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COMPULSORY  
EXAMINATION

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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE RUTH McCOLL AO SC  
COMMISSIONER

COMPULSORY EXAMINATION

OPERATION KEPPEL

Reference: Operation E17/0144

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON THURSDAY, 29 APRIL 2021

AT 2.15PM

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

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

THE COMMISSIONER: Mr Betts.

MR BETTS: Good afternoon.

THE COMMISSIONER: I gather you wish to make an affirmation?

MR BETTS: Yes.

THE COMMISSIONER: Yes. Can you just listen to the associate, please.

THE COMMISSIONER: Please be seated. The scope and purpose of this compulsory examination is, A, that between 2012 and August 2018, Mr Daryl Maguire MP engaged in conduct that involved a breach of public trust by using his public office, involving his duties as a member of the New South Wales Parliament and the use of parliamentary resources, to  
10 G8way International, G8way International Pty Ltd and associated persons. B, whether between 2013 and 2018, the Honourable Gladys Berejiklian MP engaged in conduct that constituted or involved (a) a breach of public trust by exercising public functions in circumstances where she was in a position of conflict between her public duties and her private interest as a person who was in a personal relationship with Mr Daryl Maguire and/or (b) the partial or dishonest exercise of any of her official functions in connection with grant funding promised and/or awarded to the Australian Clay Target Association Inc in 2016/2017. Mr Robertson, you appear as Counsel  
20 Assisting with Mr Brown?

MR ROBERTSON: Yes, I do, if the Commission pleases.

THE COMMISSIONER: And?

MS WRIGHT: May it please the Commission, Wright. I seek leave to appear for Mr Betts.

THE COMMISSIONER: Yes. Thank you, Ms Wright. You have that  
30 leave. Mr Betts, I'm going to make a number of directions. I'd ask you to listen very carefully while I make them. The first is that I direct that the following persons may be present at this compulsory inquiry: Commission officers, including transcription staff; Mr Betts and Ms Wright. The second declaration I'm going to make, Mr Betts, is under section 112 of the Independent Commission Against Corruption Act, I'll explain the nature of the direction first before I make it and if you just listen very carefully,  
40 please. I propose to make a direction under section 112 of the Independent Commission Against Corruption Act 1988 restricting the publication of information with respect to this compulsory examination. The direction will prevent those present today, other than Commission officers, from publishing or communicating information relevant to this compulsory examination. It will permit Commission officers to publish or communicate information for statutory purposes or pursuant to any further order made by the Commission. The direction may be varied or lifted by the Commission without notification if the Commission is satisfied that it is necessary or desirable to do so in the public interest. It is a criminal offence for any person to contravene a section 112 direction.

Being satisfied that it is necessary and desirable to do so in the public interest, I direct pursuant to section 112 of the Independent Commission Against Corruption Act that the evidence given by this witness, the contents of any exhibits tendered, the contents of any documents shown to the witness, any information that might enable the witness to be identified, and the fact that the witness has given evidence today shall not be published or otherwise communicated to anyone except by Commission officers for statutory purposes or pursuant to further order of the Commission.

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**SUPPRESSION ORDER: BEING SATISFIED THAT IT IS NECESSARY AND DESIRABLE TO DO SO IN THE PUBLIC INTEREST, I DIRECT PURSUANT TO SECTION 112 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT THAT THE EVIDENCE GIVEN BY THIS WITNESS, THE CONTENTS OF ANY EXHIBITS TENDERED, THE CONTENTS OF ANY DOCUMENTS SHOWN TO THE WITNESS, ANY INFORMATION THAT MIGHT ENABLE THE WITNESS TO BE IDENTIFIED, AND THE FACT THAT THE WITNESS HAS GIVEN EVIDENCE TODAY SHALL NOT BE PUBLISHED OR OTHERWISE COMMUNICATED TO ANYONE EXCEPT BY COMMISSION OFFICERS FOR STATUTORY PURPOSES OR PURSUANT TO FURTHER ORDER OF THE COMMISSION.**

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THE COMMISSIONER: Do you understand that direction, Mr Betts?---I do.

30

Ms Wright, have you explained Mr Betts' rights and obligations under the Independent Commission Against Corruption Act to him?

MS WRIGHT: Yes, I have, Your Honour.

THE COMMISSIONER: And does he seek a section 38 declaration?

MS WRIGHT: Yes, he does. And I've explained the effect of that to him.

40

THE COMMISSIONER: Thank you. Thank you, Ms Wright. Mr Betts, I will also make an explanation to you of the nature of the section 38 declaration before, as I gather you wish me to do, formally making it. And, again, if you listen very carefully to what I'm about to say. As a witness, you must answer all questions truthfully and produce any item described in your summons or required by me to be produced. You may object to answering a question or producing an item. The effect of any objection is that although you must still answer the question or produce the item, your answer or the item produced cannot be used against you in any civil proceedings or, subject to two exceptions, in any criminal or disciplinary proceedings. The first exception is that this protection does not prevent

your evidence from being used against you in a prosecution for an offence under the Independent Commission Against Corruption Act, including an offence of giving false or misleading evidence, for which the penalty can be imprisonment for up to five years. The second exception only applies to New South Wales public officials, and I gather you are still an employee of the state?---I am.

10 Evidence given by a New South Wales public official may be used in disciplinary proceedings against the public official if the Commission makes a finding that the public official engaged in or attempted to engage in corrupt conduct. I can make a declaration that all answers given by you and all items produced by you will be regarded as having been given or produced on objection. This means you don't have to object with respect to each answer or the production of each item and I'll now make that declaration, Mr Betts.

20 Pursuant to section 38 of the Independent Commission Against Corruption Act, I declare that all answers given by this witness and all documents and things produced by him during the course of this evidence at this compulsory examination are to be regarded as having been given or produced on objection, and there is no need for him to make objection in respect of any particular answer given or document or thing produced.

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

THE COMMISSIONER: Yes, Mr Robertson.

40 MR ROBERTSON: Can you state your full name, please, sir?---James George Betts.

Can I just ask you to point your face in the general direction of that microphone just on your right-hand side?---Sure.

See there's one on your right?---I'm sorry, yeah.

And if you just point in that general direction when you're speaking to me or to the Commissioner. There's one on the left-hand side?---Okay.

You don't need to be particularly close to it but as long as it's in your general direction, that should work fine. You're presently the Secretary of the Department of Planning, Industry and Environment. Is that right?  
---Correct.

Between about June of 2013 and April of 2019, you were the Chief Executive Officer of Infrastructure NSW. Is that right?---Correct.

- 10 Is it right to say that in general terms, Infrastructure NSW was a body that was established in 2011 to, amongst other things, act as a mechanism through which the government could be given independent expert professional analysis and advice about infrastructure projects?---Indeed.

And whilst its functions included to provide independent analysis, I take it it wasn't a fully independent body of a kind that, for example, this Commission is independent. Is that right?---No. No. It exercised certain functions independently, as in in the absence of direction from ministers and we were encouraged to provide independent advice but the – it's a creature  
20 of legislation. The CEO is appointed by the Premier. The board members are appointed by the Premier. So it's not analogous to the ICAC.

And so is it right that Infrastructure NSW was ultimately subject to ministerial direction or control, although there was aspects of its functions that were expected to be performed independently, in particular what I might describe as the advice function?---That's correct. So I was never subject to any direction in the exercise of those functions but I could have been.

- 30 When you say "those functions", do you mean all of the functions or just the advice functions?---So if, if I can just take a moment. There were a number of functions performed by Infrastructure NSW. Some related to, were advisory functions. Advice, for instance, in relation to the production of the State Infrastructure Strategy every five years, looking 20 years into the future, making independent recommendations to the government on what its infrastructure priorities should be, advice on the appropriateness and recommendations to the Treasurer on the appropriateness of proposed allocations of funding from the Restart NSW Fund, and also advice through  
40 our assurance processes on major capital projects. So, in the exercise of those functions we were encouraged to operate independently and were never given instructions, that I can recall, to operate in any particular way. But there was a fourth stream of activity within Infrastructure NSW, which was the delivery of major projects, for instance [REDACTED], where we were the government's agency, expending significant volumes of capital to build new infrastructure and facilities. Other examples, [REDACTED], [REDACTED] and appropriately we were subject to direction from government in the exercise of those functions.

And so is it right to say then that at least in relation to what I might call the advice function, including advice in relation to the Restart NSW project, at least in your experience that was always done in an independent fashion of the kind that you're identifying?---Correct

10 And at least so far as you can recall, there was never a direct direction saying, "Please recommend, or "Don't recommend a particular funding item"?---Not, there was no direction. Occasionally we would receive requests saying, "Please fund," dot, dot, dot, dot, dot, and then we would consider those through a framework of decision-making which was independently exercised by Infrastructure NSW.

Now, in respect of the Restart NSW Fund, is it right that that fund, at least part of the sources of that fund, was through the so-called asset recycling program?---Yeah. The lion's share of the approximately 32 billion, from memory, of funds deposited in that fund were from asset recycling or privatisation as it's commonly known.

20 And so as an example, what might be colloquially be referred to as the poles and wire money, if not all of that money, at least the bulk of that money found its way into Restart NSW, is that right?---That's right, that's right.

And that, that money can only be paid out to a particular project under the Restart NSW Fund legislation on the recommendation of Infrastructure NSW and on the relevant minister approving it by reference to that recommendation, is that right?---Correct.

30 The relevant minister at all material times was the Treasurer, is that right? ---Correct.

40 And although there was one Restart NSW Fund, is it right that it was treated as funding a series of funding programs?---Yes, that's right. A number of programs were generated over time as proceeds rolled into the fund from different asset sale transactions. Projects, for instance – or programs I should say, rather – like fixing country roads, fixing country rail, various other programs, and each have their own characteristics, but the common factor was, at the end, was a recommendation from me to the minister, being the Treasurer as you have correctly pointed out, as to whether that project merited funding from Restart NSW when measured against tests which were adopted by Infrastructure NSW and ratified by its board.

And when you say merit, merit assessed in what fashion?---That, we took the view as Infrastructure NSW that the proceeds which were being deposited into the Restart NSW Fund came from the recycling of assets which had been generated over time through, or created over time, through investment by taxpayers, and that in order to justify a drawdown on that fund for a new piece of infrastructure, almost without exception that piece of

infrastructure should be demonstrated to have a benefit-cost ratio, as we call it, of greater than 1 when assessed within the economic appraisal framework, overseen by NSW Treasury.

10 In terms of the actual assessment itself, was that done in-house, as it were, through Infrastructure NSW, albeit having regard to Treasury guidelines, or was that done, either always or sometimes, by other entities or other parts of the NSW Government?---Sometimes by other parts of the NSW Government, including the Department of Premier and Cabinet, or Treasury itself. Generally speaking these programs were overseen by steering committees or multi-agency committees, which included Treasury and I would rely on the advice of those committees to ensure that relevant cost-benefit analysis had been undertaken and that it was robust and complied with Treasury's stipulated methodology as it stood at the time, and that would be the principal basis on which I would be prepared to make recommendations to the Treasurer.

20 And so does it follow from that that the analysis itself wouldn't be done in-house as it were by Infrastructure NSW, but rather Infrastructure NSW would be given assistance by agencies that had expertise in the area, for example Treasury NSW - - -?---Yes.

30 - - - which then you would consider as the CEO with a view to identifying whether a recommendation would or would not be made?---Yes. And another example might be the, I think they were called the Economic Appraisal Unit. I can check that terminology within the Department of Premier and Cabinet. But again I would expect that Treasury would review that work and all agencies would sign off that the cost benefit analysis was appropriately robust.

40 And is it right to say you would ordinarily rely on that advice as distinct from some further analyses being done within Infrastructure NSW to either perform the underlying analysis or for that matter to check the robustness of the analysis that's been done by Treasury or Department of Premier and Cabinet?---Correct. We, it was, it would have been the exception rather than the rule that we commissioned our own supplementary cost benefit analysis. If colleague agencies in Treasury and DPC in their professional judgement attested to us that the relevant methodology had been complied with, we generally saw no need to replicate that. We might ask questions if, if there were aspects of that methodology that required explanation but generally speaking we were content to rely on the advice from those two central agencies.

And can you give us a sense of the size of the "we" when you say "we at Infrastructure NSW"? In terms of employees of Infrastructure NSW as distinct from employees of the government service more generally who might assist Infrastructure NSW, was it a relatively small organisation, medium, large or something in between?---It varied over the course of my

tenure. The, the size of the workforce when I started in mid-2013 would probably have been about a dozen people, and only a subset of those, maybe two, would have been working on Restart, the supervision of the Restart NSW Fund, although as I have said before, other agencies would be brought in and asked to contribute their expertise through steering committees. Over time as, as the fund grew in size and the government's investment program expanded, Infrastructure NSW's staff complement expanded to I think around 50 or 60 full-time equivalent by the time I left, and I believe it's grown further since that time.

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And when it moved from the 12 to the 50, was a substantial number of those associated with Restart NSW or were they more focused on some of the other work streams that you have explained this afternoon?---I would say the majority were focused on other work streams. I would estimate that around half a dozen people were responsible for Restart NSW, and that would include people who are responsible for overseeing the integrity of the processes for the appraisal of projects that, that led then to my making recommendations to the Treasurer. But subsequent to those recommendations having been made to the Treasurer and endorsed by government, the process of executing funding agreements with the recipients would be overseen by another small group, who would then manage those funding agreements to make sure that the recipient parties complied with their obligations including project milestones and so on.

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THE COMMISSIONER: Is it a diminishing fund, Mr Betts, because presumably we've sold off all the poles and wires, haven't we?---That's correct. So at its highest it would have had a total of \$32 billion deposited in it, but from the outset when, after the first wave of asset sales occurred in around 2012/2013 before I arrived in New South Wales, there were incomings and there were outgoings, and now we're at a point where, and Infrastructure NSW would be able to give you the latest, but it's down to a very small fraction of that \$32 billion total. So it has, proceeds have come in and they've been largely expended.

30

MR ROBERTSON: When a recommendation has been given by Infrastructure NSW to make a payment out of the Restart NSW fund and that the relevant minister, the Treasurer, has approved it, are you saying that Infrastructure NSW would ordinarily administer that funding arrangement, such as organising funding deeds, acquittals, checking of milestones and matters of that kind? Was that invariably the practice or was it sometimes dealt with by agencies rather than by Infrastructure NSW?---Sometimes by other agencies is my recollection. So, and in some cases the allocations which were made from Restart NSW were not for programs, for instance Regional Growth – Environment and Tourism Fund, but rather for large capital projects where the recipient was actually another government agency, for instance Transport For NSW receiving several billion dollars for the purposes of building the Metro. Different programs had different government structures which evolved over time, so in some cases from

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memory the, the responsibility for administering funding agreements might for instance lie with Transport For NSW, but for the majority of programs it was Infrastructure NSW that had the systems and the processes in place. So for instance in the project that we may be talking about in, in Wagga Wagga, a decision was taken that Infrastructure NSW should be the administering entity as opposed to the Office of Sport which had been the original intention.

10 THE COMMISSIONER: And that's because the funds were going to come out of one of the Restart NSW sub-funds for - - -?---It was, it was because they were coming out of Restart NSW but also because we had established machinery in place and well-established systems for the purposes of monitoring grant expenditure once it had been allocated, and the Office of Sport, from my memory, was keen to piggy-back on processes that we had already established, rather than have to re-invent processes of its own in its branch.

20 MR ROBERTSON: And when you say the administering agency in that context, you mean the administering agency in relation to the particular amount of funding. Is that right?---Yes.

Things like organising the funding deed, acquittals, milestones, things of that kind?---Yeah, and periodic audits to make sure that those milestones were being complied with and that work was being completed in an appropriate professional fashion.

30 So you mentioned the Wagga Wagga project, the Australian Clay Target Shooting Association. Does it follow from what you just said that it was Infrastructure NSW's responsibility to ensure that the money that was ultimately approved in relation to that project was appropriately spent, acquitted for, documented, things of that kind?---Yes.

40 You mentioned the Regional Growth – Environment and Tourism Fund. I take it that's one of the funding programs that sits or sat within Restart NSW. Is that right?---That's correct. It emerged from the – and I apologise if this is confusing for the Commission because it gets a bit involved. In 2014 the then government made a commitment to the privatisation of the poles and wires in anticipation of proceeds of \$20 billion, and instructed Infrastructure NSW to prepare a State Infrastructure Strategy update, which we provided to the then Premier, back end of 2014, and the Premier and the government took the commitment to privatise the poles and wires and the recommendations of Infrastructure NSW, which it had accepted, into the 2015 election. It was re-elected, and a series of funding reservations were made within the Restart NSW Fund, which responded to the recommendations Infrastructure NSW had previously made. Now, those didn't constitute formal allocations but they did lead to the creation of reserved funds, which were subsequently drawn down as Infrastructure NSW considered and made recommendations in relation to specific projects.

And when you use the word reservation in that context, that's in substance a decision by government that particular parts of the Restart NSW Fund in particular amounts of that fund will be allocated – withdraw that – are reserved for particular purposes. Is that right?---Yes, which effectively means informally earmarked. So a reservation did not constitute a substantive budget decision and did not necessarily flow through into the hard numbers in the budget. That was, in our terminology, a subsequent step, which was to allocate. So to reserve is to earmark but the substantive funding decision was the allocation.

And at the point of reservation, at least there is still, at least in a formal sense, one Restart NSW Fund, but in circumstances where a particular aspect of that fund either in existence or which may come to be in existence because of the asset recycling program or other means, is, as it were, or as you put it, as earmarked for particular purposes.---Yes, effectively for financial planning purposes, to ensure that the government didn't make commitments which exceeded the balance of funds in Restart. It's treated as, as I said, a financial planning measure but not as a budgetary decision-making measure in and of itself.

But why would the government be making commitments if the procedure in relation to Restart NSW is that money can only be paid out on your recommendation or at least on Restart, on Infrastructure NSW's recommendation and then a subsequent decision based on the recommendation by the Treasurer?---Well, the government might, for instance, make an announcement that it had reserved \$400 million to invest in improving country roads. So it would earmark \$400 million within the overall fund but individual allocations would be made until, subsequently based on individual projects having passed the various tests that Infrastructure NSW set for it. The government might also choose to make an announcement that it intended to fund a particular project and that it intended that that project should be funded from Restart. But I was always very clear with ministers that if they were to make announcements of that kind, then that in no way compromised the integrity of the tests that Infrastructure NSW could apply, and that if the project subsequently failed to satisfy out requirements around having a business case, appropriate economic analysis and a satisfactory benefit-cost ratio, then they would have been faced with the prospect of either having to retract their commitment or find alternative funding sources outside of Restart NSW.

Was it common or uncommon for there to be announcements of projects in relation to the Restart NSW Fund or one of the programs sitting within that fund before you had given a recommendation one way or the other? ---Yes. It was, the government went into the 2015 election campaign effectively committed to a whole series of projects, but all of those were subject to internal government processes such as the production of a business case and appropriate assurance processes run by Infrastructure

NSW, just, I might add, as they were subject to obtaining planning approvals and a whole series of other things. It's fairly commonplace in government for politicians to make commitments to things which are, are subject to a whole series of subsequent steps having to be taken, whether those are budgetary steps or steps through the statutory planning system, and that sometimes is not fully documented in the media release that's issued at the time.

10 Well, I take it, at least from your perspective as CEO of Infrastructure NSW, your advice would be that any minister or anyone else within government making an announcement before your recommendation has been given, positive or negative, should make it clear that it is subject to certain things, including in that case, your recommendation, is that right? ---Yes. I obviously was not in a position to draft the media releases that, that ministers put out, but I would always make it very clear whenever I was asked that any announcement that was made would be subject to the application of our, of our processes and all the integrity associated with that. So it would be at their risk if they decided to make such an announcement.

20 You referred a few times to benefit-cost ratios and I just want to be clear. As I understand what you're saying, as a general proposition, the identification of those ratios and their material underlying those ratios wouldn't ordinarily be done in-house with infrastructure NSW, but rather Infrastructure NSW would seek and obtain the assistance of economists who are expert in that area who might either come from Treasury or they might also come from a unit you identified within the Department of Premier and Cabinet. Is that right?---That's correct. So we would frequently receive proposals from third parties outside government which would purport to show very favourable benefit-cost ratios, but we would always ensure that  
30 those were interrogated by appropriate experts within the agencies that you've identified and it often would reject proposals on the basis that the cost-benefit analysis simply didn't withstand scrutiny.

And that, in your experience, is not an uncommon thing to occur, people putting forward proposals with cost-benefit analyses that might be prepared by that organisation, or for that matter by an external consultant, which whilst it might have a very nice number sitting at the end, when one actually assesses what is feeding into that number, one finds that there's a lack of  
40 the, to use I think your term, robustness that's necessary to be satisfied that the output number is supported by a sufficient analysis for the inputs. Is that fair?---Correct. And so, in a part, in part that's the *raison d'être* for Infrastructure NSW, was to give ministerial decision-makers confidence that they could rely on cost, the cost-benefit analysis that had been undertaken before they were asked to take funding decisions and not rely on potentially self-serving or partial analysis from third parties who stood to gain from that.

But how is Infrastructure NSW in a position to assess that in circumstances where the analyses or the checking of the analyses is not being done by Infrastructure NSW but it's being done by people in, for example, Treasury or Department of Premier and Cabinet?---Because we were all public servants operating within the same governance frameworks, the same agreed Cabinet-endorsed methodologies for economic appraisal, and we operated within governance structures where the relevant agencies were required as professional public servants to sign-off.

10 So does it follow from that that at least as a general proposition, Infrastructure NSW would trust the robustness and accuracy of analyses performed by, for example, Treasury and Department of Premier and Cabinet rather than conducting, as it were, a check analyses to confirm or deny what Treasury says or Department of Premier and Cabinet. Is that right?---Yes. It's, it's fair to characterise it. Our, our role was to ensure that appropriate processes had been followed. That did not mean that we had to undertake all the analysis in-house ourselves.

20 And so Infrastructure NSW would want to be sure that appropriate people within government, somewhere within government, be it Treasury, Department of Premier and Cabinet have adopted the kind of analyses that are expected under, in particular, the Treasury guidelines - - -?---Yes.

- - - albeit won't necessarily check separately just - to check itself whether or not it's been performed, you know, strictly in accordance with those guidelines?---Yeah.

30 That's, as it were, to be assumed from the fact that it's been prepared by the experts in Treasury or in Department of Premier and Cabinet?---Yes. And it's, it's worth emphasising that, that whilst Restart NSW Fund Act \$32 billion is a large amount of money, the government's overall expenditure on infrastructure during the period when I was CEO was between and 20 and \$30 billion per annum. So Restart NSW was a subcomponent of the funding sources for infrastructure. And for all other infrastructure, Treasury and Department of Premier and Cabinet were undertaking the analysis on which government relied to take all the other investment decisions. So this wasn't some exception. However, Infrastructure NSW was given a specific  
40 mandate to ensure good governance over the proceeds of privatisation, because without wishing to sort of reconstruct the government's logic, with hindsight, there was a strong sense that privatisation had been a contested issue politically and that one of the safeguards that the government wanted to be able to present to the community was that an independent body was ensuring that the correct analysis was undertaken and that money was being spent inappropriately.

But what's Infrastructure NSW actually adding to that process in circumstances where the actual analysis is being performed within government in the more traditional way, Treasury, Department of Premier

and Cabinet, for example?---The fact that we had a board, which comprised independent members, the fact that we were at arm's length from any of the agencies that might spending those moneys but you're right. There are models in NSW and in other jurisdictions where you don't have an independent body to oversee those things and government takes decisions all the time, including on the funding of infrastructure which don't go through mechanisms like Restart NSW but it is - - -

10 Well, for example, pretty much all other government funding that doesn't have a special regime, such as Restart NSW. Is that fair?---That's right. So I think, I think the Restart NSW Act speaks for itself, but clearly the government wanted, wanted to demonstrate that its arm's length infrastructure advisory body was holding the ring and ensuring that Restart funds because they came from – largely from privatisations were being appropriately allocated.

20 I'm just trying to understand why as a matter of substance rather than as a matter of form, what is Infrastructure NSW adding. One aspect, I think, of what you're explaining is in a sense a procedural aspect. Infrastructure NSW wants to make sure that someone who is an expert in the area has done the kinds of analysis which used to be expected, for example, benefit-cost analyses of the kind that the Treasury guidelines have in mind. Is that at least one aspect of what Infrastructure NSW adds?---That's, that's one aspect of it. That's one aspect of it. And - - -

30 But you'd agree, wouldn't you, and I'll come back for the additional – but you'd agree, wouldn't you, that Infrastructure NSW is not adding an additional, as it were, second check on the underlying analysis as a matter of substance, although it is checking to ensure that it at least looks like an analysis of that kind is being performed by another agency. Is that fair? ---Yes, that is fair. I would say, however, we need to be clear that this is in terms of the administration of Restart NSW Fund per se. For major projects, separate regimes, Infrastructure NSW was responsible for an infrastructure investor assurance regime where we would absolutely bring in independent experts to test the robustness of the cost benefit methodology that sat within business cases being presented by other agencies to government. It was a discrete function. But it is fair to say that for the much smaller programmatic spend, which was emerging from things like the Regional Growth – Environment and Tourism Fund, which were often well below the threshold of \$10 million which, or indeed \$100 million, which the INSW's 40 legislation directed it towards. We didn't replicate or duplicate the cost-benefit analysis that had been undertaken by other agencies. But I would add to that, the officials operating within the Department of Premier and Cabinet and officials operating within Treasury may be susceptible to informal direction from the Premier or from the Treasurer from time to time. So having an arm's length body like Infrastructure NSW which would have, there would have had to have been formality about the direction issued to us

had a minister sought to influence our decision making, provided an additional degree of assurance even if only on the basis of perception.

Focusing then on the Regional Growth – Environment and Tourism Fund, one of the things you explained before is that there was a series of funding programs that have their own characteristics to them.---Yeah.

10 I take it by that you mean, an example obviously enough, the Regional Growth – Environment and Tourism Fund has a particular characteristic attached to it, namely, it's associated with environment and tourism in the regions. Is that the nature of what you meant by characteristics?---Yes, as opposed to a program directed at roads or truck stops or rail sidings.

And I take it that in addition to specific characteristics each of those funding programs had their own guidelines associated with them. Is that right? ---Yes, they had their own guidelines. They had their own government structures and we would, if Infrastructure NSW was administering those programs we would draw up those guidelines. We would, in draft we would agree them through appropriate multi-agency government structures and  
20 wherever possible present them to Cabinet for approval at the outset of the process so that everybody understood the eligibility criteria, everybody understood the assessment criteria and it was seen in the minds of people seeking funding to be a level playing field.

And so for administration of funding programs of that kind at what I might call the front end, so before a decision has been made to fund this project and not fund that project, do I understand you to be saying that for each of those programs there would be some kind of government structure that would involve not just Infrastructure NSW but other agencies within the  
30 NSW Government?---Yes, that's right. So for the transport programs I've described we would have representatives from Transport For NSW. We might also have experts or independent members so an Infrastructure NSW board member, [REDACTED], who is a very senior business person from Dubbo, would provide independent chairing for some of the evaluation panels.

In terms of the administration, what I'm calling the front-end administration of something like the Regional Growth – Environment and Tourism Fund, doing things like publishing guidelines and things of that kind to ensure  
40 what you've described as the level playing field, is the mechanics of that dealt with my Infrastructure NSW, is it dealt with by a department or does it depend on the particular fund or program?---It depends on the fund or program. In some cases Infrastructure NSW would be the agency which was developing the guidelines and putting them in place. In other cases, and from memory this applies to the Regional Growth – Environment and Tourism Fund, the regional division within the Department of Premier and Cabinet did the majority of the work to establish the guidelines for that program.

Can you just identify that agency again, sorry.---It was, I can't remember the name of the piece of bureaucracy but it was within the Department of Premier and Cabinet. There was a group which was responsible for regional New South Wales, headed up by Gary Barnes, who is now the Secretary of the Department of Regional NSW, and his team had a significant role in the development of regional economic development strategies, regional policy generally for the government, and I believe would have been the lead agency for the production of the guidelines for the Regional Growth – Environment and Tourism Fund but - - -

And do you recall - - -?--- - - - my memory is a bit hazy on that.

Do you recall who the relevant minister was for that particular unit?---The, it would have been, the Deputy Premier would have been the principal minister with whom that agency or that group dealt.

And so is it fair to say that just at least insofar as you can recall for the Regional Growth – Environment and Tourism Fund that what I've described as front-end administration was principally dealt with by the particular unit within government you've identified rather than by Infrastructure NSW? ---Yes, but importantly whilst they might define, design the front end and, and the purposes of the fund and the types of projects which might be eligible that sat (a) with the framework of the recommendations that Infrastructure NSW have made in the State Infrastructure Strategy around the uses to which that \$20 billion of anticipated proceeds might be set and (b) any recommendation for an allocation of funding would now be subject to the standard Infrastructure NSW tests around economic appraisal and a benefit-cost ratio of greater than 1 at the back end.

And of course regardless of whatever governance structure might be identified for a particular funding program, at the end of the day the recommendation has to be from Infrastructure NSW, not by anyone else. Is that right?---Correct.

One of the matters you mentioned as relative to the guidelines is the concept of a level playing field. In relation to a funding program like Regional Growth – Environment and Tourism Fund, whose responsibility was it to ensure that level playing field in terms of its actual operation, as distinct from having guidelines which by their nature will seek to achieve a level playing field?---Well, it was our responsibility in the sense that we needed to make sure that there was a consistent approach to cost-benefit methodology in accordance with New South Wales Treasury guidelines, and that projects that we recommended satisfied all the tests.

But you'd agree, wouldn't you, that merely focussing on benefit-cost analysis isn't going to ensure a level playing field because you might for example have two or three different projects which each have a similar

benefit-to-cost ratio and some decision needs to be made as to whether one project is better than the others?---So it would have been perfectly conceivable that, and this may well have happened, that Infrastructure NSW might provide advice to the Treasurer to say here are a number of projects, all of which satisfy our tests and are eligible for funding from Restart NSW, and then it would be for the Treasurer, sometimes operating within the framework of the Expenditure Review Committee, to determine which projects were the ones that they wished to proceed with allocating funding to. So our aim was, was, was principally to ensure that Restart NSW's  
10 funds were used appropriately, that is for projects which satisfy benefit-cost tests. And when I say level playing field I'm principally referring to programs which were subject to competitive processes, so we put out calls for expressions of interest and invite for instance local councils to present proposals for their local roads to be upgraded and we would then have to have a level playing field to ensure that decisions were taken on merit of those projects judged against consistent criteria. That's, that's a case where it's a competitive so-called rounds-based program. In other cases projects would be presented to us by government agencies, sometimes out of the funds that we're talking about, where our principal role is not to make sure  
20 that those are not necessarily the most meritorious projects imaginable, but rather that they satisfied those, that binary test that they had been subject to a robust economic appraisal and had a BCR of greater than 1.

So is it right to say then that at least your focus as CEO of Infrastructure NSW in relation to that recommendation function in relation to Restart NSW was not so much necessarily picking projects within a list as it were, but ensuring that there was a positive benefit-to-cost ratio, not just the number but based on something that was of sufficient robustness to justify the view that it's a 1 or more than 1 benefit-to-cost ratio rather than less than  
30 1. Is that right?---Yeah, the latter, the latter is always the case, with the former, in terms of assessing the relative merit of different proposals, that would be principally where we had established a process from the outset where proponents understood that they were part of a competitive process and having established that, having established the framework with probity auditors are signing off on it, we then needed to administer that in a way which was consistent with those published guidelines, which meant that there had to be a level playing field and there had to be consistent appraisal and that the best project would win.

40 So is it right then that for some but not all funding programs within Restart NSW, one of the matters considered by Infrastructure NSW in deciding whether to make a recommendation or not was what I might call the alternatives issue, not just these are projects that all get 1 or more as a BCR, but rather of the 10 projects that are being put forward in accordance with these guidelines, the best projects are 1, 2, 3 or - - -?---Yes. If we said in the guidelines proponents should submit their proposals they will be assessed against consistent methodology and those which perform best will be the

ones which are recommended to government, then we, that is exactly the framework that we would apply.

And was that the kind of framework that applied to the Regional Growth – Environment and Tourism Fund?---Different approaches were taken to different components of that. As I understand it, there were some competitive processes were applied, and in other cases projects were, are proposed on their merits, and were assessed individually, and in that case it was that binary test around whether the benefit-cost ratio stacked up in accordance with robust methodology. And the project that we’re talking about was one of those which did not emerge from a competitive round, like certain, and it wasn’t unique. It was a project which was presented to us for consideration, “Is this a candidate project for Restart NSW funding? Please provide us with a recommendation as to whether Restart is an appropriate funding source for it or not.”

And so your focus for that particular project was on, and only on, is there a BCR of 1 or more, is that right?---Yes. In accordance with economic appraisal methodology. It’s worth saying, and we’re, we’re straying here into the deliberations of cabinet committees, so I just need to signal that to you, that when - - -

Can you just pause for a moment, in light of that. In my respectful submission, in circumstances where we’re in a private session, in circumstances where section 37(2) of the Independent Commission Against Corruption Act makes it clear that any witness cannot refuse to answer on the grounds of secrecy, privilege and matters of that kind, then in light of the nature of the investigation that you’ve announced, Commissioner, it’s appropriate that the witness be permitted to continue his answer in relation to that question, albeit one should always be careful when considering deliberations or things connected with deliberations in Cabinet or Cabinet Committees.

THE COMMISSIONER: Ms Wright, did you wish to say anything in relation to Mr Robertson’s submission?

MS WRIGHT: No, I don’t, Commissioner.

THE COMMISSIONER: Yes, I’ll permit you to proceed in the light of the section 112 order, which I’ve made, Mr Robertson.

MR ROBERTSON: May it please the Commission. I’m sorry for that interruption, but thank you for drawing attention to that.---No problem at all. And I drew attention to it merely for the purpose of informing you rather than to avoid sharing the information with you.

No, understood.---So, so the genesis of the proposal was a Cabinet submission that was brought forward to the Expenditure Review

Committee, subcommittee of Cabinet, in December 2016. I, I'm, I, I have no knowledge about what documents you may have seen previously, so I may be going over ground which you're already familiar with.

10 That's fine.---Which, which was brought by Minister Ayres, which sought approval for an expenditure of 5.5 million in financial year 2016-17 through the Office of Sport, to provide a grant to the Australian Clay Target Association for the development of a large clubhouse/conference facility and associated infrastructure at their existing facility in Wagga Wagga, subject to a series of conditions which were confirmation of ACTA's – that is, the Australian Clay Target Association's – cost estimates through a competitive process, development of a project delivery plan, and ACTA undertaking to meet all ongoing maintenance and operational costs and any capital costs for the facility that were greater than the \$5.5 million being sought. So that was - - -

Just pausing there. Are you reading off a document at the moment?---Yes, I am, yes.

20 And what document is that?---That's the, effectively the minutes of a Cabinet, of the Expenditure Review Committee meeting of Wednesday, 14 December, 2016.

Now, in relation to that meeting, did you know or, to your knowledge, did Infrastructure NSW know in advance of that meeting that ERC minute was going to be put forward before the ERC? Or did you and, to your knowledge, Infrastructure NSW only find out about it afterwards?---To my knowledge, we only found out about it afterwards because the record of the meeting goes on. There were supplementary recommendations agreed, which appear to have been agreed to in the meeting, over and – so what I've just relayed to you was the decision that was sought by Minister Ayres from the Expenditure Review Committee. But it's routine for Cabinet committees to agree supplementary recommendations, as they're called, which are then written into the note of the meeting and become the decision. So the - - -

30

Now I'll just ask you to pause for a moment. I'm just going to put a document up on the screen in front of you. Volume 26.3, page 255. And while that's coming up, Commissioner, do you mind if I just approach? I just want to have a look at the document that the witness is referring to?

40

THE COMMISSIONER: Yes. Ms Wright, you may also approach if you wish.

MS WRIGHT: Thank you, Commissioner.

THE WITNESS: That looks like it.

MR ROBERTSON: I can indicate, Commissioner, that the document that the witness was just reading from has the same text as the one that now appears on the screen. I'll give it back to you.

THE WITNESS: Thank you.

THE COMMISSIONER: Yes. And a large, I think, watermark through it, Mr Betts?---Yeah. So these are our individual watermarks which were designed to demonstrate the provenance of the document should it be  
10 inappropriately disclosed. They are unique to the recipient.

And that one, I think was, what, 4SU?---4SU, yes.

So does that indicate something that went to Infrastructure NSW?---I imagine it does. I was supplied with these documents in the run-up to these hearings, not, and, and was told that they had been provided to us as the documents which had also been provided to the Commission by Infrastructure NSW.

20 MR ROBERTSON: And it's right, isn't it, Mr Betts, that there's quite strict procedures that apply within government to Cabinet-in-confidence materials, is that right?---Correct.

Strict requirements and strict rules as to who's allowed to see them, who's allowed to print them and things of that kind?---Yes, yeah.

Generally speaking, when they're printed, one has a specific copy that might include markings of the kind that you can see on the screen to identify whose copy of the document it is, is that right?---Yes.  
30

And do you agree that the document that you can now see on the screen contains the same text as the one that you've brought in here in the witness box – same substantive text I should say – but some of the text going around in the border and in the watermarks are a little bit different?---That, look, that sounds right. That looks right, yes.

But that's consistent with your experience of the way in which Cabinet documents are dealt with?---Indeed.

40 At least, as you understand it, what the Cabinet system seeks to identify is whose copy of the document was it, as it were?---Yes.

And that, as you understand it, is part of being able to track, if necessary, if a document gets into the wrong hands, it was Mr Betts' copy that was provided, or Mr Robertson's copy that was provided, is that right?---Yes, indeed.

I interrupted as you were identifying the second item that we can now see on the screen, and I think you were explaining that item Roman (i) was taken by Minister Ayres to the ERC.---Yes.

But item Roman (ii) is an additional item that's added, is that right?---  
Correct, yes. So I have a copy in front of me of the Cabinet submission that was considered on that day and only Roman (i) was included in the recommendations of the submission that was brought to the Expenditure Review Committee, but the decision from the meeting obviously includes  
10 that supplementary recommendation too. So, it's my conjecture, if you like, that Infrastructure NSW had not had a role up until this decision was taken and the decision was taken that, as you can see, it's self-explanatory that Infrastructure NSW should be involved from that point.

And in your experience, where is that additional aspect likely to arise from? Plainly enough, not from the Office of Sport or the Minister for Sport because it's an addition to what the Cabinet submission was added and so it's been added but it's been added from what source, in your experience?  
---As a result of discussion within the Cabinet Committee. So that may –  
20 and I, I would be speculating about why those additional recommendations were added in. It may be because ministers seeking funding from the Expenditure Review Committee are agnostic as to the source of that funding, and Treasury is often keen to ensure that a funding source is identified, and it may have been the case that Treasury had identified that there was an unallocated balance within the Regional Growth – Environment and Tourism Fund and sought a decision from an Expenditure Review Committee that that should be the funding source for the 5.5 million and it then flowed from that, that if they were to access that source then they  
30 would require Infrastructure NSW to undertake the tests that we've been talking about.

THE COMMISSIONER: Mr Betts, can you recall at what stage the Regional Growth – Environment and Tourism Fund was as at December 2016, the date of this meeting? In other words, had it been publicly announced to the best of your recollection?---To the best of my recollection it had. I, I believe that Infrastructure NSW had made recommendations to the government, as I described earlier, in the run up to the 2015 election. We made our, we made our recommendations, I think, in November 2014.  
40 The government then responded by accepting those recommendations under the banner of Rebuilding NSW and then established a whole series of funding sort of reservations within Restate NSW under the brand Rebuilding NSW in, I imagine, around mid-2015, around the first budget after it had been re-elected in March 2015.

I'm talking about the particular fund that is identified in the ERC decision?  
---Yeah. I, I, I'm unable to recall with precision when that fund was first talked about in the public domain. Infrastructure NSW had recommended that a fund should be established to support environmental and tourism

purposes, and the government had accepted that recommendation but I don't have a precise recollection of when this reservation was first subject to commentary by – public commentary by the government or when the actual reservation was agreed by the Expenditure Review Committee. I wouldn't necessarily have been in that meeting.

And to be open to the public, so to speak, was it – my understanding is that this fund was intended to be open for applications to the public at large. Is that your - - -?---Some aspects, some – I apologise.

10

Is that your recollection about the Regional Environmental - - -?---No, I - - -

I'll call it RGETF for want of a better expression at the moment?---Yeah. I, I, I, I'm not sure that the decision was as, was as all-encompassing as that. I think it was certainly contemplated that a subset of the \$300 million that was reserved under the planning of RGETF would be eligible for submissions-based competitive programs but that the government - - -

20

From the public?---From – well, from local government entities and from incorporated (not transcribable) local government – non-government organisations and community groups registered as incorporated associations. So we wouldn't be providing money to private sector entities or to commercial companies – that was never part of the Restart NSW construct – but rather to the subcategories I've described and some part of that \$300 million at the discretion of the government might be opened up to competitive processes, where those entities would be able to submit applications for funding. In other cases, though, the government retained the flexibility to nominate its own projects for funding and I believe that the facility we're talking about in this inquiry was one of those.

30

And those competitive processes you've referred to would, I assume, be administered in accordance with the guidelines which you earlier referred to?---Correct. And there, there were guidelines in place or, or in the public domain which were published around that time about how the, the competitive submissions-based subcomponents were to be administered.

Thank you.

40

MR ROBERTSON: But this particular project didn't follow through that process of guidelines being – whether those guidelines were in place or not is neither here nor there for what we're talking about for the Clay Target Association because it didn't - - -?---Yeah.

- - - proceed down that stream.---Yeah. So the government exercised its discretion to refer projects on its own motion, if you will, to Infrastructure NSW to consider – for consideration in the light of the Expenditure Review Committee's submission presented by Minister Ayres.

THE COMMISSIONER: Even though it hadn't gone through a competitive process - - -?---And, and - - -

- - - or may or may not have complied with any guidelines then in existence?---It, it, it wasn't submitted as part of a competitive process and therefore it wouldn't have subject to any guidelines that would have been issued around that competitive process. It was never the government – as, as I recall, the government never committed that all projects to be funded from the RGETF would be funded on the back of competitive submissions-based processes. It reserved for itself the discretion to fund projects from that source on its own motion.

Thank you.

MR ROBERTSON: And so thus things going through that stream, as you've explained, the focus from your perspective and Infrastructure NSW is on what I've described as the BCR issue as distinct from the alternatives issues?---Yes, so - - -

20 But in the way that we've discussed this morning, not just the pure number but seeking to be satisfied that the kinds of procedures that should be adopted, such as compliance with the Treasury guidelines, has been done by Treasury or by other experts, such as those in Department of Premier and Cabinet?---Indeed. So flowing from the decision that we've just been discussing, a series of – I think two briefing notes were provided by me over the months that followed to the Treasurer to confirm that certain – that the tests that we've been discussing, including the tests which are embodied in that Cabinet decision, have been satisfied.

30 Now, doing the best you can, were you aware of this particular project before the ERC decision on 14 December, 2016, or as best can you assess it, does it look like you only became aware of it in the wake of that decision? ---I, I, I'm not aware of having been aware of it prior to that date. I'd be very surprised if I was.

And do you recall when it was first drawn to your attention?---Probably in the immediate aftermath of that meeting taking place and the outcome of that meeting having been documented, I would have been contacted and told that a project was to be referred to Infrastructure NSW for consideration.

40 And that would be a standard practice, would it, to, as it were, give you the heads-up that Infrastructure NSW is going to be asked to recommend or decide not to recommend a particular project that's been the subject of an indication by the ERC?---Yes.

Is this kind of form that we saw by reference to the resolution, volume 26.3, page 255, a common form, in your experience - - -?---It doesn't - - -

- - - which I'm drawing attention really to the fact that in a sense the ERC, constituted by very senior ministers, is approving it. See item 1, approved expenditure. Yet, on the other hand, the ERC cannot approve expenditure out of the Restart NSW fund without your recommendation. Is this kind of structure of a decision unusual, in your experience?---No, it's not. So, as I read it, the first recommendation, small Roman (i), sets a series of conditions, and then there are supplementary conditions applied through little Roman (ii), in particular (ii)(b), which makes it clear that the whole funding decision is subject to Infrastructure NSW assurances processes, as they've described them, which we've been discussing.

But at least in the text of it, the decision isn't ERC agrees that Infrastructure NSW should be asked whether or not it is recommended. It more seems to say expenditure is approved, albeit subject to, amongst other things, satisfactory business case and Infrastructure NSW assurance processes.  
---Yes.

Is that unusual or is that a fairly usual approach, in your experience?---It's a fairly usual approach, and it would have been, like, the person drafting this would have understood that little Roman (ii)(a) meant that referring it to us for funding would mean that Infrastructure NSW would apply the tests that we've described under the Restart NSW Act, and (ii)(b) made it explicit that that would require a satisfactory business case.

And you and I have discussed really two main categories so far of the approach taken by Infrastructure NSW, what are called the BCR issue and the alternatives issue. Is another issue as well, though, the fact that Restart NSW Act identifies particular purposes for which the Act was passed?  
---Yes.

And one of those purposes is to fund major infrastructure projects, is that right?---Yeah, there are a number of purposes which are specified on the face of the Act, including purpose to improve economic growth and productivity in the state and to fund infrastructure that will improve our infrastructure required for the economic competitiveness of the state.

So you're now referring to section 6 of the Restart NSW Fund Act of 2011, is that right?---Yes. 6(1)(b)(iii), yep.

Well, I think I referred to 6(1)(a). You've referred to 6(1)(b), and in particular 6(1)(b)(iii), is that right?---Yeah, yeah. I believe that's right, yeah.

But does it follow from that that one of the things that Infrastructure NSW would do before giving a recommendation is satisfy itself that the fund, the proposed funding be done through a competitive process, or not, in the various different ways that you've identified so far, is whether or not the funding would promote a purpose of the fund?---Yes.

And so at least as a matter of practice, if an ERC decision of the kind that we've seen on the screen and that you've brought with you was made, you would expect to be informed fairly promptly after the meeting itself, is that right?---Yes.

Do you recall that happening for this particular project, or you're just saying that was a matter of general practice?---That was a matter of general practice. I have no recollection of the specifics of this case.

10

And then having been informed as to that matter, what steps would either you take or Infrastructure NSW take in light of that information about what the ERC have decided?---We would request to see any supporting information that had been provided to the government by ACTA or anybody else in support of the proposal. We would, with our colleague agencies, review that material, make sure that the assumptions were appropriately robust, make sure that the cost-benefit analysis complied, complied with standard guidelines. We might have met with – and I'm speculating here – but we might typically have met with the proponent to clarify anything which was unclear, and I would have sought from my team attestation that, in the form of the draft minute, that they were satisfied that, notwithstanding whatever had been submitted by the ACTA, that there was a cost-benefit analysis which they were prepared to attest to me satisfied NSW Treasury guidelines, which, and exceeded 1.

20

And so, in a sense, that all feeds into what you and I discussed this morning of what I think I've described as the BCR - - -

30

THE COMMISSIONER: I don't think Mr Betts was here this morning, Mr Robertson.

MR ROBERTSON: Sorry, this afternoon. It's been – this afternoon, I'm sorry.---Yes.

About what I've described as the BCR issue. And then I think you've said you ultimately did give recommendations in relation to the ACTA issue, is that right?---Yes. So there were two memos which went from myself to the Treasurer, copied to the Deputy Premier and a number of other ministers. First - - -

40

Pausing there, why was it copied to the Deputy Premier?---It's routine for us to copy ministers in who may have an interest in the funding decision, just for information.

Do I take it that the relevant interest of the Deputy Premier at that point would be the Regional Affairs responsibilities of the Deputy Premier

connected with the particular funding program we're now talking about?  
---Yes, so the Deputy Premier was the Minister for Regional New South  
Wales.

10 THE COMMISSIONER: Mr Barilaro.---Mr Barilaro. I believe it was Mr  
Barilaro at the time. Yeah, I, yeah, I think it was Mr Barilaro. And that we  
copied in the Infrastructure Minister, or the Minister for Transport and  
Infrastructure, since he was the minister who had responsibility for  
infrastructure. Minister for Sport is the original proponent, and the Minister  
for Tourism and Major Events, given the economic benefit associated with  
this proposal flowed from its purported ability to attract tourism and events  
revenue into the state. So the first – if you're happy for me to go on?

MR ROBERTSON: We'll come back to the detail of the recommendation.  
I'll just show you a couple of documents first, just to put some timing  
around what you've been discussing.---Yeah.

20 So we can go, please, to page 264 in volume 26.3. So this is 19 December,  
2016. As you said, the ERC decision was 14 December, 2016. So here's an  
email from a Mr Doorn to you, copied to others, 19 December, 2016.  
11.35am. And Mr Doorn, if we scan down just a little bit, to give you the  
context, is an Executive Director, Sports Infrastructure Group, Office of  
Sport.---Yep.

Do you see that, towards the bottom of the page?---Yeah, I do.

30 And he's indicating to you that he was asked by Minister Ayres' office to  
provide you with information that the Office of Sport has available  
regarding the clay target shooting project. Do you see that there?---Yep.

And so this is consistent with the usual practice that you've just identified.  
It looks like you've been informed within pretty short order of the 14  
December, 2016 decision. You've asked for the information that's  
available, and by this email you're being provided with information,  
business case letter, ERC submission.---Yes.

40 And if you look at the second paragraph, it's drawn specifically to your  
attention that there's no independent reviews, feedback from agencies, et  
cetera, on the proposal, correct?---Yep.

That would have immediately been a red flag to you in saying the existing  
material couldn't possibly be enough to support a recommendation because  
all we have is the business case by the ultimate proponent rather than by the  
kinds, or through the kinds of procedures you and I have discussed this  
afternoon, is that right?---Indeed. So I would have treated this as an  
information for, from Mr Doorn for Infrastructure NSW to go to work and  
test the robustness of the proposal, as presented by ACTA.

And not just as a step along the way to procuring a BCR analysis of the kind that would comply with the Treasury guidelines, is that right?---It would, that, yes.

Was it your practice, as CEO of Infrastructure NSW, to only approve projects that had gone through analysis complying with the Treasury guidelines?---Yes.

10 Or were there exceptions in which there might be a benefit-to-cost analysis process that doesn't comply with those guidelines?---I'm not aware of any exceptions. The only thing I can – and this is the haziness of my memory – but certainly I'm, I'm strong, my strong recollection and sense is that I never approved any projects with a benefit-cost ratio of less than 1 for the purposes of Restart funding. And indeed I can recall projects with a BCR of 0.97 which we, which we rejected for Restart funding. There may, however, just a small scintilla about it in my mind is in relation to projects in relation to [REDACTED], where we may have applied a cost-effectiveness test rather than a cost-benefit test. but  
20 for projects of this kind, which purported to bring economic benefit to the state, we would have routinely and consistently expected a robust benefit-cost ratio of greater than 1.

And we talked very briefly about exceptions. You didn't apply an exception in relation to the Clay Target Association project, is that right? --- No. So, as you'll see when we come to the advice that I put to the Treasurer, it was on the basis that the Investment Appraisal Unit within the Department of Premier and Cabinet had reported that the project had a benefit-cost ratio of 1.1, which is appreciably less than that which is claimed in the initial submission from ACTA as represented here.

30 So documents of the kind that we can see referred to on the screen certainly would not be sufficient for Infrastructure NSW to issue a recommendation, correct?---Correct.

What you would be looking for is an assurance from either Treasury or from the relevant unit with the Department of Premier and Cabinet that they had performed an analysis that complies with the relevant guidelines, is that right?---Yeah, yes.

40 But you didn't have the resources, or at least didn't have the practice to go and check their work, as it were, you would want an assurance from them that they had been done in accordance with the relevant guidelines, is that right?---Yes. And we would have had governance structures with Treasury sitting on them. So even if the analysis had been undertaken by the very expert Investment Appraisal Unit within Premier and Cabinet, Treasury would also be scrutinising that decision, and by the time advice came to me, it would be the unified advice of the various government agencies.

And therefore, once it comes to you, what you're really checking is the procedure, to make sure the procedure has been appropriately adopted?  
---Yes.

10 You're not getting a calculator out yourself and making sure that the sums have been done correctly, or for that matter, that what underlies the figures, the inputs that feed into the output, the BCR, are of a sufficient level of robustness. Rather you're looking for an assurance from the economic experts in the area that they have checked, or they have cause to be checked, the robustness of the inputs that lead to the outputs. Is that fair?---Yes. I, I, I think there would be a risk of the process being compromised if I, as a non-expert, got my calculator out and started running my own numbers. So, the, the safer path was to rely on the expertise of, of professional public servants within the Premier's Department and Treasury.

20 And then can we go, please, to page 314 in volume 26.3? Still 19 December, now 12.30pm, you were responding to that information, "Gary Barnes agreed that we could use Stewart Webster and team to assess this proposal and provide feedback to the proponent where required." Do you see that there?---Yes. Stewart Webster being the head of the Investment Appraisal Unit I've referred to.

And so that's you, in effect, asking for assistance of that unit to undertake the kind of analyses that you and I have discussed this afternoon?---Yep.

THE COMMISSIONER: So you see, Mr Betts, there that this email is also going to Jenny Davis, Jen?---Yes.

30 And you say, "It could be a candidate for advance funding from the Regional Growth et cetera Fund." Does that indicate two things, one, that you weren't aware of the condition the ERC had actually made, or that fund being identified of the source of funds and, B, that that fund was not yet in operation?---I, to be honest, I don't, I, I don't want to mislead you. I don't recall why I would have expressed it that way. I, I, I think the et cetera there is, is largely just because it was a long and tedious title for the phone.

No, I appreciate that. I'm more interested in why you've described it as advance funding?---I'm not sure, I'm sorry.

40 MR ROBERTSON: Is it possible that the existence of the fund had been the subject of a reservation but the mechanics of how that fund was going to be administered had not yet been finalised?---That, that is very plausible. That may well be the case.

That's the most plausible explanation you can identify just sitting there now, noting that it was some time ago?---Yes. And I would also say the fact that I included that sentence suggests that I was unaware of the content of the ERC decision, which had effectively said it's going to come from that

reservation. I may simply have been told it's restart funding and then was, asked Jenny Davis, who sadly passed away a year and a half ago, asked her to consider whether it was an appropriate use of Restart funding, whether it was, which would be the most appropriate reservation it should come from and then to apply the other tests that we've discussed.

10 It looks like you at least knew that Infrastructure NSW was going to be involved and therefore Restart NSW was likely to be involved, but not necessarily the particular program sitting within Restart NSW that the Cabinet had in mind, or at least the Cabinet committee had in mind.---Yes. It may well have been the case that I didn't receive a copy of the Cabinet decision and we talked earlier on about the watermarking and the level of confidentiality that surrounded those decisions. I wasn't routinely invited to ERC meetings and it may be that I was, that Paul Doorn's email was the first contact I had to activate the decision after it had been taken.

20 Just on a slightly different topic, do you happen to recall when the funding grant to the Clay Target Association was announced, as in announced publicly by government?---I saw somewhere that an announcement had been made by Mr Maguire pre-Christmas 2016, but I saw that when I was looking through some notes.

30 Is that unusual, in light of what you and I have been discussing as to the chronology, Cabinet or Cabinet Committee makes a decision 14 December, 2016, and as you've explained, a reference to the text of the resolution that was subject really to you, subject to Infrastructure NSW, a local member going out there and saying funding has been approved?---Yeah, well, unfortunately it's fairly commonplace for ministers and other politicians to make decisions before all conditions have been satisfied.

THE COMMISSIONER: Decisions or announcements?---Sorry, to make announcements before all pre-conditions have been satisfied, but it does happen in government and the number of caveats you'd have to apply as we talked earlier on about things like statutory planning approvals and so on would be quite voluminous, so - - -

40 MR ROBERTSON: I take it as CEO of Infrastructure NSW you would frown on that kind of approach because amongst other things, it might suggest that your recommendation is a fair accompli.---Yes, which I would always make clear that it wasn't and therefore that if politicians were going to make announcements which were anticipating a decision by Infrastructure NSW then they should have a plan B available to them.

But you'd at least agree that it's undesirable from your perspective as CEO of Infrastructure NSW because you wouldn't want an impression to be created that your recommendation was simply going to happen. It was going to involve some independent thought on your part or on Infrastructure NSW's part.---To be honest I was sufficiently confident of the integrity of

our processes and the, the board of Infrastructure NSW would hold me to account for observing those processes that I saw it more as a risk for the politicians to make announcements prematurely rather than a risk to the reputation of INSW.

10 Can we just go, please, to volume 26.4, page 82. Page 82 of volume 46. – sorry, I withdraw that – 26.4. I’m going to show you an email, we’ll start at the top of the page. Email of 3 January, 2017 from Ms Davis to you. That’s forwarding a series of other email exchanges. So going back down, so I’m going back in time, there’s an, “As discussed,” to Ms Davis, there’s a, “I’ve spoken with Darryl,” with two Rs there, “And our agency. Daryl is good to go ahead with the announcement and our agency has provided the resources to review the business case and assist the material INSW needs.” Do you see that there?---Yeah.

20 And so that’s the chief of staff for the Deputy Premier is giving that advice to Mr Maguire that he can go ahead with an announcement. Were you consulted before it was indicated to Mr Maguire that it was good to go ahead with an announcement?---Not that I recall. Had I been consulted, I would have had the conversation that I’ve just had with you, which is proceed at your risk.

THE COMMISSIONER: Have a good explanation if it falls over.---Yeah, or an alternative funding source which doesn’t involve Infrastructure NSW having to ratify it.

30 MR ROBERTSON: Alternative funding source, preferably don’t do it at all, if you are going to do it, make it clear that it’s subject to conditions relevantly including your recommendation.---Yeah, and have a plan B. It was a \$5.5 million project, there are plenty of other sources of funding within the New South Wales budget that don’t require Infrastructure NSW’s signoff. In a way, the INSW path, the Restart path, is the hardest path any agency can tread in terms of seeking funding because we require tests which other funding sources in government don’t require.

40 And so is it fair to say, in the face of what you’ve just said, while as a matter of good practice, if significant funding commitments are going to be made – I don’t mean 10,000, \$100,000, but I mean in the millions or perhaps more – a matter of good practice, there should be things like benefit-and-cost analyses, but there’s only particular funds, of which Restart NSW is one, where it’s likely to be insisted upon before funding is provided?---That, that is accurate, yes.

Do you happen to recall the circumstances in which Ms Davis sends you this chain on 3 January, 2017?---No.

As in did the announcement, for example, come to your notice and you’re making contact with Ms Davis, saying, “Look, what’s going on? Do you

mind forwarding me the material?" Something like that?---I, I have no recollection of that. It's worth saying, [REDACTED], so I probably wasn't even at work on that day.

I can tell you, the announcement was not [REDACTED]. Mr Maguire was good enough to wait until 2 January.---Good on him.

THE COMMISSIONER: And this was sent to you on the 3<sup>rd</sup>, the next day. ---Right, okay. Sorry, I don't, I no longer have that in front of me.

10

MR ROBERTSON: I'm not suggesting on 3 January you were eager to be looking at lots of emails.

THE COMMISSIONER: Even if it wasn't your birthday anymore.---Yeah.

20

MR ROBERTSON: But why would it be that the Deputy Premier's Office was involved in whether or not an announcement could be made, noting that the original proponent was the Minister for Sport? Albeit the addition seemed to have been made to the decision that says Restart NSW Regional Fund.---So you're asking me to speculate about the way in which different ministers work together for political purposes. I wouldn't have any insight into that. I think I would have received that email by Jenny Davis, indicating to me that there was email traffic between ministerial offices, recording the fact that it was, it had now been referred to Infrastructure NSW and there was an expectation that we would now proceed to do our job.

30

But to the extent that the Deputy Premier had any involvement in relation to the fund, that's because it was a regional fund in respect of which his department had some association, is that right?---No. I, it could be that. It could be that it, the Deputy Premier is the leader of the National Party and takes an interest in political matters in regional New South Wales. I really have no insight.

So he at least had some involvement, in the way you and I have already discussed, in the front end part of the governance structure, because it was the Regional Growth Program, is that right?---Yes, that's right. So - - -

40

But I think what you're explaining is that is a possible explanation, but another possible explanation is that's simply the way in which the question of announcement was being dealt with within the political side of government.---Yeah, this is three months out from an election and so, yeah. Oh, no, it's not, is it? This was post-election.

THE COMMISSIONER: No, not in 2017 I don't think.---Sorry, confusion. No, I have no insight into the traffic that goes on between ministers' offices.

The next election was 2019.---Correct, sorry.

MR ROBERTSON: Can we go then, please, to page 88 of volume 26.4. So just drawing your attention first to the addressee of the emails. There's a couple of page email. Sorry, not the addressee, the sender of the email. From New South Wales Department of Industry. I take it this is an individual within the unit that you've drawn attention to within, what, within the Department of Industry?---No, the unit I was referring to was within the Department of Premier and Cabinet I thought. Sorry, I, I haven't seen this before.

10

We might just go back one, one page, just so you can get the context of how this gets to you. So Ms Davis sends to you, "Another happy new year present." 3 January, 2017. "Adam has provided a short critique of the Wagga clay target project proposal below." And Mr Webster expresses the view that "The GHB 'CBA' is in my opinion unusable for the purposes of fund allocation." See that there?---Yes, I do. And I may have misled you because Stewart Webster is the person I was referring to who is the head of that Economic Appraisal Unit, and this would tend to suggest that at that stage he was in the Department of Industry rather than Department of  
20 Premiers, Premier and Cabinet. My machinery of government changes have got the better of me, I'm afraid, but - - -

Could he have been in a DPC – was Department of Industry in the DPC Cluster at the time?---No, but it, but this function was shortly afterwards changed through a machinery of government change to be part of the Premier's Department, so – okay.

And so when you and I have discussed the particular unit when we've both been referring to it as Department of Premier and Cabinet, we're talking  
30 about the same unit?---We're talking about the same unit but - - -

But because of machinery of government changes, it may have been in Industry at one point?---Yes. Yeah.

And, ultimately, to use the great verb, mogged to a different department?  
---That's a – it's a MoG. Yeah.

I should spell that for the transcript operator, I think. I'll call it M-O-G and there's to be another G I suppose - - -?---Yes.  
40

THE COMMISSIONER: Yes. I think if you're going to make it a verb, it's got to have two G's, Mr Robertson?---So did you - - -

MR ROBERTSON: I think we'd better make it lower case, then, m-o-g-g-e-d?---You could do a hyphen. What was the question, sorry? I apologise.

I'm drawing to your attention first that it was drawn to your attention by Ms - - -?---Yeah.

- - - Davis that “GHD ‘CBA’ is, in my opinion, unusable for the purposes of fund allocation”?---Yeah.

See that there?---Yeah.

10 I take it that that would be your view, as well, in relation to the business case that I’ve already shown you to, which was one of the documents that you were provided early on?---I wouldn’t have a view on that other than to say that it’s pretty standard to receive benefit-cost ratios from third parties that purport to show a very favourable economic outcome which do not survive the first level of scrutiny from a trained economist and this email would appear to show that the self-performed analysis by ACTA is in that category.

And so if a trained economist within government says, “We look at the GHD cost-benefit analysis and we think that it complies with all relevant guidelines and it looks robust,” you’d rely on that?---Yeah.

20 But unless and until there was an indication of that kind from the experts within government, either Treasury or this unit, be it in industry or DPC, that would not be sufficient to support a recommendation?---Correct. And I would be satisfied to receive an email like that because it demonstrated that appropriate levels of scrutiny were being applied to the purported benefit-cost ratio from the proponent.

And so we’re now in January of 2017. Can you recall what next happens in the process in relation to the Clay Target Association?---No. The next thing I can recall is in mid-year.

30 So does it, at least so far as you can recall, does it fall off the radar for a few months and then comes back on the radar towards the end of the 2017 financial year and maybe into the following financial year?---Yes, so on the next document that I have is my recommendation to the Treasury dated the 2<sup>nd</sup> of June. I imagine that there was plenty of work going on at an operational level between Infrastructure NSW, Jenny Davis and Stewart Webster and others, including Treasury officials, but I - - -

40 And that would be consistent with what you would expect because what you’ve effectively done is task the exercise of the proper analysis to, in this case, the unit within the Department of Industry. Is that right?---Yes.

And you want to see the outcome of that but you’re not micromanaging how that process happens. Is that right?---Correct.

So can we go to page 74, volume 26.7, in fact, page 1 of volume 26.7. So you’ll see the – an acting executive director within now the Department of Premier and Cabinet Regional NSW - - -?---Post-MoG.

- - - is writing “to seek Infrastructure NSW’s review and consideration of two regional development projects”, et cetera?---Yeah.

And “find the letter and supporting documentation, et cetera, attached”?  
---Yeah. Yes.

If we then – I withdraw that. Is that a request of a kind that was usual to you as Chief Executive Officer of Infrastructure NSW - - -?---Yes.

10

- - - namely a specific request to you really to assess and – you’ll see it says there “provide an update on” certain regional development projects?---Yes. So I would – the way I would assess this is that six months – broadly, six months of work, five, five months of work have occurred since that previous communication we looked at. The various agencies have now reached a point where they are satisfied that enough analysis had been done to support a decision by the CEO and I would ask that I be contacted by the proponent agency to, to make it clear that this was now the analysis on which they wanted us to base our decision, and, rather than my receiving a whole series  
20 of unsolicited proposals from around government. So, this looks like a structured approach to say now is the point at which the decision can be ratified one way or another.

Now, if we jump to page 62, because Mr Hanger’s good enough to send you, as you’ve seen, quite a number of attachments.---Yep.

Page 62 of the same bundle. If we just scan down a little bit, do you see there’s a dot point about Australian Clay Target Association, see that dot point?---Yep.

30

And in italics, “Can INSW review the attached ACTA CBA addendum final (attached) and INSW believe the project meets the criteria for RGETF recommend the project to the Treasurer for a funding allocation of \$5.5 million from the RGETF.” Do you see that there?---Yep.

And so you would take that as a request to look at the documents and ensure that they’ve gone through the kind of process that you and I have been discussing this afternoon, is that right?---Yes. So, but I would expect that already the work has been done. So typically I might have received this  
40 letter, I would then have a conversation with Jenny Davis, who was my go-to person on Restart and say, “Okay, we’ve been, we’ve been reviewing the analysis on this for months. Are we in a position now to turn this around?” And she would say, “Yes,” and provide me with a memo. So there’s a degree of orchestration there as we, so we’re not seeing the underlying analysis for the first time. There would have been a whole series of exchanges as, as the proposal was stress-tested and made more robust over time. So this is the endgame, if you like, an exchange of letters, a consummated decision.

And you're not reviewing it for the substance at that point in time, you're reviewing it to ensure that it's gone through the kinds of procedures that you and I have discussed this afternoon, is that right?---yep, yep.

If you just have a look in the non-italicised text into the fourth line, which starts, "Wagga Wagga," following a request by the Premier. Do you see that there?---Yes.

- 10 And to get your bearings, at that point in time, Premier Berejiklian is the Premier. Were you aware of that particular request or is that a request that happened within what's described as the Department Investment Appraisal Unit?---I'm trying to - - -

Maybe just read the paragraph to yourself so you can get the context.  
---Yeah, I'm just trying to pass that sentence. I am assuming that that is indicating the Premier had requested that the Investment Appraisal Unit undertake the assessment.

- 20 That's what the text seems to suggest. What I'm just asking you is whether you're aware of the existence of that request by the Premier prior to you being told about it in this letter that we see on the screen?---No. That, that may be an inference from the fact that the Expenditure Review Committee of Cabinet had asked for that assessment, for an assessment to be undertaken. I don't know.

- 30 And even if it wasn't, at least in the ordinary course at request of that kind by either the Premier or perhaps by another minister would be something that's out of the ordinary?---No. Well, or, or anything that should cause concern in the sense, at least on the face of it, the Premier is asking for robust and independent economic appraisal of a proposal before an investment decision is made.

You're aware, I take it, that Ms Berejiklian gave evidence to 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? You became aware of that through at least media reports?---Through media, yeah.

- 40 Is that something that you knew about before the media report that drew it to attention?---No.

If you had known that at the time of receiving a letter like this, that's referring to a request by the Premier in relation to a project that was of relevance to Wagga Wagga and you were aware of a relationship between the Premier and member for Wagga Wagga, would have that effected anything that you did in connection with this project?---I, I don't think so. In the, the performance of my functions, I would stick within the frame of

the Restart legislation and the methodology which we put around it to ensure that proposals were appropriately tested and satisfied our criteria.

And so you'd be focussed - - -?---On my job.

- - - on what I've discussed as the BCR issue.---On my job, yeah.

10 And on that aspect of it and if from wherever that request has come in a sense, that's not a factor that weighs into recommendation or not recommendation.---No, it's not.

20 The fact though that, putting aside the relationship issue, the fact though that this is arising in a manner consistent with a request by the Premier, that that's part of the background, that must be at least a factor that weighs on your mind at least or that influences or affects or that you have some consideration of as to whether or not you grant the recommendation or not. ---Not really, because Infrastructure NSW is routinely receiving requests from ministers, including the Premier, for funding for projects and we just apply the same methodology consistently throughout, and indeed I sat within the Premier's Cluster at the time and the message from the Premier was she always expected us to do our job professionally and in fact relied on the assurance that we provided. So the overriding message that I received from the Premier consistently throughout the period when she was Premier and I was Head of Infrastructure NSW was, high standards, professionalism and rigour, and if those tests that we've discussed this afternoon can't be satisfied I want a straight answer.

30 Was your impression though that if a particular suggestion of funding was put forward, backed by, for example, a resolution of the Expenditure Review Committee, that it risked being a career-limiting move for you to knock it back by way of recommendation?---No, no. And I had a board backing me up, and that board had the secretaries of four government departments on it as well as five or six independent members, and to be honest I would never, I have never been stood over or put under inappropriate pressure in my time at Infrastructure NSW or in this job. So no, it was, the concept of a career-limiting move didn't, would never have crossed my mind.

40 And so is it right to say that both as a matter of form in the way that you and I discussed towards the start of the examination, but also as a matter of substance you felt that at least on the question of whether or not to make a recommendation, that you were able to act independently of at least the political aspect of government.---Yeah, the whole rationale for Infrastructure NSW is to inject dispassionate apolitical evidence-based decision-making into Infrastructure decision-making in this state, and consistently across the three Premiers that I've worked for that's been the message that they've sent me, so I'm very comfortable in that, and provided

you do your job properly and don't allow political considerations to enter your mind, then you're almost bulletproof.

And I've shown you 1 June, 2017 communication. If we can then go to page 74, which is a document called Infrastructure NSW – Briefing Note – 2 June, 2017, so the next day.---Yeah.

To the Treasurer, copy to Deputy Premier and other ministers.---Yeah.

- 10 And this is the first of the formal recommendations that you made. Is that right?---Yes, that's correct.

Now, this is happening, at least the date of this is 2 June, you get the full package on 1 June. I appreciate with the background behind it, including in January that we discussed, I take it at least by the time we get to the 1 June, 2017 communication, which in a sense is a fairly formal-type communication, you are not doing much between 1 June, 2017 and the formal issue of this recommendation. Is that right?---Correct. So we would get to a point where Infrastructure NSW and the other agencies involved in this were all satisfied that we had agreed that a robust methodology had been undertaken and a benefit-cost ratio had been generated and now was the time to go to the formal process of exchanging letters, including the memo to the Treasurer to bring that process of appraisal to a conclusion.

But to be fair, you're not agreeing that a, as a strict matter, agreeing that a robust methodology has been adopted, you're satisfying yourself as best you can that the appropriate procedure for obtaining a robust methodology has occurred. Is that fair?---Yes, that's a fair characterisation, yeah.

- 30 Now, was this recommendation the only recommendation that you made in relation to the ACTA project?---No. There was a subsequent recommendation to the Treasurer on 2 August, 2017.

So we'll go first to volume 26.8, page 3. We'll come to 2 August in a moment. I just want to ask you something about 8 July, 2017. This is an email from Ms Davis to various people. You're carbon-copied into the email. I just want to draw your attention to the first paragraph. She says to a range of people in Infrastructure and DPC and Office of Sport, "This project is unusual. The ERC minute approved it before we had ever heard of it, subject to conditions including an unconditional recommendation." You see that there?---Yeah, I'm not sure if that's an accurate characterisation of the ERC minute which we've subsequently seen, so she may not have seen it at the time.

Well, that's what I was going to ask you, whether you agree, based on all of the documents that you've seen, including the text of the ERC minute itself, whether the project, or at least the procedure connected with the project, was unusual or not.---No, I, I think, I think we have to take the Expenditure

Review Committee decision as recorded by the Secretary of the Department of Premier and Cabinet as being the decision, and what this appears to be is to be, is a second-hand characterisation of that decision, which I don't think trumps the actual decision itself.

But I'm asking you something slightly different.---Okay.

10 Although Ms Davis might not have had access to all the information that you now have access to, do you agree with the characterisation that the process is unusual by which Ms Davis seems to be focused on the fact that the ERC minute happened before what you've described as we have ever heard of it.---Yep.

And by "we" it must be Infrastructure NSW presumably.---Yes, that's an internal, that's largely internal to Infrastructure NSW, so that would be consistent with the proposal being brought forward to ERC by Minister Ayres, a decision being taken that it should be flicked to us with conditions. That was the first we heard of it post, post the ERC.

20 As a matter of fact that's right.---Yep.

Ms Davis seems to think that the procedure was unusual. Do you agree that the procedure was unusual or do you agree that it was not particularly unusual?---Unusual as in statistically rare that this is the order in which things are done, yes, probably.

30 But not a one-off, for example?---I don't think it would be a one-off, no. I think over time ERC would make decisions – and I can't recall specific examples of this – where they would say, yes, okay, we'll approve that subject to Infrastructure NSW confirming that it's, it passes the test for Restart. So - - -

40 So it's not the usual approach. Usually you would have some idea before it got before ERC, but it doesn't stick out as the one and only or in a very small class of strange circumstances, is that fair?---No, it didn't. And the fact that Minister Ayres had not gone into ERC seeking Restart funding, but rather it would appear that ERC had decided in the room that it should go to Infrastructure NSW tends to confirm that there was no attempt to keep us in the dark or anything like that. It was responding to a new set of circumstances.

But that's a possible explanation to the slightly unusual but not necessarily completely out of the ordinary process that was adopted here, is that right? ---Yep, yep.

And if we then go volume 26.9, page 362, which was 2 August, 2017. Is that the 2 August, 2017 recommendation to which you drew attention before?---It appears to be, yes. Yes.

So how did this different recommendation arise so far as you can recall?

---So as far as I can recall, this responds to a decision which had been taken which we discussed earlier. The Office of Sport no longer wished to be the recipient of the funding, but rather, in order to avoid having to establish its own protocols for overseeing the expenditure of the funding allocation by the recipient, asked Infrastructure NSW to step into that role. So this is basically seeking the Treasurer's approval to proceed on that basis. And in doing so, given that Infrastructure NSW was now the party to the funding agreement with ACTA, this minute closes out the various conditions which had been attached to the ERC decision the previous December, including in relation, as you can see, to the competitive tender process which this memo confirms has now been completed with a finalised price for the job, completion of the project plan, which contemplates the application of the usual processes that we would go through in the development of a funding deed. We have a fairly standard funding deed arrangements. And confirmation, which is in the attachment, that ACTA would pick up any cost overruns and ongoing maintenance costs.

20 But is it fair to say that as CEO of Infrastructure NSW you wouldn't ordinarily be weighing in to those kinds of matters of mechanics – is it being run through Office of Sport, is it being run through some other fashion – you're seeking to identify a recommendation that will allow the Treasurer to approve a funding grant of the kind that the Treasurer has in mind in circumstances where you've satisfied yourself on the BCR issue. ---Yes, I've satisfied myself on the BCR issue. I had satisfied myself on the BCR issue pre, prior to this in the preceding minute that we discussed on 2 June. This is now my saying that the conditions which surrounded the allocation of funding to ACTA treasurer have now been satisfied, and we now have the unconditional recommendation which was referred to in Ms Davis's email that you showed me a moment ago.

This is not you coming to any particular view as to the best mechanics as to how to administer the funds. You're as it were, helping everyone tick the boxes.---Yes, I'm - - -

The most important boxes being the ERC boxes.---Correct. But also noting that the project plan would be developed as part of the Restart NSW funding deed, which was an administrative mechanism which Infrastructure NSW had developed through many projects over time. So I'm effectively attesting to the Treasurer that he can rely on our funding deed as being an appropriate way of acquitting that condition in the original ERC condition.

Consistent with a fairly conventional approach of administering funds that might come out of the Restart NSW Fund, is that right?---Yes, so there would be many, probably over 100 such projects under funding deeds, which were administered by Infrastructure NSW, and we had people expert in the development of those funding deeds and in their administration and

oversight, so the Office of Sport had – I’m assuming that the Office of Sport had decided that that was a process which was pre-established and robust and that they would prefer to rely on it rather than invent their own processes.

If we could just go to the next page. One further page, please. Just pardon me for one moment. And I just want to make sure I understand at least an aspect of the BCR approach. As a matter of practice, is that ordinarily done in what I might describe as a “clean sheet of paper” approach where  
10 Treasury or the relevant unit in Industry or DPC will seek to perform a benefit-to-cost analysis from scratch, as it were, albeit getting inputs through the proponent and preparing a full benefit-to-cost analysis of the kind that the Treasury guidelines have in mind? Or is, is an approach to look at any benefit-to-cost analysis that’s been performed by the proponent and simply add, as it were, an addendum or an addition to it to say, “We think this is good” or “We don’t think it’s sufficient” or “We’ve taken these figures, we’ve tested these for robustness. These ones don’t pass, these ones do. And whilst we’re not satisfied with a, say, 2 BCR based on what the proponent’s provided, we are happy that this satisfied a 1.001 approach,” for  
20 example?---Yeah, it would depend on the quality of the initial analysis. If the analysis was reasonably robust but some assumptions required tweaking or stress testing or some sensitivity analysis needed to be undertaken, that’s probably the basis in which the advice would be undertaken. Based on the email you showed me earlier on, it would suggest that the initial analysis from the proponent was sufficiently flawed that a more fundamental rework of the economic appraisal was probably necessary in order to arrive at a benefit-cost ratio.

And do you remember whether an analysis of that kind was, in fact,  
30 performed?---I don’t. There would be paper trail which would answer that question but I don’t have access to it.

But in terms of procedure, the kinds of addendum-type approach identified is not unusual but it will depend on the - - -?---Yeah.

- - - quality of the original source data. Is that fair?---If the original source data is rubbish, to put it crudely, then there’s no point in just providing commentary on it. You have to go back and effectively rebuild it from scratch. But you might rely on some of the base assumptions which had  
40 been provided in, in that analysis and then apply different discount rates or different risk weightings and so on. So you might use some of the raw material but the more flawed the analysis, the more fundamental the rework.

I think you’ll find probably not different discount rates given that the Treasury guidelines I think say that they should all be the same discount rates but - - -?---Correct. But proponents would often invent their own discount rates in order to demonstrate in their own minds at least that their proposal had merit.

But the substance of what you're saying is you might have some data that is okay but might require a bit of checking or more robustness in order to spit out a sufficiently robust BCR. Is that right?---Yeah. Yeah. Or you might throw it in the bin and start again.

I take it that in preparation for the examination today, you've got together a little bundle of documents of which some you've been referring to today?  
---Yes.

10

Are there any documents in that bundle, documents in addition to those that I've shown you on the screen today?---I've got some handwritten notes which I'm very happy to share with you, which – but those are largely derived from my review of the documents some of which we've seen today, some of which are in the public domain already like the relevant legislation  
- - -

20

THE COMMISSIONER: So they weren't created around the time of these events. Is that what you're saying?---Some of them are created around the time of these events. Some of them pre-date that. So, for instance, the – I've got the text of the Infrastructure NSW Act, text of the Restart Act, the text of the State Infrastructure Strategy 2014, all of which are in the public domain. I've got – well, perhaps the easiest thing is if I just give you everything I've got?

30

MR ROBERTSON: Yes. I respectfully ask you, Commissioner, make a direction under section 35, subsection (2) requiring the witness to provide that bundle of documents to which he's just referred but before you formally make or not make that direction, can I just ask one question about the notes. I take it there's no notes on the documents that record any legal advice you've been given in preparation for today or any request for legal advice that you've made?---No. The one document – to answer your question – which hasn't been put on the screen but I have in my possession is the original Cabinet submission from Minister Ayres, the ERC submission, which - - -

And is that a document that you saw in advance of it being submitted to and approved by the ERC - - -?---No.

40

- - - or is it only a document that you've seen before - - -?---I, I think based on everything we've seen today, the safe conclusion is that I didn't see this. If I saw it at all, it was after the ERC decision had been made (not transcribable)

And having now looked at that documents, are there any particular comments that you have on the document that arise from the – or that are connected with the discussion that you and I have had this afternoon?---No.

You've just looked at that by way of background in the hope of reminding yourself as to some of the background for the questions that I might be asking you today. Is that fair?---Yes. And the, and the, the fact that the recommendations sought in, in that submission or the recommendations contained in that submission differ from and are augmented by the decision of ERC is helpful in terms of understanding the decision-making process within government.

I respectfully ask for you to make that direction if that's convenient?

10

THE COMMISSIONER: I do. I take it you don't want Mr Betts to have to produce the legislation he's brought?

MR ROBERTSON: No. He's more than welcome to keep his copy of the legislation. I have my own.

THE COMMISSIONER: Mr Betts, I direct you, pursuant to section 35(2) to produce to the Commission the documents you've brought to the Commission other than the legislation?---Okay.

20

The associate will take those documents.

**DIRECTION TO PRODUCE: THE WITNESS IS DIRECTED, PURSUANT TO SECTION 35(2) OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, TO PRODUCE TO THE COMMISSION THE DOCUMENTS BROUGHT TO THE COMMISSION OTHER THAN THE LEGISLATION**

30

MR ROBERTSON: And then I hope just one question by way of clarification and then I'll be finished. You've already explained, I think, that it's not uncommon for very ambitious BCRs to be produced by reports proffered by proponents of particular projects. Is that right?---Yes.

Is it common, though, that when those BCRs are being assessed by Treasury or by the unit in Industry, either on a clean sheet of paper basis or by assessing work that's been done by someone else, to have an iterative process where the first draft or the second draft might say 0.8 - - -?---Yeah.

40

- - - the second draft might say 0.9 and the third draft or fourth draft or fifth draft might say 1.0001. Is that a common experience?---Yeah. They can go up, they can go down. There is often judgments to be made about the application, even within the Treasury's guidelines. As new potential benefit streams are considered, questions are asked about whether the things are capable of being quantified on a sufficiently robust basis, and cost-benefit analysis is a canon of economic thinking and analysis which evolves over time. So there is a big machinery, which is overseen by Infrastructure

NSW, for major capital projects across government, part of which is there to test the robustness of benefit-cost ratios. And, as I say, they go, they can go up as well as down under that scrutiny.

But is it usual or unusual, in your experience, for the kinds of government analyses we're talking about to find a less-than-1 figure, but then for there to be further communications back to the proponent, further data is perhaps provided, and a, say, 0.8 turns into a 1.0?---That, that can happen, yep.

10 Is that an unusual state of affairs or is that a relatively usual state of affairs. ---Most, I imagine that most of the, I, well, my impression would be most of the projects that I dealt with when I was at Infrastructure NSW would have a benefit-cost ratio that was reasonably comfortable, comfortably north of 1. In the case of Restart NSW we made that a binary test as to whether the fund could be accessed, but it would be open for government to fund projects which had a benefit-cost ratio of less than 1, provided they didn't use Restart their funding source. And there are projects under construction today which have a BCR of less than 1.

20 THE COMMISSIONER: But not out of Restart funding?---Not out of Restart funding.

MR ROBERTSON: And is it fair to say that if an iterative process of that kind occurs, where it might jump around due to further analyses or due to different inputs, that's not necessarily going to be within your viewpoint, as CEO of Infrastructure NSW, because you've sent that off to Treasury or to the unit in Industry or DPC to come up with a final analysis, is that fair?--- Yes. And for major projects, there is a Gateway Review process, which is  
30 brought in to review business cases, both at strategic business and final business case stage. And, among other things, critically examine the cost-benefit analysis to make sure that it withstands scrutiny and can be relied on as a robust basis for government decision-making.

But as CEO of Infrastructure NSW, you're not involved in the detail of the iterative process.---No.

40 You're looking at the final outcome along the lines of what we saw on the 1 June, 2017 communication to you, is that right?---Yes, so as I indicated, the, part of the rationale for the creation of Infrastructure NSW was to ensure that government decision-making was evidence-based and that that evidence was robustly tested. So for me as CEO of Infrastructure NSW to personally second-guess analysis which had been undertaken by qualified experts would actually have run counter to the purpose of the creation of my organisation, rather, as you've correctly indicated, it was to affirm and then attest to the ministerial decision-makers that appropriate process had been followed.

I'm not so much focused on the second-guessing. I'm more focused on the steps of the iterative process. That's something done by others and you're interested in the result. You're not interested in the steps that might occur leading to the result.---I, I don't necessarily need to - - -

10 Sorry, I withdraw that. I shouldn't say "not interested". That's not part of your function or your focus.---I don't need to go on the journey of contesting assumptions and gathering evidence and stress-testing that evidence. What I'm interested in is making sure that when the dust settles and in the final analysis the product is an appropriately robust one for decision-makers to be able to rely on.

You need to be satisfied that you have sufficient assurances that those robust processes have been undertaken.---Yes, as you say.

Without being there on the ground, as it were, ensuring that that was done, as it were. You have to rely on the professionals in that area, is that right? ---Yes, and that - - -

20 And you mentioned the Gateway guidelines.---Yes.

Would those Gateway guidelines be relevant to a project of this kind where we're talking about \$5.5 million?---No, the threshold for Gateway, for the machinery of Gateway reviews, was \$10 million I believe.

30 Is it right, though, that ultimately those guidelines changed to make clear that they should be based on a risk-based analysis, as distinct from a pure dollar-value analysis?---That's right. So those guidelines have evolved over time, not least in response to recommendations from the audit office, which has said at some time, some points along the way said that the thresholds were too low and that Gateway analysis, which is a pretty cost-intensive process, should be applied only in projects above a higher threshold. But I believe a risk-based approach is the most mature approach and Infrastructure NSW developed under my, when I was running the organisation a methodology for assessing risk of particular projects so that they could be streamed into what we call different tiers, ranging from very high-profile high-risk projects in tier 1, which would be subject to maximum levels of scrutiny through their lifecycle, through to tier 4 which were relatively small value low-risk proposals which would be subjected to  
40 less scrutiny on a risk assess basis.

And so this particular project wouldn't be a risk 1 or a category 1 or category 4 presumably.---This would probably have been a category 4 although this is speculation on my part, but because the Cabinet decided to put it through the Restart process it was subject to a level of scrutiny which it might not have otherwise been.

If it's category 4 it's low-risk. Why would you – and I appreciate you're, as it were, assessing something on the fly, but why would you regard it as a low-risk category 4 rather than a high-risk?---Because it's a \$5.5 million project in the context of a \$25 billion annual infrastructure investment program.

10 So principally quantum. Is that right?---Principally quantum, yes, but compared to some of the complexity of projects associated with the health sector or information communications technology or linear transport infrastructure, a conference centre is not at the high-risk end of the spectrum.

So quantum, that aspect of it, and what I might call effect on the community is another aspect of it. Is that right?---Yes, and engineering complexity would be another one.

20 What about uncertainty as to the data that leads in to an assessment of BCR? ---Well, that goes to the robustness of the methodology which is why Treasury guidelines apply to all projects, regardless of their size.

So that point I've raised you would see more as falling within the, what I might call the standard form of analysis rather than affecting the decision of whether one uses standard analysis or more involved Gateway analysis. ---Correct. So the analysis is specified in the canon of Treasury guidelines. It's the level of external scrutiny that is applied, whether through the Restart processes or through the Gateway processes, which is governed by the risk assess process which we've been talking about.

30 That's the examination, Commissioner.

THE COMMISSIONER: Thank you, Mr Robertson. Ms Wright, did you want to ask Mr Betts any questions?

MS WRIGHT: No, thank you, Commissioner.

THE COMMISSIONER: Shall we release Mr Betts?

MR ROBERTSON: Yes, please, Commissioner.

40 THE COMMISSIONER: Thank you very much for attending, Mr Betts. ---Thank you very much.

You're free to go. We will now adjourn.

**THE WITNESS EXCUSED**

**[4.18pm]**

**AT 4.18PM THE MATTER WAS ADJOURNED ACCORDINGLY**  
**[4.18pm]**