

GREERPUB00306
13/05/2016

GREER
pp 00306-00344

PUBLIC
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INDEPENDENT COMMISSION AGAINST CORRUPTION

THE HONOURABLE MEGAN LATHAM

PUBLIC HEARING

OPERATION GREER

Reference: Operation E14/0362

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY

ON FRIDAY 13 MAY 2016

AT 10.05AM

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

THE COMMISSIONER: Yes.

MR HENRY: Commissioner, the next witness is Mr Wing.

THE COMMISSIONER: Yes.

MR HENRY: I indicated late yesterday we would interpose if that's suitable.

10 THE COMMISSIONER: Yes.

MR HENRY: Although we haven't finished with Mr Donovan. So I've asked – and Mr Fitzpatrick will call Mr Wing and - - -

THE COMMISSIONER: Yes.

MR HENRY: - - - and question him. So I'll hand over to him now.

20 THE COMMISSIONER: Yes. Thank you.

MR FITZPATRICK: Thank you, Commissioner.

THE COMMISSIONER: Yes. Is Mr Wing here? Mr Unsworth you are seeking to appear for Mr Wing, that leave is granted.

MR UNSWORTH: Yes. Yes, thank you.

30 THE COMMISSIONER: Has Mr Wing been advised of the effect of section 38 order?

MR UNSWORTH: Yes, he has.

THE COMMISSIONER: And he wants to take the benefit of that order?

MR UNSWORTH: Yes, Commissioner.

40 THE COMMISSIONER: Mr Wing, could I just explain that the order does not protect you from the use of your answers against you if it should be found that you've given false or misleading evidence. Do you understand that?

THE WITNESS: I do, Commissioner.

THE COMMISSIONER: 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 this witness during the course of the witness's evidence at this public inquiry are to be regarded as having been given or produced on objection and there is no need for the

witness to make objection in respect of any particular answer given or document or thing produced

10 **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 THIS WITNESS
DURING THE COURSE OF THE WITNESS'S EVIDENCE AT THIS
PUBLIC INQUIRY ARE TO BE REGARDED AS HAVING BEEN
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OF ANY PARTICULAR ANSWER GIVEN OR DOCUMENT OR
THING PRODUCED**

THE COMMISSIONER: Do you wish to be sworn or affirmed, Mr Wing.

20 THE WITNESS: Sworn, Commissioner.

THE COMMISSIONER: Can we have the witness sworn, please?

THE COMMISSIONER: Thank you. Yes, Mr Fitzpatrick.

MR FITZPATRICK: Thank you, Commissioner. Mr Wing, when did you first meet Mr Mark Johnson?---Some time in perhaps 2006 or 2005 perhaps.

10 And what was the context of that?---Mr Johnson was a consultant at the law firm Gaden, where I was also a consultant.

And that was in Brisbane?---That was in Brisbane, sorry, yes.

And what – how much did you have to do with Mr Johnson when you were each at Gadens?---I didn't initially have a huge amount to do with Mr Johnson when he was first there, but the firm then decided to establish a programme for Indigenous law students and Mr Johnson was helping with that and I was involved in the establishment of that programme.

20 And you were a consultant engaged by Gadens. Is that right?---That's correct.

And that, that commenced in about 2001?---That's correct.

And at some point you were engaged to be the Chief Executive Officer of Gadens in Brisbane?---At a later point in time I was asked to have the title of Chief Operating Officer to align the management structure with our Sydney and Melbourne offices.

30 And so was it – how much time did you spend in the Gadens office in the period before your COO appointment and after?---My initial engaged called for a minimum of 20 hours a week and that was in about 2001, that was engagement. And the work varied, you know some weeks would be considerably more, some weeks might be actually less. And it steadily increased over, over a period of time. And so around the time that I took the title COO or was asked to have that rather than consultant it was probably, you know, four days a week.

40 And so you mentioned that Mr Johnson became involved in an Indigenous law student's program, is that right?---That's established, yes.

And so was he a participant in that program or involved in its organisation and running?---Perhaps neither. He's more involved in, in assisting us to understand the challenges facing Indigenous students and how we might establish a program that, that would be effective.

And so did you have some oversight responsibility for that program?---In a, in a general sense, yes. But it was managed by the HR Manager for Gadens.

So how much – so Mr Johnson didn't work for you in your role at Gadens. is that right?---No, he did not.

So your contact with him was through your respective participations in the establishment of the Indigenous students program?---Yes, which was sponsored by one of the partners at Gadens. He was the person really responsible for establishing the program.

10 And Mr Johnson left Gadens in about 2007, do you recall that?---That would seem to be about right, yes.

And did you know where he – why he leaving Gadens to do?---All I knew at that stage was that he was leaving Gadens to move to Sydney to join an Aboriginal Land Council.

And that was the Gandangara Local Aboriginal Land Council?---Yes.

20 And if I refer to that as GLALC?---That's fine.

Yes. So after he left Gadens what brought you back into contact with Mr Johnson?---I was actually down in Sydney undertaking some lectures from Macquarie University and as part of that I had a couple of spare days and so I decided to go out and visit Mr Johnson and find out what he was doing, find out about the Aboriginal Land Council.

30 And so you met him on a, more of a social call?---Yes. I went out to visit him and find out what he was doing and find out about, as I say, about Aboriginal Land Council.

And what he tell you, what did you discuss?---Well he showed me you know what, their office and just generally the framework of what an Aboriginal Land Council was set up to do. It's mission if you like if I can describe it in that way. And then I remember we were talking about various land holdings that were either, at that time I wasn't aware of this but they were under claim or were actually owned by Gandangara and there was a map on the wall with, with yellow Post-it notes and, and numbers written on them.

40 And so the map depicted Gandangara as either claimed land or areas that were under claimed?---Yes, that's correct. As I understand, yes.

Okay. And was that, was that, was the map and these land claims something that you discussed with Mr Johnson in that meeting?---Yes, yes.

What, what was her reason for explaining that particular aspect of Gandangara's interests?---Look, I think it was in the context of just describing what the role that he had taken on and what the challenges were

and what the opportunities were. I certainly remember it being, you know in that broad context about, you know, this, as I say this map with these yellow Post-it notes, I recall that.

And this meeting led you or your company to be engaged as a consultant to GLALC, is that right?---Yes, Mr Johnson asked me to submit a proposal to, to assist GLALC.

10 And sorry, your company's called Dixon Capital?---That's correct.

And Dixon Capital is the company that is engaged by Gadens and the work for Gadens was - - -?---Yes.

- - - through Dixon Capital?---That's correct.

What experience did you have dealing with Local Aboriginal Land Councils in 2007?---I didn't have any experience at that point in time.

20 What, what relevant experience did you have that caused Mr Johnson to ask you to submit a proposal?---My relevant experience is a long history in property development, in construction and property finance and in broadly, I suppose you'd describe property strategy, portfolio management, et cetera.

Did you, on your meeting with Mr Johnson, did you meet anyone else from the organisation?---I don't recall meeting anybody else, but I couldn't be certain about that at this point in time.

30 Do you recall meeting anyone from the board of GLALC?---At that initial meeting?

Yes.---No.

40 At any time before you were engaged as a consultant by Mr Johnson for GLALC?---I remember attending a Board meeting, where the Board actually asked questions about the proposal that was submitted, about my relevant experience, about the fees that were being charged, about why I was interested in acting for or assisting GLALC. So I remember being asked to attend a Board meeting at some later point, after submitting the proposal.

Thank you. We might have a look at the proposal with the witness, Commissioner. Volume 30, please.

THE COMMISSIONER: Just while that's coming, Mr Wing, I take it that at the time that you submitted the proposal you were still resident in Brisbane?---That's correct.

MR FITZPATRICK: Mr Wing, if you could turn to page 30 of that volume, please? The numbers are in the bottom right-hand corner. Is this document the proposal that you're referring to?---Yes, that appears to be the proposal. Yes, that's correct.

It's dated the 15th of May, 2007.---That's correct.

And it's marked with a draft stamp at the top. Did you apply the draft stamp or - - - ?---That appears to be, yes.

10

So that's your draft stamp, in the sense that you're proposing terms and you've marked it as a draft because it's subject to negotiation or discussion? ---And discussion. That's correct.

Yeah. You refer in the first paragraph to recent meetings and discussions. Were there multiple meetings before you put your proposal to Mr Johnson? Or was it - - - ?---I can't recall. Certainly there was an initial meeting and I may have attended another meeting at GLALC's offices, but certainly there would have been telephone discussions.

20

Thank you. The structure of your letter is you provide some background on page number 30 about your own experience and skills. On 31, you explain your understanding of GLALC's position and what you understand the role to be that you're applying for. Over on 34, there's a statement of the financial terms of the arrangement. So there's a retainer agreement and a success fee component.---That's correct.

30

And then on 35, under the heading "mandate and commencement", you state, "As you're aware, I have commenced work pursuant to the arrangements outlined above. Following our recent meetings and discussions, I suggest that the retainer arrangement be for a 12-month period. At that time, we can review the structure and determine what changes." So, what work had you already started doing even before you had engagement terms set?---I think the work would have been to perhaps peruse documents that had been supplied regarding the land subject to claim. That is my recollection. I think that was the starting point, was to try and understand where that land was, what the status of it might have been, et cetera.

40

And if you go to the next page, 36, there's a handwritten note signed by Mr Johnson. Do you see that?---Yes, I do.

Am I right in interpreting that this is Mr Johnson's acceptance of the terms, with his note about his understanding of how the relationship will be finalised?---Yeah, that's what it appears to be, yes.

His note starts, "It must be noted that a final agreement with similar, if not identical, terms shall be entered into between a wholly-owned subsidiary of

GLALC and Dixon Capital.” Did Mr Johnson discuss with you why the plan was for Dixon Capital to be engaged formally by a subsidiary company?---At this point in time, probably not in great detail. But I think, in concept, I think Mr Johnson, if I recall, had a concept around establishing a special-purpose vehicle to undertake any property, if I can call them, development activities.

10 And was the use of subsidiary companies a matter that you had discussed with Mr Johnson in your early meetings?---I don’t recall that being discussed at the earlier meetings, no.

The subsidiary company point follows on in the third paragraph which reads, “The document shows the intent of both GLALC through a wholly owned subsidiary and Dixon Capital be legally bound under similar conditions to those contained in this document.” And then there’s a timeline for when the agreement will be – well suggestions as to when that formal agreement can be executed between Dixon Capital and the subsidiary. Do you see that?---Yes, I do.

20 Do you recall if that ever happened?---I recall at some later point in time there was a proposal in broadly similar terms entered into with, with a subsidiary company. But at this point in time around this period, I don’t believe so.

Okay. In the same volume if you could turn please to page 68?---Yes, I have that.

30 This is an email from Mr Johnson. Is that, is that your email address in the To line?---Yes, that’s correct.

Thank you. And the subject is, Agreement in Principal” now can you assist, is this an email by which Mr Johnson sent you back the agreement that we’ve just been looking at with his annotation?---It would appear so, yes.

It’s headed, the subject of it is, Agreement in Principal” - - -?---Yes.

- - - which appears to be reflect the - - -?---Reflect the handwritten comments, yes, it does.

40 The fourth bullet point in the email reads, “How are we looking for the SCC Mayor visit”? Do you remember what that was about?---Yes, one of the first actions if you can call it that was proposed was to seek a meeting with the Sutherland Shire Council, which is the SCC abbreviation and to seek a meeting with the then Mayor to try to create a dialogue between Gandangara, GLALC and Sutherland Shire Council because a lot of the, either the land owned or land subject to claim was in the Sutherland Shire Council LGA.

Had GLALC had previous dealings with Sutherland Shire Council? Was there a relationship already?---My understanding at that time was that there had been previous interactions. I don't know quite the extent of those, but I think there had been an attempt perhaps to document those in some form of for want of a better description, a partnership type arrangement, some collaborative agreement if I could perhaps better describe it. But I wasn't privy to those at the time nor was I probably aware of the full history of that.

10 Were you told whether or not there was a good relationship between the Council and GLALC at that point?---No, I think quite the opposite.

Were you brought in to be a new face of GLALC in dealings with the Council?---In a sense that's probably right. Certainly my advice to, to any client who was proposing to undertake activities within an LGA is to attempt to you know at least create a dialogue so that there's an opportunity for the LGA to put their position and both parties to, to have you know, open discussion around proposals.

20 THE COMMISSIONER: So this email suggests that you were the one organising the meeting with the Mayor or the, or the Council. Is that right? ---That's what it appears to be Commissioner, yes.

Well, I'm just noticing that the date is 5 July, 2007.---Yes.

So was it around that time that you were undertaking that activity?---As best I can recall, looking at this email, Commissioner, that would appear to be right, yes.

30 But you weren't in Sydney at that point in time. You were receiving these emails in Brisbane, were you?---That's correct.

Right.

40 MR FITZPATRICK: Thank you, Mr Wing, if you could move forward in that volume, please, to page 169. And this might be what you were referring to earlier, a proposal for a retainer agreement between your company, Dixon Capital, and a subsidiary. The subject line is "Dixon Capital appointment and invoices" and it's dated in September of 2007. You make an apology in the second line, I'm sorry, in the second paragraph, and then follow with attaching the May 15, 2007 agreement that we looked at, together with the revised letter addressed to Gandangara Development Services.---That appears to be correct, yes.

And the proposed terms to Gandangara Development Service, I'll call it GDS, is at 177.---I have that.

Yes?---Yes, thank you.

And, sorry, back to the email at 169, you attached also invoices for the first two months, indicating that you were only going to charge from the beginning of the financial year, in July.---Yes, that's correct.

Right. And I think those invoices we'll come to. But do you recall if the Dixon Capital-GDS retainer terms ever became effective?---In the sense of an executed agreement, do you mean?

10 Yes. Or did you proceed under those terms rather than the 15 May terms?
---I can't recall whether that agreement was ever executed, but I would probably tend to believe not.

I think we can confirm that, perhaps. If we go, sorry, towards the front of the volume, at page 76, and recalling that that email that we just looked at was dated 18 September.---Yes.

Page 76, we have a tax invoice from Dixon Capital with that same date.
---Yes.

20 The September. That page and the following page, there are the July '07 and August '07 periods. Do you see that in the (not transcribable)?---Yes, I do.

And then we have, beginning on page 78, invoices which post-date that.
---Yes.

30 The sending of the GDS terms. And there's a number of them. They go for the next 20-odd pages. But the point that I just wanted to confirm with you is these continue to be addressed to GLALC, not to GDS.---Yes, that's correct.

And they continue to refer to the 15 May engagement terms.---Yes.

Rather than the - - - ---Yes. I believe that that GDS agreement was never actually formalised or executed.

40 You obviously went to the trouble of preparing it and sending it, and do you recall why it was never finalised?---No, I don't recall. There may never have been a reason provided.

Thank you. If you could turn now, please, to page 51 of the volume. There are a couple more engagement term documents. The one at the beginning of 51, we're a couple of years down the track now.---Yes.

This is June '09.---Yes.

And I believe it's right to say that the terms in this document are essentially confirming the previous document with the change that the, sorry, the

retainer payments won't be any more deductible from the success component?---That's correct, yes.

And it's also to reflect that the initial retainer terms had a proposed term of 12 months, and we're now somewhat down the track?---Correct.

The following day and this is over on page 53, there was a separate retainer?---Yes.

10 And this was for the Menai project, is that right?---Yes, that's correct.

And this, sorry, and that the one that we just looked at and this one now at page 53, they're both addressed to GLALC?---That's correct.

So there's no intermediary subsidiary company involved with - - - ?---Not, not at that point in time as far as my arrangements were concerned.

Okay. And just I think this is now the last one on page 54. We have an August 2010 agreement?---Yes, I see that.
20

And now we are dealing with GMS, Gandangara Management Services?---That's correct.

Did you have discussions with Mr Johnson about why the contracting party changed now in 2010?---Yes. This was when or around this time the Gandangara Management Services was introduced into the corporate structure if I can put it in those terms.

30 And your firm actually had some involvement with that, did it not?---Yes, it did.

And if I can take you to the second page of the letter. This is under the heading of Background and you're explaining essentially what has been achieved by you and GLALC and the second paragraph on page 55 reads, refers to your involvement across a broad range of activities, not just the property development focus that you had initially discussed?---That's correct.

40 And in the second to last line of that you talk about structuring and implementing a new corporate structure. What was the, what was the new corporate structure that you assisted GLALC to establish?---It was a series of if you might describe it as special purpose or purpose of specific companies, all ultimately owned by GLALC.

If the witness could be shown volume 1, please?---Mr Wing, it's page 258 of this document that I'd like to show you. This isn't a document that you've necessarily seen before, this is a report from the administrator of GLALC in

2014. The part of the page that I'd like to ask you about is what's referred to as the original structure and there's the organisational diagram?---Yes.

Is, is that what you're referring to when you talk about the establishment of the special purpose vehicles?---Yes. But perhaps not all of those at that point in time.

At the earlier time?---But, yes, that's correct.

10 And the structure at that time, there's the balloon at the top which refers to the members?---Yes.

And that's the entire membership of the GLALC?---Yes.

But then the Council being the entity and then GDS which is that entity that we saw earlier I referred to?---Yes.

20 Then owned by GLALC and then GMS, again an entity that we've seen referred to being a subsidiary of GDS, and then the list of special purpose vehicles below?---Yes, that's correct.

You were involved in I think, your language was, structuring and implementing that, what does that mean? You assisted with coming up with the idea or - - ?---No, it certainly, it was, it a concept proposed by Mr Johnson. It was discussed, my role was in a sense - - -

30 When you say proposed by Mr Johnson, proposed to whom?---To the Board I presume. But certainly there was a diagram produced by Mr Johnson about, that looked in similar terms to that structure. Perhaps with less entities. And my role in that particular arrangement what I was referring to was really in a sense project managing the provision of, of advice around that structure. So coordinating provision advice and the, and the establishment of those entities.

THE COMMISSIONER: Sorry Mr Wing, when you say advice around that structure, I'm just not quite sure what you mean by that. My understanding is that you had a, a Commerce Law Degree and that you did a post graduate qualification in Tax. Is that right?---That's correct, yes, Commissioner.

40 So, so when you say you were giving advice around that structure was that in relation to the legal and taxation requirements that might apply or was it something else?---Sorry, Commissioner, I wasn't referring to advice that I gave, it was coordinating the provision of advice by Baker McKenzie and in turn I think their recommendations were to seek advice from one, I think in the end perhaps two senior counsel around the establishment of that structure.

Right, so your role was in terms of suggesting what other advice might be appropriate?---Yes.

Yes. Right?---Yes, Commissioner, yes, I wasn't clear.

MR FITZPATRICK: So you said that, I think you mentioned earlier that Mr Johnson's proposal to affect this restructure of the group. Is that right?
---All I can recall is there was a diagram produced by Mr Johnson which indicated that the structure that we're sort of been referring to in broad
10 terms.

Did you know whose idea it was?---I assumed it was Mr Johnson's.

Okay. Do you know what the, what the purpose of, of GLALC structuring its affairs in this way through these companies was?---I think there are several purposes. Certainly we discussed the, one of the purposes being to , as, as, you know, many organisations that many of my other clients do, put more risky if you like activities in special purpose vehicles. Property development which we were clearly proposing to do. So that would have
20 been one of the, the purposes and I think some of the entities would have been set up specifically for particular projects. There were others, I'm looking through the list of names, there were others certainly around, I know there was one to do with management of housing. And I think there was another one to do with employment services, which I think Gandangara conducted. So I think it was to put those activities or largely to concentrate those activities if you like within various entities. And I think the, the notion of Gandangara Development Services being at the top of the chain if you like, below the Land Council was, hard to describe I think actually, but
30 it was in part as I understood it a risk management position in relation to government changing the legislation that related to the Land Council, wiping them out in effect is my recollection.

Sorry, I missed - - -?---Sorry, it was set up to, to hopefully assist in the event that the government changed its mind and decided to do away with Land Councils.

THE COMMISSIONER: You mean it was designed to quarantine whatever assets arose out of the property development?---Not just those assets, Commissioner, but perhaps the employment services or other services.
40

Well yes but just in relation to the property development I think that was - - -?---Yes.

- - - I think you said GMS Limited?---GMS was a, was a company that engaged various consultants and then I think there were intended to be specific entities to undertake development activities.

MR FITZPATRICK: Sorry, from a, from a risk management perspective can you help me with this, why are there, why is there two entities essentially sequentially in chain you have GDS and below it GMS. Is there, do you understand the reason for there to be those two levels when GDS essentially has just a holding company position?---I recall that there were discussions around, as I say if the Land Council was, was removed that the members could become members of the GDS and therefore the, the structure in effect had, had the same effect that the members had an entity at the top and then the activities were undertaken by or through specific subsidiary companies.

When you say there were discussions around that, discussions that you were a participant in or that you heard speak of or - - - ? ---I think it was discussions that I had heard. I had certainly been in meetings where that had been put forward as some of the rationale.

Who were those meetings with?---Mr Johnson and perhaps other members of the Board. I can't recall precisely, but there were a number of meetings and I would have attended meetings with various people.

What was the source of the concern about changes in the position of Land Councils?---I don't recall that there was a particular identifiable source. I think it was a general concern that certainly seemed to be held by a number of, at that point in time at least, Mr Johnson and a number of the Board members. Because I do remember that general concept being discussed, not specifically around the corporate structure but just generally about changes to the legislation.

Okay. Thank you. If you could please return volume 1 and volume 30 for the moment. Oh, actually, perhaps if you could hold onto volume 30. In addition to doing things for GLALC, you were also involved in dealings with other Aboriginal Land Councils after you were introduced to this world by Mr Johnson. Would you agree with that?---Yes.

And one of those was the Deerubbin Local Aboriginal Land Council?---Yes, that's correct.

Which, in fact, I'll refer to it as DLALC. Is that - - - ?---Yes.

If the witness could be shown volume 22, please. Mr Wing, page 81 of the volume. This is an email from 8 October, 2009, from Mr Johnson to yourself. And the subject of it is to be Hazelbrook. Can you tell us what Hazelbrook was?---It was a series of lots of land, individual allotments of land, owned by Deerubbin Local Aboriginal Land Council.

And the email suggests that they're approved for sale. Why was Mr Johnson, firstly, aware of this state affairs? Or how?---Well, as I understood it, Mr Johnson had been in discussions with Deerubbin and had been, I

think, talking to Deerubbin about what Gandangara was trying to do with its land holdings, and was obviously suggesting Deerubbin, I assume, suggesting Deerubbin do likewise.

And what was your role to be in that project?---In this particular project?

10 Yes.---I was engaged by Mr Johnson's company, Waawidji. And Waawidji, in turn, was engaged by Deerubbin. And it was to undertake the management of the sale of these lots, which included the requirement to do works to some of those lots. So not all of the lots were immediately saleable.

So when you say you were engaged by Waawidji so this was, this was not within the terms of the retainer agreements with GLALC or its entities that we looked at before?---The Hazelbrook project, no, was not.

Did you have a contract with Waawidji in the sense of a written agreement?--As I recall, well actually, no, sorry, I can't recall whether I did or didn't.

20 Well do you remember – how did the topic come up of your company assisting Waawidji in respect of the Hazelbrook, do you remember?---I think Mr Johnson, as they explained to me his discussions with Mr Cavanagh who is I think the CEO of Deerubbin that this land Deerubbin had indicated that they wanted to raise some, some funds through the sale of this land. And that Mr Johnson was, was keen to, to help Deerubbin achieve that goal. And that he had a vision, if I can describe it as that or a concept that, that Gandangara might be able to help other Aboriginal Land Councils. But in this particular instance there was an arrangement where as I understood it, Deerubbin engaged Waawidji and Mr Johnson, I remember
30 having discussions with Mr Johnson about whether I felt comfortable being retained by Deerubbin and I said I wasn't comfortable with that. That I would rather be a subcontractor to Waawidji, because I didn't know anybody at Deerubbin, I had no prior dealings with them.

40 So what, you mentioned assistance from Gandangara to Deerubbin, do you know what form any assistance took from GLALC?---At around this point in time I think it was in particular focused on helping Deerubbin lodge land claims, so helping them with the GIS mapping to identify potential land that could be a subject to claim. That had certainly been a big focus around this point in time.

And do you, do you understand why, you described Waawidji as Mr Johnson's company. By that you mean it was his private company not an entity under the Gandangara umbrella?---Yes, I understood that at that time, yes.

And you understood at the time?---Yes.

Do you understand why Mr Johnson's private company was going to be assisting DLALC with its property ventures?---My recollection is that it was explained that, that there was this work to be done and that, that there was no appropriate entity within the Gandangara structure to, to be engaged and that that matter had been discussed and approved by the Board.

Sorry, by which Board?---By the Gandangara Board.

10 Okay. So you understood that the Gandangara Board agreed to Mr Johnson and his private company being engaged by Deerubbin?---Yeah, that's why I understood at the time, yes.

Sorry, what was that understanding based on?---It certainly would've a conversation with Mr Johnson whether, whether, whether I was present at a Board meeting at which it was discussed I couldn't recall but it certainly would've been a conversation with Mr Johnson.

20 And you don't have a recollection of hearing that from anyone on behalf of the Board?---No, I don't recall, I don't recall whether I did to I didn't.

Okay. The documents that follow in the volume on page 82 there's an email a few weeks later on 6 November where you're asking for some dot points for a letter to DLALC?---Yes.

And page 83 is an email in the same week from, sorry, within a week from Mr Johnson with an attachment which follows on page 84?---Yes.

And that appears to be that input that you sought?---Yes.

30 Following on 85 an email on 6 December with a draft letter that you're providing to Mr Johnson?---Yes.

And it's, it follows page 86 and it's to be on Waawidji letterhead addressed to Mr Cavanagh who you mentioned?---That's correct.

And on page 88 we have the fees component of this arrangement which is a success of \$5,000 per lot from the sales of the development.

40 Now I think if we can skip ahead please to page 127 and the, an email dated 24 December and that's from Mr Johnson to you forwarding what is the executed agreements?---Yes, I have that.

And there's no mention of Dixon Capital's arrangements with Waawidji in the terms or put by Waawidji to DLACL. Do you agree with that?---There doesn't appear to be, no.

And your arrangement with, that is Dixon Capital's arrangement with Waawidji was for you to share that success fee component and also be the, yes, the success component of \$5,000 per lot. Is that right?---That's correct.

Can we just confirm that by look at page 202, no sorry, 201?---Sorry, 201?

201?---Yes, I have that.

10 So this is an invoice of your companies to, addressed to Waawidji?---Yes.

And the – it's for the provision of professional services to Waawidji and it's a, there are seven lots identified at 25 hundred per lot?---That's correct.

And that's, and there's the sum of that. And that is dated 17 December? ---2010, yes, correct.

I'm going to show you on page 203?---203.

20 That is Waawidji's invoice to Deerubbin Management Services which I take it is a subsidiary company of DLALC for the same lots and it's at its price of 5,000?---That's correct.

So I want to take you to the invoices to confirm the terms of the Dixon Capital arrangement with Waawidji. You were essentially getting paid half of the amount that Waawidji was making from DLALC for its, its work? ---That's, that's correct. Yes.

30 And your work is identified only as having provided professional services. Do you recall what your role was?---My role would have been largely undertaking a number of the activities described in that retainer agreement that Waawidji had, had sent to Deerubbin.

Sorry, so you had responsibility for some or all of the services that were going to be provided by Waawidji?---As I recall probably for the majority.

So why were you only getting half?---It's the arrangement that was struck at the time.

40 Was it because it was Mr Johnson's relationships with DLALC that had - - - ---Yes, well, I - - -

- - - put the deal together?---I had had no dealings with DLALC. I had never met them before. Mr Johnson introduced me to them. And so, yes, it would have been to do with that.

Who did you deal with at DLALC?---I remember meeting Mr Cavanagh on quite a number of occasions around this period.

Sorry, (not transcribable) volume 30, if you still have that. Sorry, do you have volume 30 with you? Sorry, it's numbered on the outside.---No, volume 1, sorry. Maybe this is volume 30, sorry. Oh, that's, oh, sorry. My apologies. Yes, I do.

Sorry, page 217. So, this is a letter on your letterhead addressed to DLALC, but it's care of Mr Grahame Clare, a project manager of Arben Management.---That's correct.

10 Who was Arben Management.---They were project managers engaged to assist with various of the property development activities.

In this context, engaged by DLALC?---In this context, engaged by DLALC, yes.

And you were being engaged to provide assistance with a preliminary feasibility study?---That's correct.

20 This document isn't signed. Do you recall if this came to fruition? Did you conduct the work that's the subject of this agreement?---Certainly did conduct the work. It was for a project known as Maroota. It was located at (not transcribable). And it was part of a package of consultant submissions being put together for a funding proposal that was submitted to the state government for funding.

Was this an instance in which you were engaged directly by DLALC, to your recollection?---Yes.

30 And how did this arise? Was this also through your dealings with the Hazelbrook project or - - - ?---No, this arose through the general dealings that we had, subsequent to Hazelbrook, with Deerubbin. So myself and a number of the other consultants engaged by GLALC were - - -

When you say the other consultants, who do you mean?---I certainly recall Arben Management. I think Baker & McKenzie or subsequently (not transcribable) Legal. Perhaps EMC. And some of the other consultants.

40 Sorry, who were EMC?---Essential Media Communications. They were a communications and media company.

What sort of work did they provide to DLALC in this instance?---In this Maroota project? I don't think that they were engaged for the Maroota project. I was talking more generally as to how that relationship arose.

Sorry, who relevantly do you know EMC did work for?---EMC, like Dixon Capital and Arben, were engaged by GLALC. And we were, at a point in time earlier to this date, asked by Mr Johnson to assist in matters pertaining

to land owned by Deerubbin. But we were retained by GLALC, not by Deerubbin.

Were there other Local Aboriginal Land Councils that you played a similar role with as you did with DLALC in assisting their property development?
---Yes. La Perouse Local Aboriginal Land Council and Walgett Local Aboriginal Land Council.

10 In those instances was Dixon Capital engaged by the Land Council or by, I'll (Not Transcribable) that question. Did you do it directly with those Land Councils did you?---No, sorry, no.

Were you in the same way as the DLALC instance were you engaged by Waawidji?---No, I was not.

So who was it?---It was through the existing retainer arrangements we had with, depending on point in time, Gandangara Local Aboriginal Land Council or Gandangara Management Services Limited.

20 So your work was built to a Gandangara entity and presumably Gandangara covered the cost of your work from the, the other Land Council?---Yep, yes.

Did you know, did you know the terms on which Gandangara or a Gandangara entity was engaged by the other Land Councils?---No, other than there was, those Land Councils, some of those Land Councils didn't have immediate funds to pay and so that the consultants were paid by or retained by and paid by Gandangara and then Gandangara would presumably wait until some of these projects were undertaken and the Land Councils had funds to pay.

30 And so you said that, I mean depending on the timeline it was either GLALC and to be specific about the entity, it was - - -?---The Land Council

- - - it was the Land Council who was paying you for your work to for (Not Transcribable) or it was after that the last screen we saw GMS that was paying you for your work for another Land Council?---That's correct.

40 Okay. And, and you knew at the time that the other Land Councils may not have had present funds to, to cover those, the invoices that were coming from GLALC or GMS to Le Perouse or Walgett?---Yeah, it was my broad understanding that, that part of the work we were doing was to help them either develop land or sell some land in order to have funds available for activities. Those activities would have included a payment of consultants for example.

Was it ever explained to you from a commercial perspective why a Gandangara entity would essentially, sorry, trump the money for these other Land Councils to undertake their development contracts?---I understood that

Gandangara saw itself as, as in part helping other Land Councils who were perhaps in not as quite a fortunate position. But I also understood that they were going to receive you know an interest rate for, for those monies.

So it was being treated as a loan as you understood?---Yeah, I don't think it was ever described as that, but, but in effect I think there was some notion of, of recompense. Like I can't recall whether there was any further description.

10 Thank you. If you could return that one, please and be given volume 17.

MR DOCKER: Excuse me, Commissioner, sorry to interrupt but we're having a bit of trouble hearing both the questions and the answers.

THE COMMISSIONER: Yes, I'll get them to speak up. It'll appear in the transcript I know, the microphones are sensitive Mr Docker, but I think we just need to raise our voices.

20 MR DOCKER: Thank you, Commissioner.

THE COMMISSIONER: I think Mr Fitzpatrick's probably suffering under a lurgy but - - -

MR FITZPATRICK: Yes, I am.

MR DOCKER: Yes, I think perhaps Mr Wing's.

30 THE COMMISSIONER: Mr Wing I think is just naturally softly spoken. If you could speak up a bit?---Sorry Commissioner, I'll lean forward perhaps. Sorry, I'll try to speak up for people.

MR FITZPATRICK: Mr Wing, you mentioned earlier one of the things that you did in your dealings for GLALC or its entities was to coordinate other consultants including legal advices. Is that right?---In the sense of what you might describe as project managing them, yes.

If I could take you to page 55 of this volume 17. Do you recall the topic of legal advice in relation to loans to the Gandangara Future Fund?---Yes, I do.

40 The document at page 55 is an email from Andrew Beatty of Baker & McKenzie.---That appears to be correct, yes.

And he's addressed the email to Mr Johnson and yourself.---That's correct.

And he's talking about, in this email, a conference that he had with two barristers and what was discussed at this meeting. Is that right?---That appears to be correct, yes.

And attached to that email is the brief, the brief to advise. And that is at page 57 and following.---Yes.

Were you involved in the preparation of the brief or giving instructions to Baker & McKenzie for the preparation of the brief?---I can't recall, but I would have had input into the brief. I may have seen a draft or been asked to provide some details.

10 Okay. Looking at that document, the text of which begins on page 58, there's paragraphs 4 to 6, some background about the corporate structure. And, sorry, just to put you in time, they're the emails dated March 2011. ---Thank you.

So, the structure is as we discussed earlier, the GDS and GMS and then special purpose vehicles exist.---Yes.

20 And that's explained in paragraph 4 and 5. There's then discussion of the role of Gandangara Future Fund Limited at paragraphs 14 through 16. And we then come to the questions on which advice is sought, in paragraph 18 and 21. Now, I'll let you look at those paragraphs in particular, but do you recall, essentially, that the question was whether or not money could be moved from GLALC to Gandangara Future Fund Limited, the money being the proceeds of Gandangara's recent property developments?---That certainly seems to be the questions posed in the brief, yes.

30 Why was GLALC interested in moving the proceeds of its property development to this particular entity within the group?---As I understood it, the Gandangara Future Fund - or the broad purpose for the Gandangara Future Fund was to establish a vehicle to allow development profits, or profits from the sale of land, to be accumulated in a single entity for the benefit of not only the existing members but future generations of members. So it was intended to be intergenerational in its outlook.

And the question was, within the scheme of the Aboriginal Land Rights Act, which regulates the Land Council, whether and how money can be moved from GLALC's own, essentially, accounts to those of a subsidiary company.---I think that's what the brief's trying to establish, is the mechanism.

40 Do you recall that essentially being the issue that GLALC was interested in at that time?---Yes.

There was a series of discussions with a number of lawyers and there was a point at which prepared a summary of the legal advice that had been obtained on behalf of GLALC. I'll show you that document, it's volume 19. And it's page 54, sorry. Sorry, at 54 is an email, an email of yours addressed to Mr Johnson and Mr Beatty of Baker & McKenzie and you indicate that you've created a summary and road map which seeks to pull

together the various advices received. So you can agree on next steps and documentation?---That's, yes.

The summary follows at page 55. Now the, the effect of the legal advice that GLALC had received was that outright transfers or gifts from GLALC to another entity was prescribed by the legislation that was predicted?--- Could I have a moment to - - -

10 Yes, of course?--- - - - to refresh my memory, I'm sorry. Yes, that appears to be correct.

Right. And so in paragraph 3 of the executive summary on page 55 the second bullet point indicates that what's contemplated by GLALC at that point is a loan, the loan of funds representing 80 per cent of the profits?--- Yes, that's correct.

20 And the second last bullet point from the bottom of page indicates that GMS is going to have a role in, in this transaction. GMS is going to use its own funds to make a loan on commercial terms to SRL which is Sproule Road Limited one of the SBD's?---That's, yes, according to this, yes, that's correct.

And then over the page under the head of the Future Fund Transaction, the first bullet point reflects that the Board wanted to convene a meeting and pass an appropriate resolution to enter into a loan, that is the Board of GLALC. A loan to GFFL and it emphasises on commercial terms and with appropriate security?---Yes.

30 So and that was – those were two conditions that had come from the legal advice that GLALC had obtained?---Um - - -

I can help you with that, if you turn to page 59?---Yes.

Paragraph 24 at the bottom of the page, there's a reference to advice from Council and there are bullet points, "Can only be done by loan", and then turning over to the top of the next page, "The loan must be on commercial terms and appropriate security must be provided"?---Yes, I see that.

40 And these points about commercial terms and appropriate security, you echoed in paragraph 25. "Provided the loan to GFFL is made on commercial terms with appropriate security"?---Yes, I see that.

And in paragraph 26, the first bullet point, again there's a reference to the loan on commercial terms and appropriate security must be provided?--- Yes.

Those, those elements were crystal clear from advice that GLALC had received as at 2011. Do you agree with that?---Yes.

And the legal advice had come from counsel to conferences with representatives of GLALC and GLALC solicitors?---As I recall, yes.

And to what extent, do you know, that the content of the legal advice had reached the Board, for example?---I believe the Board was aware of the advice. I'm not sure whether the various advices had been tabled at the Board. I couldn't comment on that. And I'm not sure whether this summary was provided to the Board.

10 But the summary had at least reached Mr Johnson? He was well across the -
- - ?---It was sent to Mr Johnson, yes.

And he'd had access to the legal advice as well?---Absolutely.

The two elements, a loan on commercial terms, what does that mean to you?---It means that the loan ought to contemplate some recompense, whether that be by way of interest or share of profit or something. So there should be some recompense for the party providing the loan, that there is generally a term, even if that term may be quite long-dated or capable of
20 extension, and that there be some documentation surrounding that.

So when you say "recompense", if it's a loan, what are the alternatives to interest?---Well, they can be share of profit or share of surplus, for example. If the borrower is intending to use the money for a particular activity, for example.

If it's an interest base, does commercial terms mean something different to, for example, a reference to the RBC cash rate? Is the RBA cash rate a loan on which commercial loans are made?---It's a reference rate used in
30 commercial loans.

Usually by reference to a margin above?---That's generally correct, yes. That's right.

THE COMMISSIONER: The RBA cash rate is usually quite low, though, isn't it?---Yes.

But in terms of commercial loan transactions.---Yes, generally.

40 Yeah.---That's right, Commissioner.

MR FITZPATRICK: And appropriate security. What do you understand that to mean?---It means that in some cases it may be a mortgage over land. If there's no land involved in that transaction, then appropriate security might be a charge over an entity or a charge over shares or a charge over a mortgage over a lease, for example. There's a range of different securities that you could take, depending on the transaction.

Thank you. Did you have any awareness of what GFFL was going to do with the money once it borrowed it from GLALC?---Not in precise terms. I think it was intended, as I say, to potentially assist in the undertaking of other transactions or development activities, being potentially a funder, for example. And also to invest that money.

10 So GFFL would – so in the first category, transfer or - - - ---They could lend it to, perhaps, a special-purpose vehicle, I think, was one contemplation. And that vehicle might undertake a development and then obviously funds would go back to the lender.

Was it anticipated that money would be loaned from GLALC to GFFL and then, for any reason, back to GLALC?---Again, perhaps for the undertaking of projects, for example, or the establishment of commercial businesses or something like that.

Okay.

20 THE COMMISSIONER: But if GLALC held the funds in the first place, what would be the point of loaning them to GFF and then loaning them back to GLALC to do what GLALC could have done in the first place?---I think, Commissioner, that the intention was to, as I said, reflecting on the earlier comment, there was this fear about the Land Council or the legislation affecting the Land Council.

So that goes back to quarantining the funds does it?---Yes, that's as I understand it Commissioner, yes.

30 MR FITZPATRICK: Thank you Mr Wing. You can hand back that volume and have volume 6 please. Sorry Mr Wing, picking up on the Commissioner's question about quarantining, how did lending GLALC , how is GLALC lending its money to GFFL and in fact of quarantining that money?---I think a relatively ineffective quarantine.

THE COMMISSIONER: And is that because under the structure that existed at the time GFF was a wholly owned subsidiary of GLALC anyway through, through a number of other companies, but essentially it was all, it all went back to GLALC?---Correct.

40 MR FITZPATRICK: Thank you. Mr Wing, do you recall being asked to deal with GLALC's auditors in, the audits I call October 2012?---Yes, I do.

If you look at, if you have volume 6 now, there's a document at page 128? ---Yes, I have it.

The email chain starts at 132 between the auditors, Lawlers and Baker McKenzie. At the bottom of 130 there's an email to you from Mr Scott Tobutt, who's a principal of the Lawler practice?---Yep, I see that.

Firstly, do you recall why you were involved in these interactions with the auditors for the 2012 audit?---Principally it was because I think Mr Johnson's relationship with, with Mr Hickey I think he was the partner at Lawlers, had become very difficult and Mr Johnson felt that I might be able to explain the, the or answer their questions and explain the facts in a manner that answered the questions that they had at the time.

10 Were you simply a liaison between Mr Johnson and the auditors or did you have in your own possession the information that the auditors were interested in?---I was essentially liaison so I would have gone back with questions and found out those answers and, and transmitted that information through.

Looking at the, looking at the email exchange on page 130 and your response which begins on 129, the, is it the time it's emailed is at 8.59pm with questions about two topics. One is the appointment of an investigator to GLALC and that's, it has the heading, "NSWALC Section 221 Matter". And then the second issue is the Future Fund loan?---Yes, I see that.

20

So your email which, your email response which comes back the same evening at 11.00pm, 11.10pm, you would have, you would have had to get Mr Johnson's input to provide the material that you responded?---I probably had instructions from Mr Johnson to, to you know, provide information to the auditors upon request and I think what I was setting out what appears to be in the response is a series of, of facts and, and timelines and dates of, of what has happened.

30 Yeah. In relation to the first matter, there's in your, in your response on a couple of occasions, the issue that becomes highlighted is whether or not the ALRA, the Aboriginal Land Rights Act applies in the same way to GLALC as it does to GLALC's subsidiaries. That was, was that a, a reflection of the quarantine idea that we've talked about before, that some things were, were within the scope of GLALC and its regulatory scheme and the affairs of the subsidiaries was arguably not?---I think that was the contention, yes.

And it indicates that there's advice being sought. If you see that's the last bullet point under that heading on page 130?---Yes.

40 And GLALC was, was abdicating the position that or wanting to abdicate the position that its subsidiary companies were not covered by the ALRA, is that your recollection?---That's my recollection, yes.

The second issue and we talked about the, the advice that was sought at the Future Fund loans?---Yes.

After those loans were made you recall there was dealings with the Registrar about a compliance direction and the those transactions had to be wound back or properly explained by resolution?---Yes, that's correct.

What was your understanding of the outcome of that process?---Sorry, of the compliance direction process?

Yes?---Can I read this note?

10 Yes?---Because I think that deals with some of the – it appears that there was a compliance direction issued by the Registrar, sorry, and that the Board of GLALC met and passed a new resolution which they believed would satisfy the terms of the compliance direction and that subsequently the Registrar had indicated an intention or issued a notice of intention to issue a compliance direction in relation to that new resolution and that advice was being sought on that particular point.

Can you hand back that volume and I have last topic for you. Sorry, do you still have volume 1?---No, I don't, I'm sorry.

20

Sorry, Mr Wing, we're going to back to that structure diagram at page 258? ---I have that.

Now we talked earlier about the structure that's depicted under the original structure heading?---Yes.

Are you aware of the steps that were taken to implement what's referred to as the new structure?---Yes.

30 And the essential difference effected by the restructure, under the new structure heading, is that the GLALC bubble now has below it only the GDS entity. And the new companies, which are Gandangara Health Limited and Gandangara Services Limited, are now no longer subsidiaries to GLALC.--- That's what the diagram indicates, yes.

Did you understand that to be the purpose of this restructure in 2014?---Yes, in a broad sense, yes, that's correct.

40 What did you understand the purpose of this restructure to be? Why was it that the entities, on the old structure, started with GMS and followed down the chain, were being moved out from under GLALC to be held, at least as depicted in this diagram, directly by the members?---My broad recollection is that there was a concern that GLALC, the Land Council, might be dissolved in effect. And this would allow the members to retain control of the land holdings and the various activities, housing and other things, that they operated.

Was this the same concern that we talked about earlier in the context of quarantining assets from the council?---Yes, in a sense the same concept.

And were you involved in the decision making to adopt this particular structure?---Not in the decision making, but I would have been involved in discussions around the structure, probably.

10 So who would have been involved in the decision making?---I would assume the Board and Mr Johnson would have been involved.

Do you know whose idea it was?---I would assume Mr Johnson's.

Did you have discussions with Board members about the adoption of this new structure?---Not to my recollection.

Commissioner, that's all my questions.

20 THE COMMISSIONER: All right. Does anyone have any questions for Mr Wing? Yes, Mr Mack.

MR MACK: Commissioner, I do. Mr Wing, my name's James Mack. I represent the Registrar of the Aboriginal Land Rights Act. You'll recall before that the Registrar issued a compliance direction during these proceedings. I just have a few questions to ask you in relation to your relationship with Mr Johnson, and I just want to start at the first time you met Mr Johnson, back in 2007. That was when you were both involved with the law firm Gadens. Is that correct?---That's correct.

30 And subsequent to that, Mr Johnson accepted a position of CEO of GLALC in Sydney. Is that correct?---That's correct.

And then you came down to Sydney for a university engagement, and you were interested in catching up with Mr Johnson. Is that correct?---That's correct.

40 Why were you interested in catching up with Mr Johnson?---We'd had a very cordial relationship. I thought the work that Mr Johnson had done for Gadens, in terms of assisting with this Indigenous legal students program, had been, you know, very interesting. I found it personally very interesting, the challenges that Indigenous law students face, for example. Mr Johnson's understanding of those matters were interesting, and I was interested to find out what he was doing and what an Aboriginal Land Council was intended to do.

And did your interest in the Land Council also dovetail your interest in property, with your knowledge of developing properties?---At the time I went to visit Mr Johnson I didn't know what the Land Council was

intending to do. I didn't know what a Land Council was in effect at that point in time.

And after chatting with Mr Johnson in 2007 when you came down for the university engagement what did you understand a Land Council did?
---Provided, well it was intended to provide I think services to its members. But it was also one of its I think, if I can describe it, I'm not sure whether this is correct but statutory obligations as I would refer to them as was to claim land on behalf of its members.

10

And are you aware that its statutory obligations didn't derive from the Corporations Act that they derived from a separate Act?---Oh I understood that there was a piece of legislation that, that dealt with that, yes.

And you're familiar with the Corporations Act through your law degree and your other post graduate studies presumably. Is that a fair statement?---I'm relatively familiar with it, yes.

20 All right. After you met with Mr Wing, I mean when he came down and see him that first time you've then entered into a retainer agreement with Mr Wing, sorry you then entered into a retainer with Mr Johnson who was acting on behalf of GLALC around about 15 May, 2007. Is that correct?
---Well Dixon Capital entered into a retainer with GLALC, yes.

I'm sorry, yes. And there was reference earlier on this morning to pre-engagement work. Did that include any idea about, did that include a discussion about how long the retainer would last?---I don't recall whether it did or it didn't.

30 All right. And was there any discussion pre-retainer and pre-engagement work about developing land for the Land Council?---Yes, there were.

And what was the content of those discussions?---I can't recall the precise content but I think the context was that Gandangara had had or had land in terms of it owned land or it had claims over land and Mr Johnson was interested as to what the development potential of some of that land was in order to provide funds for the Land Council to provide services to its members.

40 I see. And did you proffer any opinion about what the value of that land might be?---At that initial meeting?

Yes, or pre – did that include part of your pre-engagement work, before 15 May, 2007?---Proffering a value of 89.

All right. Did you ever discuss with Mr Johnson creating a new company, company by the name of Gandangara Development Services before 15 May, 2007?---Before 15 May, 2007?

Yes?---Not to my recollection.

All right. In, following, you were taken earlier to the note, the handwritten note of Mr Johnson and references made to having to include a section in the retainer in relation to other entities. Did you have a discussion with Mr Johnson about what those other entities were?---I think that, my recollection around that is that there was just a broad concept around the establishment of other entities.

10

All right. And then, can I take you to the subsequent letter which was sent on 22 August, 2007, volume 30, page 44?---Sorry I don't have volume 30.

THE COMMISSIONER: It's on the screen?---Oh, sorry. Thank you.

MR MACK: And you'll see in the first paragraph that there's a reference to Gandangara Local Aboriginal Land Council and its wholly and subsidiaries including Gandangara Development Services collectively known as GLALC?---Yes, I see that.

20

And do you accept that wasn't in your first letter on 15 May or do you want me to take you to that as well?---No, I accept that proposition.

And did you talk to Mr Johnson about the operation of any of those wholly owned subsidiaries?---Prior to this - - -

Yes?--- - - - to 22 August? Yes, I would have.

30 And what would've those contents of those conversations been in broad terms?---I think around the concept of establishing those entities and I recall that I think a partner at Gadens had established one or more of these entities for, for Gandangara.

A partner at Gadens created these entities is that correct or advised GLALC on the creation of these entities?---Advised creation of those entities.

And were you on a retainer at that time with Gadens?---Yes, I was.

40 All right. And you didn't see that as potential conflict at all?---That was disclosed to both parties.

And where was that disclosed?---It was disclosed in discussions. Mr Johnson was well aware of my retainer with Gadens and I would've advised Gadens that I was being asked to do that and that there was potential work that Gadens would provide for Gandangara.

Do you have a copy of those disclosures to Gandangara or to Gadens? Would it be in writing?---It may not have been in writing.

If it was in writing would you be able to produce it?---If I had it in writing it ought to have been in the material that's been supplied.

All right. And when you were having these discussions, did you look at the Aboriginal Land Rights Act at all? Did you have a look at the Aboriginal Land Rights Act before talking to Mr Johnson about creating subsidiary companies?---I don't recall whether I would've or wouldn't have.

- 10 You accepted before that you understood on 15 May, 2007, in your initial conversation that GLALC and its corporate existence to an Act than the Corporations Act?---That's correct.

And then you just assumed that the same rules – did you then assume that the same rules applied to subsidiaries created underneath GLALC as would apply if they were created underneath the Corporations Act?---I think I probably would've assumed that, that the partner at Gadens would've, would've looked at those particular matters.

- 20 THE COMMISSIONER: Sorry. I'm just wondering when that would've occurred because if Mr Johnson didn't apply for the job at Gandangara until the end of 2006 and he left Gadens shortly thereafter. Then that discussion with the partner at Gadens about these special purpose vehicles had to have occurred after Mr Johnson took up the job as CEO, is that right?---That's correct, Commissioner, yes.

And so during that period, so we're talking the early part of 2007, were you also in touch with Mr Johnson about what he was doing?---Prior to my visit to him?

- 30 Yes?---I probably telephoned him to, to see how he was going and, and perhaps to set up this appointment I can't, I can't recall.

Well you wouldn't have known where to go if you hadn't had some prior contact with him?---That's correct, Commissioner, yes.

- 40 MR MACK: And do you know if Gadens ever advised GLALC prior to 22 August, 2007, in a form of written advice?---I can't recall whether, whether there was an advice but I believe that there were some meetings and, and certainly some face-to-face meetings and discussions.

Face-to-face meetings and discussions between who?---With Mr Johnson and the, and the relevant partner at Gadens.

And who is the relevant partner at Gadens?---I believe it was Allan Eden.

Allan?---Eden, E-d-e-n.

Allan Eden?---Yes.

And did you introduce Mr Eden to Mr Johnson?---I think Mr Johnson knew Mr Eden from his time at Gadens but he was the, the corporate partner. So he would've been the relevant person to, to undertake any work.

Did Mr Eden, to your knowledge, know that Mr Johnson had accepted a position as CEO of GLALC?---At the time he provided the advice in – did this work in 2007, yes, he would've.

10

No, sorry. My question is when, I'll start again. Did Mr Eden know Mr Johnson whilst Mr Johnson was involved with Gadens?---I'm sure he would've.

All right. And would've – did you tell Mr Eden that Mr Johnson was now working at GLALC in Sydney?---I'm not sure who, I think the, I think the partner who had introduced Mr Johnson to the firm had sent a note around or an email around to, to everybody letting everybody know where Mr Johnson had gone. I don't recall specifically advising Mr Eden of that. I believe we all knew at relatively the same time.

20

All right. And did you ever have a discussion, in your capacity as a representative of Dixon Capital, with Gadens that didn't involve Mr Johnson? Sorry, I'll rephrase that. Did you ever have a discussion, as Dixon Capital, with Gadens about GLALC when Mr Johnson wasn't present?---I imagine I would have.

Right. And what would have been the content of those discussions?---It might have been relaying questions or it might have been relaying instructions, or it might have been both ways. You know, Mr Eden might have had questions that he wanted clarified or things like that.

30

So you were again facilitating the flow of information, this time between GLALC and Gadens?---Yes.

That's a fair way to summarise it?---(not transcribable) describing it, yes.

All right. And have you, I just want to clarify this point, have you ever seen any written advice from Gadens, from Mr Eden at Gadens, to either Mr Johnson or the GLALC Board?---I can't recall whether there was written advice, but I believe there was documentation produced regarding the establishment of those companies. So I just can't recall whether there was advice in the terms in which you're probably looking for that answer.

40

So you didn't have this conversation with Mr Eden, "Mr Eden, I understand that GLALC isn't incorporated under the Corporations Act. You might want to have a look at the statutory scheme behind GLALC." Did you have a conversation to that effect?---I couldn't recall.

Do you accept that that would be a prudent thing to have done, given that you knew that GLALC owed its corporate existence not to the Corporations Act but to the Aboriginal Land Rights Act?---Yes, I accept that.

I just want to move on. Can I just take you back to your original letter to Mr Johnson on 15 May? That's at page 30. I just want to take you through the structure of this document. At page 30, there's a subheading "Background".---Yes.

10

And that's followed by six paragraphs.---Yes.

And then subparagraph "Current Status", subheading "The Role".---Yes.

And then underlining and dot points. Can I ask you to turn to, sorry, can I ask you to turn to page 220 of that same volume. This is a letter from Mr Johnson of Waawidji Proprietary Limited to Mr Kevin Cavanagh of Deerubbin Local Aboriginal Land Council.---Yes.

20

And you'll see subheading "Background". And underneath that, would you accept that it's effectively a template of your retainer to GLALC?---Yes.

Yes. And did you ever have a discussion with Mr Johnson about what a retainer should look like for the type of work that you undertook, on behalf of Dixon Capital, for GLALC?---I'm sorry, I didn't quite understand the question.

30

Sorry. I'll rephrase that. Did you ever have a discussion with Mr Johnson in relation to what the terms of a retainer for project management and consulting should contain?---In the context of this letter?

Just generally.---Generally? Yes, I accept that's a proposition, yes.

And in the context of this letter?---Yes.

So you had a conversation or an exchange to the effect of "Mr Johnson, if you want to do the kind of work I do, I suggest that you enter into the type of retainer I have entered into"?---Yes, I believe I provided a draft of this letter to Mr Johnson.

40

All right. And were you aware that he was going to use that as the basis of his engagement with Deerubbin Local Aboriginal Land Council?---Yes.

All right. And why did you give that advice to Mr Johnson?---Presumably because Mr Johnson asked me whether I could assist him with that. We would have, I'm assuming, discussed the potential engagement by Deerubbin regarding the Hazelbrook land. And Mr Johnson probably

thought it was easier for me to produce a template, given that it was similar work to what I was doing for Gandangara.

All right. And you gave an answer before as to why you didn't want to have a retainer between yourself and Deerubbin Local Aboriginal Land Council and the reason was to the effect that you didn't know anybody Deerubbin Local Aboriginal Land Council. But then two months, but then later you then entered into a retainer with Deerubbin. Is that correct?---For the Maroota project?

10

Yes?---Yes, that's, that's correct.

So what changed between 8 December, 2009 where Mr Johnson's engaging as Waawidji to when you entered into that subsequent retainer with Deerubbin?---Look there were two things that were different. The first was that subsequent to the, if I can refer to it as the Hazelbrook engagement, I had then had many interactions with Mr Cavanagh. He'd attended numerous meetings both to discuss Hazelbrook but other potential Deerubbin landholdings. So I'd had numerous meetings and contact with Mr Cavanagh. And the second was that the Maroota project required the consultants, there was a number of consultants engaged for that particular work and it required those consultants to be directly engaged by Deerubbin for the purposes of the funding arrangement with the state government.

20

Right. I just want to take you back to this letter of 8 December, 2009. Was the understanding that Mr Johnson would invoice Deerubbin and you would invoice Waawidji?---That's correct.

And so effectively the money was by-passing Waawidji and going to Dixon Capital. Is that a fair summary?---No, not bypassing. It was being paid from Deerubbin to Waawidji and then from Waawidji to Dixon Capital.

30

And if 100 percent of the money that came from Deerubbin to Waawidji would 100 percent of that money end up with Dixon Capital?---No.

No. So how much would - - -?---It appears from the invoices that I looked at before to be 50 percent.

50 percent so Mr Johnson will get 50 and you'll get 50?---That's correct.

40

All right. So you had a fairly close working relationship with Mr Johnson. Is that a fair analysis of your relationship with him since 2007?---Yes.

All right. And did you also have a working relationship with somebody called Alfred Sing?---Yes.

And can you tell me what the nature of that relationship was?---Well Mr Sing was employed I think at, at GLALC I think in perhaps two different

periods. I think he left for a period of time and came back. And so I interacted with on, on a range of matters that I was acting for in Gandangara and then he was also representing Walgett Land Council at a later point in time.

Walgett Land Council?---Walgett Local Aboriginal Land Council.

10 And how often – would you contact with Mr Sing be on a day to day basis or weekly? What would be the best way to summarise it?---it would depend on, on what the activities were at the time. It could be multiple times in a day, it could be, you know once a week, it could be you know less than that. It would depend on what the activities were and what Sing's involvement in those activities were supposed to be.

And how would you describe the relationship Mr Sing and Mr Johnson? Were you privy to, to that relationship?---Only as an outside observer. I thought they had a, a reasonably good relationship.

20 Okay. Did you spend much time in Sydney after 2007?---Yes.

All right. And how often would you be in Sydney? It seems to me that you'd be there almost on a weekly basis dealing with - - -?---I was on average in Sydney probably more than 40 weeks of a calendar year.

Between 2007 and right up until 2012 or '13 or - - -?---Possibly, I couldn't be precise in that, but yes that seems about right. And I was certainly in Sydney quite often for more than a day.

30 All right. So, but there was 12 weeks of the year where you would be somewhere other than Sydney, perhaps Brisbane?---Yes.

All right. And so the minority of your work was in Brisbane. Is that fair to say?---I had other clients. But, yes, increasingly, a lot of my work was in Sydney.

So it would follow that, in terms of your client base and revenue income stream, it was predominantly from Sydney and not Brisbane?---I couldn't be precise in that. I think it fluctuated over that period of time.

40 But it follows, doesn't it? I mean, did you have any other clients in Sydney besides GLALC?---Yes, I did.

Besides Land Councils?---Yes, I did.

All right. What percentage of your time was devoted to matters related to either GLALC or other Aboriginal Land Councils or their related entities? Roughly.---It's a very long period of time to generalise. It escalated over time. It became increasing over time.

THE COMMISSIONER: Well, are we talking 60/40? 60 per cent of your work over that period was the Land Councils? Or something less than that? Or something more than that?---I would say it was, look, on a long-run average, Commissioner, I would probably say, over that extended period of time, perhaps about 40 per cent.

Over the entire period?---Yes.

10 But towards the end of that period, it would have been more than 40 per cent?---At some periods of time, it would have been much more than 40 per cent, Commissioner, yes.

MR MACK: And how did you find doing your job in Sydney as compared to Brisbane?

MR HENRY: Can I just object, only because I don't follow where this is heading. And I don't object if it's going somewhere that might assist the Commission.

20

THE COMMISSIONER: Yes.

MR HENRY: I don't follow, myself, where it's heading.

THE COMMISSIONER: Well, Mr Mack, I'm prepared to give you some further leeway, but, I mean, is this designed to lay a foundation for what the Registrar wants to submit to the Commission later on?

MR MACK: Yes, in terms of – short answer, yes.

30

THE COMMISSIONER: All right. Go on.

MR MACK: Did you ever work with any Aboriginal organisations or corporations in Brisbane?---No.

No. All right.

THE COMMISSIONER: Or in Queensland?

40 MR MACK: Or in Queensland?---No.

All right. And were you surprised with the amount of regulation that was involved in doing your role in Sydney?---For - - -

In terms of your retainer with GLALC.---No, I don't think it was a surprise.

All right. So you expected in 2007, when you arrived, that you should be able to make this deal work, in that sense?---Well, in 2007, the

contemplation was around project identification, I think the retainer talked about. And, you know, assessments of development capability, et cetera. Those activities are broadly the same in every state.

10 All right. I just want to take you to another one of your retainer letters. This is an increase in retainer on 8 August, 2010. Page 54 of volume 30. And just the second, beneath "Background" there. The second paragraph beneath that, you express these words, "The retainer agreements that we struck back in 2007 reflected what we hoped would be normal development process. It never occurred to me, or I am sure to you, that GLALC would face the intransigence of Sutherland Shire Council, the bureaucracy of NSWALC, or the excessive cautiousness of the NAB, to name just a few counterparties with whom we have experienced such frustrating delays." ---Yes, I see that.

20 My question goes to back in 2007, what did you expect in terms of developing? What did you expect would confront you in your role as project manager between GLALC and developing their land?---What I expected in my role would be what I might describe as the usual development process.

And can you just more content to use your development process?---Sorry. You know, if you were trying to develop a plan in, in, in part of Australia you need to clearly submit applications to Local Government authorities, Councils, like LGA's. Each of those LGA's has a set of rules and regulations that apply to it as well as there's obviously State Legislation. There's a natural process, if I can describe it as that, that through which one must go.

30 And is some of the frustration you're expressing there is that directed at the Registrar of the Aboriginal Land Rights Act? Did you ever become aware of that role in your role for Dixon Capital?---I was aware of the role of the Registrar. I can't recall whether as at 8 August, 2010, I would've had any – at that point in time had any dealings with the Registrar, I may have but I can't recall precisely.

40 Can you just tell the Commission, in rough terms, what was the total amount of fees that you were paid by GLALC or related entities since 2007?---I'm sorry, I couldn't answer that without adding up all of the invoices.

Would it be more a 100,000?---Yes.

More than half a million?---Over that period of time?

Since 2007?---Possibly.

Possibly?---Yeah.

Possibly as much as a million?---Look, I couldn't answer that question without looking at all the invoices, I'm sorry.

But it's not impossible that it could've been up to a million?---It's not impossible.

10 All right. Just one second. Just one final, final question. I understand that Mr Johnson did the introduction between you and DLALC in terms of the Hazelbrook development, is that correct?---Mr Johnson would've introduced me to Mr Cavanagh, yes.

Yes, all right. Do you know if Mr Johnson supplied or Waawidji any other services in relation to the Hazelbrook development?---Other than - - -

Other than the introduction, yeah?--- - - - that what was in that letter?

Yes?---I'm sorry, other than the services outlined in the letter or - - -

20 Yes. Other than those services?---Not, not to my knowledge.

All right. Thank you.

THE COMMISSIONER: Just in relation to your retainments, was there a monthly fee that was charged?---Yes, Commissioner.

And what was it?---I think it started at \$5,000 a month and, and was increased in subsequent periods.

30 So what was the highest monthly retainer that you received towards the end of the period?---I think from recollection it was \$12,000 a month, Commissioner.

And was there other income that applied, any success fees or bonuses or anything like that?---Yes, Commissioner, there would've been.

So there was a success fee was there on the completion of a development?---Yes, as articulated in the retainer agreements, Commissioner.

40 Right. Does anyone else have any questions of Mr Wing, and we'll try and finish this. Will you be very long, Mr Docker?

MR DOCKER: I'd say 10 minutes, 15 minutes.

THE COMMISSIONER: All right. Well, look what I had in mind is if we can allow Mr Wing to leave and then we'll take an early luncheon adjournment. So go ahead, Mr Docker.

MR DOCKER: Thank you, Commissioner. Mr Wing, my name is Sean Docker, I appear for Mr Johnson.

When Dixon Capital was doing work for the GLALC Group, is it your understanding that it was paid by GMS or by GLALC?---In the, I think, based on the retainer agreements I referred to today, Mr Docker, it appears from 2007 to up around 2010, it was paid by GLALC and then from 2010 I think the invoices were directed to Gandangara Management Services.

10 Right. And just coming back, just changing the topic to services being provided to Deerubbin, or DLALC as it's been referred to. And you were asked about interest that GMS earned from DLALC. Do you recall that?---I recall a broad question about that, yes.

Yeah. And were you aware of whether GMS also provided services to DLALC?---Yes.

And they provided those services for reward?---I understood that they were providing some services for payment.

20

For a fee?---Yes.

All right. Now, you were just shown a letter in volume 30. Do you still have that volume in front of you?---Yes, I do.

Page 54. And you can see there that in the second paragraph, under the heading "Background", there's a reference to excessive cautiousness of the National Australia Bank.---Yes.

30 Can you recall what you were referring to there?---Yes, it related to obtaining a loan from the National Australia Bank to undertake the development of residential allotments, a project called Gandangara Estate Stage 2.

Right. So that related to a land development?---Yes.

That comment? Right. Thank you, Mr Wing. I have no - - -

40 THE COMMISSIONER: Any other questions of Mr Wing? Anything, Mr Unsworth? No? Yes, thank you, Mr Wing. You may step down. You are excused from the summons today.

THE WITNESS EXCUSED

[12.07pm]

THE COMMISSIONER: I'm just wondering, is there any point in just returning to Mr Donovan briefly, in the hope that we can – or should we just leave that till quarter past 1.00?

MR HENRY: I'm not sure if he's here.

THE COMMISSIONER: Is he here?

MR HENRY: We would have to - - -

10

THE COMMISSIONER: We did say not before 11.30.

MR HENRY: We did. And it may be that he's outside. I don't know.

THE COMMISSIONER: All right. Look, I think I'll take the luncheon adjournment. We'll resume at quarter past 1.00 and then, if need be, we can take a short adjournment sometime between 1.15 and 4 o'clock. Thank you.

20 **LUNCHEON ADJOURNMENT**

[12.08pm]