

KEPPELPUB02616  
28/10/2021

KEPPEL  
pp 02616-02639

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE RUTH McCOLL AO SC  
COMMISSIONER

PUBLIC HEARING

OPERATION KEPPEL

Reference: Operation E17/0144

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY 28 OCTOBER, 2021

AT 2.00PM

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

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

<DARYL WILLIAM MAGUIRE, on former affirmation [2.01pm]

THE COMMISSIONER: Yes, Mr Robertson.

MR ROBERTSON: Can we go, please, to the transcript of telephone intercept 4205? Mr Maguire, I just want to be clear as to your evidence on an issue arising from that transcript. 4205, extract number 1, 30 November, 2017. If we can just zoom into that, do you see where Ms Mangelsdorf, he  
10 says, "I understand why from a government perspective they can't be seen to be providing a commercial venture for a nick." Do you see that there?  
---Yes.

And you say after a little while, "My solution to that, my solution to that was to build the entertainment space bigger and then at a later date – I'm sure you build it too big and then put some commercial stuff and sublet it." Do you see that there?---Yes.

Is there any reason you can identify as to why the Commission wouldn't  
20 read that exchange as you making a suggestion that Mr Mangelsdorf should seek to construct the facility larger than was necessary but for that to be concealed from the government but then for commercial space to be used to provide a revenue stream for the Riverina Conservatorium?---No, I, I can't agree with that. I think, and for a nick, I think means for nix, meaning for nothing.

For nothing.---Yeah, I think for nothing. But I think that was in the context of us, of us talking about how the conservatorium could continue to fund, you know, its existence because the, the, the proposals change so many  
30 times and I just can't be clear at what stage in the discussions, because the, the, the, the department wanted commercial rent which the, which the conservatorium couldn't pay. They, there was an upkeep that was meant to be paid. There were all sorts of restrictions put on the conservatorium, who didn't have any money and virtually no income stream. So I, that's one of the discussions of, well, what may be possible, but I don't think there was any intent to hide anything.

But you knew that those working within at least the agencies of government thought it was a bad idea to construct a facility with government money that  
40 then procured a revenue stream for a private organisation, do you agree?  
---Well, you know, government are very funny about all sort of things but that, I'm sure that was one of the discussions but ultimately the, the conservatorium had no money and they had no income stream other than fees and perhaps whatever they get from the Department of Education. It was important in the thinking of the board and myself to try and find a way that the conservatorium can be supported, and having a recital hall where they could bring world-class acts to Wagga Wagga where they could perform, where they could lease it out for functions and things, was one

solution that we were discussing. And, and having a commercial venture there may have generated some money, including providing a facility for that entire street and the conservatorium, the mums and the dads that brought their children for music lessons. So - - -

But your proposal at this point in time to Mr Mangelsdorf was to build the facility, to use your phrase, too big so as to try and earn a revenue stream of the kind that you've identified, correct?---Well, yes. I, I could agree with that.

10

Build it bigger than is necessary so as to get around the concern from a government perspective that they can't be seen to be providing a commercial venture for nothing or for a nick. Correct?---Oh, would you repeat that, please, Mr Robertson.

THE COMMISSIONER: For nix.

MR ROBERTSON: Perhaps for nix or, it's at least transcribed here as a nick or nick but - - -

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THE COMMISSIONER: I think Mr Maguire has agreed it should be "for nix", Mr Robertson. I think that's the sense. I think it's been mistranscribed.

MR ROBERTSON: You understood, Mr Maguire, Mr Mangelsdorf when he says either "for nix" or "for a nick", it's a reference to essentially for nothing. Is that right?---Yes. Originally they, the government wanted the conservatorium to pay I think \$1 million. The conservatorium wouldn't have a million cents. They had nothing. They were homeless. This was

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one of the many discussions that we had to try and solve their crisis. But you understood that the view within government was that the government could not be seen to be providing a commercial venture for nothing. Correct?---Well, I don't know that that was actually communicated to me. They certainly wanted to get a return on their building. That was communicated to me and it was communicated to the board. They, they wanted a commercial rent, they wanted outgoings and all sorts of things that a university, that a conservatorium would find impossible to pay.

40

Well, how then do you explain your suggestion to Mr Mangelsdorf that he should seek to build it too big? He's building it too big in the sense of, is this right, suggesting to government that we need a facility of a particular size, building it actually bigger than what is necessary and then subletting the space to make some money?---Well - - -

How else, if we don't read your comment that way, how else should your comment be read do you say?---Well, that could be interpreted that way, yes.

Now, did you make a similar suggestion in relation to the ACTA proposal that we discussed before?---Yes. I told them to build it bigger. Do it once. You're only going to get one opportunity. I kept encouraging them to build it bigger.

- 10 And is this right, that's with a view of getting government money to build a building in respect of which there could then be a revenue stream for the private organisation?---Or the Clay Target Association, a sporting organisation, yes.

- Now, I showed you a little while ago the press release of 16 February, 2018 concerning the RCM project. I'll just put that back on the screen to refresh your recollection. Exhibit 436, volume 31.0, page 170. As at the time of that media release what was your understanding as to the status of any decision-making within government concerning the Riverina Conservatorium of Music project?---I think from my recollection the building had been secured. I'd managed to stop the sale of the building. I think that was through Properties. That there was a, a funding stream or mechanism that would deliver the required funds. That's, that's my understanding and that was a continual work in progress and continual discussions. That was my understanding or my recollection.
- 20

- Had those decisions, at least as you understood it, been formalised in the sense of whatever formal decision-making within government needed to take place?---Yeah, and that was forever changing. Complex and changed almost every day about different models to try and fund the Conservatorium of Music.
- 30

But what I'm trying to understand at the moment is, as at 16 February, 2018, as you understood it, had the relevant decisions been made, be they by a minister, by Cabinet, by a committee of Cabinet and the like?---I can't recall who it was. My recollection is it may have been the Minister for Arts, Harwin. That's my recollection but I, it may have been Minister Harwin. I can't be clear on that.

- 40 Did Ms Berejiklian keep you informed as to the status of any decision-making within government insofar as that pertained - - -?---Not - - -

- - - to the RCM project?---Oh, I can't recall what communications were had. I, my recollection is it was Minister Harwin that, I think he may have even come down for that announcement with handing over the building and, and, and perhaps the, the discussion about funds. I can't be clear about that.

Well, in relation to the RCM project, would you keep Ms Berejiklian informed from time to time as to what you were doing in seeking to advance that project?---I, I may have. I may have. That's possible.

Did she keep you informed from time to time as to the status of government decision-making in relation to that project?---It was, it was mainly through Mr Barnes if I remember rightly. It, it, because, because it changed. It was, it was just complex. Nothing was set in concrete, so - - -

- 10 So just through Mr Barnes and not through Ms Berejiklian. Is that right?  
---Well, Mr Barnes was handling the, the, the mechanism or the model.  
And I don't think it's until perhaps it got maybe to the end stage or something. I, I just can't recall.

- Let me try and assist this way. Telephone intercept 8400, 1 May, 2018.  
Extract number 1, please. I'm sorry. I think that might be the wrong one.  
Just pardon me for a moment. Just pardon us for a moment, Mr Maguire.  
We'll come back to that one in a moment, Mr Maguire, but you would at  
least accept, I take it, that you were in regular communication with Ms  
20 Berejiklian with a view to advancing projects in Wagga Wagga. Is that  
right?---Yes, yes.

It wasn't about the regions generally. It was a particular focus, as one might expect as the local member, on projects in Wagga Wagga?---Well, that, well, that's, was a regional facility. It, it's not just for Wagga. It's for the region.

- No, but your concern and your focus of your direct advocacy to Ms  
Berejiklian, presumably, as local member for Wagga Wagga, was on Wagga  
30 Wagga projects rather than in regional projects more generally. Is that  
right?---Well, yes. It was a regional project based in Wagga Wagga,  
teaching over 250 children throughout - - -

You didn't engage in any direct advocacy of Ms Berejiklian in respect of projects in Albury, as an example?---Not that I recall.

Your focus was on the electorate and area in the vicinity of Wagga Wagga. Is that right?---Was on that occasion, sure.

- 40 Not just on that project but generally, do you agree?---Generally, yes.

Let me just play you a telephone intercept in that context. Can we go to telephone intercept 2558. We're going to go a little bit back in the time line to October of 2017. 2558, extract number 1.

**AUDIO RECORDING PLAYED**

**[2.14pm]**

MR ROBERTSON: I take it you accept one of the voices on that recording was yours and one was Ms Berejiklian's?---Yes.

Sorry, you'll have to repeat again. It didn't come through at my end.  
---Sorry. Yes, yes.

10 Do you agree that your focus in terms of direct advocacy to Ms Berejiklian was on making, to use your phrase from that call, Wagga the blazing star of the southern universe?---Well, yes, and we were having a political discussion about the regions around us and what was happening.

20 But it wasn't focused on the regions generally, your direct advocacy, it was focused, as one would expect as the member for Wagga Wagga, on the electorate of Wagga Wagga itself, correct?---Yes. And forecasting the future about what was going to happen with the city and why it needed investment and still needs investment, because it's growing at record pace. This city has a lot to offer. You've only got to look at the papers yesterday talking about the things that are happening. It has a great future. Of course I was going to advocate for it.

I tender telephone intercept 2558, extract number 1 from October of 2017.

THE COMMISSIONER: Exhibit 513.

**#EXH-513 – TELEPHONE INTERCEPT 2558 BETWEEN  
BEREJIKLIAN AND MAGUIRE DATED 7 OCTOBER 2017 AT  
9.26PM**

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THE COMMISSIONER: I think Mr Maguire's frozen and you've vanished.

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

THE WITNESS: It's quite warm here, Commissioner. It might be freezing the stream. It's quite warm.

40 THE COMMISSIONER: Yes, it's freezing here, Mr Maguire.

MR ROBERTSON: That's at least fixed on my screen, Commissioner. I'm not sure about yours.

THE COMMISSIONER: Yes.

MR ROBERTSON: Can we now go back to telephone intercept 8400, extract number 3, please?

**AUDIO RECORDING PLAYED**

**[2.17pm]**

MR ROBERTSON: I take it you accept one of the voices on that call is yours and one was Ms Berejiklian's?---Yes, I do.

10 Why did you understand her to be saying when she said, "We ticked off your conservatorium the other day"?---Oh, I suspect the, the money, the funding.

So does that assist your recollection as to how you found about the formal status of any decision-making? Does it follow from what you've just said that it was Ms Berejiklian who advised you as to that matter?---Well, yes.

You used the phrase "money projects". What did you mean by "money projects"?---The projects they wanted to get built in the electorate, funding that I needed to continue the development of the electorate.

20 As at May of 2018, you were considering retiring at the next election, is that right?---Yes, that's right.

It was at least a possibility that if you retired at the next election, Ms Berejiklian and you would make publicly known the existence of your relationship, is that right?---That's correct, yes.

30 Was one of the things that you were attempting to do towards the middle of 2018 to put in place a series of projects with a view to making it easier for you to be able retire at the next election by making the Coalition popular in the electorate of Wagga Wagga?---The name of the game, yes.

So that was, is this right, that was part of what was at least exercising your mind towards the middle of 2018, the desire to follow through on some of the projects that you had been focusing on, including the conservatorium project, with a view to making it easier for you to retire at the next election?---To deliver on my promises that I'd made, yes, that's correct.

40 Well, to deliver on your promises with a view to making it easier for you to retire at the next election, is that right?---Delivering my promises to make the electorate understand that the Coalition delivers.

And with a view to making it easier for you to retire at the next election, do you agree?---Well, I wouldn't have stayed. I, in my mindset I certainly was considering going, and I wanted to get projects completed to deliver on what I said I would do.

You would accept, I take it, that at least in your experience as a politician, there's often what's sometimes referred to as a benefit of incumbency?  
---Well, of course.

A risk for the Coalition was that if you had retired at the next election, there would be a risk, at least in your experience as a politician, of a swing against the government party?---Well, there's always a risk when you have a new candidate. It's always a risk that there could be a swing and that other political parties would enter the race, seeing an opportunity, yes.

10

One of the things that was exercising your mind towards the middle of 2018 was to try and deliver on the projects that you wanted to deliver on with a view to making it easier for you to retire at the next election, in the sense of increasing your popularity and therefore being in an easier position to, in effect, hand over to a new member?---Well, there wouldn't have been voting for me, but the intent was to deliver on the commitments that I made so that if I retired, yes, I could retire knowing that I'd honoured my promises and that, yes, a new candidate, a Liberal, certainly would get the benefit. That would be the intention of anyone in any electorate.

20

I take it that you considered the RCM project an important part of your legacy as a member of parliament?---Well, RCM were homeless. So apart from being offered two school rooms, which was an insult to this city, it needed to be done because they, they had nowhere to go. They had no money to buy a building. They certainly couldn't pay commercial rent. And they teach in our schools. They are, they should be a part of the Department of Education and funded appropriately, and they're not. They're hived off to a board, who do a fantastic job on a shoestring, and they needed a home. I don't apologise for that.

30

I'm not asking you to apologise or otherwise, I'm just asking you to confirm or reject the proposition that you regarded the RCM project as an important part of your legacy as a local member.---Well, you could say that, yes, but the priority was to get them housed, yes.

40

But isn't it a bit more than that? At this point in time there had been, in effect, agreement. It had been ticked off, as Ms Berejiklian said to you. The transfer of the Riverina Conservatorium to the 1 Simmons Street site, that aspect of it had been ticked off, as you understood it, as at 1 May, 2018, correct?---The conservatorium had a deadline on their lease, which was to expire from, from Charles Sturt University. So the need was to get the building completed so they could move in.

But in terms of keeping a home, that aspect had been ticked off as at 1 May, 2018, correct?---Yes.

But the idea of a world-class recital hall had not been ticked off at that point in time, correct?---I think so, from my recollection.

I'm sorry, Mr Maguire, that didn't come through at my end.---My recollection, yes.

I take it that you regarded having a world-class recital hall as an important part of the legacy that you sought to achieve in your capacity as a local member.---And an asset for this great city, yes, that's correct.

10 Both of those things. An asset for the city and part of your own personal legacy, correct?---Yes, sure. Yes.

In that telephone call we played before, you said, "When we stick roadblocks in the way," and you referred to a 25 per cent contribution, and then Ms Berejikian said, "I know, but you still get, you're still getting everything." Do you remember hearing that exchange between you and her?---Yes.

20 Were you seeking for Ms Berejikian to intervene so as to remove or avoid the things that you described as roadblocks?---Well, I, from my recollection, that was an obstacle that was thrown in where they were seeking funding that the, that the conservatorium would have to put forward as their 25 per cent contribution. They didn't have the money. And they, the, the bureaucrats would have known that, and if they didn't, they should have. The, the conservatorium didn't have two bob to put in.

30 But by raising that question of roadblocks, were you, in effect, inviting Ms Berejikian to intervene with a view to removing those roadblocks?---No, I don't know that I, I, through that conversation I invited her to intervene but I, I certainly made my view known about this contribution that I think was from left field. I don't even know where it came from or how it even entered the discussion but I know that I wasn't too happy that, that the conservatorium had, you know, been thrown this and they didn't have the funds to, to bless themselves with.

I tender telephone extract 8400, extract 1, 1 May, 2018.

THE COMMISSIONER: Exhibit 514.

40 **#EXH-514 – TELEPHONE INTERCEPT 8400 BETWEEN  
BEREJIKLIAN AND MAGUIRE DATED 1 MAY 2018 AT 8.59AM**

MR ROBERTSON: Can we go now, please, to page 190 of volume 31.0. I'll show you some correspondence from Dr Wallace to you. See there an email from Dr Wallace to you 16 June, 2018?---Yes.

If we then just scroll a little bit further down the page, please. A little bit further again, please. Do you see there a series of concerns that have been raised by Dr Wallace regarding the status of what I'll describe as the RCM project?---Yes, I see that.

And if you look at the second-last paragraph, do you see that it says, "I do think that high-level conversations will permanently settle the issue." Do you see that there?---Can you scroll up a little bit more, please?

10 The second-last paragraph – sorry, Mr Maguire. We need to scroll down, please.---(not transcribable) screen.

See the paragraph that starts, just scroll down, please. See the paragraph that starts, "Thank you for your efforts next week to unblock the communication issues that cause us concern."---I see that.

And it says, "I do think that high level conversations will permanently settle the issue." Do you see that there?---I see that.

20 Do you recall whether you had any high level conversations to permanently settle the issue?---No. From my recollection, Mr Wallace met with Mr Barnes, I think he travelled to Sydney. I, I can't recall the details of what actually happened there but I, I've got a feeling Mr Wallace may have travelled to make that meeting happen. I can't be clear.

Well, did you have any communications with Ms Berejiklian at a high level to permanently settle this issue?---I don't know. I, I would have thought, in first instance, I would have dealt with Mr Barnes. He's the person that I dealt with most of the time. I, I can't recall what I did.

30 If you look at the preceding paragraph, "I've contacted Gary Barnes."---Yes.

So that's at least one of the individuals or one of the people that you're focusing on or making contact with in relation to the issue. Do you see that there?---That's correct.

Can I then - - -?---But I - - -

40 I'm so sorry.---I just can't recall who I spoke to about that or whether, it was left in the control of Mr Wallace, I think, to try and negotiate a way to solve the problem. Those, those conditions they put were just impossible for the conservatorium to meet.

If we go to page 199 of volume 31.0 and while that's coming up, I tender the email of 16 June, 2018, volume 31.0, page 190.

THE COMMISSIONER: Exhibit 515.

**#EXH-515 – EMAIL FROM ANDREW WALLACE TO DARYL  
MAGUIRE REGARDING RCM COMMUNICATION ISSUES WITH  
GOVERNMENT DATED 16 JUNE 2018 10.14PM**

10 MR ROBERTSON: Do you see there, you're forwarding the email from Dr  
Wallace on 19 June, 2018, to Ms Berejiklian's direct email address?---Yes, I  
see that.

Why were you doing that?---To inform her, I guess, of the problem that, that  
we'd experienced, the outrageous rent that they were wanting for a  
conservatorium that had no money.

And, presumably, to seek her intervention to remove what might be  
described as a roadblock. Do you agree?---To seek her support, yes. I'd  
agree.

20 I tender the email from Mr Maguire to Ms Berejiklian, 19 June, 2018,  
6.04pm, page 199, volume 31.0.

THE COMMISSIONER: Exhibit 516.

**#EXH-516 – FORWARD EMAIL FROM DARYL MAGUIRE TO  
GLADYS BEREJIKLIAN REGARDING RCM COMMUNICATIONS  
ISSUES WITH GOVERNMENT DATED 19 JUNE 2018 DATED  
6.04PM**

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MR ROBERTSON: And, Mr Maguire, you appeared before this  
Commission to give evidence in an operation called Operation Dasha on 13  
July, 2018.---Yeah.

That evidence was the subject of considerable political controversy.  
Correct?---Correct.

40 You were asked for your resignation as parliamentary secretary on the  
evening of that day, 13 July, 2018. Is that right?---That's correct.

Ms Berejiklian made direct contact with you to request that resignation. Is  
that right?---I telephoned Mr Barilaro first and then I telephoned the  
Premier.

You telephoned Mr Barilaro first because he was Acting Premier at that  
point in time. Is that right?---Yes.

And are you saying you reached out and made contact with Ms Berejiklian on that evening?---From my recollection, yes.

Was that to offer your resignation or what was the circumstance in which you were making that call?---I, because I, when I spoke to Mr Barilaro he said, “Well, it’s a matter for you and the Premier.” And so I rang straight away and my recollection is she was very upset and she said, “You’ll have to resign.” Which was that afternoon.

10 And did you agree with that suggestion or did you ultimately resign at least as parliamentary secretary on 13 July, 2018?---I agreed to resign as parliamentary secretary as I was requested. That’s my best recollection.

During the course of that conversation did you say anything to Ms Berejiklian regarding the evidence that you gave on 13 July, 2018?---I may have. I can’t recall the conversation clearly. I may have. It’s possible.

Or did you do something like profess your innocence or - - -?---Yes.

20 - - - concede concerns or anything like that?---Yes, I did.

The gist of at least one part of your evidence on 13 July, 2018, is this right, that you first denied attempting to do deals in exchange for a commission with property developers? You gave evidence to that effect.---Well, that is a long time ago. I can’t remember clearly the evidence that I gave but it’s the, it’s the way the question was put that I answered and, and, Mr Robertson, out of all of that I was invited to go to that hearing. I wasn’t summonsed. I was invited. I went of my own accord and I gave the evidence as I saw it. It may not have suited ICAC but I gave the evidence and out of all of that there’s only been one recommendation to the DPP of giving false and misleading evidence.

30

You’re drawing attention, are you, to the report that was issued in Operation Dasha in respect of which there was a recommendation that consideration be given to prosecution of you for giving false or misleading evidence on 13 July, 2018?---My recollection is it wasn’t even worded that strongly but, anyway, that’s what occurred.

40 Following your resignation as parliamentary secretary did you engage in any further consideration, further communications with Ms Berejiklian regarding the other offices that you then held, including as a member of the Liberal Party and as a member of parliament?---That was, that was from Chris Stone, the Director of the Liberal Party. He demanded that I resign, I think it was on the Sunday, from the Liberal Party. And to resign from the parliament, my recollection, I think it was former Premier O’Farrell that said I should resign from parliament if that’s, my recollection is clear.

Did you give any advice to Ms Berejiklian as to what steps she should take in light of the controversial evidence that you gave on 13 July, 2018?---I think so. I can't recall clearly what it was but I certainly had some discussion about that, yes.

Including sending some messages to Ms Berejiklian. Is that right?---That's correct.

10 Can we go, please, to page 82 of volume 31.4? I'll show you an intercepted short message service message. Do you see there a message from you to Ms Berejiklian saying, "Hokis, get stuck into me. Kick the shit out of me. Good for party morale." Do you see that there?---Yes.

And if we go to the next page, please, page 83, you then say a couple of days later by the looks of it, "You have some tough decisions to make" exclamation mark "soon." Do you see that there?---I can see that.

20 Do you recall what the tough decision that she might have had to have made that you were drawing to attention?---Oh, there was a lot of tough decisions she would have had to make with regards to the fallout from me being invited to ICAC. She would have had to deal with the electorate issues, she would have had to deal with how, how she, how she dealt with it. That's the tough decisions. There would be a lot, a whole heap of things that would eventuate from what occurred on that Friday the 13<sup>th</sup>.

At this point in time, you hadn't resigned as the member for Wagga Wagga, is that right, 18 July, 2018?---That's right.

30 Was one of the tough decisions that she had to consider making, according to you, was whether or not you should be expelled from the house, from the Legislative Assembly?---There was a discussion about all of that, about being expelled.

But you're giving some advice or suggestions to Ms Berejiklian regarding that issue at around this point in time, is that right?---Perhaps that was right.

40 I'll just show you the next two messages. We'll go to the next one, being the response. It says "Like" and then we go to the next one "expelling me from the house." Do you see that there?---Yes, that's right. Ah hmm.

So is that consistent with your recollection that despite what occurred on 13 July, 2018, you are at least engaging in some communications as to what steps might be taken in light of the aftermath of your evidence of 13 July? ---Well, that's referring to the Labor Party, who very publicly stated that they would move to expel me, and the issue was I wouldn't get a chance to sit on the, on the crossbench until findings were brought down. In other words, guilty before proven innocent, whereas most people get to sit on the crossbench until the reports are brought down and you can technically

defend yourself. That's what normally occurs. It was denied to me because of the Labor Party threats and there was no guarantee that our National colleagues would side and support me.

But you're drawing attention in these emails, or these SMSs, to making tough decisions that Ms Berejiklian might need to make, including whether to not to support expelling you from the house. Is that how we read them? ---Well, yes, you could read it that way but certainly it was a topic that was very public and driven by the Labor Party, yes.

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I tender the three short message service messages, pages 83 to 85, volume 31.4, 18 July of 2018.

THE COMMISSIONER: That will be Exhibit 517.

**#EXH-517 – TELEPHONE INTERCEPT 11221 – SMS CONTENT  
BETWEEN MAGUIRE AND BEREJIKLIAN DATED 16 JULY 2018  
AT 12.40AM**

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THE COMMISSIONER: Mr Maguire, you were telling Ms Berejiklian what she should do in this difficult political circumstance in these texts, weren't you?---Yes. In a, in a way. She, she ultimately would have to make the decision, but yes, Commissioner.

MR ROBERTSON: Now, you ultimately resigned from, or at least indicated an intention to resign from the Legislative Assembly, is that right?---Yes.

30

Did you provide any input in relation to any by-election announcements that in your view should be made during the course of the by-election campaign?---Yes, I did.

How did you provide that input, as in to who or through what method?---My recollection is that I had a discussion with, I think it was Zach Bentley at the time, about, I think he rang me perhaps a couple of times to get my view on, on what should be focused on. Yes, that's true.

40

What about any advice provided directly to Ms Berejiklian, or was it all through Mr Bentley or others within Ms Berejiklian's office?---No, most likely I gave advice to her too, yes.

Did that advice include advice that the RCM project should be the subject of an announcement in relation to stage 2, the recital hall?---Yes.

Was part of your reason for suggesting RCM stage 2 as a by-election announcement the desire to seek to preserve your legacy and the work that

you did when you were the local member?---No, not entirely. The, the conservatorium needed its future cemented. It needed to be given encouragement. And, look, if, if a legacy was the by-product of that, so be it. But my concern was that the conservatorium has an enormous amount of support and we'd made a commitment. This would have been additional, great for the city, great for the region and, yeah, sure, a vote winner.

10 But at that point in time there'd been no commitment in relation to the world-class recital hall, correct?---I think that might have been in discussion at the time. I don't know that any commitment had been given, but certainly it was in discussion, I think.

There had been a commitment in relation to a like-for-like facility, but not in relation to a new recital hall, correct?---My best recollection.

20 Do you agree that at least one of the reasons you put forward RCM stage 2, the recital hall, during the course of the by-election campaign was with a view to securing your legacy, having regard to the work that you'd done as the local member?---If, if securing the legacy was the by-product, then, then I would say yes. But the, the, the aim of the thing was to give education, musical education, to give that, that social fabric which is the arts an important boost in this city, in this growing city. That was the ultimate aim in all of this.

But they'd already secured, they weren't going to be homeless, they'd already secured a site. They'd secured the 1 Simmons Street site, so they wouldn't be homeless, correct?---Yes, Mr Robertson.

30 And so at least one aspect, is this right, at least one aspect of why you put RCM stage 2 forward was in relation to seeking to secure your legacy, do you agree?---Mr Robertson, if that was a side benefit or a, an outcome. The driving priority in this was to build a centre in this city of a standard that could bring entertainment, music, and teach children across the region, and a facility that would help generate money for the conservatorium to survive. That was the ultimate aim in all of this. And if, and if there was a legacy attached to that, well, so be it. You know, the same thing with hospitals and the things that you build. If there's a legacy attached, so be it, but the priority was to get them housed and get the very best for this city.

40 Can we play, please, telephone intercept 11846, extract number 2, please, of 30 July, 2018. I'm going to play you two extracts, Mr Maguire, two relatively short ones.

**AUDIO RECORDING PLAYED**

**[2.43pm]**

MR ROBERTSON: Can we play extract 3 now, please. And I'll give a parental advisory before we play this recording.---And I'll give an apology for language.

**AUDIO RECORDING PLAYED**

**[2.44pm]**

10 MR ROBERTSON: I take it in those two extracts you agree that one of the voices is yours and one is Ms Berejiklian's?---Yes, I agree.

There was a reference to the "three top things". I take it that one of the three top things was RCM stage 2, as in the recital hall?---Yes, that's correct.

Ms Berejiklian is transcribed as saying to you, "You've just got to do what's right from your end, otherwise you'll kill me." Do you remember hearing a reference to that?---Correct.

20 What did you understand her to be saying by saying, "You've got to do what's right from your end"?---Shut up and stay out of the campaign.

Was it anything to do with your resignation or was it, at least as you recalled it, to do with shut up and stay out of the campaign?---No. It had nothing to do with the resignation but certainly my preparedness to help behind the scenes. That's what I think she's referring to.

30 So is this right? You have a recollection of having a preparedness to help in terms of making suggestions as to how the by-election campaign should be run to Mr Bentley and to Ms Berejiklian directly. Is that right?---Yes.

To anyone else within the party, so far you can recall?---No. Nobody spoke to me. I was a leper.

I tender those two extracts, telephone intercept 11846, extracts 2 and 3 as a bundle, 30 July, 2018.

THE COMMISSIONER: Exhibit 518.

40 **#EXH-518 – TELEPHONE INTERCEPT 11846 BETWEEN  
MAGUIRE AND BEREJIKLIAN DATED 30 JULY 2018 AT 8.23PM**

MR ROBERTSON: If we go now please to page 225 of volume 31.0. And I'm going to show you an email chain between you and Dr Wallace. We'll start towards the bottom of the page. See Dr Wallace says, "I prepared and sent a letter to the Premier today regarding stage 2 of the RCM initiative." Do you see that there?---Yeah. Right.

And in response, you say “BTW” by the way “I think you’ll feature in the election.” Do you see that there?---Yes.

How did you know as at 31 July, 2018, that either Dr Wallace or the RCM would feature in the election?---Well, I, I was asked for my advice on what should be funded. My recollection is originally by, I think Zach Bentley. I was asked for a list. That’s my recollection.

10 But being asked for a list doesn’t necessarily mean that the RCM or Dr Wallace will feature in the election. Is a possibility at least that you knew that the RCM would feature in the election because you knew that Ms Berejiklian would accept your advice regarding the three top things to announce during the course of the Wagga by-election campaign?---Yes, I’d agree with that.

And if we scroll up a little bit further, Dr Wallace says, “A letter has already gone in. I’m very happy to be part of the election. Thank you for your work in promoting our vision.” And then do you see it says, “Ha, they got it! My sources just confirm stick to the line. You will be okay,” with a  
20 thumbs up. Do you see that there?---Yes.

Who were the sources that you’re referring to in your email of 31 July, 2018?---I don’t recall who that was.

Is it possible that your source was Ms Berejiklian?---It, it could be possible, yes. It may be.

And we’ll scroll up a little bit further. We have a wink emoji back from Dr  
30 Wallace. Do you see that there?---Yes.

Semicolon and a closed parentheses.---Mmm.

I tender the email chain ending in an email from Dr Wallace to Mr Maguire, 31 July, 2018, 8.33pm.

THE COMMISSIONER: Exhibit 519.

40 **#EXH-519 – EMAIL FROM ANDREW WALLACE TO DARYL MAGUIRE REGARDING LETTER TO PREMIER DATED 31 JULY 2018 AT 8.33PM**

MR ROBERTSON: Now, is it right that the aftermath of 13 July, 2018 was at least in your mind a low point in your relationship with Ms Berejiklian but not one that led to the relationship coming to an end?---Yes.

You still retained the key to her house that you referred to before. She didn't ask for it back?---No.

You visited her house from time to time in calendar year 2018. Is that right?---Yes, I, I, I think so, yes.

During the course of the Wagga by-election campaign, do you recall giving any advice to the Liberal candidate for that election?---I may have.

- 10 It was a Ms Julia Ham, H-a-m. Is that right?---Yes. She did come and see me at one point when she was thinking about running for the by-election and she asked about the role, et cetera, but I can't remember exactly what I, what the discussion entailed.

Can we play, please, telephone intercept 12356, the relevant excerpt 19 August, 2018.

**AUDIO RECORDING PLAYED**

**[2.50pm]**

20

MR ROBERTSON: Do you agree that one of the voices on that recording was yours and one was Ms Ham's?---Yes.

How did you know as at 19 August, 2018 that the conservatorium project was going to be funded, or at least the subject of an announcement for funding?---Oh, well, I would have had a discussion with either Zach Bentley or someone else.

- 30 Well, I think you said before that you were not a particularly popular individual at about this point in time.---Correct.

I think you used a slightly different phraseology but have I got the gist of that right?---Leper I think was the term I used.

So other than Mr Bentley from what other source could have you found out that information at least so far as you can recall?---Oh, it'd be from Ms Berejiklian.

- 40 During that call Ms Ham talked about the tide starting to turn about your reputation at that point in time. Do you remember hearing a reference to that?---Yes, I heard that.

Was that at least part of the reason why you were still seeking to advance the conservatorium project after your resignation from the Legislative Assembly, the desire to have your personal reputation turn in terms of the tide of criticism that you had between giving evidence before this Commission on 13 July, 2018 and later steps taken during the course of the

Wagga by-election?---No, I couldn't say that. I mean it wasn't all about the legacy. It was, it was, you know, political. There was a campaign happening. I think, I think that recording explains it all and if the, if there's a legacy left out of all of that, there was politics at play. That's what was happening, politics.

So throw money at Wagga with a view to winning the seat. Is that right?  
---Of course.

10 That's the examination, Commissioner, save for tendering the telephone intercept extract of 12356, 19 August, 2018.

THE COMMISSIONER: That will be Exhibit 520.

**#EXH-520 – TELEPHONE INTERCEPT 12356 BETWEEN HAM  
AND MAGUIRE DATED 19 AUGUST 2018 AT 11.41AM**

20 THE COMMISSIONER: Mr Agius, do you wish to seek leave to ask Mr Maguire any questions?

MR AGIUS: No, we do not. Thank you, Commissioner.

THE COMMISSIONER: Thank you. Ms Callan?

MS CALLAN: Yes, Commissioner.

30 THE COMMISSIONER: Well, you have that leave subject to relevance.

MS CALLAN: Yes, Commissioner. Mr Maguire, my name is Callan. I appear on behalf of Ms Berejikian in this public hearing. Can you see and hear me?---I can. Hello.

Hello. Mr Maguire, you were asked some questions by Counsel Assisting early in your evidence today in relation to the close personal relationship that you had with Ms Berejikian for a time.---Yes.

40 Including, he asked, whether you stayed with her from time to time in Sydney. It was the position, wasn't it, certainly whilst you were a member of parliament that you had your own accommodation in Sydney?---Yes, I did.

And there were occasions when you came to Sydney, for instance, and that you wouldn't necessarily even let Ms Berejikian know that you were in town?---That happened occasionally, yes.

You did not, for instance, share a diary with Ms Berejiklian?---(No Audible Reply)

THE COMMISSIONER: Ms Callan, I'm sorry to interrupt you but, Mr Robertson, one of these screens has frozen again.

MR ROBERTSON: Yes. Just pardon me. I'll make enquiries.

10 THE COMMISSIONER: I'm just not sure whether – is that the public stream?

MR ROBERTSON: No, it is not, Commissioner, but I'll just have some enquiries made as to whether that's causing any difficulties other than in hearing room.

THE COMMISSIONER: Just make sure everyone's moving. Yes, Ms Callan. Please continue.

20 MS CALLAN: Thank you. Sorry, Mr Maguire, I was asking, you did not share a diary with Ms Berejiklian, did you?---No.

You never met any member of Ms Berejiklian's family?---Not, no, not officially. I did know them, I, I had met them at functions and different things but, no, I'd never been to the family home or officially met the parents or, no.

She was not introduced to your family, for instance, as Daryl's girlfriend?  
---No, no,

30 You did not enjoy any shared finances with Ms Berejiklian?---No.

You did not celebrate any form of anniversary date?---No.

It was suggested to you, Mr Maguire, that closer and more regular available contact was available to you with Ms Berejiklian than you would have had from other ministers. Do you recall - -?---I recall that.

40 That doesn't mean, does it, Mr Maguire, that you in fact lobbied her more through informal channels than you lobbied other people, did you?---My access to ministers was open-door. I had access to every minister. Former whip, former whips, they, they tend to have a, a little bit of pull and I would have harangued every minister, I would go down and see them personally. Too right, I did.

Would you describe that as lobbying through informal channels?  
---Sometimes it was formal and sometimes it was informal. That's right. I, I would knock on the door and, and barge right in and I did the same with

Premier O'Farrell. Premier Baird was more difficult to, to get past the guards, and you could always walk in and see the Premier at any time, Premier Berejiklian, at any time as well.

And what about your communication with other ministers, for instance, by telephone or SMS? Was that methods that you used - - -?---Yes, correct.

You were seeking to update them on your projects or persuade them to advance things that you cared about?---Yes, certainly.

10

Mr Maguire, in circumstances where you did have regular telephone calls with Ms Berejiklian, why was it that you, through your office, sent letters to her office from time to time?---Well, there are procedures in an office that's run well where you would CC ministers in, or you would write to them and you would have a series of letters that would inform a number of ministers, either in the cluster or the senior minister, and the junior ministers, about what you were lobbying for. There was due process.

20

In circumstances where you had telephone calls with Ms Berejiklian, why was it was that you dealt with staff in her office, as you've mentioned, for instance Mr Bentley?---Well, because, you know, the, the, the mechanics of government require that you go through the PLO or the advisers or whoever's put in charge of whatever project it is or whatever matter you're dealing with. You don't run to the minister with every single thing, but if it's serious, then you draw their attention to a, to, to something that's not, you know, happening as it should.

30

Mr Maguire, were you using your close personal relationship with Ms Berejiklian to access her for the purpose of lobbying for projects and the Wagga region more generally?---Could you repeat that, please.

Were you using the close personal relationship you had with Ms Berejiklian in order to access her so as to lobby for projects and the Wagga region? ---We tended to keep our private, our private discussions and, and our business discussions fairly separate. But, yeah, I would have given her a hard time on certain things, yeah. I wouldn't have cut her any slack.

40

Could I ask the witness be shown Exhibit 503. Can you see that on the screen there, Mr Maguire?---Yes.

That email that you forwarded to Ms Berejiklian on 6 March, 2017, I think you described, in evidence given to Counsel Assisting, that you described that as "venting". Do you recall that?---Yes.

Did you, from time to time, send similar correspondence to other ministers or members of parliament?---Yes.

How regularly would you do that, Mr Maguire?---Oh, I, I couldn't tell you. But I'd certainly let them know how I felt, especially when it came up, you know, to deal with bureaucracy and BS. I think I was well known for that. I wouldn't, I wouldn't hold back.

As at the middle of 2018, Mr Maguire, you had been a Member for Wagga for nearly 20 years.---Yes.

10 Is it the position that you were ready to retire, assuming you could do so leaving Wagga in good hands?---Yes. I, I certainly, I hadn't said anything publicly, but certainly I wanted to retire, yes.

Could the witness be shown Exhibit 516. It's an email, I think of 19 June, 2018. You'll recall, Mr Maguire, being shown this email by Counsel Assisting, which is dated 19 June, 2018.---Yes.

20 I think you were asked whether you were seeking Ms Berejiklian's intervention to remove a roadblock, that roadblock being the lease that was proposed in respect of the 1 Simmons Street site.---The outrageous lease, yes.

From time to time, did you send similar correspondence to other relevant ministers where you considered roadblocks had been put up in respect of projects that you were advocating for?---I most definitely would have.

Thank you for your time, Mr Maguire. Those are my questions.

30 THE COMMISSIONER: Thank you, Ms Callan. Mr Harrowell, do you wish to ask Mr Maguire any questions?

MR HARROWELL: No, Commissioner.

THE COMMISSIONER: Mr Robertson?

MR ROBERTSON: No questions by way of clarification on my part.

40 THE COMMISSIONER: Thank you. Mr Maguire, in response to Ms Callan's questions you just now, for example, in relation to the last one, you said you may have made similar approaches or sent similar communications to the 19 June, 2018 email, Exhibit 516, to other ministers. As at 2018, of course, Ms Berejiklian was the Premier of New South Wales and the most powerful minister, if I can put it that way, in the state. You've got to answer by - - -?---Yes.

And what you were asking her to do, or drawing to her attention, in this "outrageous lease" was a roadblock you wanted removed in the way of the RCM being able to transfer to the 1 Simmons Street site.---Yes, I wanted her to take an interest in, in, in the problem.

And that was because you understood she had the power to ensure that the “outrageous lease” requirement was removed, didn’t you?---Well, I guess ultimately she would have had the power, yes.

You said in one of the telephone intercepts which Mr Robertson played to you this afternoon that she could overrule the bureaucracy.---Yes.

10 You recall hearing that. And that was your understanding that that was the case, wasn’t it?---Yes.

And you also called upon her in relation to the Wagga by-election to throw money at Wagga Wagga.---That’s correct.

And that was also because you understood as Premier she had the power to make money flow to the electorate.---Yes, that’s correct.

20 And she also had the power to make money flow to projects while she was Premier such as the conservatorium.---Yes, that’s correct.

And while she was Treasurer to projects such as the Clay Target Association.---Yes, that’s correct.

Yes, thank you. What should we do in relation to Mr Maguire’s summons, Mr Robertson?

30 MR ROBERTSON: My suggestion is to not release him immediately only in case anything arises from Ms Berejiklian’s evidence tomorrow or Monday that requires recalling. I would hope to avoid that situation but that might be the more cautious approach.

THE COMMISSIONER: Thank you, Mr Robertson. So, Mr Maguire, you may have heard that. I’m not going to release you at this stage in case you need to be recalled.---Thank you.

But at this stage we’re I think about to be adjourn, are we not, Mr Robertson?

40 MR ROBERTSON: Yes, if it pleases the Commission.

THE COMMISSIONER: Yes. Thank you, Mr Maguire. 10 o’clock tomorrow?

MR ROBERTSON: Thank you, Commissioner.

THE COMMISSIONER: I now adjourn until 10 o’clock tomorrow.

**THE WITNESS STOOD DOWN**

**[3.07pm]**

**AT 3.07PM THE MATTER WAS ADJOURNED ACCORDINGLY**

**[3.07pm]**