you know, things weren't as, as smooth as they otherwise could be.

Well, your evidence was that you were not convinced the Premier thought things were going as well as they potentially could do.---Yeah.

That is you were alive to some criticisms the Premier had of you and your office?---I wasn't aware that the Premier herself had criticisms but I was aware that, that, you know, in talking to come of the staff that, that there was some role confusion and that things could be better.

10 Better in terms of the timeliness with which your office undertook its work?---I previously, well, earlier this morning gave advice that that is what I'd been told by a colleague of mine who reported back something that he'd heard in the Premier's Office, that's correct.

Was that a view that he'd heard expressed in the Premier's Office about your office or team not moving as quickly as it could have?---On this particular project.

Which particular project?---The ACTA project.

20 Were you were aware of that being a more general – were you concerned about a more general criticism, fair or otherwise, about your team moving - - -?---Yes. Yep. If they thought we were moving slowly on this one, then, you know, I thought I could have hypothesized that there might have been a perception that we weren't moving, that that might have been a generalised criticism.

30 Was that what promoted the email that you sent on 30 May, 2017, Exhibit 489, which referred to, one, that you were going to pull out all the stops to deliver for her, that is Ms Berejiklian and the Deputy Premier and the government?---Yeah. As I said, within the, you know, within the law, I didn't want my team to be perceived as a team that was not commercially urgent and, and, and prepared to, you know, move expeditiously but followed due process to get things done.

In that respect, you didn't want anyone to perceive you or your office as fobbing off regional programs or projects, did you?---I don't understand what you mean by the fobbing off.

40 Did you understand that there was a criticism that was made of you or your office of fobbing off regional projects, not getting them moving in the right direction quickly enough?---I don't think those words were ever contemplated.

Well, what about the more general concept of a criticism, rightly or wrongly, that your office was not doing a good enough job in having regional programs and projects moved along in a timely fashion by reference to the appropriate funding structures?---Yep, and, and as I, you know, the introduction of the regional infrastructure coordinator to come in

and look at all aspects of regional infrastructure and where there were potential blockages in the various systems and grant processes, did give me an indication that, that the Premier and her office were concerned to make sure that projects proceeded as quickly as they appropriately should.

When was that role introduced?---Oh, I'm going to say March.

Of 2017?---Yes.

10 In relation to that email that you sent on 30 May, 2017, you sent that email in part to meet any such criticism of your department in relation to the progress of the ACTA proposal?---I, I thought that Mr Gillespie was in communication with the Premier and her office. I think, I'm not sure how often he met with her personally but he was in communication with her. At least he indicated that, that he was from time to time. He met with Mr Mathieson and I didn't want him to get the view that we had this project for a year, which we clearly hadn't. We'd inherited this project.

20 Yes.---And I wanted him to know that, you know, that within doing all things according to, you know, the law that we would pull out all stops and make sure that things were happening, you know, with commercial urgency.

That email, and can I also have it put on the screen. I just want to ask you one or two questions about it. It's Exhibit 489.

MR ROBERTSON: It's also MFI 24 if it helps.

30 MS CALLAN: Do you see in your second bullet point you deal, as you say, to correct any incorrect impression that your team had been sitting on this for a year.---Yep.

You'd received it just before Christmas, that is upon the ERC decision having been made.---Yep.

And then you refer to the work that was then done by, the further work that was then done by GHD.---Yes.

40 You said the original appraisal was 0.7 BCR. On the basis of that being the BCR, you consider that that warranted further, another look.---Yes.

Are you aware looking at that email now that in fact the BCR that was produced was 0.88?---Yes, aware of that now, yes.

That was at - - -?---Or later. Like, not just now but I would have been aware of that, you know, in the time period after I had sent that email.

What information did you use to input that in your email that it was a 0.7 BCR?---Oh, just best of recollection. Like, I didn't have access to the

document when I was doing this, and to the best of my recollection I knew that the IAU had come up with the, a pretty good score, and I thought it was either 0.7 or 0.8 I think.

Did you use the figure 0.7 to reinforce your explanation for why it was taking so long?---No.

Just a bit of a rough guess in the information - - -?---Yep.

10 - - - you were providing to the Premier's Office?---It wasn't to the Premier's Office. It was to Ken Gillespie.

Sorry, to Mr Gillespie.---Yeah.

And Mr Murray.---Yep.

And Mr Murray was the contractor working for the Premier's Office. Wasn't that your evidence?---No. Both of them were contractors working for DPC.

20

Yes.---And reported through the secretary. In fact the secretary and I met with Mr Gillespie and Mr Murray probably regularly to get an update on the work that they were doing and we provided back office services for them and their team out of my, out of my area.

30

So when you were providing information or updates to Mr Gillespie and Mr Murray, did you understand that you were providing information to the Premier's Office?---No, but I knew that they engaged with the Premier's Office from time to time, and if they heard things about us sitting on this for, you know, over a year, which is what I'd heard – basically on the same day that I wrote this email – from one of my colleagues, I didn't want them to be thinking that that was correct.

Ultimately, the further work that was conducted after this date yielded a BCR of 1.1. You recall that?---Yes.

At around about that date, it was certainly the BCR that was set out in your letter to Mr Betts of 1 June?---I think the letter was for Mr Hanger.

40

Sorry. Mr Hanger. And, to your observation, that was the product of the work that had been done by GHD in refining the business case and then had been the subject of the rigour and experience of, amongst other things, the Investment Appraisal Unit?---Correct.

In respect of the Conservatorium of Music proposal, your understanding and impression was that that conservatorium was a relatively small, not-for-profit organisation?---Yes.

When you say you first became involved, you understood it was looking for the government to transfer that land at 1 Simmons Street to it?---Yeah.

And the work you did identified another mechanism to permit them to use that premises without a transfer of the property to there?---Yes.

The unsolicited proposals process. Were you involved at all in the provision of advice to the RCM that they ought pursue that process?---Not at all.

10 Do you have any familiarity with the features or requirements of that process?---I know about that process. Most governments use it across the country. It really requires a very high priority on things being unique and things being delivered that are value for money and don't encumber the government of the day with a lot of outlay.

Is it your understanding, at least the unsolicited proposals process that the NSW Government offer require the proposal to contain some form of commercial proposition for the government?---Look, at the time, I, I wasn't aware of that but that's unsurprising.

20 Your understanding of the RCM proposal did not, to your understanding, contain any sort of commercial proposition for the government, did it?---Not for the government, no.

In that respect, the unsolicited proposals process was a wholly unsuitable mechanism in terms of the funding?---It, it, if someone had asked me, it wouldn't have been for a small community group that were looking to do the things that they were doing, it wouldn't have been a place that I would have directed them.

30 Could I ask that the witness be shown Exhibit 431. Mr Barnes, that's a letter you were shown by Counsel Assisting of 7 July, 2017?---Yeah.

Do you see the fourth paragraph commences, "Having said that, the government appreciates the role and importance of cultural facilities such as the conservatorium have," and so on?---Yeah.

40 Did that reflect your impression that the government understood the dilemma that the Conservatorium of Music was in?---Yes.

Was it that letter or around about that time that you were asked by the Premier's Office to have a look at options for the RCM?---I think it was after that, but, but it would have begun shortly after because Mr Hanger was there as a, a contact and no doubt I think the RCM would have been quite keen to look at what the next steps would be, given that they had some time pressures in terms of having to get out of one venue.

Well, insofar as you gave evidence in answer to some questions from Counsel Assisting that “The Premier’s Office asked me to look at options,” was that at or about this point in time when Mr Hanger is nominated as someone who would contact the RCM shortly?---Yeah. Look, my understanding is that Mr Hanger did begin exploring potential solutions and we were reporting back to the Premier’s Office. I believe I’ve received calls from Mr Crocker wanting to get an update on how things were going in potentially, you know, the work that Mr Hanger was doing about trying to identify suitable finding streams because that’s what it says, look at the
10 Regional Growth Funds, and we weren’t having much luck in being able to find a way forward on the project. So I think it was at that time, and it was, I’m going to say, like, November. So, quite a bit of time between that and, that I was asked to get involved.

So one of your members of staff, Mr Hanger, was involved from July until November?---Sometimes after July until, yeah, November I would imagine.

And your evidence is that you were directly asked to get involved in November?---I, I, I, I don’t know whether I was directly asked but, but I
20 inferred that, that my involvement would be appropriate to, to see if there were options to find a way forward, given that things didn’t seem to be progressing insofar as coming up with a solution might be concerned.

That is to say, between this letter of July and your trip to Wagga in late November, some five months had elapsed and your office had not come up with a suitable option or alternative?---No, and, and to be honest, my staff at the time were wholly and solely focused on matters that were about regional infrastructure, and they would have been telling me that they very much saw this as an issue that Education and Create should have been leading on
30 because those were the groups that had responsibility for continuity of service delivery. So we were, we were trying to find an infrastructure solution to a service-delivery issue.

That five-month period that elapsed, is that an indication of the priority or attention that you or your office was giving to the matter in the second-half of 2017?---This, like, it had not been brought to my attention other than that this was a significant priority at that time.

In respect of what’s come to be described as stage 2 of the project, has it
40 been your observation that the Independent member, Dr McGirr, who came in after the Wagga by-election, is supportive and a strong advocate for stage 2 or the RCM more generally?---He, like, I don’t think there’s a person in Wagga who would tell you that they didn’t support the RCM as a, as a very valuable community group. I’m led to believe that Dr McGirr was a strong proponent of stage 2 and that after he won that seat he continued to advocate for the project.

But as you've said in evidence, both before and after the Wagga by-election, your view, which was reflected in your advice, was that there were some considerable concerns and difficulties with the stage 2 part of the project?
---Yes. I had some concerns and we thought there were some difficulties.

The work that you did, Mr Barnes, in terms of progressing stage 1, was that affected by any inference you drew that the Premier was supportive of the project?---Only insofar as the attention that I gave it personally. But I think government solving for that issue was entirely appropriate.

10

The work that you did, Mr Barnes, in progressing stage 1 of the RCM project, was that affected by your understanding or inference that Mr Maguire was an advocate for this project?---No.

The work you did in terms of considering stage 2, was that affected by any inference you might have drawn the Premier was supportive of the project?
---No.

20 The work that you did in considering stage 2 and the advice you gave about it, was that affected by your understanding that the new local member, Dr McGirr, was an advocate for stage 2?---No.

You've indicated in evidence that you believe your team delivered good, solid work in accordance with the rules.---Yes.

30 In that respect, does your knowledge now of the evidence given by Ms Berejiklian about the close personal relationship that she had with Mr Maguire, would that have caused you to change the manner in which you undertook your work in respect of either of these proposals?---It would cause us to reflect on whether the right mechanisms for the management of the processes were appropriate after I might be given advice on that. But as to the merits of either of the proposals, I believe that stage 1 of the conservatorium and the ACTA proposals would have stood on their merits.

40 That is to say knowledge of that close personal relationship would not have changed your assessment of the merits of either of those proposals, nor the advice that you gave in relation to them?---No, not the merits. It, the ACTA proposal may have led to a, a different course of action but it was endorsed by ERC and therefore it had broad support. So I don't believe that, I don't believe that, I don't believe that it would have changed things. It may have.

Would knowledge of that close personal relationship have changed the timeliness or otherwise of the work that you or your office undertook in respect of either proposal?---No.

Those are the questions. Thank you, Commissioner.

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

MS GOODWIN: No, thank you, Commissioner. Might he be released from the summons?

10 THE COMMISSIONER: Just one moment, Ms Goodwin. Mr Robertson?

MR ROBERTSON: Just one point by way of clarification. Mr Barnes, you were asked a number of questions by Ms Callan regarding the, I think, fortnightly meetings between the Premier and the Executive Team.---Yes.

Can I have on the screen, please, page 259 of volume 26.6. I think in answer to one of Ms Callan's questions, you referred to there being something in the nature of a template where you would provide updates on matters within your portfolio area.---Yes, that was a template that the
20 Premier used when she was the Minister for Transport and she brought it across in her role as Premier.

Does the document on the screen appear to be the first page of such a template for the purposes of the meeting of 29 May, 2017?---Yes.

Can we go, please, in this document to page 267. Do you see there a heading Regional NSW Group – Gary Barnes?---Yes.

30 So this is a page of a document, or at least appears to be forming part of the template, is that right?---Correct.

If you have a look at item 4, do you see there a reference to Regional Growth – Environment and Tourism Fund?---Yes.

That's the fund in respect of which the ERC decision of December of 2016 referred to that fund as part of the ACTA proposal, is that right?---Yes.

40 But do you then see on the right-hand side there's a reference to a number of projects, and referring to the status of the short-listing of certain projects?
---Yep.

Is that short-listing process, is that part of the competitive process that you and I discussed earlier today?---Yes.

But if we then have a look at the next page. Do you see there item 7, there's a specific item that seemed to be just dealing with Wagga Wagga Clay Pigeon Shooting Range?---Yes.

Why did the Wagga Wagga Clay Pigeon Shooting Range get its own item in this template whereas we saw on the preceding page there were 52 projects that were put together as part of a single item?---It was my understanding that the Premier's Office and the Premier had an interest in being updated on this particular project.

10 So the Premier, as you understood it, the Premier and the Premier's Office wanted an updated about this specific project and that's why it got its own item. Is that right?---I hadn't heard that. As I previously stated by virtue of the fact that we were being asked for updates on this more than any, it was atypical, more than any other project.

And that's why it got its own item. Is that right?---Yes.

I tender the document entitled Department of Premier and Cabinet Executive Team 29 May, 2017, page 259 and following. The version that I tender will be redacted save for the two items to which I have drawn attention.

20

THE COMMISSIONER: That will be Exhibit 495.

#EXH-495 – AGENDA FOR DEPARTMENT OF PREMIER AND CABINET EXECUTIVE TEAM MEETING DATED 29 MAY 2017

MR ROBERTSON: Thank you, Commissioner.

30 THE COMMISSIONER: Shall I release Mr Barnes?

MR ROBERTSON: Yes, Commissioner.

THE COMMISSIONER: Mr Barnes, you're released from your summons to attend to today.---Thank you.

You may step down.

40 **THE WITNESS EXCUSED**

[1.36pm]

MR ROBERTSON: Commissioner, can I just deal with one formal tender that I neglected to do during the course of Mr Barnes' examination. I tender the document being an email chain ending with an email from Mr Walker to Mr Hanger, 22 August, 2018, 9.15am, page 58 through to 61, volume 31.4.

THE COMMISSIONER: That will be Exhibit 496.

**#EXH-496 – - EMAIL CHAIN ENDING WITH LEON WALKER TO
CHRIS HANGER AND OTHERS REGARDING WAGGA
CONSERVATORIUM - FUNDING FOR RECITAL HALL STAGE 2
DATED 22 AUGUST 2018 9:15AM**

10 MR ROBERTSON: Commissioner, that's the program of evidence today. I
propose to call Mr Maguire at 10.00am tomorrow.

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

**AT 1.37PM THE MATTER WAS ADJOURNED ACCORDINGLY
[1.37pm]**