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HEARING

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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 TUESDAY 24 MAY 2016

AT 10.10AM

Any person who publishes any part of this transcript in any way and to any person contrary to a Commission direction against publication commits an offence against section 1122) of the Independent Commission Against Corruption Act 1988.

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

THE COMMISSIONER: Yes, Mr Fitzpatrick.

MR FITZPATRICK: Commissioner, I call Mr Kevin Cavanagh.

THE COMMISSIONER: Yes.

MR FITZPATRICK: Please come forward. Commissioner, Mr Cavanagh is not represented.

10 THE COMMISSIONER: Thank you. Just take a seat, Mr Cavanagh, if you
wouldn't mind. I just need to explain something to you about the way that
we conduct the proceedings. The questions that are asked of you, you must
answer them truthfully. You don't have the option of refusing to answer a
questions even if the answer should implicate you in some form of
wrongdoing. Because you must answer the questions truthfully I can make
an order under the Act which effectively prevents your answers being used
against you in any future civil or criminal proceedings. However, there is
one exception to that order. It doesn't protect you if we should find that you
20 have deliberately given false or misleading evidence because if that was the
case we could nonetheless use your answers to prosecute you for an offence
under the ICAC Act. So do you understand what the limits of the order are?

MR CAVANAGH: I do.

THE COMMISSIONER: All right. Do you want me to give you the
protection of the order?

MR CAVANAGH: I do.

30 THE COMMISSIONER: Thank you.

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.

40 **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**

THE COMMISSIONER: Would you like to be sworn or affirmed,
Mr Cavanagh?

MR CAVANAGH: Sworn.

10 THE COMMISSIONER: Thank you.

THE COMMISSIONER: Yes, Mr Fitzpatrick.

MR FITZPATRICK: Thank you, Commissioner. Mr Cavanagh, you have a position as - - -?---Can you speak up a little.

10 I apologise. You have a position with the Deerubbin Local Aboriginal Land Council. Is that right?---I'm the CEO.

The CEO. And how long have you been the CEO?---I started as CEO in 1994.

At that time the Council had a different name. Is that correct?---That's correct. It had Daruk, D-a-r-u-k, Daruk Local Aboriginal Land Council.

And was the position known as the CEO at that time?---No.

20 Was it the co-ordinator position?---No. It was known as the Executive Officer position, CEO, Executive Officer.

And can I refer to DLALC as an abbreviation for the Deerubbin Local Aboriginal - - -?---That's correct, DLALC.

Thank you. At what point in your career did you meet Mr Jack Johnson?---I met Mr Jack Johnson it was at a meeting in Gandangara about 2008 sometime, I think late 2008. It was a CEO regional meeting as I understand from my, my recollection. Yeah, 2008.

30 So that was a meeting of the CEOs of - - -?---The CEOs, a regional meeting of the, of the CEOs in the Sydney/Newcastle region.

Of Local Aboriginal Land Councils?---Of Local Aboriginal Land Councils. That's correct.

About how many CEOs does that cover?---Oh, there was quite a few. I would have thought there would have been 20, 15, 20 because there were not also CEOs, there were other, other folk at there but CEOs probably – well, there wouldn't have been 20 CEOs because not 20 in the, in the area. I couldn't – I didn't have – didn't do a count on them but there were several there I knew.

About how many Land Councils were represented?---Oh, Land Councils represented again, again I – could be 8, 9 I suppose. I don't know. I don't know.

Thank you. And this meeting was hosted by the Gandangara Council?

---No. I understand it was hosted – it was called by the Darkinjung Local Aboriginal – CEO of the Darkinjung Local Aboriginal Land Council, Sean Gordon, yeah.

And why – what was your understanding as to why it had been called?---My understanding was it was just a gathering of the CEOs to talk about CEO matters and Land Council matters as they related to CEOs. That was all I understood it to be.

10 In 2008 what were the issues that were of interest to CEOs and Land Councils?---Sorry, what was the question?

What were the sorts of issues that were being discussed at that meeting in 2008?---Oh, 2008. It's been a while. I'm just trying to think. Just as I understand it and can remember it was just the general things that CEOs talk about how, how we can strengthen our Land Council, have them work together, have them build, build as a, as a, as a body and as inner regions and, and maximise the, the resources we have, the vast – well, not the vast resources, the very little resources we have. Yeah, that's, that's my
20 understanding of the gist of it anyway.

And the Deerubbin, Deerubbin Local Aboriginal Land Council and the Gandangara Council are adjacent. Is that right?---They, they adjoin, yeah. they're neighbours. That's correct.

And they have dealings with some Shire Councils in common. Is that right?---That's correct.

30 And have you had discussions over time with people at Gandangara in relation to dealings with particular Shire Councils?---Sorry, what the question was, sorry, again?

Have you compared notes with people at Gandangara about how – about their own dealings with Shire Councils and the way that your, your Council has done that?---There was discussions about the Fairfield Council which is the one that adjoins the Land Council and that was discussions – yeah, there was with Gandangara about – as I recall Mr Johnson talked about that when, when the, the fact of there were quite a large number of – yeah, they were doing – Gandangara were doing a Land Council assessment of what was
40 Crown Land in their land and it was brought to our attention that did you know that there's Crown Land in your land which is under the LGA of Fairfield. That's the – as I understand the conversation, that's the conversation I understand.

That was a conversation that you had with Mr Johnson?---That was a – not only I had but it was brought to the attention – as I understand it Mr Johnson brought that conversation to not only myself but at a meeting of the – with

other – with Board members of our Land Council and the CEO – sorry, the Board members one time. But that was after 2008. That was in 2009.

Thank you. We'll perhaps look at a document to confirm that. Volume 22. There's an email string commences on page – sorry, 4 is the front page of the document that we'll have to go back through the emails. Mr Cavanagh, the document at page – you will see there's some small numbers in the bottom right-hand corner. That's what I refer to. Page 4 is the end of an email string. It begins at – let's look at page 6.---Sorry?

10

An email from Stephen Wright to a DLALC email address and Mr Johnson.---I see that, yeah.

Yes, thank you. And that email address was one that – the email itself is addressed to Kevin which I take it is yourself and that DLALC at the BigPond address is a – that's an address that you would have received messages at?---DLALC at that time, yes.

20

Yes. Thank you. Who was Stephen Wright?---Stephen Wright was the Registrar of the New South Wales Aboriginal Land Rights Act.

And he is writing in relation to an issue about dealings with the Fairfield Council.---Ah hmm.

What was Mr Wright's role in relation to DLALC's and GLALC's dealing with the council?---Dealing with the Fairfield Council?

Yes.---What role did he have in that?

30

Yes. Why would he have had interest in that matter?---Well, as the Registrar of the New South Wales Aboriginal Land Rights Act, I would have thought he'd have interest in all matters, Local Aboriginal Land Councils, like, in a general way. But specifically, I can't say.

40

Okay. Mr Wright's email is passing on a request from Fairfield Council about receiving information in relation to land claims directly from DLALC and GLALC. And there are then some emails in this chain in which you and Mr Johnson exchange messages about what the approach should be in dealing with the council. And then the email on page 5, there's an email of yours towards the top of the page. And about halfway through your message, there's a sentence that reads, "Deerubbin has never made a claim in our part of the FC, the Fairfield Council, area because we understand there appears, from our very limited research, there is no claimable land." ---Correct.

And what research was DLALC able to do at that time about claimable land?---At that time we were not doing any research on claimable Crown land. We'd done quite a bit earlier in the years, but not at that time.

And why was it that you weren't doing that research at that - - - ?
---Because, as I said, we believed that, as I said in the email, that there appears to be no claimable Crown land in the Fairfield area. That was the understanding.

10 Mr Johnson writes back to you, and that email appears at page 4. And this is where, perhaps, he gives you some information about Gandangara's efforts to claim land. There's, about halfway through the email, a paragraph that begins "In addition", and that reads, "In addition, we have recently lodged over 200 claims in the FCC using GIS mapping systems to locate the claims. We suggest that DLALC may be missing out on substantial land claims by not using GIS mapping to assist." This was news to you?
---Absolutely. Absolutely, yes, it was, yeah.

Did you understand why Mr Johnson was providing this information?
---Well, no I don't. He just came out of the blue, as it were, to me. I mean, just saying that, been providing it, no. At that stage, no.

20 The email continues, "Maybe KC and Jack should sit down and start on our core business, land and development, and not get so distracted by the side issues. We are ready when you are." And this initiated some further discussions between DLALC and GLALC about - - - ---Is that email from me?

No, this is an email from Mr Johnson.---From Mr Johnson, yeah. I'm just trying to get used to the – sorry, could you repeat that again for me, please?

30 Sorry, the question was, did this prompt further discussions between - - - ?
---At that stage, well, obviously, I see it as a responsibility, if there is a possibility there are claimable Crown land for our Land Council, then I should pursue it. And, yes, in that sense I would have.

The last sentence of Mr Johnson's email reads, "GLALC is of the opinion that whilst poor we remain weak and susceptible to attack. We're therefore ready, willing and able to offer support and assistance to DLALC in this area." Did you share Mr Johnson's view that Land Councils were susceptible to attack?---Attack from what?

40 Well, that was going to be my question.---About what?

You don't understand there to have been a threat to Local Aboriginal Land Councils at that time?---Certainly not.

Okay. Mr Johnson's email concludes with an offer of support, which you accept in the email at the top of the page, in the last paragraph. "Finally, DLALC stand ready to be supported in being brought up to speed using GIS

mapping system.” So you took it to be an offer of assistance from GLALC in respect of the mapping of the land claims?---I did, yes.

And you enthusiastically accepted that suggestion that GLALC help?---I did, but obviously it was a matter that also, to take to the Board, as we did later down the track. But at that point, in my role as I understood stood it, yes.

10 To - - - ---It was enhancing and doing the sorts of things I had to do as a CEO.

Was it usual for – I mean, you've mentioned this occasion of a meeting of CEOs. Was it usual for you to interact with other CEOs, to provide advice or assistance from one Land Council to another?---CEOs met regularly in regional meetings, yeah. In that context, yes. And if CEOs were to ring me up, I'd respond to them and, you know, obviously, if I wanted to talk to a CEO, I'd ring a CEO. But I can't recall ringing too many and asking too much advice.

20 Thank you. There was then set up, I believe, a meeting to discuss the land claims issue. If the witness could be shown page 40 of that volume, which is 22. At the bottom of that page, there's an email from Mr Johnson. And he's responding to an earlier message. But the passage that is of interest now is his statement in the paragraph at the bottom of the email. “I ask because we urgently need to have DLALC grow as a vibrant business that the government just cannot ignore and the public see as a resounding success story for the land rights movement. We need as many successes as possible prior to March 2011.”---Where was that, sorry? I'm not picking that up on here.

30 I apologise. It's on the screen. There's an email from Mr Johnson dated Wednesday, July 15.---Yeah.

And there's a number 1, a number 2 and then a paragraph that I have just read out.---Yeah, “I ask because we urgently need,” yes, yes. I can see that now. Yeah. Okay. Yeah, now that's fine, thanks. Can I just read it?

Yes, of course.---Yeah. Okay. The question?

40 What did you understand to be the need for DLALC to be seen as a vibrant business and a success story? Why was that relevant at this time?---I think, well, as far as my understanding about – it was for DLALC to grow and strengthen. That's how I understood it. I didn't read too much more into that and what Mr Johnson's saying about being a resounding success. And that goes without saying that if we wanted to grow and be vibrant, we would be seen as a success story in the land rights movement. That's how I see it, anyway. That's how I read it and understood it, anyway.

Do you know what the significance of the date was, March 2011?---March 2011?

Yes. At the end of that paragraph. It says, “We need as many successes as possible prior to March 2011.”---No, I can’t recall what was March 2011, what the significance of that was.

10 If I could refresh your recollection, do you think that coincides with the date of a state election in New South Wales?---Yes, there was a state election around that time, yeah. But that had no relevance to what I was thinking, anyway. State election, I mean, what would that do with us growing as DLALC? I don't know, frankly.

Okay. You respond in an email towards the top of the page that you're desperate for DLALC to grow as a vibrant business and therefore would like to suggest some dates. And you, I take it, set up a meeting. And, in fact, there’s an occasion where Mr Johnson then, shortly thereafter, presented to the Board of DLALC. Do you recall that occasion? I can assist you with some minutes of the meeting. That’s at page 50 of the volume. These are
20 the minutes of the DLALC Board meeting on 8 September, 2009. There’s indication at agenda item 3, “Presentation, chief executive officer, Gandangara LALC.”---Ah hmm.

Now, did you attend Board meetings?---Yes.

So I don’t see your name among those present, but is that an indication of the Board members present and that didn't include, for example, yourself as a staff member?---Yes, I attended the meetings and I took minutes too.

30 You took the minutes?---Mmm.

Thank you. The presentation by Mr Johnson is summarised on this page. “The chairperson introduced Mr Johnson, who spoke at length and in detail regarding the core business, namely the claiming of Crown land and potential large conservation areas and appropriate land development within GLALC’s area.” This was the presentation that came from your discussions with Mr Johnson about the assistance that could be provided by GLALC in relation to how they were doing their land claims. Is that - - - ?---That’s correct.

40 The next paragraph reflects what we discussed earlier, that GLALC’s research was identifying claimable land around the Fairfield Council border. And then the next paragraph reads, “After meeting with DLALC, it was agreed for GLALC began a mapping of all claimable land claims falling within the Deerubbin area, and providing Deerubbin with copies of land claims.”---That’s correct.

So an arrangement was struck between DLALC and Mr Johnson on this occasion. Is that your recollection?---Yes, we took it to the Board. It was agreed.

The next paragraph reads, "Jack spoke briefly about a Future Fund that GLALC had in operation." What did you understand the Future Fund to be?---I understood it to be a community land and business plan sort of fund, if you know what I mean. In that sense, that's what I understood it to be.

10 And what purpose did it serve?---Well, the purposes of ensuring that there was a plan for the Land Council to work through and grow, in terms of Deerubbin Land Council's case, to work through and grow as a Land Council. That's what I saw it as, the Future Fund. I didn't know too much about it, but that's the first time I'd heard about the Future Fund, yeah, that I recall at this stage, anyway, yeah.

There's then, in the next paragraph, a reference to a two-stage process that Mr Johnson was suggesting. Firstly land claims and secondly all possible
20 developments or property developments on land that it had claimed or could claim?---Property development, land development, that's been one of the main (not transcribable) from the word go. That's the reason why we put in for land claims way back, and we were looking at that with those lands. So we'd been moving along. So it wasn't something we just thought about. But we'd had it in our minds, but, yeah, so it was a goal in that sense.

What was Mr Johnson adding to DLALC's knowledge or awareness of its ability to do property development?---Well, at that stage, I would have thought that he was just bringing experience along, I suppose. That's all I
30 would have thought, at that stage.

At this point in time, had DLALC done major land developments in the past?---No, we hadn't done any. We had done, no, not major land, but they were back in the early '90s. But, no, we hadn't done any for years at this stage.

And you understood that GLALC was doing or had recently done its own land development projects?---Oh, yeah. Well aware of that, yeah.

40 How was that known?---Oh, the newspapers, and Mr Johnson had made it known, and others. But, yeah, Mr Johnson particularly had made it known to us about different developments.

Towards the bottom of the page, there are two motions that give effect to this discussion. There's instruction for GLALC to lodge DLALC land claims and then to proceed, in the second motion, for investigation and mapping. And there's a fee that's proposed for the charge for making land claims. Do you see that \$112?---Ah hmm.

That was an amount that had been proposed by Mr Johnson as the cost that GLALC could charge per claim. Is that right?---Correct.

Now, was there a time that you had discussions with Mr Johnson about another thing that Gandangara was doing, which was setting up a corporate structure? Do you recall that?---I do.

10 What do you recall Mr Johnson telling you about Gandangara's corporate structure?---I recall that we first met around this time, and he'd spoke about a corporate structure that they were working through and developing and getting legal advice on about matters. And that was just the general discussion, the corporate structure, and this is how it was, and, yeah, that was the first meeting, as I understood, yeah.

20 What did you understand the purpose of the corporate structure to be?---My understanding of the corporate structure was to, at that stage, and I didn't know too much about the corporate structure then, but what I understood was it would strengthen the Land Council under the Land Rights Act and stay within the Land Rights Act. That was the main thing that I was saying, because one of the questions I said when we first talked about this was that this is under the Land Rights Act legislation. That was my understanding of it, yeah. Didn't know too much about the corporate structure, 'cause that was the first time I'd met and first time I'd seen these diagrams and the whole thing, yeah.

30 In what way did you understand it would strengthen the Land Council?---In the sense that, that it was enabling – it talked about, it talked about a, a Gandangara development service which was a dummy group and that sort of – they talked about a Gandangara general – a Gandangara, GMS, a general management service and that was the one that I thought would strengthen because that's where we – Gandangara and Deerubbin in an administrative way were going to work and development and strengthen – maximise the resources collectively but to the benefit of both groups. That's how I understood it okay and that's the way I understand it and that – I understood that sort of structure would be able to do that because we were scarce with resources, certainly we were, although in terms of finances and the likes we had assets of quite some considerable amount but assets are not much good if you don't have an opportunity to, to bring them, bring them on. Anyway.

40 You mentioned one of the companies being a dummy.---Sorry? I didn't know too much that's why I've, I've got to be honest in terms of saying that when that word dummy comes into my mind I'm conditioned to think that it's not worth a thing.

So that was a word that Mr Johnson used?---I recall that being said, yes.

Okay.---Described that way, yes.

And what – you just said that when you hear that word you mean it's not worth any - - -?---Sorry?

Sorry. What did you – I was just hoping you could repeat your evidence. When you said that when you heard that word it made you think that that company was not worth anything. Is that what you said or - - -?---Well, as I said it was very early when this – we're talking about the first time we met. I mean later on we had further discussion about the structures and that but
10 when, when – and in terms of when the dummy, I said well, let's – it's a useful thing – a useless thing. What is the purpose of it was in my mind at that time. But I never explored it further. I mean I went – because this is all new to me. This is a new – and the other thing it wasn't under the Land Rights Act for structure it was under ASIC and that's the reason I asked from where I stood does this, does this fit under the Land Rights Act and I was told yes, it does.

So sorry, two follow-up questions. So you didn't ask what Mr Johnson meant by dummy, you just had a sense of what that might mean to you?
20 ---That's right. That's right.

And you asked – you were explained the difference between – and it is under the Land Rights Act and under ASIC or the Corporations Law and you were told by Mr Johnson that the corporate structure would be – sorry, did you say under ASIC or under - - -?---What – when I – I was just inquiring as an inquiry of mine about what was a dummy and just asked the question. There wasn't any great conversation about it at all in that sense. It was just – I just said, you know, because it just seemed to me at that point – I mean we're in a context of and timeline and I'd just become aware of it
30 at the beginning. It was certainly down the track I learnt a lot more about it and it was from there, yeah. I don't know whether that answers your question but there was that structure. The structure – the way it was structured it just seemed to me that why would you structure it that way quite frankly initially anyway.

Did Mr Johnson provide an answer to that question, why - - -?---Sorry?

Did Mr Johnson provide an answer to that question, why would you structure it that way?---No. I didn't ask that question. I'm asking myself
40 that question, okay.

I'm sorry?---Mr Johnson - - -

THE COMMISSIONER: Mr Cavanagh, your concern was that whatever the structure was it was compliant with the Aboriginal Land Rights Act?
---That was my – uppermost in my mind.

And when you asked Mr Johnson that question he replied that it was?

---That's my recollection of the conversation.

MR FITZPATRICK: Did Mr Johnson explain this is a response to the threat that Land Councils might be abolished or that there might be a threat to the assets of - - -?---I – there was, there was, there was talk of – yeah, I heard talk about abolishment of Land – threats and the Government and all that sort of stuff but I mean to be honest I heard that but it didn't, didn't resonate and I didn't take too much concern about that at that point in time in terms of – because I mean, you know, that's – that goes on in life all the time quite frankly that sort of conversation. That's how I saw it, I saw it anyway.

So you didn't have a particular concern about, about that issue?---My – in relation to the Land Rights Act I believe it – no, I believe that the Land Rights Act is a firm, solid act that the Government would support 100 per cent.

Thank you.---That's my view on it.

20 Did Mr Johnson in his early meetings mention SASL or what I think at that time was called the Sydney, Sydney Area Land - - -?---Sydney Aboriginal - - -

Sydney Aboriginal Services.---Land Service they called it. That was, that was under Gandangara, yes.

That was – you - - -?---We had - - -

30 You understood it as a Gandangara company?---I understood it was controlled by Gandangara, under Gandangara, yeah. That's all I understood it. Little or nothing to do with it.

If the witness could be shown a document at page 136 of the volume 22. Mr Cavanagh, these are meeting minutes of the DLALC Board held on 19 January, 2010. I believe this is the next occasion on which Mr Johnson attends the meeting. There's an indication that you're present as the Chief Executive Officer and an invitation – by invitation Mr Johnson. Was this the first occasion on which there was a presentation of the corporation structure issued to the DLALC Board?---Yes, this – as I understand it, yes, 40 this is the first time it was presented to the - - -

How did - - -?--- - - - and, yeah.

How did the invitation to Mr Johnson come about?---The invitation came about with a meeting with myself, Mr Johnson and the chairperson at the time, Mr Frank Vincent. We'd had a meeting and Mr Johnson had said earlier we've seen the structure, we've had the discussions and it was suggested that – and we were saying we need to take this to – it needs to be

taken to the Board for discussion. That's how it came about. So we invited him to the, to the meeting to talk about it.

So that was, sorry, that was Mr Vincent's decision or your decision with Mr Vincent?---That would have been certainly my decision agreed to by – and Mr Vincent in concert I'd be suggesting, yeah.

10 There's reference to your meeting with Mr Vincent and Mr Johnson in the minutes. There – about the middle of the page there's a sentence, "The
Chairman advised the meeting that around the middle of 2009 along with
the Deerubbin LALC CEO he met with Mr Johnson and broadly spoke
about how DLALC and GLALC could together work towards maximising
our Land Councils' resources." There's then – there's further background
information provided about a meeting on 17 December where there's a
description of significant structural change that the Board of GLALC had
endorsed and there's suggestion of the possible – the possibility of a
corporate amalgamation between the LALCs. What did - - -?---What I,
what I understood by that was, and there was talk about a corporate
20 amalgamation, there was talk with Mr Johnson and that was to maximise as
I said earlier our resources and to strengthen and be able to talk to the
different – the various groups whether they be the local Councils or the
sports groups or the Government or the – as a, as a strength of two Land
Councils joined and in the, in the metropolitan area that had quite
substantial constituents. That was the main thrust is we give strength and
maximise the resources and share the loads, the financial – the working
loads, cultural heritage work, all those sorts of things that part of our Land
Councils are required to do under the Act.

30 Thank you. Two paragraphs down there is then a description of
Mr Johnson's presentation and there's a reference to a copy of the suggested
three level A, B and C structure was distributed. The pages that follow this,
if we could go over to 137. Was this the structure that you were describing
having seen previously?---I can't be quite certain that was the structure but
it was a similar structure to that certainly.

So 137 is GLALC's. There's then over on 138, do I take it this is - - -?
---That one was - - -

40 - - - Mr Johnson's suggestion for - - -?---That was a suggested structure,
yeah.

And there's there on page 139, one headed "GLALC, DLALC corporate
amalgamation". Was this Mr Johnson's suggestion about how that would
work?---That's, that's a structure Mr Johnson created, yes. And suggested
that's how it may work, it would work.

The question of, sorry, and back to page 136, please. The question of how
these entities would operate within the statutory schemes addressed in the

last paragraph on the page. It says that the GLALC's CEO stated that the corporate structure that his Board had put in place will operate solely in accordance with the Act. Does that mean the Aboriginal Land Rights Act?--My understanding is that's what, the Land Rights Act we're talking about there, yeah.

Would you have taken these minutes at this meeting as the - - -?---Sorry, yes I did.

10 Sorry, would you have been the author in this, thank you. And, sorry, and picking up that sentence then, performed no roles other than those prescribed in the Act. So that's what you were referring to earlier that the -- your understanding of the structure would be within - - -?---With the Act and, and if you read further it says "With the aim of having all business transactions except in the initial 40D process dealings. To me that's the only process that that -- that operation was the new Land Rights Act. That's what the Land Rights Act was requiring, requiring me to do. And that's why - - -

20 And then the last part of the sentence reads "And for all funds derived from the business transactions to be quarantined in level C for use by level A through the community Land and Business Plan". And there's, I'm not sure that there's a structure diagram that has the tiers described by letters. But if you can look at 137 there's number 1, 2 and 3. Is that - - -?---Is this the GLO Corporate Structure we're looking at?

Yes?---Sorry, 1, 2 and 3, yes. And we've got the GLALC.

Are those the tiers?---Sorry?

30 There's a reference in the, sorry, there are levels, sorry. Let's talk of levels A, B and C for level A and C. Is that, is the Land Council level A and the - - -?---In the DLA structure as I understood it, I mean it's -- in the DLAL structure it was level, it was, the Land Council was the Board, that is under the Land Rights Act and then the next one under that was the Development Corporation, the Deerubbin Development Corporation. Which again had one Board member that was a member of that and then it came down to the Deerubbin, well in this case Gandangara because we hadn't been set up, or hadn't been, hadn't been on the ground at this point in time. Okay. So I
40 don't want to jump ahead of myself there. Gandangara and then you had, come down to Gandangara Management Services. That's as far as it got as I understood it. These other, that was drawn up by, and that was -- this was a structure that you're showing me here, was drawn up by Mr Johnson and was showed to us. But there was nothing, I knew nothing about how their structures worked or what was in their structures and the whole thing. But the bones of it was that.

So you made reference to the development services company having only one director. Was that your understanding of - - - ?---That's my understanding of how it went. I didn't know that at the time, but as I moved forward on it. That was what they call the dummy group.

Did Mr Johnson explain any difference between how companies formed under the corporations law were regulated in comparison to Land Councils under the Land Rights Act? Was that a point that he emphasised?---He may or may not. I don't remember. I can't recall.

10

You mentioned earlier some land claims that Deerubbin had made in the early 1990s. Did that include those referred to as Hazelbrook?---No. No, we – sorry, land claims? Sorry, correct. Yeah, it did. And that was in the community, land and business plan. I was thinking of land we claimed. It did, it was a list of land claims, and Hazelbrook was in that early, early part, from my recollection. I might have to check it, but. But it was certainly in that early time, Hazelbrook, yes.

20

And what was the status of the land at Hazelbrook in late 2009?---Late 2009?

Yes.---It was in the same status it was way back then, before we started development on it, yes. And that was that it was saleable land. There was 13 lots and we made application through our community, land and business plan to be able to sell them, and that was where it was at, at that time. And we were looking at wanting to, yeah.

30

So, this land had been DLALC's land for some time. What had been the reason for holding it without developing or selling it to that point?---Sorry, I missed that part.

How come this land hadn't been developed or sold in the time from when it was claimed?---Well, we didn't have any funds. We were very short of funds and we'd been very much wanting to develop that. But as I said, we didn't have any funds and that was why it hadn't been, and we just didn't have the resources to do that.

40

Was that an issue that you discussed with Mr Johnson?---That was an issue that, when we spoke about the Hazelbrook, yes, we said, yes, we don't have funds to develop that land.

And what was Mr Johnson's response to that?---Mr Johnson said, "That's a matter that, well, we can help you, our Land Council, to develop it. And I have a private company called Waawidji, and they can assist you in doing it, developing that land."

So did you understand Mr Johnson to be offering the assistance of both GLALC and his private company?---My understanding was it was a private

company just direct from him. But not GLALC. He said it was a private company that he had had, called Waawidji.

Your evidence a moment ago, I believe, was that “we could help you”. Did you mean that GLALC could help or was he speaking - - - ?---When I said “we could help”, I mean, I took, well, as I said, I didn't think about the “we” at that time and I still didn't think then until you've just raised it in my mind, actually. But the offer was from a Waawidji company from Mr Johnson, a private company.

10

That turned into a proposal, which I'll show you. That's volume 22 at page 113. And this is late in 2009. As I understand the emails, Mr Johnson sends you an email on 22 December, and then realises he sent you the wrong document. So the relevant email is at the top of that page, dated 23 December. He explains that in the first line of the email and then says, “I've attached both the Hazelbrook project document and the land assessment project document. If you're happy with the Hazelbrook document, could you please countersign, scan and return.” And then there's, following in the bundle beginning at page 114, is the first of those documents, is the
20 Hazelbrook Project Advisory Development Management Services Retainer Agreement. That's the heading in bold type. And that's signed by Mr Johnson on page 117. And then there's a second document, which is the project advisory and development management services retainer agreement, and that begins on page 118, and it's signed by Mr Johnson on page 121. Now, these documents are both headed Waawidji, which you understood at the time to be Mr Johnson's private company?---That's correct.

30

The role that Mr Johnson is offering for his company is on page 115. And he states there in the text of the letter, under the heading “The Role”, “It is my understanding of the role that DLALC wishes my firm to undertake could broadly be described as follows.” And this is in respect of the Hazelbrook project.---Yes. Correct.

40

There's the sixth bullet point down. Sorry, fifth bullet point down. “Is to arrange for a commercial loan from GLALC for sale costs.” Was that an element of the deal that you understood? That Mr Johnson was offering to arrange for DLALC to borrow money from GLALC?---My understanding was it was Mr Johnson said that his private company, Waawidji, could assist us. And that's where I understood it. And I see where he's saying here, he
40 arranged for a commercial loan from GLALC. I wasn't aware if he could arrange like that (not transcribable) DLALC himself. It wasn't something that I agreed to at that time. Why would I?

Well, this was his proposal. He was proposing that Waawidji could assist DLALC. And one of the ways it could do that was to obtain a loan for DLALC from GLALC.---Mmm.

You understood that was what he was proposing?---Yeah, yeah. Yeah. And I do understand, let me say, that he did say, and as I've agreed to there in that statement, they arranged for a commercial loan from GLALC. There was a loan, apparently.

You understand that that in fact happened? Is that what - - - ?---Well, my understanding was that, yes, there was to be a loan from there, as I understand. But we were dealing with Mr Johnson and his private company.

10

But it's clear here that Mr Johnson's private company wasn't making the loan. You weren't borrowing money from Waawidji or he wasn't offering to lend money. Sorry, Mr Johnson, on behalf of Waawidji, was not offering to lend DLALC Waawidji's money. He was offering to arrange a loan from GLALC.---Mmm, mmm. Yeah.

So you agree with that?---That's what, yeah.

20

Okay. And the fees that Waawidji would charge for its services in arranging that loan, among the other things that are identified on page 115 and onto 116 was a success fee of \$5,000 per lot. And that's at the bottom of page 116. And you understood that that was the price that Waawidji was charging for - - - ---My understanding was that Mr Johnson was a private company who said that he could arrange a loan. He didn't say who he was going to get it from, but (not transcribable) at that time. There were \$5,000 to him, and that's who we paid the \$5,000 to, to Waawidji. Not to Gandangara.

30

THE COMMISSIONER: But that was from the proceeds of sale.---Sorry?

The 5,000 per lot was after the - - -?---Oh, after, sorry.

Was afterwards?---We didn't pay then. Yeah, sorry.

So it wasn't a loan, that was actually the success fee that was in effect Waawidji's payment for providing that service?---Correct.

Right.---Correct.

40

MR FITZPATRICK: If we go over to page 127. This is your email in response and it's - the email that we have just been looking at and - or we were looking at a few moments ago is in the middle of the page. That's the one December 23 at 8.47am. You respond on the same day at 1.51pm, "Jack, see attached. I'm still struggling to get the Board together but have not given up yet." And sorry, the attachment is the Hazelbrook project advisory agreement and management services retainer. It begins on 128 and your signature below Mr Johnson's is on 131. So that's the, that's the acceptance of the retainer terms by you on behalf of DLALC?---This is, this

is – just to understand it, get my understanding of it, we’re talking about the Waawidji sale of the land. Correct?

Yes.---And that’s - - -

Yes, but this is the document in which you send back the signed retainer terms for the Waawidji to - - -?---Yes, yes, yes, understood. Yes, correct.

10 Thank you. The reference to “I’m struggling with getting the Board together”, had you – did you already have authority to sign the document and enter this contract with Waawidji?---Sign the document?

Sorry, did you already have authority from the Board to do that or was that something that you had done since receiving the retainer terms?---I just want to get that sequence in my mind. In getting – when I signed this document and can I go back to the date of that because I think it was in December we signed that Waawidji document.

20 Yes, that’s right.---And in terms of getting the Board together – could I look at that again thanks just to get my mind – it’s quite a while ago.

Sorry.---I’m just trying to rethink the sequence of that back to the minutes.

Could you please go back up to 127.---Back to the minutes of minutes ago.

Apologies, Mr Cavanagh. It will be back on the screen in a moment.
---Thank you. Sorry. Sorry.

30 Your email towards the top of the page reads, “Jack, see attached.” And the attachment was what we’ve just looked at. And then you have the sentence, “I’m still struggling with getting the Board together but have not given up yet”.---That’s correct, yeah.

And my question was when you signed, when you signed and sent back the contract was that a matter that you had already discussed with the Board and had authority to engage Waawidji and move forward with the Hazelwood project?---In terms of – I saw that in terms of, yes, my, my role as the CEO, yes.

40 Okay. Now, one of the other roles that Waawidji was going to have under its agreement was to recommend consultants to assist in the process of the development and sale of the Hazelbrook lots and that was something that occurred in – let’s look at a document from 5 March, 2010, page 140 of this volume. The email with the little arrows down the left-hand side is an email that comes from Mr Johnson and he – and this is again 3, sorry, 5 March. It’s an email to you where he makes reference to the 10 parcels of land at Hazelbrook in the top – in the first paragraph.---What, sorry, I’m just trying to get - - -

Sorry, it reads - - -?---From Mr Johnson from me, 5 March at 5.48pm I'm looking at here?

Sorry. About five lines down there's 12.41pm and it says "Mark Johnson wrote"?---What number was that, I'm looking at number - - -

It's 1-4-0.

10 THE COMMISSIONER: Can you see it on the screen, Mr Cavanagh?---
No, I can't. I'm looking at 5 March, 2.10, 5.48pm.

Yes. But just below that it says, where the little hand is on the screen. It says on 5 March, 2010, 12.41 - - -?---Oh, yes, yes, yes. I'm sorry.

- - - Mark Johnson?---I apologise, yeah.

So what appears under that is an email from Mr Johnson?---Yeah, I apologise.

20

Yes.

MR FITZPATRICK: Thank you?---I'm getting confused. Right, sorry.

And Mr Johnson is there passing on a fee proposal from Arben Management to assist DLALC and a fee proposal from Urban Housing and Urban Land & Housing. And indicates in the first sentence of that previous, sorry, the following full paragraph "Part of this has since been provided by Waawidji to DLALC is the recommendation of appropriately qualified consultants".

30 So and it continues. "Accordingly we are pleased to recommend the appointment of Arben to assist DLALC and we have negotiated the scope of work and fee arrangement as set out in Arben's proposal and believe it is commercially reasonable". And it explains to some extent why these consultants are being retained. There's - now did you have dealing with these consultants with Arben Management or Urban - - -?---We dealt through Mr Johnson, yes.

Only through Mr Johnson?---Yes, both of them, yeah, both of those, yes.

40 And then towards the bottom of the page the second last paragraph on that page there's another reference to the loan. And the paragraph reads "It should be noted that Waawidji has arranged a loan on commercial terms for DLALC so that DLALC can meet the costs of engaging the various consultants required for disposal of these parcels of land". And that was a reference to the loan from GLALC that Mr Johnson mentioned in Waawidji retainer letter that we looked at before. Do you agree with that?---Yes, yeah.

Thank you. The last paragraph is an offer for Mr Johnson to answer any queries. Did you have questions for Mr Johnson about his engagement of consultants or the arrangements of the loan, those matters that you took up with him and - - -?---We had discussions, a control group meeting prior to that as I recall, in my memory about - and this was discussed with myself and other control group members including our Chairperson. And it was brought up about the Arben Group and the Urban Land & Housing and so it was discussed there and then as I said it moved to this particular situation. But no, I didn't have any queries or questions.

10

And did you know who was paying Arben Management and Urban Land & Housing?---I understood it was Waawidji actually. Sorry, it was, sorry, that's not what I originally meant. It was being paid by GMS as I understand and they paid both Urban and Arben, certainly Arben and, yeah, paid by GMS.

20

Can I show you a document page 144?---Can I also add what I'm thinking. We also, I may be getting confused here. Yeah. We're talking about, we're talking about Hazelbrook, yeah. Because Arben did also work with us under another Maroota which I can get to. But, yeah, as I said we've got GLS, yeah, Arben.

Sorry, so this is - - -?---Sorry.

30

I was just curious. This is an invoice from Arben Management. It's addressed to Gandangara Local Aboriginal Land Council to the attention of Mr Johnson. The project is identified as DLALC Terrace Falls Road, Hazelbrook. That's, that's the project we've been talking about. Correct? ---Correct.

40

So did you ever see invoices – did you see these invoices at the time or were they directed only to GLALC?---The ones that – as I said we, we – the GMS invoices we never saw. No, the payments – those – we did see Arben invoices but we paid some Arben invoices ourselves and they paid them under GMS also. There was two payments going on here.

You're suggesting that it was GMS that paid Arben. This is – you see here this is an invoice directed to GLALC not to the GMS entity.---My understanding was it was GMS that paid.

And you see – you may not be familiar with this but there's a stamp on the document which reads approved for payment and there's an indication that the department or entity that's paid this is GLALC.---Yeah. Yeah, as I said I haven't seen that document.

Where does your understanding come from that it was GMS that was paying - - -?---Because we have paid – GMS have paid Arben for getting – I might be getting confused again, it's a long time ago – for Maroota work and that.

I know that in the, in the, in the Hazelbrook area there was – my understanding was that we paid a total if I can answer it in this, this way so I can try and bring my memory back. There was a total of about \$190,000 approximate that was paid to Arben for – well, for the Hazelbrook stuff, okay, \$190,000. That's my understanding of it and that's why I'm saying – and some of that I understand was paid by, by – that, sorry, let me – that \$190,000 is paid by GMS as I understand it. Paid to – okay, that was for the, for the - - -

10 THE COMMISSIONER: Well, when you say as I understand it, is that because someone told you - - -?---Sorry.

- - - that that had happened?---No, that is, that's how it is. That's how I saw it. There was 190,000 – around \$190,000 paid to Arben by GMS.

So you saw the invoice in relation to those matters?---When we, when, when – that's what – when we did the – when we've been doing our checking that's what we have, we have come back down to.

20 And was that on the Hazelbrook development?---That was on the, as I recall the Hazelbrook development, yes. Yes, the Hazelbrook development.

MR FITZPATRICK: Sorry, and you're awareness of what – of which Gandangara entity paid any relevant consultants is based on the way in which those charges were passed on to Deerubbin. Is that right?---My - - -

If you didn't - - -?---My awareness - - -

30 If you say you didn't see the – if you didn't - - -?---Because a lot of these invoices didn't come till late, much later, after – again that's when, when we were given an account by Mr Johnson that we owed this money we asked for all the invoices and that's where they came to light and we saw them and, and we responded back by saying we would want – like to please explain why these invoices were paid in this way when we haven't seen them and we haven't paid them.

40 THE COMMISSIONER: Mr Cavanagh, was this at a point in time when Mr Johnson was saying that – or was expecting DLALC to in effect reimburse for the payment of these expenses on the land development? ---That's correct. It came at that time, after that.

All right. But that wasn't happening on a monthly basis so it wasn't as though you were being asked to pay these invoices monthly, it was all – it's right at the end of the process?---No, it all came at one – in one – in one or two lots.

Right.

MR FITZPATRICK: Sorry, but just in relation to the document at page 144, you see that this is invoiced to the GLALC itself and the stamp appears to indicate that it was paid by GLALC itself. You don't have a basis for challenging the correctness of those pieces of information and suggesting that it was in fact GMS that paid this amount, do you?---Can you give me that again, sir? I'm trying to get it in my head.

Sorry. The document appears to indicate that it's an invoice that's - - -
---It's paid by Gandangara.

10

The payment had been called for by GLALC, and payment has been made by GLALC.---Ah hmm.

You don't have a basis for suggesting that what the document says is not right?---No.

Thank you. Now, the outcome of the project was a success, I take it? The Hazelbrook project, the lots were sold?---The lots were sold, yes.

20

And Waawidji sent invoices to – I can show you the documents, page 203. This is a Waawidji invoice for seven lots that are numbered there, 186, 187, 189, 191, 196, 197, 201, at \$5,000 each. Brings a pre-GST total of \$35,000. Is that right?---Correct. That's correct, yeah.

And the date of that invoice is 17 December, 2010. And that amount was paid. I can show you the bank transfer document, which is at page 258. The other side of the transaction might be the receipt, but there's an indication that the account name, there's that number. The 3-8-5-0 number is the bank record of the amount transferred and the Deerubbin Local
30 Aboriginal Land Council is the account name.---Yeah, we paid that.

You paid that. And also paid a second invoice, which was dated in September of 2011. Sorry, the payment was – let me show you the invoice first, which is 220. This invoice is dated 27 July, 2011. And that's for the final three lots. \$15,000 plus GST makes \$16,500. And that payment was made on 2 September. That is on page 255. There's the account name, Deerubbin Local Aboriginal Land Council, and the third item down in the transactions is that \$16,500 number. So, the - - - ---Correct, yeah, we paid that too.

40

Waawidji's fees were charged in accordance with the retainer that we looked at before, and paid by Deerubbin.---Deerubbin LALC.

Thank you. Mr Cavanagh, there was also a relationship between Deerubbin and GMS, I think you mentioned earlier. Let me show you a document at page 196 of the volume. This is an email exchange between yourself and Mr Johnson in November of 2010. There's your email towards the bottom of the page, and there's a paragraph beginning with the words "I accept". "I

accept the offer, as outlined below, to undertake financial administration for DLALC and all existing entities, including the Deerubbin Future Fund, for the annual fee of \$75,000.” This was GMS taking on administrative responsibilities for Deerubbin? Is that - - - ---That’s correct.

And there's – the balance of the emails involves you working out the exact scope of the work?---Yes.

10 But that relationship commenced towards the end of 2010?---Actually, yes.

And that led to, I think, you were referring earlier to receiving information from let's call it the Gandangara Group about amounts that were owing by Deerubbin either GMS or GLALC. And that led to a dispute about how much was owed and for what. I don’t need to go into the ins and outs of that dispute but can you tell us what the status of that is today?---The loan, how much was owing by DLALC to - - -

20 Well, yes. So there was – a dispute arose about the extent and the amount that was owed by Deerubbin?---Yeah. Yeah. The status of it if I'm understanding the question is that matter was – it's been resolved. There was an administrator put into the Land Council, we met with the administrator, we met with, and the matter was resolved and GLA had met with the administrator. That's the DLA Council and we have come to an agreement, GLALC, DLC, to pay an amount of money that has been agreed to through the administrator and both groups and that's now in the process, it's been agreed to by both Boards and it's only been recent but and it's in the process of being cleared. That's how I understand it anyway, that's the status of it.

30 Those are my questions, Commissioner. I note the time.

THE COMMISSIONER: Yes. Well we'll just take a short adjournment and we'll deal with the cross examination after the morning tea. We'll adjourn. Thank you.

SHORT ADJOURNMENT

[11.28am]

40 THE COMMISSIONER: Yes, any questions for Mr Cavanagh?

MR MACK: Yes, Commissioner.

THE COMMISSIONER: Yes, Mr Mack.

MR MACK: Mr Cavanagh, my name’s Mack. Just going to ask you a few questions on behalf of the Registrar of the Aboriginal Land Rights Act. ---Ah hmm.

Is it fair to describe your development track record before meeting Mr Johnson as poor?---Yes.

Yes, all right. And is it fair to say that you lacked the expertise to undertake development at Deerubbin?---Yes.

And the money? You lacked the money as well?---Yes.

And staff?---Yes.

10

And without the support of GLALC, you wouldn't have been able to undertake that development at Deerubbin?---Yes.

And the only way you could have done it was with the support of GLALC? ---Yes.

All right. Thank you, Mr Cavanagh. They're my questions.

20

THE COMMISSIONER: Any other questions of Mr Cavanagh? Mr Docker.

MR DOCKER: Thank you, yes, I do, Commissioner. Mr Cavanagh, you were shown some emails earlier. Sorry, my name's Sean Docker. I appear for Mr Johnson. You were shown some emails earlier with Mr Johnson in about June 2009, and asked about when you first met him and things of that nature. Do you recall that?---I do.

30

And what followed shortly after that, at the end of 2009, was the agreement about Hazelbrook?---Right.

Right. Now, it's true, isn't it, that Gandangara Land Council started providing administrative services to Deerubbin Land Council in the second half of 2009?---Yes.

And in particular, book-keeping services?---Yes, there was book-keeping.

And Gandangara was charging Deerubbin for those services?---Yes.

40

And was it true that Gandangara was also up-front paying for some of Deerubbin's administrative expenses on the basis that there'd be a loan and it would be repaid by Deerubbin?---I don't quite understand the way you're putting that. That wasn't the way it was put to me. We were understanding that the arrangement with administrative expenses and that was all part of the service that was being offered. That's how I understood it anyway.

All right.---Understand what I'm trying to say? I don't know whether that's answering your question. But I don't quite understand, in terms of up-front payment of - - -

I'll rephrase it for you.---That wasn't the language that was used to me at all.

Okay. I'll rephrase it for you, sir. So with Gandangara providing administrative services to Deerubbin in the second half of 2009, Gandangara charged you a fee for those services. That's one thing.---That's correct.

10 Right? And one of the services it provided was accounting and book-keeping services to assist you to pay, to ensure all your bills that were coming in were getting paid.---Correct.

Right.---Yeah, in terms of, you know, under Mr Johnson, yes, that's correct.

Right.---Dealing with the Gandangara, Arbens and that, yes.

20 Right. But in terms of the actual money that was being used to pay those bills that were coming in for administrative expenses, were they being paid out of Gandangara funds or Deerubbin funds?---Some of them were being paid out of Deerubbin funds and some were being paid, as I understand it, well, not only understand, some were paying out of Gandangara funds.

Right.---When I say that, by that I mean Deerubbin Land Council paid for example direct to Arben and certainly direct to – yeah, yeah, I'll leave it at that.

30 And to the extent that Gandangara were paying for things out of its own money for Deerubbin you understood that there was interest being charged by Gandangara to Deerubbin. Is that right?---See the – let me say, my understanding is this. We got the accounts very late. There was, there was an accumulation of things going on. Now, the interest was – yes, yes, I do understand that, there was, there was, there was saying that interest would be charged on, on, on this, yeah (not transcribable) I recall now, yes.

All right. And that related to any expense didn't it that Gandangara was paying on behalf of Deerubbin?---It certainly related to the, the, yes, yes, it would, yes.

40 THE COMMISSIONER: What was the interest rate?---Sorry?

What was the interest rate you were being charged?---What was the – there wasn't, there wasn't a – that I can – I can't recall what it was. There wasn't a – when I say I can't recall that was – my understanding is this, that the interest rate because we were getting the invoices late, we weren't getting them on a monthly – or the charges – we, we never got the invoices and the like till late in, in – we got them in bulk, two lots as I understand it and there was, and there was discussion around the interest rate and I, I can't say, you know, I can't give you a figure. I don't have it in my head.

MR DOCKER: Mr Cavanagh, would this assist you. The interest rate was the National Australia Bank commercial rate. Is that your – is that correct?--I – as I said I can't recall the interest rate.

All right.---I wasn't associated with the National Bank.

Could I just ask you to turn to page 140 of volume 22. Do you still have that with you?---Yes.

10

And if you would just look at the bottom of the page, the second-last paragraph there's a reference to a loan on commercial terms. Do you see that?---What, what - - -

Just the second-last paragraph?---It should be noted, is that the paragraph you're talking about?

Yes, that's the one. Could you just read that to yourself first.---Yes, I see that.

20

Now, this is an email you were taken to before morning tea which was from Mr Johnson to you of 5 March, 2010. Do you recall that?---Yeah.

And you understood didn't you that loan on commercial terms meant loan with a commercial interest rate?---Well, that's what, yeah, that's my understanding what a loan on commercial terms is, yeah.

30

Right. And it was the same terms that applied to all of the payments that Gandangara made for Deerubbin. Is that your understanding?---Going back over it's quite a long time to remember all of the, all the, all of the terms and can you tell me what areas you're talking about or what are the, what are the, what were the – when you say all of the terms I, I, I'm talking about - - -

THE COMMISSIONER: Mr Cavanagh, can I – sorry, can I just ask you just to focus on that paragraph that Waawidji has arranged a loan on commercial terms for DLALC so that DLALC can meet the costs of engaging the various consultants. You see that paragraph there?---Yes.

40

Well, just for my benefit, I'm not sure, did that mean that you got a bucket of money from GLALC which was loaned to you on a commercial rate and from that bucket of money you were paying the consultancy invoices as they came in, was that what occurred?---No, no.

That wasn't what occurred?---No.

All right.---No.

MR DOCKER: Now what was occurring wasn't it, was that one of the entities in the GLALC Group would be paying expenses on behalf of DLALC and DLALC would be on the basis that DLALC would be required to pay, repaid the GLALC entities for the expense. That's firstly right, isn't it?---On the basis of required to pay the DLALC entity or the expense - - -

DLALC would be required to repay the GLALC entity for the amount it paid for the expense?

10 THE COMMISSIONER: In other words you were reimbursing GLALC for what it had paid to the consultants?---We – in the case of Waawidji, DLALC paid the, for example, Arben directly in some cases and also paid them through reimbursing under the GMS, an amount, I mentioned an amount before.

But that wasn't in relation to the same invoice. They would've been two separate invoices, is that what you mean?---Two, yes, absolutely, yeah, two - - -

20 There were some invoices that you received from Waawidji - - -?---That's correct.

- - - that you reimbursed Waawidji for?---Correct.

And there were some that you received from a GLALC entity that you reimbursed them for?---No. My understanding is we just we were paying GMS - - -

30 Well that's what I mean. There were some that you – some invoices you received from Waawidji?---Yeah.

Some you received from GMS?---Yeah.

But whoever you received them from you reimbursed them for that amount?---We, we relieved, sorry, yes. Yes, we did reimburse them, yeah.

MR DOCKER: And in respect of the ones that needed to be reimbursed there was also an interest component on top of that, that's right, isn't it?---That's correct.

40 And that was at a commercial rate?---Yes.

And that – all right. Now you asked me to assist you with the various kinds of assistance that was provided. Could you turn to page 272 of volume 22. And you can see here that this is a letter that you wrote to Mr Johnson on 1 May, 2012. It goes for until page 281. Do you agree with that? This is your letter to Mr Johnson?---Yes, that's correct, yes.

All right. And was this a letter that you wrote yourself or was it written with the legal assistance?---?---This letter was written with assistance.

From a lawyer?---Yes.

Right. Now if you just go to page 274, there's a table there that sets out six items, do you see that?---I do.

10 Now I don't need to ask you about the Hazelbrook land sales project because you've already given some evidence about that. Now the Land Cluster Project was a project wasn't it, by which one or more of the GLALC entities arranged for Deerubbin to be provided with services to ascertain whether and to what extent land held by Deerubbin was developable?---That's correct.

That's right?---Yeah.

20 And there were – you gave some evidence earlier about 190,000 being, \$190,000 figure being charged?---That's correct.

And you said in your evidence that that related to Hazelbrook. I suggest to you that it was actually the Land Cluster Project.---And I agree.

You agree with that? All right.---The 90,000 was for Hazelbrook.

And that was separate to Hazelbrook, wasn't it?---90,000 was for Hazelbrook.

30 Yeah.---Okay?

But the Land Cluster Project was separate to Hazelbrook?---The Land Cluster Project was an absolute separate.

Yeah. And then in the course of the Land Cluster Project, did GLALC entities pay expenses up front to consultants and the like, and then seek reimbursement plus interest from DLALC?---GLALC? Yes, they were there.

40 So that's one example.---Yes.

Right. And then there's a reference there to the Maroota Project. That was a project, wasn't it, by which there was an assessment done on land that had been successfully claimed at Maroota to see whether there could be some sort of sand extraction on it and then development? Is that right?---That's correct.

All right. And most of the costs in relation to that came from a government grant, didn't it?---That was under a government grant.

Yeah. But the GLALC entities provided services in relation to that too?
---Yes. But that government grant came direct through – we set up, that is DLALC, set up their own banking entity or banking arrangement, and the money was transferred eventually into our banking. However, earlier, before the money came from the government entity into our bank, GLALC was, as I understand it, or the entity, sorry, the entity, we don't know which one it was coming through at the time, the entities (not transcribable) were paying some of the costs that they were doing for the Cluster we're talking about. Are we? Sorry, are we talking Cluster? We're talking Maroota, sorry.

No, we're talking Maroota. I'm sorry.---Maroota, sorry. Not the Cluster. There Waawidji, Cluster and Maroota.

Yeah.---Three separate entities.

They were all separate.---Three separate groups.

20 All right. And then, if we keep going down this table, there is GMS financial and other services. Now, this includes the administrative services, doesn't it?---Yes.

For which the GLALC entity charged a fee?---That's correct.

And there were other services related to that too, were there?---The administrative services?

30 Yeah.---There was, well, the book-keeping was part of all that, under the administrative. That's what you're saying, that those services are there. And then we had, with regard to the housing, we paid that. DLALC paid for any housing services because it wasn't under GLALC or the arrangement with Mr Johnson at all, housing. So - - -

All right.---Okay?

40 I understand that, Mr Cavanagh. So it's fair to say that the GMS financial and other services is separate from the three above it. That is, separate from Hazelbrook, separate from Land Cluster and separate from Maroota. Is that right?---That's correct.

And then if I could just skip to the last one. GMS Aboriginal Land Claims. ---What page are we talking about?

I'm still on page 274, Mr - - - ---Right.

I'm just using the table there, just as an easy guide to the categories of services that were provided. Do you see the heading there, GMS Aboriginal Land Claims?---I do.

And that was a process by which GMS provided services I identifying and claiming on behalf of Deerubbin LALC land in the Deerubbin LALC area. ---That is correct. And that included, if I understand, the land claims that we were putting in, that you're saying. That was the arrangement. \$112 per land claim back, and that was one of the other services that he gave. So,
10 yeah, that's a service that was given, yes.

Yes. And there was also an interest component on that as well. Is that right?---Yes, there was as I understand the interest was being, was included.

And if you just – if I can just ask you to turn to page 279. You can see there under Aboriginal Land Claims – do you see that heading?---I do.

And there's a reference in the first dot point under there to 1,478 claims. The – is it the case that by the end of the assistance provided by GMS that
20 nearly 2,000 land claims have been lodged or is, is that 1,478 figure the correct one?---1,478 is the land claims that were lodged.

Right.---That's all.

All right. And where it says – if you could just turn to page 278 you can see there's a heading Corporatisation and Miscellaneous Services. Do you see that?---I do.

That was a – that's referring isn't it to the assistance which the DLALC
30 group entities provided to Deerubbin to set up various other corporations for certain specific purposes. Is that right?---That was – yes, there was assistance there, the legal, legal, that was in particular legal. As I understand Mr Johnson wanted to – spoke about a legal, legal arrangement, fee where, where in order to get some advice on, on whether – on, on these corporations. That was what it was. To get advice on the, on these corporations, the entities.

Right. But that wasn't advice form him was it, it was advice from other lawyers?---That was, that as advice through the legal – Baker McKenzie
40 were the people that - - -

And, and, and to the extent that any of those invoices were paid up front by a GLALC entity Deerubbin was charged interest. Is that right?---Well, yes, I would say so, yeah.

All right. Yes. And just in relation to a GLALC entity paying expenses on behalf of DLALC, it's true isn't it that you were asked to approve the payment of each expense before it was made?---Yes.

And that's what happened?---That's correct.

And you used to sit down with Mr Shalesh Gundar on a regular basis to go through the expenses and to approve them. Is that - - -?---Not correct.

Not correct?---No. I didn't sit down with Mr Shalesh Gundar to go through the expenses, no.

10 All right. All right.---Mr Gundar is the accountant for Gandangara are you talking about?

Yeah, yes, that's who I'm - - -?---The second accountant. There was a first accountant.

Yes.---Karen Maltby. We talked about expenses and that but never sat down with them to go through the expenses. That never happened ever - - -

20 All right. But - - -?--- - - - in any, any occasion.

I'm sorry, the question was then – was probably poorly directed. But, but you did discuss with them the expenses before you approved them?---What happened with the expenses would be the invoices would come as I say – and as I said they came in bulk form. They didn't come every month. We would present them on a regular basis and the invoices then were dealt with by – the major invoice, we're talking about here the Baker McKenzie and that. They were never discussed with Shalesh or any of – any accountants. It was just – went through them and they were discussed with Mr Johnson, the, the matters – not so much the invoices but the matters that we were
30 dealing with and then would get the invoices once it was agreed to. That's how I, that's how I, I dealt with the matters.

Right.

THE COMMISSIONER: Mr Cavanagh, sorry. I just need to clarify something because I'm not sure that I understand what your answer was to the previous question. Mr Docker asked you whether or not the arrangement was that you approved each individual invoice before it was paid and you said, yes, you did?---Approved it before it was paid?
40

Yes. That's what was put to you Mr Docker. Mr Docker said that there was an arrangement whereby you approved each invoice before it was paid and you said yes. But now you're referring back to these invoices that arrived all in one or two batches. Are they the same invoices that you were told about before they were paid or is this something else?---Well a mixture. Some of them, some of them were the same invoices but there was a mixture. We would, we weren't just getting all of them in batches we got quite a

considerable amount of them but we would get occasionally others that would come across - - -

That came through?--- - - - and I would I approve. And we had an arrangement that I went I would approve and send back and send the list back to Gandangara who were looking after the books and they would then be paid by Gandangara. Because they had – they were paying our accounts in terms of those invoices.

10 So you approved each of those invoices that kind of dribbled through?--- Come through.

But when you're talking about the invoices that arrived in the big numbers, you didn't go through the same process with them?---When, when the invoices came in the numbers as I say. Just trying to think back to how long ago that was. They would come and we would, I would, I'd check, check the invoices to see – because when we received the batch of invoices that we were supposed to be owed we in fact asked the question when we received them from Mr Johnson, this is how much you owe and I need
20 invoices. And we said back as I recall now going back to it, and said back to Mr Johnson, we can account and we're happy to pay these invoices. Because these invoices on this particular account, a certain number and we mark them and said these are to be paid because we have invoices and we can verify them. However, there are these ones we have no invoices for.

I see. All right?---Okay. And that's what I meant by the batches and the confusion and we refused to pay those.

MR DOCKER: Now Mr Cavanagh, just lastly, coming back to this letter
30 that's at page 272. And this letter contains, this is your letter of 1 May, 2012, to Mr Johnson. This letter contains an offer to resolve a dispute over various matters, do you agree with that?---That's correct.

And you were asked by the learned Counsel Assisting earlier about the settlement of a dispute before morning tea, you remember that?---That's correct.

And you said that the dispute had been settled?---That's correct.

40 And is that the same dispute as being discussed in this letter?---Yes.

Yes. And are you able to say what the number was that was agreed on to settle this dispute?---The figure, final figure was \$370,000 - - -

Right. Thank you - - -?--- - - - that I can recall, approximately I think, just off the top of my head.

Thank you, Mr Cavanagh, thank you, Commissioner. That's my questions.

THE COMMISSIONER: Yes, Mr Fitzpatrick.

MR FITZPATRICK: One matter arising. Mr Cavanagh, in that same letter. Sorry, let me ask you a question first. In relation to the topic of interest that Mr Docker raised. Was there ever an agreement in relation to the terms on which interest would be paid by Deerubbin to any of the Gandangara entities?---There was never an agreement there was – no, I can't, I can't, I can't – no, I know there was, how can I put it. When we spoke about it they said that interest would be paid. That's what Mr Johnson said to me on the thing. So if that's an agreement then there was an agreement.

But as to the, the terms or the rate or - - -?---As for the number and what interest I wasn't privy to that.

Thank you. If could show the witness page 279. This is in that same letter that you've been discussing with Mr Docker and as he characterised it, this is an offer to – an offer by - - -?---2?

Sorry, 279.---279, yes.

And it's on the screen. This is an offer to settle the dispute.---Yes.

And there's a heading at the bottom of the page that reads Allowance for Interest and - - -?---Yes.

- - - the paragraph which goes over the page commences, "To date you have made a number of different assertions about Deerubbin LALC's liability to pay interest to GLALC, GMS or SASL in respect of some or all of the above." The next paragraph reads, "I have never had an answer from you to my questions about the basis on which you believe that Deerubbin LALC is obliged to pay interest to GLALC, GMS or SASL in respect of some or all of the amounts that you claim from us." So that was the – that was an accurate statement of - - -?---That's correct.

- - - your understanding - - -?---That's correct.

- - - as to the - - -?---That's correct.

So in this offer what has been done is, and I'll take you down to the paragraph beginning "Where" which is a third of the way down the page, what's been done in this offer is that there's – and please correct me if I'm wrong about this – but there's an acceptance in principle of an obligation to pay interest.---That's correct.

And an allowance as that heading that we saw on the previous page has made – has been made for that - - -?---That's correct.

- - - by making a couple of assumptions. One is an interest rate, a commercial rate of 9.6 per cent.---That's correct.

And that's the first assumption, and the second assumption is that the Gandangara entity paid the invoice two months after the date on the invoice - - -?---That's correct.

10 - - - so interest is only running from the date of payment. So that's why there has been an allowance of interest on the 27,000-odd number that's there?---That's correct.

And then there's an ongoing interest component - - -?---That's correct.

- - - just again to keep the amount at – going forward at a fair sum?---That's correct.

Great. Thank you. Those are my questions.

20 THE COMMISSIONER: Thank you. Yes, thank you, Mr Cavanagh. You may step down. You're excused.

THE WITNESS EXCUSED

[12.27pm]

THE COMMISSIONER: Yes. Mr Wright is your next witness?

MR HENRY: Yes. I call Mr Wright.

30 THE COMMISSIONER: Yes, come forward, Mr Wright.

MS RONALDS: Commissioner, I've just joined.

THE COMMISSIONER: Yes. And, Ms Ronalds, do you appear for Mr Wright?

MS RONALDS: I do.

40 THE COMMISSIONER: Thank you.

MS RONALDS: With Mr Mack.

THE COMMISSIONER: Yes, thank you. Do I take it Mr Wright has been informed of the extent of a section 38 order?

MS RONALDS: Yes, Your Honour.

THE COMMISSIONER: And he wishes - - -

MS RONALDS: Commissioner, sorry.

THE COMMISSIONER: - - - wishes to take advantage of that?

MS RONALDS: He does wish to take advantage if that is convenient to the tribunal.

10 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.

20 **PURSUANT TO SECTION 38 OF THE INDEPENDENT COMMISSION AGAINST CORRUPTION ACT, I DECLARE THAT ALL ANSWERS GIVEN BY THIS WITNESS AND ALL DOCUMENTS AND THINGS PRODUCED BY 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**

30 THE COMMISSIONER: Do you wish to be sworn or affirmed, Mr Wright?

MR WRIGHT: Affirmed please, Commissioner.

THE COMMISSIONER: Can we have the witness affirmed.

MR HENRY: Thank you, Commissioner. Excuse me. Mr Wright, you're the Registrar under the Aboriginal Land Rights Act. Is that right?---Yes.

And how long have you been in that position?---As a statutory officer holder since 2002.

10 All right. Now I appreciate that some of these questions that I'll ask will be at a level of generality but I'll ask you to do your best in answering them. If you say they're just too general please, please let me know. That is, too general for you to give a complete and accurate answer. The first is this, during the period 2010-2014 which I appreciate is a lengthy period, did you have a main point of contact at GLALC?---Yes.

And who was it?---Mr Johnson.

20 Right. Was there anyone else at GLALC with whom you regularly interacted?---Not regularly. From time to time I spoke to the chairperson, Ms Cronan.

Right.---But principally with Mr Johnson.

All right. And how regular was that contact with Mr Johnson?---Over that four-year period, I would suggest at least monthly.

And what form did it take?---Often in the form of telephone calls or emails, and occasionally meetings.

30 And were they ordinarily contacts instigated by him or by you?---I couldn't say which was the more dominant.

All right. And did those communications involve requests for advice from you?---From time to time, Mr Johnson, as other Local Land Councils do, will seek the views of the Registrar on aspects of the Act.

40 Right. What other purposes, again, generally speaking, were made for the contact?---Generally to discuss the issues that were pertinent to the Local Land Council, in Gandangara's case its move to a particular structure, as well as disputes or conflicts which might be going on within the Land Council itself.

All right. I'll perhaps provide you with an example, I think, of what you're talking about. If you could be provided with volume 3 at page 72, please. And you'll be provided with a hard copy, Mr Wright. It will also come up on the screen. So, the page that's up on the screen, the first page of this document, is a circulating resolution of GLALC. You'll see that it has three

pages, pages 72 through to 74, Mr Wright, and then some annexures. Have you seen this document before, do you recall?---I don't recall seeing this document.

All right. You'll see from page 74 that it's a document that appears to have been signed on 29 March, 2010 by the members of the Board of GLALC. Do you see that?---Yes.

10 Or actually that may be incorrect in the sense that although they appear to me to be members of the Board, at the front page – no, I withdraw that. It is said to be the directors on page 73. At the base of the page, you'll see that. Excuse me, going back to 72. Item 1 is corporate restructure and it provides that “GLALC intends to effect a corporate restructure, which will include GLALC,” and I won't read the rest of it to you. Is that an example of what you were talking about a moment ago when you referred to a corporate restructure?---Yes.

20 Now, as I've said, you'll see page 75, the structure, the purpose of the circulating resolutions is depicted on a diagram. And that's the structure about which I'm asking you. With that in mind, could I ask you please to be provided with – so perhaps leave that there available to you, Mr Wright, and I'll ask you to be provided with volume 17 at page 94. Now, I'm taking you to page 94 just to give you context, Mr Wright. This is an opinion of Mr Priestley, of Queen's Counsel, which you presumably have seen before. ---Yes.

30 What I want to take you to for present purposes is page 105, in the bottom right-hand corner. You'll see paragraph 48 about a quarter of the way down the page.---Yes.

And at (i), it says "On 29 June, 2010, the Registrar queried the corporate structure with which GLALC was dealing and the potential conflicts of directors and officers of GLALC acting as Board members or officers of other companies", do you see that?---Yes.

40 Now I appreciate I don't have to put in front of you whether it's a letter or other form of communication dated 29 June, 2010. But what I want to ask you is first of all, are you able to say whether the corporate structure referred to at paragraph 48 (i) is the corporate structure that's depicted in the diagram in volume 3 of page 75?---No, I don't think it is.

I see. It's a different one, is it?---My recollection is that my letter of 29 June, 2010, which is the reference in Mr Priestley's paragraph 48. It certainly involves some of those companies but I don't recall that being the exact structure.

All right. Where I've ultimately wanted to come to is this. Do you recall how you learned about the corporate restructure of the GLALC Group or

Gandangara Group of entities in the first half of 2010?---There was a meeting of the GLALC members in July of 2010. I received a complaint about a resolution from that meeting. Talking about the creation of the GFF entity and the movement of money. And I raised that complaint with GLALC and my letter of 29 June, 2010 was premised on conversations before then. So this, sorry, my apologies. My knowledge of the – let me start again, Counsel.

10 That's all right. The June, 2010 letter, my knowledge of the corporate restructure arose in 2007 when I was first – a complaint was first received by me from a group of GLALC members about an initial corporatisation. My letter of July, June 2010 was a letter in response to the general concepts of corporatisation by GLALC and setting some ideas in GLALC's mind about what was an issue in that process.

And can you recall what prompted you to write the letter when you did in June, 2010?---I'd been discussing those issues with Mr Johnson.

20 Right. So is this a fair summary of how issues would ordinarily be brought to your attention at least in respect of GLALC during the period 2010 to 2014. You'd be contacted by a person who had some concerns, ordinarily a member and then you would take that up with Mr Johnson?---Yes.

All right.

THE COMMISSIONER: Sorry, Mr Wright. I just want to get this sequence right. The first complaint you received about a corporatisation issue was in 2007?---Yes, Commissioner. I apologise. I had - - -

30 No, no, no, that's all right. I just want to get - - -?--- - - - given you the wrong before. Yeah.

- - - the sequence right. And then from that time you were discussing these issues with Mr Johnson and then you received a complaint in relation to the July, 2010 meeting, is that right?---No. The meeting was 2011, so that's what I've conflated.

40 All right?---So my correction is that leading up to the June, 2010 letter, Commissioner, was initial contact from GLALC members in 2007.

I see?---Some conversations about the general concepts of corporatisation and my letter of June 2010 was to alert the GLALC to some of the issues that that process would enliven.

Thank you.

MR HENRY: This may assist you. If you're provided with volume 9 at page 111. You should see there Mr Wright, minutes of the Board meeting of 11 July, 2011?---Yes.

If you go forward to page 114 you'll see motion 17?---Yes.

Is that what you had in mind when your reference was to 2011?---The complaint I received in 2011 concerned a like resolution from a member's meeting.

10

Oh, okay. Well perhaps I may be able to assist you there?---This was, this was, this Board motion or resolution I became subsequently aware of.

Aware of, right?---But the complaint was raised to me on the basis of a members resolution.

All right. If you go forward, this may assist you. Page 129. You'll see minutes - - - ---Yes, I'm familiar with those minutes, Counsel.

20

- - - of 27 July. And the resolution, I think, to which you're referring is at page 132.---Yes.

Right. So the sequence is in relation to this issue, that is the transfer of funds from GLALC to GFF, is subsequent to this members' meeting on 27 July, 2011, you are contacted by a member who is present at the meeting. ---Yes.

I don't suppose you can recall who it was?---Yes, I can.

30

Can you give us the name?---His name was Len Malone.

Len Malone? And can you recall – he rang you, did he?---He rang me and he sent me an extract. He telephoned me.

Right.---He didn't send me an extract. That was 2007.

Yes.---He rang me and advised me about this decision.

40

Right.---And asked me to make inquiries about it.

I see. Which, of course, you did. And that culminated, ultimately, in you issuing a compliance direction, which is in volume 20 at page 16. So I'll ask you to be provided with that.---What page did you - - -

Page 16 is where the letter from you, enclosing the compliance directions, is found.---Yes.

And then, if you go over the page. So the covering letter is at page 16, and then the compliance direction itself commences at page 17.---Yes.

Now, as you see from the covering letter, it's dated 31 August, 2012. But on page 17, where you set out the facts, you refer back to the general meeting, which you've just given some evidence about, of 27 July, 2011. Now, so are you able to recall what the sequence of events was between when you received the complaint after the July 2011 meeting, up to the point at which you issued the compliance direction?---Broadly I received a complaint which addresses the question of the power of the GLALC to conduct itself in certain ways. And I've asked the GLALC questions about that. I've also sought legal advice in relation to that matter. And prior to issuing the compliance direction, I had satisfied myself that the resolution of July 11, both at Board and members level, was beyond the power of the GLALC. So it was a process of coming to the view as to whether or not those decisions were beyond power.

Right. Now, if you go to page 19, you'll see the directions portion of the compliance direction. And do you see in subparagraph A, it says, "Within 28 days of receiving this compliance direction, rescind the Board resolution or decide it is not to be implemented or further implemented." I'm just focusing on those words "implemented or further implemented".---Yeah.

At the time of you issuing the compliance direction, were you aware as to whether or not funds had been transferred from GLALC to GFF?---So, there was a letter from me to the GLALC on 1 August.

Yeah.---2012, which foreshadowed the compliance direction.

Yes.---During the period 1 August, 2012 to 31 August, 2012, there was a meeting, my recollection is on 20 August, involving myself and my legal advisors, or advisor, GLALC and their legal advisors, at which it was suggested that there had been monies transferred in the 2011-12 year. And so the terms of the compliance direction were to accommodate that information.

All right. Were you told – or who told you that?---It was expressed by lawyers acting for the GLALC at the meeting.

I see. And did they, did they or anyone else indicate to you how much money had been transferred?---The amount that came to me was \$1.66M I think is the number and it didn't appear at that time.

Yes?---It appeared in further correspondence from Baker & Mackenzie following the issuing of the compliance direction on 31 August, 2012 - - -

Yes?--- - - - in response to that direction and it was included in a report that was put I understand to the GLALC Board to have the GLALC Board move

some further resolutions in their mind to remedy the, the conflict or the issues arising from the compliance direction. So the amount was not known to me - - -

Yes?--- - - - as at 20 August for 31 August.

10 As you say there was then following the compliance direction follow up as to whether or not there had been compliance with the compliance direction itself. Can I ask you please to turn forward in volume 20 to page 93, Mr Wright. And if it assists we can get rid of some of the other volumes that are in front of you?---I've already done so, Counsel, thank you.

20 All right. Yes, so this is a letter of yours of 19 October, 2012 to Mr Johnson of behalf of GLALC. And you'll see in the bold heading you indicate that it's a Notice of Intention to issue a new compliance direction. And you set out on pages 93 and 94 some of the background and you point out at page 94, paragraph 6 that on 31 August, 2012, which of course is the date of the covering letter of the compliance direction, that GLALC by its solicitors, Baker & Mackenzie sent you an email stating, "I'm instructed by my client that it's the intention of GLALC to comply with the terms of the compliance direction." So a sequence appears to have been used, you send the compliance direction and you automatically or immediately get this response for comply. Is that - - -?---Yes.

Right. Then what happens as you set out at pages 94 to 95, there's an attempt by the Board of GLALC to satisfy you in respect of the compliance direction by rescission of motion. And you'll see there it's rescission of the Board's motion. Do you see that?---Yes.

30 Now one of the directions that you made in the compliance direction was concerned with the member's motion, it wasn't confined to the Board's motion. Do you recall?---Yes.

And if you go forward in this letter of yours to page 96, paragraph 11 you record that you have not been advised whether the general resolution has been rescinded or varied. Do you see that?---Yes.

40 But were you ever advised to whether the general resolution was rescinded or varied?---My recollection Counsel, is that I was advised it was going to be dealt with in the same way as the Board resolution. But that's my recollection.

All right. But you can't recall ever being provided with a document that demonstrated that that had occurred?---I can't be certain, Counsel, I'm sorry.

All right. You'll see going back then in the letter, page 95, paragraph 8. It records that on 21 September, 2012 you were sent a copy of the second

Board resolution, which is the one that attempts to rescind, rescind the resolution that was initially put in place?---Yes.

Excuse me. And you were also sent an extract – a copy of an extract of the report to the GLALC for the meeting and a copy of a draft security deed and loan deed.---Yes.

10 You say in paragraph 10 that the draft loan deed did not – or had some problems with it. and that’s my paraphrasing, and then in paragraph 12 you say that it appears to you that GLALC has not complied with the compliance direction and you set out your reasons why.---Yes.

20 Then you say in paragraph 13 that you intend subject to receiving an undertaking to refer GLALC’s noncompliance to the L and E Court. Then you finally provide notice of intention to issue a further compliance direction. Now, this as I say is recorded in a letter of yours of 19 October, 2012. Where this sequence ultimately ends up is in the context of the mediation involving Mr Priestley’s advice, the advice to which I’ve taken you do you recall?---Yes.

And Mr Priestley’s advice, I needn’t take you to the detail of it but it’s dated 26 February, 2013 but the resolution of the matters the subject of the compliance direction happened sometime later in about May – April/May of 2013 and for that if I could ask you to have regard to volume 20 at page 272. Page 272, have you got that open, a ministerial brief?---Yes.

I appreciate that – well, I assume you didn’t create this piece of paper, the ministerial brief. Is that right?---I did create this piece of paper, Counsel.

30 Oh, okay. So you did. That perhaps makes it easier. This sets out what the ultimate outcome of the dispute, if I can call it that, was and essentially undertakings were provided by Mr Johnson or on behalf of GLALC and they’re recorded at page 273. Do you see those?---Yes.

Then you gave certain undertakings at page 274. Do you see those?---Yes.

40 And then there was – if you look at page 280 there’s a letter to you from Mr Johnson providing evidence to resolve the matters the subject of the agreement in the undertakings which included a repayment by GLALC to GFF of \$1.38 million and that’s, that’s pages 280-282. Do you see that? ---Yes.

Now, I appreciate that’s a relatively lengthy sequence I’ve taken you through to get to this point. The question I have for you, or one question I have for you in relation to this episode which starts with the compliance direction on 31 August, 2012 and ends up being resolved in April, 2013, is whether or not in your view there’s a more expeditious way to resolve this sort of problem?---So I issue the first direction on 31 August, 2012.

Yes.---I satisfy myself that I need to foreshadow a second direction because I am not satisfied that the Board resolutions and my recollection is a draft member's resolution suggested to me in September would remedy the problem.

10 Yes.---There is correspondence between myself and my legal advisors, and Gandangara and their legal advisors. There is then a meeting on, by my recollection, 15 November, 2012, at which these matters are discussed, and my intention to refer the matter to the court is discussed. And the outcome of that meeting is that I agree, using my judgement, to enter into what I wouldn't call a mediation counsel, I would call an expert opinion process.

Yes.---Whereby other than commencing proceedings in the Land and Environment Court, the parties would identify a mutually suitable senior counsel, who would have submissions provided to them on these issues, and that the parties would accept that view. So that's the unfolding of the events
- - -

20 Yes.--- - - - following the 31 August direction. So, yes, there was some time involved in that. As you would imagine, the logistics of that process, while perhaps not as onerous as the logistics of proceedings, certainly required some work to undertake. And that was the course that I agreed to.

All right. And you perhaps touched upon where I'm going next. And that is, is the alternative, at least under the current statutory scheme, that you go to the court to enforce a compliance direction?---Yes.

30 And so from your perspective, the issue, presumably, was once you had satisfied yourself of a failure to comply with the compliance direction, you either embark upon court proceedings with the attendant cost and time, or you attempt to resolve by some means of agreement or compromise in the way in which you did. Are they the alternatives at that point?---Those alternatives are open to the Registrar. And in this particular instance, I chose essentially an agreement process rather than litigation.

40 And in that process, my understanding is Mr Priestley was asked to give the opinion that he gave. You were prepared to abide by the outcome of whatever that opinion was, but GLALC was not. Is that right?---I think what emerged was that subsequent to Mr Priestley's advice, information seemed to suggest that there had been activities, particularly in the 2012-13 year, which could not necessarily be fixed by Gandangara. Money had left the process. So rather than them suggesting they were unwilling to comply, I don't think they had complied.

Yes, but, sorry, perhaps we're at cross-purposes or my question wasn't clear. Am I correct in understanding that as far as you were concerned, when Mr Priestley was brought in for the purposes of giving his opinion,

you were prepared to enter into, whether it's called a mediation or not, the arrangement on the basis that whatever he said would dictate the outcome.
---Yes.

But that GLALC wasn't prepared – it was prepared to have Mr Priestley give his opinion, but wasn't prepared to be bound by that opinion. Is that right?---I think they reserved their right to consider Mr Priestley's views, yes.

10 Which leads me to this question for you. Do you perceive that there is perhaps benefit in a statutory scheme that provides for an independent person appointed to make a decision that binds the parties, which is in effect like another possible form of dispute resolution in circumstances where a compliance direction is not complied with?---I'm not troubled by the scheme as it is now, because the court does that job. But in this particular instance, I selected other than court as the remedy.

20 THE COMMISSIONER: I suppose in some respects that is the issue, isn't it, Mr Wright. Because, I mean that's why when the compliance direction is not complied with the court performs that role. I suppose the question arises in this way. Given that the Gandangara Local Aboriginal Land Council saw itself as something of a maverick in this area, so it was as if I could use this expression "pushing the envelope" in terms of what it could and couldn't do?---Yes.

30 - - - around the provision of services. And as I understood it that had been a long standing kind of dispute or discussion that was going on. Isn't there some benefit then in actually taking the matter before a court so that there could be a definitive ruling rather than going down the path of an expert opinion process where the expert opinion wasn't accepted by one of the parties? I mean I know there are competing considerations but I'm just wondering whether or not at some point you need a circuit breaker and that might've been the option that could've been chosen?---Commissioner, I say to you that the decision I took at the time to use an alternative dispute resolution procedure rather than a referral to the court was my decision and was taken at the time on the basis that I was satisfied it would provide a remedy in this case. Am I right to say, Commissioner that there had been a long conversation about where the boundaries were and activities under the Land Rights Act in relation to Gandangara. And that it was effectively and
40 to some extent premised on the events that had led to Justice Barrett's decision in relation to the Darkinjung Local Land Council. So if I go back in time, Commissioner, and say it would've been better for me to go to court, I can't say. But I'm satisfied that at the time the decision was made on the basis of I thought it was a sensible decision and it certainly was a cost effective decision which is always in my mind.

And I appreciate that's all very well being wise in hindsight. It might be an appropriate time. We'll just take a luncheon adjournment and resume at 2 o'clock. Thank you.

LUNCHEON ADJOURNMENT

[1.02pm]