
Operation Skyline

Introduction

1. The public inquiry that commences today is part of an investigation by the NSW Independent Commission Against Corruption (or “the Commission”) into a series of transactions purporting to deal with land, owned by the Awabakal Local Aboriginal Land Council (or the “Land Council”), in the period from 2014 to 2016, and the role of a number of individuals and companies in connection with these transactions or, in one instance, attempted transaction.
2. For present purposes, I will simply describe them as “transactions”, but later I will make clear the attempted transaction.
3. These transactions are, individually, reasonably straightforward in what they sought to do and the nature of the obligations they sought to create. Nevertheless, there is detail and complexity in the various steps taken in furtherance of these transactions, and detail and complexity in the roles of the individuals and companies that were involved in, or behind, them. Before descending into that detail, I will provide a summary of some of the issues that will be investigated. I will then identify some common threads and then provide a general overview of the transactions and the individuals who had central roles in effecting them. Thereafter, I will go to the detail of the inquiry, within the parameters of the scope that has been previously announced by the Commission.

Summary

4. This inquiry will investigate whether land belonging to the Awabakal Local Aboriginal Land Council, which was the registered proprietor of a number of properties in the Lake Macquarie area, was targeted for the promotion of land sale transaction schemes to investors/developers and in particular:
 - (a) whether such schemes were disclosed to the Board of the Land Council;

- (b) whether the Board authorised any of the transactions purported to have been entered into as part of those schemes; and
 - (c) whether any person(s) who promoted, and/or assisted in promoting such schemes, including in particular:
 - (i) Mr Nicholas Petroulias;
 - (ii) one or more Board members of the Land Council; and
 - (iii) the lawyer who purported to act in the interests of the Land Council (and on behalf of other parties to one or more of the transactions),engaged in conduct that was improper or unlawful in any respect and, if so, whether any such conduct constituted corrupt conduct within the meaning of the ICAC Act.
5. Neither Mr Petroulias nor the lawyer, Ms Despina Bakis, who acted in relation to the transactions, were members of the Board of the Land Council and neither were Indigenous people. The Board member who was involved in each transaction, Mr Richard Green, was, at all relevant times, the Deputy Chair of the Board of the Land Council. The other, who was involved in three of them, Ms Debbie Dates, was, at all relevant times, the Chair of the Board of the Land Council.
6. There are a number of questions related to the land transactions that will fall for consideration. They include:
- (a) the question as to the entitlement of the Land Council to monies paid by Sunshine to the Land Council via the trust account of Knightsbridge North Lawyers ("KNL") in respect of the Sunshine transaction. The Land Council has not received any of those monies and there will be evidence of the monies having been disbursed but not for the benefit or at the direction of the Land Council;
 - (b) the question as to who received, directly or indirectly, the benefit of the monies paid into the trust account of KNL from what I have referred to as "the scheme",

in what amount, and whether any individual who benefitted did so, though having no entitlement to any monies paid into the trust account of KNL.

7. The land transactions purported to burden or affect the Land Council's interests in the properties to which the transactions related and to create 'rights' in outsiders (the developers) in respect of such properties. Matters that fall for examination in the investigation are whether the Board of the Land Council was informed of, or knew and appreciated, the effect and significance of the transactions upon Land Council property, what legal advice was or was not provided to it, and how the transactions were entered into if there had been no disclosure to the Board as to material matters concerning them. The purported retainer of the solicitor to act on behalf of the Land Council and the circumstances in which that came about will be referred to a little later.

An overview of the transactions

8. This inquiry centres on three transactions, and one attempted transaction, involving Awabakal Local Aboriginal Land Council land in the 2014–2016 period. These transactions had a number of common features. I will give some examples.
9. One common feature was that each transaction involved Mr Petroulias. In relation to these transactions, Mr Petroulias purported to acquire a right to purchase a number of parcels of land owned by the Land Council; on-sold that right; then, having done so, attempted to on-sell it again without disclosing this fact to the original purchaser or prospective purchaser; and, later, entered into an agreement with the Land Council, through a corporate vehicle that he established and in which he had a 25% shareholding, that conferred an option in favour of that company to acquire a substantial portion of the land holdings of the Land Council. The ultimate purchase price was expressed to be \$30 million.

10. Another common feature is that Mr Petroulias used a number of different aliases during the course of these transactions. These included Nick or Nicholas Piers; Nick or Nicholas Pearson; and Nick or Nicholas Peterson.
11. I will now outline the transactions that are the focus of this inquiry.
12. The first transaction that sought to deal with land owned by the Land Council was an agreement described as “Heads of Agreement”, dated 15 December 2014, between Gows Heat Pty Limited (“Gows Heat”) and the Land Council. This purported agreement involved Gows Heat purchasing five properties from the Land Council. It was signed by Richard Green, then Deputy Chairperson of the Land Council, and by “Jason Latervere”, said to be a director of Gows Heat. At the time of the execution of the agreement, this could not be so, because Jason Latervere was deceased, so the signature was obviously not his. As it turned out, the person who executed the document, apparently pursuant to a power of attorney, was Nick Petroulias. Not only could Mr Latervere not have signed the agreement, but also he could not have been a director: at the time that he was apparently appointed to that role in 2014, he had already passed away.
13. By this agreement, Gows Heat and thus Mr Petroulias, secured a right to purchase five lots of land owned by the Land Council, with an estimated value of around \$12.6 million. Gows Heat, it should be added, was a \$2 company controlled by Mr Petroulias, and Mr Petroulias at that time had recently been made a bankrupt. Neither Gows Heat nor Mr Petroulias paid any money to the Land Council to secure this “right”. As I explain later, Gows Heat and Mr Petroulias secured a significant windfall: he sold this “right”, around 6 months later, and received around \$1.1 million as a result.
14. The second transaction that sought to deal with Land Council land involved three parties: Sunshine Property Investment Group Pty Limited (“Sunshine”) – or a corporate vehicle created by them to pursue this arrangement – Gows Heat and the Land Council. Negotiations commenced in around May 2015 and, by 30 June 2015, an agreement was reached between these parties that involved the “buying-out” of the

purported right created under the Gows Heat Heads of Agreement and the substitution of Sunshine in the place of Gows Heat.

15. To give effect to this transaction, a number of agreements were prepared, but it is presently only necessary to refer to two of them: the “Surrender Agreement and Release”, which is undated, and the Sunshine “Heads of Agreement”, dated 2 October 2015. For the Land Council, each agreement was executed by Mr Green and Ms Dates, who held the positions of deputy chairperson and chairperson of the Land Council respectively.
16. By clause 1(a) of the Surrender Agreement and Release, which is on the screen, Sunshine agreed to pay Gows Heat \$1.6 million to, in effect, buy-out what was described in the Agreement as the right of Gows Heat “to acquire property at valuation from Awabakal Land Council (‘Awabakal’) arising, inter alia, from” the Gows Heat Heads of Agreement dated 15 December 2014.
17. Under the Sunshine Heads of Agreement, Sunshine acquired the right (previously held by Gows Heat) to purchase the five lots owned by the Land Council for a purchase price of \$6.3 million, plus completed houses on land of not less than \$6.3 million in value.
18. Further, by clause 2.5 of that agreement, which is on the screen, the sum of \$1,102,000 was to be paid into the trust account of Knightsbridge North Lawyers by 7 October 2015 and the sum of \$48,000 previously held by Knightsbridge North Lawyers was to be “dispersed towards the payment of Gows pursuant to its surrender and release agreement”.
19. The third transaction that sought to deal with Land Council land was an attempted transaction with Solstice Property Corporation Limited (“Solstice”). The attempts to effect this arrangement commenced in around November 2015, with Mr Green and Ms

Dates executing an agreement purportedly on behalf of the Land Council on 19 November 2015 – that is, at the time there was a concluded agreement with Sunshine. In effect, this was an attempt to replicate the Sunshine transaction with another party. To put it bluntly, Mr Petroulias, with the assistance of Mr Green and others, sought to sell the interest allegedly created by the Gows Heat Heads of Agreement to Solstice without disclosing to Solstice that it had already been sold to Sunshine and without disclosing to Sunshine that he was trying to re-sell what had apparently been sold to it.

20. Four points about this attempted transaction should be made. The first is that the proposed agreement – the Solstice “Heads of Agreement” – followed substantially the form of the agreements used in the Sunshine transactions, albeit that one document, rather than multiple documents, was to record the agreement. The second is that, like the Sunshine transaction, Gows Heat (and thus Mr Petroulias) was to have its interest bought-out by the proposed purchaser: initially this was for the amount of \$400,000, but in a later form of agreement proposed, this amount was increased to \$1,200,000. The third is that, in its original form, the proposed agreement purported to sell land that was not, in fact, owned by the Land Council – it was land owned by the state of NSW. The fourth is that, in its revised form, the arrangement involved more than the five properties that were the subject of the Gows Heat Heads of Agreement and the Sunshine Heads of Agreement: the property holdings of the Land Council sought to be transacted were far more substantial, which was reflected in the proposed purchase price of \$30 million.
21. The negotiations relating to this attempted transaction continued into 2016 but, by May 2016, no agreement had been reached, and the proposed deal was not pursued. I will later seek to outline, in more detail, some of the circumstances that explain why this was so, but in part it was because there was a new potential buyer: Advantage Property Experts Syndications Limited (“Advantage”), a New Zealand entity, or a wholly-owned Australian subsidiary of it.

22. In June and July 2016, the Land Council entered into a number of agreements with Advantage, and a number of other entities. These agreements are detailed, and as part of this general overview, I will mention one: the Call Option Deed, dated 7 June 2016.
23. The Call Option Deed granted Advantage, upon payment of the option fee, an option to purchase the properties identified in Schedule 1B of the Deed (“Listing Schedule”). In all, there were thirty two properties covered by this agreement.
24. The purchase price, upon exercising the option, was \$30 million, made up of a payment of \$16.5 million with house and land packages making up the balance (Schedule 1, item 4). The purchase price was expressed to be subject to the “Collaborative Agreement” entered between the “parties” (Schedule 1, item 4). The initial period to exercise the option was five years (see clause 3.1 and schedule 1, item 6), although this option in favour of Advantage could be extended by Advantage for a period of a further three years. The agreement notes (on the execution page): “The Owner hereby acknowledges receipt of option/fee deposit”. Despite this, as it turns out, no option fee was ever paid to the Land Council and a form of deposit bond – or something similar to it – was apparently used in its place.
25. I have already mentioned some of the corporate entities involved in these transactions. But there are many more. A feature of these corporate entities are their links to Mr Petroulias, or associates of his. Some of them have been created using the names and identities of people who know nothing of their involvement. One, as I have mentioned, passed away before he was appointed a director of a company controlled by Mr Petroulias. Some have been established in New Zealand. At least one has had its shareholdings and directors changed immediately after transacting business with the Land Council, presumably to show that Mr Petroulias was not involved in the transaction in question.
26. I have already mentioned four particular individuals involved in the transactions, each of whom will have some prominence in the investigation into these transactions. I

propose to explain who they are now, so that the roles of each can be more readily understood when I later outline the investigation in more detail.

27. The first is Nicholas Petroulias. His current name is Nicholas Pearson. His birth name was Nikytas Nicholas Petroulias. Mr Petroulias had a central role in each of the four land transactions (or attempted transactions).
28. The second is Richard Green. Mr Green was a member of the Land Council Board, and its deputy chairperson during the period of these transactions. He ceased being a Board member on 13 October 2016, when the Minister appointed an Administrator to the Land Council. Mr Green also is a common denominator to each transaction: he signed, on behalf of the Land Council, each of the agreements that are being investigated by the Commission. The investigation will examine, at least in relation to the first three transactions, whether he had the authority of the Board to execute these agreements and bind the Land Council; whether he disclosed the existence of these transactions to the Board, and if he did, whether any disclosure was full and complete. I understand, at least in relation to some of these transactions, that Mr Green will say that he cannot read well, that the various documents were simply put in front of him to sign (which he did) and that he did not know what he was signing.
29. The third is Debbie Dates, who was a member of the Land Council Board, and its chairperson (aside from the period from 2 November to 28 December 2015, in which she was suspended from this role) during the relevant period. She ceased being the chairperson on 27 July 2016, and a board member on 13 October 2016, when the Minister appointed an Administrator to the Land Council.
30. With the exception of the Gows Heat Heads of Agreement, Ms Dates signed, on behalf of the Land Council, each of the agreements that are being investigated by the Commission. As with Mr Green, the investigation will examine whether she had the authority of the Board to execute these agreements and bind the Land Council; whether she disclosed the existence of these transactions to the Board, and if she did, whether any disclosure was full and complete. I understand that, in part, Ms Dates will

say that, although she signed the documents, she was given no advice about the content of it because it was simply presented to her to sign.

31. The fourth is Despina Bakis. Ms Bakis is a solicitor and practiced as a sole practitioner under the name Knightsbridge North Lawyers (or KNL). The role of Ms Bakis and that firm features throughout each transaction. She undertook, it seems, all of the legal drafting that was required in connection with the four transactions.
32. How that firm came to be apparently retained by the Land Council is a matter that is being investigated by the Commission. At the time that Ms Bakis and KNL were apparently retained by the Land Council in late 2014, Ms Bakis was a sole practitioner, based in Sydney, who had never before acted for a Land Council and who had no relevant experience in undertaking the legal work in connection with a land transaction, or land transactions, of the kind that she was apparently tasked to undertake for the Land Council. Her connection to the Land Council came via Mr Petroulias, who introduced her to Mr Green. It should be pointed out that Mr Petroulias and Ms Bakis were, at that time, in a domestic relationship, and had been so for nearly 20 years (notwithstanding that it might be described as an “on-again off-again” relationship).
33. Having given that general overview, I propose to move to the detail. Before doing so, I want to make some remarks about this opening, and the nature of the investigation and the public hearing.
34. The opening of the investigation is not evidence nor, it should be stressed, is it a statement of the view of the Commission or you, the Commissioner. I want to make it clear that I am speaking on behalf of Counsel Assisting this inquiry, and I am not speaking for you, Commissioner. You will only make your findings based upon all of the evidence, and only after considering the submissions of all parties, including those of Counsel Assisting.

35. This public inquiry is only one part, albeit an important part, of an investigation by the Commission. It is also important to understand that an investigation is not a trial. This public inquiry is not a trial, nor like a trial. The procedures are different to those used in a trial. Some allegations of corruption have been raised, and they were sufficiently serious to require investigation. This public inquiry is part of the process through which those allegations are being investigated.
36. The whole story is a very complex story. To present it in a coherent fashion, we propose to present it by organising it into parts. There is no simple or single timeline that can be drawn through the course of events, so my outline today cannot be strictly chronological, and there will be a degree of backtracking and some repetition.
37. I will now outline the detail of this inquiry and, from time-to-time, I will use some visual aids to display some of the relevant documents on to the screens around the hearing room.

The Awabakal land

38. For present purposes, the Land Council operates across Newcastle and the Lake Macquarie area. It owns, and is the custodian of, a range of assets, including vacant blocks of land, undeveloped parcels of land, commercial properties and urban residential land. Perhaps one of the most well known of its properties is the former Newcastle Post Office.
39. The Gows Heat agreement concerned five properties in Warners Bay that were owned by the Land Council. A description of these properties is shown up on the screen:
 - (a) 14 Vermont Place, Warners Bay.
 - (b) 291 Hillsborough Road, Warners Bay.
 - (c) 295 Hillsborough Road, Warners Bay.
 - (d) 110 Bayview Street, Warners Bay.
 - (e) 3/79 Clarence Road, Warners Bay.

40. These properties were also the subject of the Sunshine transaction.
41. For the proposed Solstice deal, the arrangements were different. In the initial proposal, the land that was sought to be the subject of this transaction was described as Lot 7393, DP 1164604 and Lot 101, DP 1180001. As I mentioned earlier, this was not land owned by the Land Council; it was land owned by the state.
42. In a later version of the proposed arrangement with Solstice, described as a “Call Option Agreement” between Solstice and the Land Council dated 4 April 2016, the land that was sought to be the subject of this transaction was far more extensive, and the proposed purchase price on the exercise of the options similarly more substantial: the nominated purchase price was identified in clause 2.1 of the option agreement as \$30 million. The land involved in this attempted transaction was set out in Schedule 1, item 1, which is shown now on the screen in the yellow and blue highlight.
43. In the Advantage transaction, the land that was sought to be the subject of this transaction, via a Call Option Deed dated 7 June 2016, was even more extensive, despite the purchase price remaining fixed at \$30 million. By that agreement, an option was created in favour of Advantage that, upon exercise, entitled it to purchase the land set out in Schedule 1B, which is now on the screen. It included the land in the Sunshine and Solstice transactions and the other land highlighted in pink.
44. In the period between 2014 and 2016, the Land Council was the registered proprietor of thirty eight (38) properties in the Newcastle and Lake Macquarie area. Through the Advantage transaction, an option was to be granted over 32 of those 38 properties. In addition to the ambitious scope of the Advantage transaction, it is worth noting the following matters regarding the subject land:
 - (a) five of the properties belonged not to the Land Council, but to the state of NSW

- (b) one of the properties – 20 Olney Road, Adamstown – had formerly been the property of the Land Council but had, in fact, been sold in early 2015.
- (c) one of the properties – 127 Maitland Road, Islington – was actually the premises of the Land Council itself.

The ALALC and its functions

- 45. The Awabakal Local Aboriginal Land Council is an incorporated body under Part 5 of the *Aboriginal Land Rights Act 1983* (NSW) (“the ALR Act”). It is one of 120 Local Aboriginal Land Councils in NSW – a network established under the ALR Act as the elected representatives of Aboriginal people living in NSW. The ALR Act provides for the vesting of land in this network of Local Aboriginal Land Councils and the acquisition and management of land and other assets by, or for, those councils.
- 46. The Land Council operates out of premises located in Islington, a suburb of Newcastle. The members of the Land Council “are the adult Aboriginal persons who are listed on the Local Aboriginal Land Council membership roll for that adult area” (see s 53 of the ALR Act). By way of background, as at June 2013, there were estimated to be around 3,880 Indigenous persons within the Land Council’s area, and approximately 498 members of the Land Council – 383 of which were current voting members. The Land Council was first established in 1985, but ceased to operate for a brief period. It was re-established in 1992, and has operated since that time – albeit that it has been operating since 13 October 2016 until today with an administrator appointed under s 222 of the ALR Act by the Minister for Aboriginal Affairs.
- 47. Each Land Council is an autonomous, separate entity, governed by a board that is elected by its members. By virtue of s 51 of the ALR Act, the objects of each Local Aboriginal Land Council – and thus the Awabakal Local Aboriginal Land Council – are to “improve, protect and foster the best interests of all Aboriginal persons within the Council’s area and other persons who are members of the Council”. In furtherance of

these objects, the Land Council has specific functions, which are enumerated in Part 5, Division 1A of the ALR Act. That division sets out the functions of a Local Aboriginal Land Council, which fall broadly into the categories of land acquisition, land use and management, Aboriginal culture and heritage, and financial stewardship.

48. One of the principal functions of the Awabakal Local Aboriginal Land Council, as mandated by the ALR Act, is therefore the acquisition of land, either by land claim or purchase. Under the ALR Act, the Land Council must protect the interests of Aboriginal persons in its area in relation to the management, use, control and disposal of its land. That the interests of Aboriginal persons in the Land Council's area are made paramount is ensured by various protective measures in the ALR Act relating to land dealings by Land Councils. For example, before approving a land dealing, a Local Aboriginal Land Council must consider the impact of the proposed land dealing on the cultural and heritage significance of the land to Aboriginal persons. Further, the NSW Aboriginal Land Council (or NSWALC) may refuse to approve a proposed land dealing if it considers that the dealing is, or is likely to be, contrary to the interests of the members of the Land Council or other Aboriginal persons within the area of that council.
49. In order to fulfil its functions, the Land Council is required, by s 82(1) of the ALR Act, to prepare and implement a "community, land and business plan". The content of such a plan is to cover matters prescribed by s 83 of the ALR Act, and this includes land management and development.
50. Being an incorporated body, s 61 of the ALR Act provides that the Land Council has a Board consisting of at least five, but not more than 10, Board members. The functions of the Board are prescribed by s 62(1) of the ALR Act, and they include (relevantly) "to direct and control the affairs of the Council" and "to review the performance of the Council in the exercise of its functions and the achievement of its objectives".

51. A board of a Local Aboriginal Land Council may (subject to any directions of that Council) exercise any of the functions of the council on behalf of the council, other than those functions that are expressly required to be exercised by resolution of the voting members of the council (for example, relevantly, approval of land dealings) as well as any function delegated to the board under s 52E of the ALR Act.
52. During the period from 2014 to 2016, the Awabakal Local Aboriginal Land Council had up to 10 board members.
53. It is also necessary to refer to the staffing of the Land Council. By s 78A(1) of the ALR Act, the Land Council must employ an individual to exercise the functions of the chief executive officer of the Land Council for the purposes of the ALR Act. By s 78(2) of the Act, the chief executive officer is tasked with functions including the “day to day management of the Council’s affairs” and to “assist in the preparation and implementation of the Council’s community, land and business plan”. I have mentioned, albeit briefly, the requirement for a CEO, and their functions because, as I explain a little later, for critical times during the period of these transactions, there was no permanently appointed CEO of the ALALC, and in consequence the Land Council went into a period of significant organisational decline.

Background to land development in 2014

54. I have set out the statutory provisions in part to explain that land use and management and financial stewardship can legitimately involve the selling or disposal of land vested in the Land Council – albeit that, under Part 1, Division 4 of the ALR Act, there are steps required to be followed to effect the sale or disposition according to law.
55. Consistent with the above, s 82(1) of the ALR Act provides that land councils are required to prepare and implement a “community, land and business plan”. By s 83 of the ALR Act, the community, land and business plan must contain, relevantly, the

objectives and strategy of the Land Council in relation to land including the acquisition, management and development of land.

56. In 2011, the Land Council prepared a plan called a “Community, Land and Business Plan 2011–2015” and, within it, the Land Council identified, as “Long Term Goals” (being goals over the period of the plan), the disposal of Land Council land. The intent to dispose of land owned by it was motivated, at least in part, by the need for income to enable the Land Council to provide funds to further develop and enhance the other services and programs it provided, and to increase its ability to self-sustain and self-fund projects. In the projected budgets for the financial years of 2014, 2015 and 2016, as set out in the “Community, Land and Business Plan 2011-2015”, the disposal of limited amounts of property was central to ensuring that the Land Council operated at a surplus.

The Indigenous Business Union presentation on 31 October 2014

57. From time-to-time, the Land Council as the owner of substantial land reserves – many of which are undeveloped – received approaches from developers interested in developing Land Council land or approaches from prospective purchasers interested in buying it.
58. In late 2014, an approach was made by a company called the Indigenous Business Union Pty Limited (“IBU”). That company was first formed in July 2014 and one of its directors was Cyril Gabey.
59. Mr Gabey knew Mr Green and, through this contact, the topic of Land Council land arose, and there was a discussion about the prospect of a proposal to develop some of it. Mr Green advised Mr Gabey to make an appointment with the Land Council if he wished to present a proposal to the Board, and this is what he did.
60. As part of this process, Mr Gabey enlisted the help of Omar Abdullah. Mr Abdullah, whose background was in building design, was asked by Mr Gabey to assist him with

this – specifically by presenting the proposal to the Board, as well as preparing the “material” that would be provided to it during that presentation. Mr Abdullah agreed to do both and they attended the Land Council on 31 October 2014 to present the proposal to the Board.

61. The promotional material that was prepared makes it clear that it was a proposal by IBU; and only by IBU. I say this because I understand that Mr Petroulias will contend that, in fact, the presentation was a joint presentation – by IBU and the company that Mr Petroulias controlled, Gows Heat. One of the critical matters that will be the subject of this investigation will be whether that contention is true or not. Some light is cast on its correctness by the minutes of the Board from that meeting, and the formal resolution that was passed by it that dealt with the IBU proposal. I will deal with these now.

The minutes and resolutions of the meeting on 31 October 2014

62. Commissioner, the ALR Act requires that minutes must be kept of the proceedings of each meeting of the Board of a Local Aboriginal Land Council and these minutes must include a detailed record of motions put and resolutions passed. The ALR Act Regulations require the chairperson of the board to sign minutes of previous meetings as correct once they have been presented to, and accepted as correct by, the board at the next meeting. The practice of the Land Council’s Board was to have them typed and signed as correct by the chairperson once accepted by the Board. This is what occurred following this meeting, and it is clear that the Board resolved to act further in relation to IBU’s proposal, as can be seen in the minutes, which are now on the screen:

“Propose a contract of sale to IBU and include landscaping, fencing, apprenticeships, traineeships to be contracted to the land council. Sale to be at minimum value rate. If agreed then put forward to members.

Plan A all five properties [sic]

Plan B 4 properties not including Hillsborough road Warners Bay

Moved: Debbie Dates **Seconded:** Mick Walsh **Motion Carried"**

63. These minutes, it will be observed, have been signed by Ms Dates as chairperson of the Board.
64. Consistent with the minutes are the formal resolutions of the Board from that meeting. The resolutions of the Board are now on the screen:

"Propose a contract of sale to IBU and include landscaping, fencing, apprenticeships, traineeships to be contracted to the land council. Sale to be at minimum value rate. If agreed then put forward to members.

Plan A all five properites [sic]

Plan B 4 properties not including Hillsborough road Warners Bay

Moved: Debbie Dates **Seconded:** Mick Walsh **Motion Carried"**

65. Commissioner, there are other documents that I need to mention, which apparently provide a slightly different complexion to these events. The first are the handwritten minutes of the meeting.
66. Behind the formal minutes are handwritten minutes taken during the meeting. On 31 October 2014, the minute-taker was John Hancock – a Land Council Board member. These handwritten minutes are now on the screen.
67. These minutes are at odds with the formal minutes and it seems that words including 'Gows' have been added to it. On the face of them, and when understood in the context of the typed minutes and formal resolution of the Board meeting on that day, a real question arises as to whether the minutes have been falsely altered. Added to this is the following: there will, I expect, be a body of evidence that the name Gows Heat was never mentioned during the meeting, and that the participants – possibly with the exception of Mr Green – had never heard of that entity. This inquiry will investigate the circumstances of, and events surrounding, the meeting on 31 October

2014, including whether the minutes have been falsely altered – and, if so, the purpose for its creation; who might be motivated to falsely alter the minutes, and who actually did alter them. Logically, Commissioner, if that conclusion is reached, there are only three people who could have such motivation: Mr Petroulias, Mr Green and Ms Bakis – these being the individuals who entered, and documented, the Gows Heat Heads of Agreement, and who participated in the negotiation and documentation of the Sunshine and Solstice agreements.

68. There is more. Despite the formal resolution, another resolution has been discovered – stapled into the Board minute book. This apparent resolution is now on the screen:

“Propose sale to Gows and/or on market value minimum per Heads of Agreement including standard terms and conditions

Plan A all five properites [sic]

Plan B 4 properties not including Hillsborough road Warners Bay

Moved: Debbie Dates Seconded: Mick Walsh Motion Carried”

69. The fact that it has been stapled into the minute book is itself somewhat unusual in the sense that the resolutions of the Board were not typically recorded separately from other business recorded by the minutes. Another unusual feature of this resolution is its appearance. The resolution was provided to Sunshine during the course of the transaction involving the Land Council, Gows Heat and that entity.
70. The examination of the meeting on 31 October 2014 will also involve investigating whether this resolution was falsely created; and, if so, the purpose for its creation; who might be motivated to falsely create the resolution, and who actually did create it. Again, Commissioner, if that conclusion is reached, there are only three people who could have such motivation: Mr Petroulias, Mr Green and Ms Bakis – these being the individuals who entered, and documented, the Gows Heat Heads of Agreement, and who participated in the negotiation and documentation of the Sunshine and Solstice agreements.

The involvement of KNL: the retainers dated 28 November 2014 and 27 November 2015

71. It is appropriate now to explain a little more about the role of KNL and Ms Bakis. I had earlier explained how Ms Bakis, and her firm, KNL, came to be retained; namely, Mr Petroulias introduced her to Mr Green and, having done so, Mr Green appears to have taken it upon himself to engage that firm by signing a fee agreement and retainer to that effect, dated 28 November 2014.
72. Even without the events that I have just mentioned, this appointment is more than a little curious. To this point in time, the Land Council and the Board had used the services of a local Newcastle firm, Emery Partners and a solicitor, Ian Sheriff, in particular. Mr Sheriff was a highly experienced commercial and property lawyer, and the Board and Land Council had used his services for this kind of work from at least 2006.
73. Despite this well established relationship, Mr Green by-passed Mr Sheriff and proceeded to directly engage Ms Bakis. As I pointed out earlier, Ms Bakis was Sydney-based with no prior experience in dealing with any Land Council, or Aboriginal land, and who appeared to secure the role simply because she was introduced by Mr Petroulias.
74. The curiosity does not end there. It also appears to be the case that, not only did Mr Green enter into this arrangement without Board authority, but he failed to disclose to the Board that he had done so, at least until January 2016, when he moved a motion to ratify their appointment.
75. This investigation will examine the reasons why Mr Green took these steps and whether he did so for an improper purpose; namely, to facilitate, at least initially, the first three land transactions identified. In connection with a later engagement with that firm, on 27 November 2015, the investigation will examine the reasons why Mr Green entered into this further engagement; what led him to propose a resolution to

the Board, on 11 January 2016, to ratify their appointment, and whether Mr Green took these steps for the same improper purpose.

76. Not only was the appointment of KNL a little curious, but so too were some of the terms of the agreement it had with the Land Council. A striking example of one of the more unusual terms is clause 20 of the agreement, dated 28 November 2014, which is now on the screen. That clause provided:

20. INSTRUCTIONS THROUGH YOUR AGENTS

You have instructed us that we may work with and take instructions from your agents. These include Mr Nicholas Peterson, Richard Green, William Tofilau, Andrew Margi and each of you for each other. Indeed it is contemplated that drafts of documents will be prepared and compiled to assist the work load to [sic] this firm.

77. By this arrangement, Ms Bakis was able to transact business on behalf of the Land Council, taking instructions from those persons nominated as agents. This included her domestic partner, Mr Petroulias, as well as two others – being Mr Tofilau and Mr Margi – who had absolutely no connection whatsoever to the Land Council. Their connection was to Mr Petroulias.

78. The terms of the agreement, dated 27 November 2015, that KNL entered into with the Land Council contained a similar clause. Clause 20 of that agreement provided:

20. INSTRUCTIONS THROUGH YOUR AGENTS

You have instructed us that we may work with and take instructions from your agents. These include Mr Nicholas Peterson, Richard Green, and each of you for each other. Indeed it is contemplated that drafts of documents will be prepared and compiled to assist the work load to [sic] this firm.

79. Commissioner, I understand that Ms Bakis' explanations for these matters are that she was always given to understand from her dealings with Mr Green that he was

authorised to appoint her and KNL and, in relation to clause 20 and the appointment of the four agents in the 2014 retainer, that she included the agents as identified on the say so of Mr Petroulias. I also understand that Ms Bakis will say that she gave advice on the conflicts of interest that arose. This inquiry will investigate the roles of Mr Petroulias, Mr Green and Ms Bakis in the formation of the relationship between KNL and the Land Council; the reasons that motivated the retention of Ms Bakis initially and during 2015 and later in 2016; and the way in which KNL and Ms Bakis carried out her role as the solicitor for the Land Council in the four transactions being investigated.

The Gows Heat Heads of Agreement

80. Commissioner, despite the fact that the Board had resolved to proceed with the IBU proposal, it is clear that nothing in fact developed between the Land Council and the IBU. What did occur, however, is that an agreement, bearing the date 15 December 2014, was entered between the Land Council and Gows Heat – a shelf company controlled by Mr Petroulias.
81. I have already mentioned this agreement, and some of its detail, but the execution of this agreement, and the manner in which it was drafted, were quite unusual.
82. Entry into an agreement of this kind – the value of the property sought to be covered by this agreement was in excess of \$12 million – reasonably might be understood to be a significant matter for the Land Council requiring it to be put to the Board for it to consider, receive advice and decide upon. It is also the case that, pursuant to the ALR Act, entry into this agreement required the approval of, first, the members of the Land Council (by resolution at a members' meeting) and, secondly, the NSW Aboriginal Land Council. In the case of this transaction, these approvals simply were not sought; Mr Green, without Board or Land Council authority, executed this agreement and, having done so, failed to disclose to the Board that he had.
83. Commissioner, my understanding is that Mr Green will say that, although he may have signed this document, he did not read it and did not know what was in it.

84. The manner in which this agreement came to be drafted was also unusual. Having been appointed by the Land Council, Ms Bakis then proceeded to document this agreement. In doing so, she acted for, and took instructions from, both parties to this transaction; that is, from Gows Heat (who was Mr Petroulias, and her domestic partner) and, apparently, from Mr Green.
85. This inquiry will investigate how the Gows Heat Heads of Agreement came about, including how Mr Green came to sign it; how Mr Petroulias came to sign it; what instructions Ms Bakis received; whether it was a bona fide commercial arrangement; whether the creation of this agreement was for an improper purpose (the improper purpose being the creation of an interest in Land Council land, via the Gows Heat Heads of Agreement and thereby permit the on-selling or novation of this agreement to third parties as a means to confer a financial benefit on participants); and, if it was created for an improper purpose, the roles of Mr Petroulias, Mr Green and Ms Bakis in the creation and documentation of that agreement for that improper purpose.

Board dysfunction: the removal of Steven Slee

86. I have earlier set out the requirement under the ALR Act for the Land Council to have a CEO.
87. The CEO at the relevant time was Steven Slee. Mr Slee was first appointed on 12 January 2014. During the period that Mr Slee was the CEO, risk assessments of the Land Council conducted by the NSWALC determined that the Land Council was functioning well from an organisational, financial and governance perspective.
88. By late 2014 and early 2015, however, the Board of the Land Council was showing some signs of dysfunction, and factions appeared to emerge.
89. The circumstances leading to this dysfunction seemed to start around the time that Mr Wright, the Registrar under the ALR Act, was requested by the Commission to

investigate allegations of potential misconduct by members, or former members, of the Board of the Land Council. As a result of that referral, and matters that occurred in late 2014, Mr Wright attended the Land Council in February 2015 to start his investigations. He met with Mr Green and Ms Dates and, at that time, allegations of misconduct against Mr Slee were raised by them with Mr Wright. In consequence of these allegations, Mr Wright's original investigation was deferred, and he investigated the allegations against Mr Slee and some allegations of misconduct against Ms Dates that arose out of the investigation that he undertook or arranged. Mr Slee, in light of the allegations made against him by Mr Green and Ms Dates, was suspended by them from his role as CEO of the Land Council.

90. The dysfunction of the Board became entrenched following the suspension of Mr Slee. The factions were divided between those Board members that favoured his removal – led by Ms Dates and Mr Green – and those Board members who supported him. One consequence of this division was that the Board of the Land Council met infrequently during 2015.
91. An acting CEO, Nicole Steadman, was appointed. Ms Steadman was the wife of a Board member, Lenny Quinlan, who was the son of another Board member, Jaye Quinlan, and the nephew of Ms Dates. Ms Steadman had previously been employed as a receptionist and project officer. She was not trained in the role of a CEO, nor did she have any experience in undertaking the duties of a CEO. An investigator appointed by the Minister to investigate the affairs of the Land Council found that, without directing any criticism of Ms Steadman for this, she was not able to “act effectively in the role of the Awabakal LALC CEO”.
92. The records from the NSW Aboriginal Land Council, and in particular the risk assessments that they undertook in the time period following Mr Slee's suspension, show that organisationally, the Land Council fell into a period of sharp decline. By June 2015 the risk rating given to the Land Council by the NSWALC was so high that the Land Council lost its funding; that is, funding from the NSWALC stopped.

93. On an occasion that the Board did meet, on 6 August 2015, the Registrar attended the meeting and reported on the key findings of his investigation. Relevantly, there were two. The first is that he found no evidence of any wrongdoing by Mr Slee. The second is that he found that there was evidence of misconduct, as that term is defined under the ALR Act, on the part of Ms Dates.
94. The Registrar recommended that Mr Slee be reinstated to his former position. This recommendation was fully supported by Mr Sheriff, the solicitor who undertook work for the Land Council, who also attended the meeting. Mr Sheriff provided the Board with advice about the consequences of not acting on the recommendation of the Registrar. Further, the Registrar advised that he had found evidence of misconduct on the part of Ms Dates and he later suspended Ms Dates from acting as chairperson for the period from 2 November to 28 December 2015.
95. As it happened, Ms Dates and Mr Green did not accept the key findings given by the Registrar nor the advice given by the Registrar and Mr Sheriff in relation to Mr Slee. Mr Green proceeded to move for the immediate termination of Mr Slee – a motion that was carried with support from Ms Dates, Jaye Quinlan and Lenny Quinlan.
96. Mr Slee contested his termination and he was paid out a substantial sum for what occurred, including alleged defamation. The payment of this money was approved and made by Ms Dates on 29 September 2015 without approval of the Board of the Land Council.
97. Commissioner, these matters paint the picture of the Board of the Land Council failing to govern effectively, and instances of Mr Green and Ms Dates acting in a manner that sits uneasily with their roles, functions and duties as Board members, and as deputy chairperson and chairperson of the Board.

The Sunshine agreement(s)

98. Armed with the Gows Heat Heads of Agreement, Mr Petroulias sought out a potential purchaser of the Land Council land so that the interest he had acquired under that agreement could be bought-out. This came about through Mr Petroulias contacting an individual called Sammy Sayed. Mr Sayed and Mr Petroulias had met whilst both were prison inmates at Dawn de Loas Correctional Centre. Once contacted by Mr Petroulias, Mr Sayed then made contact with a person named Keith Rhee. Mr Rhee had a number of contacts in the Chinese business community, and one of them was Tony Zong.
99. Mr Zong was interested in the land, and arrangements were made to view the lots being offered. This occurred in May 2015, possibly around 26 May, and there were discussions about the purchase of the land at this time.
100. Those that attended this meeting were Mr Zong, Matt Fisk (a person experienced in property development employed by Mr Zong's company, Sunshine), Mr Green, Mr Rhee, Mr Sayed and Mr Petroulias.
101. Commissioner, it seems reasonably clear that, in addition to discussing the purchase of the land, a number of matters were discussed between those at this meeting. I say that, in part, because, by 30 June 2015, the parties had entered into an agreement for Sunshine to purchase the properties, instead of Gows Heat, and for Gows Heat to be paid out for relinquishing their rights under the Gows Heat Heads of Agreement.
102. One matter discussed was the position of the Land Council. Commissioner, it seems clear that during this meeting and after it as well, Mr Green represented that he had the authority of the Board, and thus the Land Council, to enter into any agreement with Sunshine. At some point, possibly after this meeting, some of those individuals were also provided with the resolution that purported to record the Board on 31 October 2014 resolving to sell land to Gows Heat. I understand that Mr Petroulias will say that he thought that, at all times, Mr Green was so acting.

103. Another matter discussed was the need to buy-out Gows Heat, and the amount that would be needed to effect this. Mr Petroulias, as I understand it, accepts that he spoke to Mr Zong in these terms and, as I have said, the payment to Gows Heat to buy-out its interest is entirely consistent with what actually occurred.
104. A third matter discussed was payment to the individuals who introduced Mr Zong and Sunshine to Mr Petroulias. Ultimately, payment to Mr Sayed and Mr Rhee for that introduction was effected through an agreement described as a “Project Procurement Deed”, dated 2 October 2015, between Keeju Pty Limited and Sunshine Warners Bay Pty Limited. Pursuant to that agreement Keeju, which was a company controlled by Mr Rhee, was paid \$250,000, and was to be paid a further sum of \$2,150,000 upon acquisition of the Land Council land by Sunshine.
105. Once the “agreement” had been reached between Gows Heat, Sunshine and the Land Council, it required the parties to document the buying out of the Gows Heat interest and the documentation of the agreement between the Land Council and Sunshine. For the Land Council, these documents were signed by Mr Green, or by Mr Green and Ms Dates, or by Ms Bakis. Each agreement was drafted by Ms Bakis. This inquiry will investigate the circumstances surrounding how the Sunshine agreement came to be formed, including how, and in what circumstances, Mr Green and Ms Dates came to sign these agreements; how and in what circumstances, Ms Bakis came to sign one of them; and whether these agreements were disclosed to the Board of the Land Council.
106. In all there are nine (9) agreements documenting, or relating to, this transaction. I have earlier mentioned the two of the more significant ones. I will mention them now and give some more detail to the relevant ones, and the payments that were made pursuant to them:
- (a) The “Offer Schedule & Exclusive Due Diligence Agreement”, dated 30 June 2015. This agreement provided, by clause 5, for the payment of \$50,000, which, although not stated, was to be paid to the vendor and paid into the “vendors

solicitors trust account". On 13 July 2015, pursuant to this agreement, Sunshine paid \$50,000 into the KNL trust account. From this, \$2,000 was released into Mr Green's account on 22 September 2015 – I will return to this payment to him later. In late October 2015, Mr Zong signed the "Heads of Agreement" dated 2 October 2015 between Sunshine and the Land Council, which provided that the remaining \$48,000 received by KNL on behalf of the Land Council was to be released to Gows Heat, pursuant to the Surrender Agreement and Release (also referred to below).

- (b) The "Offer Schedule & Exclusive Due Diligence Agreement", dated 8 July 2015. This was signed by Mr Zong and Ms Bakis.
- (c) The "Offer Schedule & Exclusive Due Diligence Agreement", bearing a date of 21 September 2015, signed by Mr Zong, but not executed by, or on behalf of, the Land Council.
- (d) The "Heads of Agreement" between Sunshine and the Land Council, dated 2 October 2015. I have already mentioned this agreement. By it, the deposit commitment – that is the money that was to be paid by Sunshine – was \$1,102,000, plus the \$48,000 it had already paid.
- (e) The (undated) Surrender Agreement and Release between Sunshine Warners Bay Pty Limited, Gows Heat and the Land Council. This was signed by Mr Zong and, it seems, by Mr Petroulias. By this agreement, Sunshine was to pay Gows Heat, and thus Mr Petroulias, the sum of \$1.6 million to surrender its rights under the Gows Heat Heads of Agreement.
- (f) The Call Option Agreement between Sunshine and the Land Council, dated 12 October 2015. This was signed by Mr Green and Ms Dates, but was not signed by Sunshine.

- (g) The “Project Procurement Deed”, dated 2 October 2015, between Keeju Pty Limited and Sunshine Warners Bay Pty Limited. This was signed by Mr Zong and Mr Rhee and made provision for the payment to Mr Zong and Mr Sayed.
- (h) A “Deed of Rescission” agreement, dated 12 October 2015, between Gows Heat and the Land Council.
- (i) The “Variation Agreement”, dated 23 October 2015, between Sunshine and the Land Council. This was signed by Mr Green and Ms Dates for the Land Council and by Mr Zong for Sunshine. The Variation Agreement granted Sunshine an option to purchase the land in consideration of the payment of an option fee to the Land Council in the amount of \$712,000. Of the \$712,000, \$400,000 was to be released to the Land Council and the balance was to be held in KNL’s trust account. On 26 October 2015, Sunshine paid \$512,000 into KNL’s trust account. On 10 December 2015, a further \$200,000 was paid into KNL’s trust account by Sunshine.

107. I should also mention the “Deed of Acknowledgment and Guarantee”, dated 21 December 2015, between Sunshine Warners Bay Pty Limited and the Land Council. This is signed by Mr Zong and Mr Green. A number of representations and assurances are made in this agreement, which is now on the screen, by Mr Green ostensibly on behalf of the Land Council. Some examples are Recitals ‘A’, ‘C’, ‘E’ and clause 2:

A. On 23 October 2015 the parties entered into an agreement for the option to purchase from the Owner, certain properties, and which involved the payment by the Purchaser a sum of \$1,212,000 to parties involved with, necessary to and upon the reliance upon the contract with the Owner.

C. On about 25 November 2015, the Purchaser became aware of the press announcement that the Minister appointed an investigator into the affairs of the Owner including the suspension of the Chairperson, Ms Debbie Dates who as party to the agreements referred to in recital A (‘the controversy’).

E. The Owner assures the Purchaser that there is no reason arising from the controversy, which would comprise the validity of the arrangements or which would expose the Purchaser to additional risk of financial loss in acting on reliance thereon.

2. The Owner guarantees the Purchaser for any loss or damage suffered by the Purchaser by continuing to proceed with the re-zoning, development process and the project generally. Such loss is not limited to any payments made by the Purchaser to Gows and Keeju, of \$926,667.00 and \$250,000.

108. The significance of this document extends beyond what it sought to guarantee. You will notice the date: 21 December 2015. As I will shortly explain, at the very time that Ms Bakis drafted this agreement, and at the time that Mr Green executed it, Ms Bakis had drafted (and Mr Green had signed) another agreement seeking to effect a sale of Land Council property, and the buying-out by Solstice of the Gows Heat interest under the Gows Heat Heads of Agreement.
109. In the early part of 2016, Sunshine began to want some clarity around progressing the transactions, and securing “dealing certificates”; that is, certificates under s 42K of the ALR Act. A meeting was requested in March 2016, and by way of update, Ms Bakis advised Sunshine that the “Board will meet on all this and get the process going at next meeting in two weeks”.
110. There were a series of emails between Mr Fisk and Ms Bakis about this on 28 April 2016. Formalities omitted, I will make mention of two of them. They are on the screen and are as follows:

Dear Despina,

I am not querying the investigation. I am sure that will be appropriately dealt with in due course.

We are seeking an update on the approvals which will be required from the NSW Aboriginal Land Council to allow a land sale transaction.

I understand this is the Dealing Approval Certificate vested under sec 41(1) and 42k (1) of the Aboriginal Land Rights Act 1983.

As it presently stands, we have no documentary evidence that shows that the Awabakal land council has permission to sell the land.

Regards

Matt.

The response from Ms Bakis was as follows:

Matt,

With respect you are asking the wrong question. Only the local aboriginal land council [sic] can enter into any agreement, land dealing or otherwise. It does not require permission to enter into such. We suggest you obtain proper legal advice before engaging down that legal pathway. We will get instructions and revert to you.

Regards

Despina Bakis

Solicitor.

111. The content of these communications – in particular the response from Ms Bakis, dated 28 April 2016 – is intriguing. Mr Fisk’s enquiries were entirely reasonable, and identified the statutory controls with which the transaction was required to comply. Ms Bakis, it seems, appears to either dispute this, or not know this. Putting that matter to one side, despite what Ms Bakis had said in her email, on 8 April 2016, the Board of the Land Council had resolved not to proceed with the “Sunshine Group Agreements”. Ms Bakis (and Mr Petroulias) knew this because she attended this meeting (as did Mr Petroulias) when the resolution was passed. The other matter to note is that, despite agreeing to “get instructions” for Sunshine about this issue, Ms Bakis had been documenting agreements for, and engaging in negotiation with, Solstice.

112. I should explain, briefly, some of the background to how the Sunshine deal ended. At the meeting of 8 April 2016, there was also discussion about a report that had been prepared by Able Consulting Pty Limited – apparently at the request of Ms Dates – to assess land proposals that had been submitted to the Land Council. This report was signed by Greg Vaughan, and addressed to Ms Dates.
113. Mr Vaughan was director of that company from 20 January to 11 April 2016. Its registered office was at Level 4, 44 Miller Street, North Sydney. This is the same address as the registered office for Gows Heat Pty Limited. Mr Vaughan was appointed as a director of Gows Heat on 29 August 2017 and remains its sole director. He has also been a business associate of Mr Petroulias since around 2005.
114. Seemingly, on the strength of the advice contained within a summary given to the Board by Mr Petroulias, the Board not only resolved to “reject Sunshine”, but to approve the establishment of the Awabakal LALC Trustees Limited as trustee and nominee of the Land Council and the use of Awabakal LALC Trustees Limited to oversee a project of the rezoning of Land Council property and its sale to Solstice “or such other party in substitution to Solstice on comparable terms should that relationship fail”. This inquiry will investigate the background to this meeting, including how the resolutions came to be drafted and passed; the role of Mr Petroulias, Mr Green, Ms Dates and Ms Bakis at, and during, the meeting and the nature and extent of the disclosures made, and advice given, to the other Board members at the meeting before there was a vote on this resolution.

Payment under the Sunshine “Heads of Agreement” and benefits

115. I have already outlined the payments made by Sunshine and the fact that over \$1 million has been disbursed from the KNL trust account to Gows Heat. In fact, as I understand it, Mr Petroulias does not dispute receiving it. This inquiry will investigate what has happened to this money.

116. Mr Green received a payment of \$2,000. This amount was paid to him, via a KNL trust account cheque dated 21 September 2015, on 22 September 2015, and Sunshine authorised the release of this money to him. The request that was made to Sunshine, however, was for this money to be released so that the money could be used to sponsor an Aboriginal sporting team. In fact, the money was not used for that purpose, but was used by Mr Green to buy furniture for his own purposes on, or around, 23 September 2015.
117. In early May 2016, Ms Bakis transferred a 2009 Mercedes Benz to First Peoples Advancement Charity Pty Limited. Mr Green was the sole director of that entity. The notional selling price was recorded as \$36,000, but Mr Green did not pay for the vehicle. Mr Green accepts that he received, and used, the vehicle, but says that he received it for a legitimate business purpose. This inquiry will investigate the circumstances surrounding the transfer of that vehicle to him, and his subsequent use and disposal of it.
118. In addition, Mr Green appears to operate a number of bank accounts in his own name and in the name of various corporate entities. Some of them were opened, and are operated, jointly with Mr Petroulias. Money has come, directly or indirectly, from Gows Heat into 13 of those bank accounts. This inquiry will investigate the circumstances surrounding these payments and whether they are related to the four land transactions or not.
119. In addition to the funds received by Gows Heat from the KNL trust account, on 26 October 2015, \$250,000 was paid by Sunshine directly to Gows Heat. On 28 October 2015, this money was disbursed as follows:
- (a) \$200,000 to an account held by Point Partners Consulting Pty Limited; and
 - (b) \$50,000 to two accounts in the name of Nicholas Peterson.

120. Point Partners Consulting Pty Limited (“Point Partners”) is the former company name of Knightsbridge Tax Pty Ltd – a company apparently controlled by Ms Bakis. Nicholas Peterson is, as I have indicated earlier, one of Mr Petroulias’ names. Following receipt of the money from Gows Heat, Point Partners returned \$70,000 to Gows Heat. This inquiry will investigate these transactions (and others) to determine whether this was an arm’s-length transaction or not; and, if not, whether it was a benefit received by Ms Bakis and/or her company for her participation in the various land transactions.

The introduction of Solstice

121. Notwithstanding that an agreement had been entered with Sunshine, an attempt was made to undertake a further transaction, again based on the existence of the Gows Heat Heads of Agreement. This attempted transaction is recorded in the Solstice Heads of Agreement, dated 19 November 2015, which was signed by Mr Green and Ms Dates and drafted by Ms Bakis.
122. The documents were drafted by Ms Bakis, and it is clear that she used the Sunshine transaction as a template; that is, she used the Gows Heat Heads of Agreement as a means to:
- (a) confirm the existence of an underlying transaction between Gows Heat and the Land Council;
 - (b) confirm that such transaction created an interest in the land owned by the Land Council that permitted its on-selling (in the sense that the Land Council consented to the novation of that agreement to third parties); and,
 - (c) enable Gows Heat to extract payment from Solstice in consideration of it forgoing its interest in the land and novating the agreement with the Land Council to Solstice.

123. Initially, it was intended that the proposed transaction take the same form as the Sunshine transaction, which it largely did. Later, during the course of negotiating the final terms, the form of the proposed agreement with Solstice changed so as to be similar to what was used in the June and July 2016 agreements between Advantage and the Land Council. Despite this change, the underlying purpose of the agreement remained: to enable the Gows Heat interest, allegedly created by the Heads of Agreement, dated 15 December 2014, to be bought out by an unwitting third party – in this case, Solstice.
124. There were two basic differences between the Solstice Heads of Agreement and the Sunshine agreements:
- (a) The first difference related to the land that was subject to the Solstice agreement and the apparent value of the transaction – ultimately, the properties involved and the monies involved were substantially greater. The proposed contract price, payable if an option was exercised, was \$30 million.
 - (b) The second difference related to the payment to be made to Gows Heat, pursuant to the Surrender Agreement and Release (Schedule B to the Solstice Heads of Agreement). In the Solstice transaction, the sum initially nominated was \$400,000, although this changed such that, by the time the revised form of agreements had been circulated (having been prepared by KNL on or before 1 April 2016), the payment to Gows Heat was \$1.2 million.
125. As I mentioned, one of the striking features of this attempted transaction was that, on the one hand, Gows Heat and the Land Council had entered an agreement with Sunshine, and yet, on the other, they were secretly dealing and negotiating, with the assistance of Ms Bakis, with Solstice, with a view to entering a similar arrangement and extracting another payment to Gows Heat.

126. However, unlike the Sunshine transaction, an agreement was never reached; although, the reasons for that lack of consensus suggest that a – possibly *the* – reason for this was because Solstice became aware of the conditional nature of any agreement (that is, of the need to comply with the terms of the ALR Act) and its reluctance to part with any money in that setting without it being secured and refundable in the event that the transaction did not proceed.
127. Possibly because those behind these negotiations sensed or knew of these matters (and thus the futility of proceeding further), the proposed transaction was called off. On the face of it, this was the consequence of a resolution that was passed by the Board on 6 May 2016, which “ended” any negotiation with Solstice.
128. The Board resolution was: “That owing to a failure to come to terms with the Solstice Group entities, that the Solstice proposal be rejected”.
129. This inquiry will investigate whether, in, or around, early to mid-November 2015 and into 2016, a scheme for the sale and development of properties owned by the Land Council based on the Gows Heat Heads of Agreement was utilised in an attempt to effect a transaction with Solstice – despite the apparent agreement with Sunshine – and the role that Mr Green, Ms Dates, Mr Petroulias and M Bakis had in this attempt.

The introduction of Advantage

130. Commissioner, on and after 7 June 2016, a number of agreements were entered into between the Land Council and Advantage. The first mention of that entity in the minutes of the Board was on 2 June 2016. I will read these minutes because they are illuminating:

Despina spoke about resolution they would like for board to pass.

131. The minutes of the Board then record the following resolution:

That Awabakal LALC board agrees to the replacement of Advantage for solstice for the collaboration and development of the Awabakal Lands Council and the Advantage transactions.

132. Before I outline the nature of the Advantage agreements, I will explain the foundation for their involvement because they were laid well before they were first mentioned to the Board on 2 June 2016. I will also explain who was behind Advantage.
133. The keys steps explaining how Advantage came to be involved in a transaction with the Land Council are as follows:
- (a) the resolution passed by the Board at its meeting on 8 April 2016 was to sell to Solstice “or such other party in substitution to SOLSTICE on comparable terms should that relationship fail”. The resolution passed was in a form that was proposed by Ms Bakis before that meeting, and emailed to Ms Steadman and Ms Dates;
 - (b) at that meeting on 8 April 2016, the Board had also resolved to approve the establishment of Awabakal LALC Trustees Limited as trustee and nominee of the Land Council and the use of Awabakal LALC Trustees Limited to oversee a project of the rezoning of Land Council property. Again, the resolution passed was in a form that was proposed by Ms Bakis before that meeting, and emailed to Ms Steadman and Ms Dates;
 - (c) as at 8 April 2016, the sole director and shareholder of Awabakal LALC Trustees Limited was Nicholas Piers – that is, Mr Petroulias, who had incorporated the company in New Zealand on 20 January 2016. On 8 June 2016, Mr Piers – that is, Mr Petroulias – was removed from the register as a shareholder and replaced by Mr Green. On 9 June 2016, Mr Green was registered as the sole director of the company and as having been appointed as a director on 20 January 2016, while Mr Piers is recorded as having ceased to be a director on 1 February 2016;

- (d) Awabakal LALC Trustees Limited was removed from the register on 15 July 2016 and a new company is incorporated with the same name on 20 July 2016. The ultimate holding company is registered as the Land Council, the shareholder consent form for the Land Council having been signed, purportedly on its behalf, by Mr Green. At the time of registration, its sole director was Mr Green;
- (e) Advantage Property Experts Syndications Limited was a company incorporated in New Zealand by Nicholas Piers – that is, by Mr Petroulias. Further, when the Advantage agreements were discussed by the Board, Nicholas Piers – that is, Mr Petroulias – held a 25% shareholding in Advantage, and was also registered as one of its four directors;
- (f) on 8 June 2016 (the day after the Board resolved to execute the Advantage agreements), Nicholas Piers – that is, Mr Petroulias – transferred his 25% shareholding to Knightsbridge North Lawyers Pty Limited (KNL). Ms Bakis was the sole director and shareholder of KNL. On 30 June 2016, KNL's shareholding was transferred to a company called Composite Building Industries Limited, which is registered in Hong Kong;
- (g) on 9 June 2016, one of Advantage's directors, Hussein Faraj, registered a change in the directors of the company; namely, that Mr Piers (that is, Mr Petroulias) ceased to be a director, apparently as at 5 May 2016;
- (h) the company appointed as "Manager" in the Advantage agreements was Able Consulting Pty Limited. As at the date that the agreements were executed, Mr Vaughan had ceased to be a director of Able Consulting Pty Limited, but he had been a director of that company from 20 January to 11 April 2016. He had also, it will be remembered, prepared a "report" to the Board, dated 8 April 2016, assessing the various proposals to buy or develop Land Council land. He has been, and is currently, a business associate of Mr Petroulias. He is also the sole director of Gows Heat.

134. On 7 June 2016, the Board resolved to enter into the agreements with Advantage. Again, like the resolutions that had been passed at the meeting on 2 June 2016, the resolution relating to Advantage had been emailed before the meeting from KNL – either by Mr Petroulias or Ms Bakis or possibly both of them – to Ms Steadman, the acting CEO of the Land Council.
135. There were seven agreements executed in connection with the Advantage transaction. I will identify them and make mention of some of the terms of the agreements:
- (a) The first was described as a “Collaboration Agreement – Awabakal Economic Advancement Strategy” between the Land Council (the owner), Advantage (the purchaser), Awabakal LALC Trustees Limited (the trustee) and Able Consulting Pty Limited (the manager). Essentially, by this agreement, the parties agreed to an unincorporated collaborative venture – the “Awabakal Development Advancement”.
 - (b) The second was described as the “Agreement Addendum regarding Community Housing – Awabakal Economic Advancement Strategy” between the Land Council, Advantage and KNL.
 - (c) The third was the “Confirmation of Variation of Retainer and Engagement” between the Land Council and KNL. The agreement records: that the Land Council “hereby confirms that its retainer and engagement letter dated 27 November 2015 with Knightsbridge North Lawyers ... is varied to include” (inter alia) the Advantage Transaction. By clause 2, the description of the services provided by KNL extends beyond simply documenting or advising on the Advantage Transaction to services that impress as going well beyond KNL’s (or indeed any solicitor’s) capabilities and expertise; namely, “assisting with the assessment of building systems, feasibility studies, analysis, site preparation ... engaging third parties in respect of the same and doing such things necessary or

convenient for the purposes of preparing the community meeting and preparing the background material appropriate for the New South Wales Aboriginal Land Council expert panel assessment.” By clause 4, as security for payment of KNL’s fees and any third parties appointed by KNL, the Land Council provides a further or separate charge in favour of KNL over its assets and authorises KNL to lodge a charge, mortgage, security interest or caveat over those assets. Finally, this agreement, by clause 5, is said to have “retrospective effect”. This document was signed by Ms Dates, Mr Green and Ms Bakis. Consistent with its terms, KNL proceeded to lodge caveats over Land Council property to secure its fees.

- (d) The fourth was the “Call Option Deed” between the Land Council and Advantage, dated 7 June 2016 (albeit that there is a later version of this agreement – which is the fifth). I have already outlined the nature of this agreement.
- (e) The sixth was the “Agreement Addendum – Awabakal Economic Advancement Strategy”, dated 8 July 2016, between the Land Council, Advantage, Awabakal LALC Trustees Limited, Able Consulting and KNL. Pursuant to this agreement, Mirror Developments Pty Limited was appointed to conduct a feasibility report/analysis and KNL was appointed to manage that work. By clause 5 of that agreement, a fee proposal prepared by Forlife Development Pty Limited (“Forlife Development”), dated 13 June 2016, was accepted and Advantage is appointed to manage the work to be conducted by Forlife Development. The Land Council also provides a further charge in favour of Advantage and KNL over its assets and authorises Advantage and KNL to lodge a charge, mortgage, security interest or caveat over those assets to secure payment of legal costs and disbursements arising from this agreement. The agreement was drafted by KNL. It is signed by Ms Dates, Mr Green, Mr Faraj and Ms Bakis on behalf of the owner, trustee, the purchaser and KNL respectively.
- (f) The seventh was a fee proposal for preparing plans and reports by Forlife Development sent to Advantage dated 13 June 2016, which I have mentioned

above. The proposal was for a fee of \$3 million, with \$300,000 payable on acceptance of the fee proposal. This document was signed by Ms Dates, Mr Green and by Ms Bakis: “KNL for Awabakal”.

136. From the above, the following might be noted. First, assuming the “validity” of such an agreement having regard to the statutory controls on “land dealings” prescribed by Part 1, Division 4 of the ALR Act, the grant of an option in favour of Advantage has meant that for the duration of the option period, and any extension that they might seek, the Land Council was precluded from dealing with that land. This could be for anywhere up to eight years. Secondly, the land holdings of the Land Council sought to be the subject of these agreements is substantial and there appears to have been no material, such as valuations, put before the Board nor any detailed analysis undertaken by the Board to properly assess whether a transaction of this kind involving the sums of money of this magnitude was warranted. Thirdly, by the entry into the agreement with Forlife Development, the Land Council became immediately liable to pay it \$300,000, irrespective of whether the overall sale and development proposal with Advantage proceeded. As it happens, the Land Council is now being sued for this money, albeit that Advantage appears to allege that it has the entitlement to this money, and not Forlife Development. It is not immediately obvious, Commissioner, why the Land Council would enter into such an agreement so as to create such an immediate liability – or even consider entering into such an agreement – having regard to the statutory controls on dealing with land as set out in the ALR Act.

Concluding remarks

137. That is all I wish to say about the facts by way of opening of the inquiry. There will be a lot of evidence – both oral and documentary – so naturally what I have said is but a summary.
138. Obviously, the matters to be investigated by this inquiry are serious. Over the course of the inquiry, evidence is almost certain to emerge that will have some bearing upon the

final position, but it seems necessary that I now outline (in addition to those matters I have earlier covered) some of the more serious matters that are to be investigated.

139. In relation to the Gows Heat transaction:

- (a) whether Mr Petroulias and Mr Green devised a scheme for the sale and/or development of properties owned by the Land Council via the use of a false agreement – namely, the Gows Heat “Heads of Agreement” dated 15 December 2014 – which was to be used as a means to wrongfully confer a financial benefit on each of them;
- (b) whether, and if so the extent to which Mr Petroulias, Mr Green and Ms Bakis participated in, and/or assisted with, the implementation and execution of that scheme;
- (c) whether Mr Petroulias, Mr Green and Ms Bakis received benefits from their participation in this scheme.

140. In relation to the Sunshine transaction:

- (a) whether Mr Petroulias and Mr Green devised and/or utilised a scheme for the sale and/or development of properties owned by the Land Council to Sunshine via the use of a false agreement – namely, the Gows Heat Heads of Agreement dated 15 December 2014 – which was to be used as a means to wrongfully confer a financial benefit on each of them;
- (b) whether, and if so the extent to which, Mr Petroulias, Mr Green, Ms Bakis and Ms Dates participated in, and/or assisted with, the implementation and execution of that scheme;
- (c) whether Mr Petroulias, Mr Green and Ms Bakis received benefits from their participation in this scheme.

141. In relation to the Solstice transaction:

- (a) whether Mr Petroulias and Mr Green devised and/or utilised a scheme for the sale and/or development of properties owned by the Land Council to Solstice via the use of a false agreement – namely, the Gows Heat Heads of Agreement dated 15 December 2014 – which was to be used as a means to wrongfully confer a financial benefit on each of them;
- (b) whether, and if so the extent to which Mr Petroulias, Mr Green, Ms Bakis and Ms Dates participated in, and assisted with, the implementation and execution of that scheme.

142. In relation to the Advantage transaction:

- (a) whether Mr Petroulias, Mr Green, Ms Bakis and Ms Dates devised and/or utilised a scheme for the creation of an interest in relation to properties owned by the Land Council in favour of Advantage;
- (b) whether, and if so the extent to which, Mr Petroulias, Mr Green, Ms Bakis and Ms Dates participated in, and assisted with, the implementation and execution of that scheme;
- (c) whether Mr Petroulias, Mr Green, Ms Bakis and Ms Dates devised and/or utilised a scheme for the creation of a contractual liability in the Land Council in the amount of \$300,000 in favour of Forlife Development;
- (d) whether, and if so the extent to which, Mr Petroulias, Mr Green, Ms Bakis and Ms Dates participated in, and assisted with, the implementation and execution of that scheme.